

Gramophone Company, Limited

v.

Its Workmen

(Supreme Court Of India)

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

Civil Appeal No. 495 And 498 Of 1963 | 31-03-1964

Wanchoo, J.

1. These two appeals by special leave arise out of the same award of the industrial tribunal at Bombay and will be dealt with together. Appeal No. 495 is by the employer (hereinafter referred to as the company) and Appeal No. 498 in by the employees (hereinafter referred to as the workmen). A large number of matters were referred to the tribunal for decision. The company's appeal is confined to gratuity and Privilege leave. The workmen's appeal raises a large number of points to which we shall refer when we deal with that appeal.

2. We shall first consider the contention of the company on the question of gratuity. The company is a subsidiary or branch of the Gramophone Company, Ltd., which is a private limited company incorporated in the United Kingdom. The Indian branch was established over 50 years ago and is concerned mainly with the manufacture and/or sale of gramophone records, gramophone machines, needles, accessories, radio receivers, radiograms and record players. The head office and the factory of the Indian branch is at Dum Dum in West Bengal. While there is a branch office at Bombay with which the present appeals are concerned. There are about 72 workmen both clerks and subordinate staff employed in the Bombay office. On the other hand, there are about 1, 700 employees in the head office and factory at Dum Dum. The workmen at Bombay asked for the introduction of a gratuity scheme for them. This was opposed by the company and the main ground of such apposition was that the company had no financial capacity to bear the burden of the scheme. The tribunal went into the question of the financial capacity of the company and came to the conclusion that its financial capacity justified the introduction of a gratuity scheme in Bombay. But the scheme which the tribunal framed was a

modest scheme as compared to the demand of the workmen. It is not necessary to refer to the details of the scheme framed by the tribunal, for the company does not question the detail. Its contention is that it has not the financial capacity to bear the burden of any gratuity scheme. In this connexion it is further contended that the tribunal went wrong not only in its appraisal of the financial capacity of the company but also in overlooking certain other facts which have an important bearing on the question. It is contended that the tribunal failed to notice that there was already a provident fund scheme in force for the employees of the company since 1950. It also ignored the effect which the grant of gratuity to the Bombay workmen would have on the Dum Dum employees where a large majority of the company's employees work. Lastly it is contended that the tribunal ignored the fact that an earlier demand by the Dum Dum employees for the introduction of a gratuity scheme was turned down by the industrial tribunal in Bengal at the end of 1955 on the ground that the company's financial position did not justify the introduction of a gratuity scheme in addition to the provident fund scheme, which was already in force. There is no doubt that the tribunal while dealing with the question of gratuity has not referred to the existence of the provident fund scheme for the employees of the company. It has also not considered the impact of the introduction of the gratuity scheme in Bombay where only 72 workmen work on the company's head office at Dum Dum where there are about 1, 700 employees. Nor has it adverted to the fact that in 1955 a tribunal in Calcutta had turned down the prayer for the introduction of a gratuity scheme for the employees at Dum Dum on the ground of lack of financial capacity. These omissions of the tribunal have certainly introduced an infirmity in the award relating to gratuity, and we have therefore heard learned counsel for the parties at length on the question, particularly with regard to the financial capacity of the company and its ability to bear the burden of a gratuity scheme.

3. Before we consider the financial capacity of the company we should like to deal with the points which the tribunal failed to consider to see what effect they can have on the introduction of a gratuity scheme for the workmen in Bombay. The first fact to which reference may be made is that there is a provident fund scheme in force since 1950 to which the company contributes at the rate of 6 1/4 per cent of the consolidated salary of a workman. It is however well-settled now that the existence of a provident fund scheme is not a bar to the grant of a second retrial benefit in the shape of a gratuity scheme, provided the employer is able to bear the burden of two retrial benefits. That naturally depends on the financial capacity of the employer which we shall consider later. But the mere

