

Karam Chand Thapar and Bros. Limited, and Others

v.

Their Workmen

(Supreme Court Of India)

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

Civil Appeal No. 27 To 29, 102 And 103 Of 1962 | 02-08-1963

Das Gupta, J.

1. These appeals arise out of certain disputes between Karam Chand Thapar & Bros., Ltd., to which we shall later in this judgment refer as "the company, " which manages a large number of other limited companies and its workmen. One of the principal questions that arises for consideration in this appeal is whether this company is the employer of these workmen or they are workmen employed by the several companies managed by Karam Chand Thapar & Bros. There were altogether three references which have been disposed of by the adjudicator by one and the same award.

2. In the first order of reference made by the Government of West Bengal on 9 May, 1955 only Karam Chand Thapar & Bros. Ltd., was mentioned as the employer. In this reference fourteen matters, some of which will be referred to in detail later, between Karam Chand Thapar & Bros., Ltd., and their workmen were referred for adjudication. The order of reference was amended on 22 September, 1955 by adding 28 companies mentioned in a schedule and described as the associate companies of Karam Chand Thapar & Bros., Ltd., as the employers.

3. The second order of reference was made on 18 July 1955. There also Karam Chand Thapar & Bros., Ltd., was originally named as the employer and two items were referred to adjudication in these words :

"(1) Whether the workmen employed in the head office of the managing agents Karam Chand Thapar & Bros., Ltd., are employees of the managing agents or they are employees of the respective associate concerns managed by the same managing agency or both.

(2) Whether any additional sum is payable as bonus to the workers employed at the head office in respect of the year 1953-54."

4. This order of reference was amended by an order of the Government of West Bengal on 11 April, 1956. By this order of 11 April, 1956, 37 limited companies including the 28 companies (which had been made parties to the first order of reference in September, 1953) were mentioned as employers. So that in the second order of reference as it ultimately stood the employers were described as Karam Chand Thapar & Bros., Ltd., and companies mentioned as their associate companies. The third order of reference was made on 6 February 1956. Karam Chand Thapar & Bros., Ltd., and 37 companies were mentioned as the employers. These 37 companies were identical with 37 companies mentioned in the second order of reference and out of these the name of one United Collieries, Ltd., was deleted later on. Two matters in dispute were referred in this third order of reference. They were :

"(1) Quantum of bonus for the year 1954-55 and the method of its distribution amongst the workmen of the different associated concerns employed in Calcutta.

(2) What will be the status of the employees of Modern Agencies, Ltd., in relation to the managing agents, Karam Chand Thapar & Bros., Ltd., and what amount is payable to them by way of bonus for the year 1954-55."

5. On behalf of the employers a preliminary objection was raised denying the jurisdiction of the tribunal to decide whether the respondent-workmen were workmen of the Karam Chand Thapar & Bros., Ltd., or one more of the companies mentioned as associate companies. The tribunal rejected this objection and held on a consideration of the evidence that the respondent-

workmen were all workmen of Karam Chand Thapar & Bros., Ltd., the managing agents, and not the workmen of the other companies. The tribunal then considered the different matters in dispute and gave its award in respect of each of them. Against this decision of the tribunal these five appeals have been filed on the strength of special leave granted by this Court-three (C.A. Nos. 27-29 of 1962) being by the employers and two (C.A. Nos. 102 and 103 of 1962) being on behalf of the workmen.

6. The first question that fell to be considered by the tribunal and has naturally been raised before us is whether the workmen were workmen of Karam Chand Thapar & Bros., Ltd., the managing agents, or workmen of one or more of the companies. Sri Sastri has very rightly not raised before us the objection that was raised before the tribunal to its jurisdiction to decide this question. It is obvious that the contention of the workmen that Karam Chand Thapar & Bros., Ltd., was their employer formed the basis of all their claims and as this contention was seriously contested, except as regards 18 persons, by this company and also the companies under its management, the matter had necessarily to be decided by the tribunal. Sri Sastri has however argued that the tribunal's finding on this matter is not supported by any legal evidence. In our opinion, this argument is wholly unwarranted. The company admittedly functions as the managing agents of 30 of the 36 associated companies mentioned in the references. It is further admitted that the company did originally act as the managing agents of the other six companies also. It appears however that prior to the date of reference the company had in form given up its managing agency as regards those six concerns, viz., Indian City Properties, Ltd., Jagatjit Cotton Textiles Mills, Ltd., Karam Chand Thapar & Bros., Ltd., Karam Chand Thapar & Bros. (Coal Sales), Ltd., Modern Agencies Mills, Ltd., Produce Exchange Corporation, Ltd., and Sri Sitaram Sugar Mills, Ltd. The company had its head office at 5, Royal Exchange Place, Calcutta-1. It appears from Ex. 30 that this head office was shifted on 23 January, 1960 to its new premises, at Thaper House, 25, Brabourne Road, Calcutta-1. It is interesting to notice that in this document which is a copy of an advertisement published in the daily Amrita Bazar Patrika about the shifting to the new premises, the language is "from 23 January, 1960 our head office is shifting to its new premises, Thaper House, 25, Brabourne Road, Calcutta-1." Then follow the names of 36 concerns mentioned in the reference and some others followed by the name "Karam Chand Thapar & Bros. (Private), Ltd." It is not disputed that the workmen before us work in this building. Their case is that they are employees of Karam Chand Thapar & Bros. (Private), Ltd., at this head office. The company's case is also the case of the

associated companies is that only eighteen of the workmen are the company's workmen and the remaining 378 working in this building are not the company's employees. It is said that 255 of them are common employees of different groups of the associated companies, while 123 are the exclusive employees of different concerns. It is difficult to see how as regards those who are said to be common employees of different groups of concerns it can even be seriously argued that they are the employees of any of these concerns. It is true that the mere fact that Karam Chand Thapar & Bros. appointed these men would not be sufficient to show that Karam Chand Thapar & Bros., Ltd., are their employers. For under the terms of the managing agency agreement the managing agents are empowered to make appointments on behalf of the managed concerns. We have however the additional important fact that the allotment of these common employees to particular concerns is wholly in the hands of the company, Karam Chand Thapar & Bros., Ltd. The tribunal has recorded a definite finding that the company used to transfer employees from one concern to the other or from one group of concerns to the other. There is nothing before us that would justify us in interfering with this finding of fact. On the contrary, the several appointment letters to which Sri Sastri drew our attention do indicate that the managing agents keep in their hands the right to employ these common employees for doing the work of one member of the group or another just as they thought fit and proper. It appears also that there is one provident fund scheme controlled by the company through a board of trustees selected by the company for all these employees. These and other circumstances which have been mentioned in detail by the tribunal fully justify the tribunal's conclusion that these persons, said to be common employees of different concerns, are really the employees of the company, Karam Chand Thapar & Bros., Ltd. In any case, urges learned counsel, there are 123 persons each of whom is shown to be the exclusive employee of one or the other of the associate concerns only. These cannot, it is argued, be considered in law to be workmen of the managing agents company. In support of this plea. Sri Sastri has drawn our attention to some of the appointment letters on the record. At p. 378 of the record we find the letter of appointment of Samai Kahar. The appointment purports to have been made on 1 May, 1959 apparently for Bharat Starch and Chemical, Ltd. At p. 392 we have the appointment letter of Sibji Roy. The letter bears the date 3 August, 1957 and purports to make the appointment with effect from 1 July, 1957 as godown coolie for Produce Exchange Corporation, Ltd. Another appointment letter of Nitai Ray also as a godown coolie for the same concern appears at p. 393. Several other appointment letters purporting to be for exclusive appointments under particular concerns appear on the record. It is curious to notice however that all these letters contain a clause cancelling "all previous arrangements of