existence of a provident fund scheme is not by itself a reason for refusing a gratuity scheme, particularly when a good part of the services of the existing workmen was not covered by the provident fund scheme. The next fact which was not noticed by the tribunal was that the West Bengal industrial tribunal had turned down the demand of the Dum Dum employees of the company for a gratuity scheme at the end of 1955 on the ground of lack of financial capacity. That also is no reason for refusing the introduction of a gratuity scheme for the Bombay workmen, if the financial capacity of the Company has in the meantime improved, and it is able to bear the burden of such a scheme. It may be mentioned that the West Bengal tribunal looked at the position of the company as it was up to 1954. Since then seven years had passed when the present tribunal came to make its award, and it is the financial position of these seven years which was not before the West Bengal tribunal that will have to be considered in deciding whether the company is able to bear the burden now of a gratuity scheme for the workmen in Bombay. The omission therefore of the tribunal to consider the existence of the provident fund scheme and to take into account the fact that the West Bengal tribunal had turned down the demand for the introduction of a gratuity scheme in 1955 will not matter if we find on a review of the financial capacity of the company that it is in a position to bear the burden of a gratuity scheme for the Bombay workmen.

4. The last point which the tribunal omitted to consider was the impact of the introduction of the gratuity scheme for the Bombay workmen who number only 72 on the financial capacity of the company with respect to about 1, 700 employees in Dum Dum. It is contended on behalf of the company that if a gratuity scheme is introduced for the Bombay workmen it will not be possible for it to resist the demand for the introduction of a similar scheme for the Dum Dum workmen, and therefore in judging its financial capacity to bear the burden of the introduction of the gratuity scheme the overall position should have been taken into account and its capacity to bear the burden should be judged not merely on the basis of 72 workmen at Bombay, for it may have to provide for a similar scheme for its employees at Dum Dum. There is some force in this contention of the company, and its financial capacity has to be judged on the basis of the all-India position for it may not be able to resist the demand, for the introduction of a gratuity scheme in Dum Dum, if it has to introduce a gratuity scheme for the Bombay workmen. It appears from what counsel for the parties have told us that since the award under appeal contribution to the provident fund made by the company has been increased from 6 1/4 per cent to 8 per cent in the case of the factory employees in Dum Dum. It is also stated by learned

counsel for the workmen that the burden of this increase in the company's contribution towards the provident fund of the factory employees in Dum Dum to more or less the same as the burden that would be cast on it by the introduction of a gratuity scheme like the one granted by the tribunal. Therefore, it is urged that so far as the large majority of the factory employees in Dum Dum are concerned, they have already got another benefit equal to the benefit which the workmen in Bombay would get by the introduction of the gratuity scheme and therefore they need not be taken into account in considering the total burden cast on the company by the introduction of the gratuity scheme for the Bombay workmen. It is only the non-factory workers who are a small percentage of the total number of employees in Dum Dum who may not be covered by the increase of the provident fund contribution who have to be taken into account in according what further burden would be thrown on the company by having to introduce a similar scheme for such employees as are not covered by the increased provident fund contribution. It is not in dispute that in Bombay the provident fund contribution has remained at 6 1/4 per centum as before as the Bombay workmen are not factory workers to whom only the increase applies. There is in our opinion force in this contention on behalf of the workmen and the impact of the scheme in view of this fresh development with respect to factory employees in Dum Dum would not be much with respect to a small percentage of its employees not covered by the increase in the provident fund contribution by the company in Dum Dum. We shall however bear in mind the impact of this small majority of employees in Dum Dum in judging the financial capacity of the company to bear the burden of this gratuity scheme for the Bombay workmen. We turn now to a consideration of the financial capacity of the company. In this connexion the company gave an estimate of the initial fund required for a gratuity scheme, which, according to it, works out to about between Rs. 33 and Rs. 34 lakhs on the basis of the demand of the workmen. This figure will be roughly halved, for the workmen had demanded one month's consolidated salary as gratuity for each year of service without any limit while the tribunal has awarded half a month's basic salary for each year subject to a maximum of fifteen months. Even so the figure would be in the region of Rs. 16 to Rs. 17 lakhs. If this was the real burden thrown on the company, at once a question may arise whether it will be able to bear this burden or not. But, as was pointed out by this Court in *Sone Valley Portland Cement Company v. Its workmen* [1962 - I L.L.J. 218] (Civil Appeal No. 586 of 1960 decided on 25 January 1962) there are two ways of looking at the burden thrown on an employer by the introduction of a gratuity scheme. One way is to capitalize the burden, and if that is done the burden would certainly appear very high and that is what exactly the company has done in its estimate. But looking at it from a

practical point of view, only 3 per cent to 4 Per cent of the workmen retire every year, and provision has to be made each year for only these workmen and the burden in the circumstances, assuming it to be Rs. 15 to Rs. 16 lakhs on the basis on which the company has calculated it, would immediately be reduced to about one lakh of rupees per year.