any nature whatever" with the person appointed. What these "previous arrangements" were is not shown. This furnishes strong support for the view which found favour with the tribunal that these are not cases of new appointments but only fresh letters of appointment for old employees with the purpose of making it appear that they were not the employees of the managing agent but of particular concerns under the company's management. As has been pointed out by tribunal, a question as regards particular employees at the head office being employees of the managing agent company or one or more of the managed companies was raised on a previous occasion and it was held by the Labour Appellate Tribunal as regards these employees that whatever might be the system of calculations of their salaries it could not be gainsaid that Karam Chand Thapar & Bros., Ltd., were the real employers as they issued the appointment letters and in fact paid them their salaries. In the present case the tribunal thinks that the terms used in the new appointment letters were a mere device to conceal the real state of affairs. The tribunal has discussed in detail the evidence of witnesses showing that even in the case of these persons said to be employees of particular concerns only, the services of the employees were transferred from one concern to another at the direction of the managing agents and that every such person was "completely in the control of the company in the matter of making his service available to any of these concerns at any moment." We are satisfied that there is ample evidence on the record in support of the tribunal's decision and there is nothing that would justify us in interfering with it. Sri Sastri also drew our attention to the fact that for six of the companies Karam Chand Thapar & Bros. had ceased to be managing agents. Apart from the fact that according to the tribunal this cessation of managing agency is only in form and that in fact the company has continued to manage these six concerns also, we do not see how this question is at all relevant if as in our opinion; the tribunal has rightly found that the employees are the workmen of Karam Chand Thapar & Bros., Ltd. The fact that this company ceased to manage one or more companies, formerly under its managing agency, cannot in law affect the status of employees.

7. We are therefore of opinion that the decision of the tribunal that the respondent workmen were workmen of Karam Chand Thapar & Bros., Ltd., the managing agents, and not the workmen of the other companies, cannot be successfully challenged.

8. This brings us to the criticism made by Sri Sastri against the tribunal's award on some of the specific matters in dispute.

9. The first matter in dispute in the first order of reference is : "What should be the working hours for the subordinate staff including peons and sweepers ?" It appears that the working hours of these employees had already been fixed at 9-30 a.m. to 4-30 p.m. with half-an-hour recess at 1 p.m. on week days barring Saturdays, and from 9-30 a.m. to 1-30 p.m. on Saturdays. These hours as fixed by the previous award are admittedly in line with the award given by the Mercantile tribunal with respect to the Bengal Chamber of Commerce. The company's case was that, having regard to the nature of duties of peons and sweepers, it was not practicable to observe the same hours for them as for other employees. It has been rightly pointed out that for a proper working of the office it is necessary that sweepers and peons should start their work sometime before other employees come and should stay on for some time after the other employees depart. The tribunal has recognized this position and has ordered that it will be open to the company to direct these subordinate staff to attend office half-an-hour before the normal time to be regulated by a system of rotation subject to overtime wages being paid at the rates fixed by the award. For working beyond 4-30 p.m. on week days and 1-30 p.m. on Saturday, also the tribunal has ordered that these employees should be entitled to overtime payment. In our opinion, these directions are just and proper. Issue 3 was with respect to the company's holding up annual increment in seventeen cases. The tribunal refused relief as regards some; as regards the rest it directed that their pay should be fixed in their next stage in the scale with effect from 1 April, 1953 and the company should pay them the arrears in wages arising from the deficiency for not giving the annual increment. The sole point raised by Sri Sastri was that to give annual increment or not was at the absolute discretion of the company, and so the withholding of increments on 1 April, 1963 in consideration of the fact that these employees had their pay fixed under the previous award with effect from 12 September, 1952 and thereby secured an increase in their wages, is fully justified. We are unable to find any support in principle or authority for the submission that granting or withholding of annual increments is at the absolute discretion of the employer and therefore find no reason to interfere with the tribunal's decision in the matter.

Issue 4 is with regard to pay-scales. The earlier award of the Labour Appellate Tribunal had fixed the following scales of pay :

Grade A. - Rs. 70-3-85-4-105-E.B.-5-170 (23 years).

Grade B. - Rs. 70-4-90-5-110-E.B.-7-215 (22 years).

Grade C. - Rs. 80-5-100-7-135-E.B.-10-265 (22 years).

Grade D. - Rs. 90-5-110-10-150-E.B.-12-306 (22 years).

The union's claim was for substitution of these by two grade, viz. -

Grade A. - Rs. 90-5-115-7-150-E.B.-10-25).

Grade B. - Rs. 100-7-135-10-185-E.B.-15-335.

10. The present award has created three grades, the former two grades A and B to be substituted by the new grade A, the former grade C to be replaced by the new grade B and the former grade D. to be replaced by the new grade C. For the grade A it fixed the pay Rs. 70-5-110-E.B.-7-215; for the new grade B, it fixed the scale at Rs. 100-7-135-E.B.-10-265 (18 years); for the new grade C it fixed the scale at Rs. 130-10-150-12-198-E.B.-12-306 (15 years). Sri Sastri's main criticism against the award is that the tribunal has given the workmen more than their claim. On behalf of the workmen, Sri Chatterjee denied this and expressed his willingness to have the award modified by giving the workmen the two grades A and B as claimed by them. Sri Sastri at first was agreeable to this suggestion but ultimately admitted that the pay-scales as granted by the award were less favourable than what had been claimed. In view of this we think his attack against the award in the matter of pay-scales must be rejected. The tribunal has give detailed directions as regards the adjustment of employees on the old B grade and the old A grade in the new grade A as awarded by it. It has however given no directions as regards the adjustment of the pay of employees on the old grades C and D in the new grades B and C which respectively replaced them. The workmen in their appeal have prayed for proper directions

for adjustment, similar to those given by the tribunal in respect of the new grades B and C. It appears to us to be necessary to direct that employees on the old grade C and the old grade D should be fitted into the new grades B and C at the next higher scale of pay. We do not think we shall be justified in making any further directions in the matter.

11. The tribunal's award on the question of dearness allowance has been attacked by both the parties. On behalf of the company Sri Sastri has pointed out that in discussing whether the company is financially prosperous and stable enough to pay higher dearness allowance the tribunal has taken into consideration not only the financial position of this company but also the high profits made by some of the managed companies. Sri Sastri rightly contends that it is the financial position of the company alone that has to be considered and the prosperous position of the managed companies is not directly relevant. One cannot however ignore the fact that in appreciating the future prospects of the company the financial position of the managed companies has also necessarily to be considered as commission income earned by it is bound to depend on the magnitude of profits of the managed companies.

12. On an examination of the tribunal's discussion of the matter we are of opinion that the tribunal is on the whole justified in its conclusion that "the company is in the path of steady prosperity and it would be fair and appropriate to increase the rate of dearness allowance."The tribunal has rejected the workmen's claim to the rate of dearness allowance as under the Bengal Chamber of Commerce but has awarded it at the rate of 100 per cent for Rs. 100, 50 per cent on the next Rs. 100 and 25 per cent on the remaining salary for the clerical staff. For the subordinate staff the tribunal has increased the old rate of dearness allowance from Rs. 45 to Rs. 48.

13. The workmen in their appeal contend that the Bengal Chamber of Commerce rate of dearness allowance should have been allowed. Dealing with this question the tribunal has pointed out that almost all the constituent members of the Bengal Chamber of Commerce have had long experience in industrial field, having started their business in India many years before the commencement of the present century. There is therefore no reasonable basis for asking companies like Karam Chand Thapar & Bros., Ltd., which was started only about 35 years ago, to bear the burden of the dearness allowance

paid by members of the Bengal chamber of commerce. Though therefore it is true that the clerical staff of members of the Bengal Chamber of Commerce and the clerical staff of this company are drawn from the same social class having similar conditions of living and living standards, we think there is considerable weight in the reason given by the tribunal for awarding dearness allowance at some - what lesser rates than the Bengal Chamber of Commerce rates.