5. It is however said that in the company a large number of employees are older men and the rate of retirement may be more than three to four Per centum. Even so we think calculating in the practical way the burden will not be more than Rs. 1 1/2 lakhs per year for the entire 1, 700 employees or so. Further if we exclude from this calculation the large number of factory workers at Dum Dum in whose case the provident fund contribution has been increased from 6 1/4 to 8 per centum, the total burden per year would be very much less indeed. What we have to see is whether the company is in a financial capacity to bear this burden of the present gratuity scheme awarded by the tribunal. We therefore turn to the financial position of the company after 1955 to see whether this burden can be borne by the company. Balance sheets have been filed by the company for the years 1956- 57 to 1960-61. The profits shown in these balance sheets for the various years are as below :

Rupees Year in lakhs

1956-57 ... 7.6

1957-58 ... 7.2

1958-59 ... 1.6

1959-60 ... 1.49

1960-61 ... 6.04

6. It is further contended on behalf of the company that before the real profit for each year can be arrived at we should deduct amounts to be Provided for taxation and for development rebate reserves and if that is done it will be found that hardly any profit would be left and the financial position of the company would show that in most of these years it suffered lose. We are of opinion that this is not the correct way of judging the financial capacity of an employer, assuming that the figures in the balance sheets are all accepted as they are. When an industrial tribunal is considering the question of wage-structure and gratuity which in our opinion stands more or less on the same footing as wage-structure, it has to look at the profits made without considering provision for taxation in the shape of incometax and for reserves. The provision for incometax and for reserves must in our opinion take second place as compared to provision for wage-structure and gratuity, which stands on the same footing as provident fund which is also a retrial benefit. Payment towards provident fund and gratuity is expense to be met by an employer like any other expense including wages and if the financial position shows that the burden of payment of gratuity and provident fund can be met without undue strain on the financial position of the employer, that burden must be borne by the employer. It will certainly result in some reduction in profits; but if the industry is in a stable condition and the burden of provident fund and gratuity does not result in loss to the employer, that burden will have to be borne by the employer like the burden of wage-structure in the interest of social justice. While on the one hand casting of this burden reduces the margin of profit, on the other hand it will result in the reduction of taxation in the shape of income tax.

7. Thus, if the rate of tax is about 60 per cent as in the present case, the burden on the employer will be reduced to the extent of 60 per cent by being passed on in the shape of reduction of taxation and the real burden will only be to the extent of 40 per cent of the entire burden. We cannot therefore accept the contention on behalf of the company that provision for taxation and provision for reserves should take precedence over provision for gratuity. Further, an we have indicated, the practical burden on the company in the present case even taking all the employees into account would be in the neighbourhood of Rs. 1, 50, 000 per year of which 63 per cent would be met by reduction in taxation. It so, the real burden of gratuity scheme like the present on the company would be about Rs. 60, 000 per year. We do not think on a consideration of the profits made by the company in the five years already indicated that the company is not in a position to bear this burden. The actual burden may be even less, if we leave out of account the factory employees at Dum Dum in whose case there

has been an increase in the provident fund contribution from 6 1/4 to 8 per cent, and who therefore stand on a separate footing. Therefore, as we see the financial position of the company in the five years ending 30 June 1961, we do not think that it is such that it cannot bear the burden of the gratuity scheme as awarded by the tribunal. It has however been contended that the future of the company is not very bright and this should be taken into account in casting a further burden of a permanent nature like a gratuity scheme.

8. In this connexion it is said that it is not possible to increase the price of the records and that whenever the price was increased the sale of records in India fell. There is no doubt that compared to 1946-47 the sale of records has fallen in number. While it was over 38 lakhs in 1946-47, in the five years from 1956-57 to 1960-61, it has been about 25 lakhs. Though in one year it was over 27 lakhs. Even so for all these five years the figure has remained steady and therefore it cannot be said that the future is gloomy. It is true that the company has not been able to increase the price since 1946-47, for its experiment in that direction between 1947-53 showed that with the increase in price the sales fell in numbers. But we find that there was a small increase in price in 1960-61 and 1961-62 without seriously affecting the sale of records in numbers. We cannot therefore accept that there is any case for gloom about the future. It may be mentioned that the company is practically a monopolist in the matter of manufacture of gramophone records in this country and that is also a factor which will be in favour of the Company so far as the future is concerned. In this connexion it is urged on behalf of the workmen that we must not merely look at the number of records sold, we must also consider the value of the records sold and this shows that there has not been much variation in the five years from 1957 to 1961. In 1957 the value of total sales of all kinds of records, etc., was Rs. 148 lakhs; in 1958, Rs. 158 lakhs; in 1959, Rs. 141 lakhs, in 1960, Rs. 148 lakhs and in 1961, Rs. 166 lakhs. This again shows that business for the last five years before the award was more or less steady and there is therefore no reason to suppose that it will go down in the foreseeable future. Then our attention was drawn to the fact that exports had fallen since 1956-57. In 1956-57 the number of records exported was 9.19 lakhs while it had gone down to 5.77 lakhs in 1960-61. It appears that there are two kinds of records which are made by the company. There are firstly what are called 78 r.p.m. records which are cheaper and secondly 45 r.p.m. records which cost almost three times as much. It appears further that though the unit sales went down to a large extent the total value of the sales did not go down as much. In 1957 the total value was Rs.

13.04 lakhs while in 1961 it was Rs. 11.78 lakhs. The company's contention therefore that its business is going down cannot be accepted.

9. Lastly reference was made to the fact that the company has had to borrow larger and larger amounts each year to carry on its business. As to that, the position seems to be that the company has no capital of its own, as it is a branch of the English company. It further appears that its working capital is provided in two ways : (firstly) the working capital is provided by the head office and other branches of the English company, and (secondly) the company borrows money in India for its working capital. Thus in 1956-57, the head office and the Singapore branch had provided Rs. 37 lakhs as working capital and therefore the company had to borrow about Rs. 4 lakhs in India in that year. In 1959-60, the head office and the Singapore branch only provided Rs. 23 lakhs towards capital and therefore the company had to borrow about Rs. 16 lakhs in India that year. It seems therefore that the increase in borrowed money depends upon how much working capital is provided by the parent company. When such working capital is reduced by the parent company capital borrowing in India goes up. The fact that borrowing in India has gone up in the last few years therefore is not necessarily an indication that the financial position of the company has deteriorated. On a careful consideration of all the factors as disclosed in the balance sheets of the company we are of opinion that what-ever may have been the position before 1955, the company has been making profits since 1956-57 and its financial position appears stable and it is in a position to bear the burden of the gratuity scheme awarded by the tribunal to the Bombay workmen. Even if we take into account the workmen in Dum Dum (excluding the factory workers in whose case the provident fund contribution has been increased from 6 1/4 per cent to 8 per cent and who therefore stand on a different footing) we see no reason to interfere with the order of the tribunal introducing the gratuity scheme for the company's workmen in Bombay.

10. Then we turn to the question of privilege leave. Before the award the company was granting fifteen days a year an casual leave and 21 days per year an privilege leave. In addition it used to grant sick leave of one month on full pay and of two months on half pay per year, which could not be accumulated. Privilege leave however used to be accumulated up to 42 days in accordance with the provisions of the Bombay Shops and Establishments Act LXXIX of 1948. Casual leave could not naturally be accumulated. What the tribunal has done is to increase privilege leave to 30 days per year subject to accumulation

up to 42 days. The company contends that the total of privilege leave and casual leave has been increased from 36 to 45 days while other comparable concerns give much less leave usually between 7 and 10 days. It is therefore urged that there was no reason to increase privilege leave to 30 days with accumulation up to 42 days as before. In this connexion reliance is placed on a comparative chart showing casual leave and privilege leave allowed in various comparable concerns for this purpose. It does appear that the total of privilege leave and casual leave as now provided by the award is higher than in the case of other concerns. But some of these concerns allow accumulation of privilege leave for more than 42 days, in some concerns it is 56 days, and in others 63 days. In some concerns privilege leave is allowed for 28 days per year. If we leave out of account sick leave, it is in our opinion impossible to interfere with award of the tribunal in view of the varying patterns that are prevalent in the comparable firms cited on behalf of the company. Further if we take sick leave into account we find that though the appellant does not allow any accumulation of it, in many concerns accumulation of sick leave up to 60 days or even 90 days is allowed.