The objections by the company as well as the workmen to the award on the issue of dearness allowance must therefore fail.

14. The sixth matter in dispute mentioned is the first order of reference was leave and leave allowance. On behalf of the company Sri Sastri urges that the provisions in the award that in case of protracted illness an employee who had served the company for less than five years should be allowed leave without pay up to six months is unreasonable. We think there is considerable force in this contention. In the award as it stands, an employee who has served for say, even for one year, would be entitled to leave for a period up to six months in the case of protected illness. It is true that this will be without pay. But the company's difficulty would be that it would not be able to engage new men on permanent basis in place of such employees. It appears to us that the workmen who had served the company for less than five years can be generally said not to have become so much part of the company that this special privilege should be granted to them. We therefore set aside the provision in the award that an employee who has served the company for less than five years should be allowed leave without pay for a period up to six months. The workmen in their appeal claim that the tribunal should have granted their prayer of sick leave on full pay instead of half wages as at present. It has to be remembered that sick leave is allowed to the workmen in addition to eighteen days' privilege leave in the year and ten days' casual leave in the year for clerical staff and fifteen days' privilege leave and ten days' casual leave to the subordinate staff. There is thus no justification for the workmen's claim for sick leave on full wages.

15. On the question of overtime allowance which forms item 7 in the first order of reference, the award fixes the rate at 1.25 wages inclusive of dearness allowance for every hour or part of an hour's work done beyond 5 p.m. on week days and 2 p.m. on Saturdays. On behalf of the company, Sri Sastri contends that the dearness allowance should not be taken into consideration in the

overtime allowance. In support of the workmen's appeal Sri Chatterjee has contended that overtime allowance should be at the rate twice the wages and dearness allowance. On the one hand we think that on principle overtime allowance should have relation to the total wage packet, viz., basic wage plus dearness allowance, and that there is no reason to interfere with the tribunal's decision on this point; on the other hand we do not find anything to justify raising it to more than 1.25 the wages as granted by the tribunal on a consideration of the financial capacity of the company as also the practice prevalent in other concerns in the neighbourhood.

16. The claim for bonus was disallowed by the tribunal. The workmen in their appeal have challenged the correctness of this part of the award. It appears that some bonus has already been paid by the company for the year 1953-54 and advances equal to one month and seven day's pay have also been taken for the year 1954-55. By consent of the parties on the question of bonus for these years, we order that no additional bonus be paid for the year 1953-54 and that in respect of the year 1954-55 the advances of one month and seven days' pay should be treated as payment of bonus but that nothing further should be paid by way of bonus. These directions by content of the parties will be without prejudice to any claim for bonus for future years. The only other item of dispute that remains for consideration is issue 2 in the first order of reference which is in these words :

"Whether any sum is payable to the twelve workmen mentioned in the attached list A or to any other workmen on account of fitting them in grades and scales laid down in the decision of the Labour Appellate Tribunal of India dated 12 September 1952."

17. The tribunal has refused to give any relief to the workmen on this issue. It is pointed out that the claim of the workmen is based on an assumption that under the directions given in the previous award the basic pay of the workmen should have been fixed in the revised grades and scales of pay at a stage next higher to the point arrived at after addition of Rs. 10 to the existing pay. This assumption is clearly not justified by the terms of Labour Appellate Tribunal's award and no relief can now be claimed, as sought to be claimed, on the presumption that such a direction was intended. The workmen's attack against this portion of the award therefore fails.

18. Under issue 13 the tribunal has directed that late attendance by 10 minutes on three occasions in a month would be condoned, and if a workman is late for more than three days in a month, he would loss his wages for one day. By the consent of the parties, we modify this direction to the extent that for late attendance for every four days in a month, the workmen would loss his wage for one day.

19. In the result, all the appeals are dismissed except for the modifications in the award mentioned above. Parties will bear their own costs.