11. In view of these differences in detail in the matter of accumulation we do not think that any interference is called for in the order of the tribunal in the matter of privilege leave. Now we come to the appeal of the workmen. Their main contention is that the wage-structure framed by the tribunal is low and should be further increased. The tribunal has fixed new grades which are higher than the old grades after comparison with other concerns in the region. The grades fixed by the tribunal are what may be called intermediate grades; they are lower than the highest and higher than the lowest grades in the region. No cogent reasons have been put forward on behalf of the workmen to induce us to interfere with the wage-structure fixed by the tribunal after full consideration of the wage-structure prevalent in that region. Next it is urged that the tribunal should have given more adjustment as demanded by the workmen. The workmen demanded one to four increments depending upon the length of service. The tribunal has however ordered that the workers should be fixed in the awarded scale according to their present pay, and if it does not coincide with any stage of the new scale, they should be stopped up to the nearest higher stage. Thereafter the workmen who have completed three years' service should be given one increment and those who have completed six years of service or more, two increments. Considering the fact that some grades were in force in this company before, we see no reason to interfere with the provision made by the tribunal in the matter of adjustment.

12. The next contention is with respect to special allowance for sepoys, who are entrusted with the work of carrying money from the bank and who do duplicating and filing work. The tribunal has refused this demand. It has pointed out that the office of the company is situate in the heart of the city and not a long distance from the bank, and the sepoys carrying money do not run any risk. It has also pointed out that the duty of bringing money from the bank is not more strenuous than any other duty usually allotted to sepoys. Further it has pointed out that duplicating and filing work is not of such a nature as to call for any special allowance. In view of these circumstances we see no reason to interfere with the order of the tribunal rejecting special allowance for sepoys who do this work. The next point is about increasing the rate of gratuity. Learned counsel for the workmen however did not press this in view of the provident fund scheme in force in the company.

13. Next the workmen contended that certain musicians should be made permanent and given grade wage-scales. The company's contention is that musicians only work part-time. Whenever there is a song to be recorded, and have thus been treated as temporary workmen and have never been treated as permanent. The first group consists of Nenkare. Nand Ram, Ebrahim and M. R. Joshi, So far as these four are concerned, the tribunal held that no evidence had been led on behalf of the workmen to show that the work of these musicians was constant and regular in the same manner as the work of clerks and sepoys. It therefore rejected the demand in respect of these four musicians. We see no reason to interfere with this finding of the tribunal.

14. The other four musicians are : Kersi Mistry, Vaze, Alimohamad and Mangeshkar. In their case the demand was that they should be Permitted to join the provident fund. In their case the tribunal has stated that there was no evidence from which it can be judged that the nature of their work was constant or regular like the work of clerks and subordinate staff. The tribunal therefore rejected this demand. Learned counsel for the workmen relies in this connexion on the fact that these four have been given increments in the last few years. He also relies on a letter addressed to one of them in which it was said they they were not temporary musicians. But in the same letter the company said that the musicians were treated as belonging to a separate category and could not be considered permanent in the same sense as members of the clerical staff. This

four was said as far back as 1950, and if it was the case of the workmen that these musicians also worked constantly and regularly like the clerical staff, evidence should have been led in that connexion. Prima facie, it is hardly likely that a musician will work for all the working hours on all working days. They are required only when there is recording of songs and evidence should have been led to show that recording of songs was going on during all the working hours for all the working days. In the absence of such evidence.

15. We see no reason to interfere with the award of the tribunal in this connexion. The fact that they were given some increments for some years would in our opinion make no difference in this position. The last contention on behalf of the workmen was with respect to Reva Gopal, sweeper. The tribunal's finding in that connexion was that Reva Gopal's, father used to work as sweeper in the company. As that man was getting old, Reva Gopal was allowed to work with him in order to learn work so that he could be appointed in his place when the father retired. The tribunal therefore rejected the demand that Reva Gopal had been working since 1947 as a regular member of the staff. It, however, recommended that the company should put him in the proper grade after the retirement of the father, when he was the only sweeper working for the company. In view of the recommendation of the tribunal we see no reason to interfere with the order of the tribunal in this behalf.

16. Both the appeals fail and are hereby dismissed. In the circumstances we pass no order as to costs in both the appeals.