The Cachar Chah Sramik Union Silchar, Assam

Vs

The Management of The Tea Estate of Cachar, Assam

Civil Appeal No. 969 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, V. Ramaswami – I, K. N. Wanchoo JJ)

26.10.1965

JUDGMENT

RAMASWAMI, J. –

This appeal is brought, by special leave, against the award of the Industrial Tribunal, Assam, published in Assam Gazette dated January 13, 1960, vide Assam Government Notification No. 361/55/690 dated December 29, 1959, in References Nos. 25 to 39, 41, 43 to 45, 47 to 51, 54 to 57, 59 to 61, 63 to 67, 69 to 73, 76 and 91 of 1957 and 15 of 1958.

During the period from June, 1951 to March, 1953 the entire tea industry in the Cachar district of Assam was subject to an unusual economic crisis. There was a steep rise in the cost of production due to increase in wages and introduction of subsidised rations. In October, 1949, a Tripartite Conference was held at Silchar and it was decided in this Conference that nearly 20 Tea Estates had become uneconomic and should be allowed to convert food concessions into cash at the rate of 0-4-6 per head per day. The need for re-adjustment of labour force was also recognised in this Conference. The financial position of the Tea Estates however continued to cause anxiety to the Government. On February 12, 1949, an Ad hoc Committee was appointed which submitted its reports on September 13, 1950. In this report the Committee stressed the inability of the tea industry to bear the burden of subsidised food-stuffs. The Committee further found that the increase in production cost was considerable and the tea estates were compelled to borrow more money and the Scheduled Banks were finding it difficult to meet the demand. The Committee found that the yield of tea in Cachar district was 7 mds. per acre and in its view the absolute minimum yield which could be economic in Cachar was 8 mds. per acre. In view of the critical condition of the tea industry in Cachar another Committee named as 'The Cachar Plantation Committee' was constituted on April 4, 1950. The report of the Committee was submitted on January 4, 1951. The Committee recommended abandonment of uneconomic areas under tea and suggested offer of alternative employment to the surplus labour or provision of khet land, if available. The Committee also recommended a seven annas conversion rate per day in lieu of food concession for all estates and it was proposed that Government should undertake to supply foodgrains to tea estates at controlled wholesale rates. The Committee also reached the finding that the average return to the shareholder was 2-2/3% and the remuneration to the managerial staff constituted a very small fraction of the total cost of production. Even according to the labour representatives on this Committee the labour costs represented 47 per cent. of the cost of the total cost of production of tea.

In the year 1951 there was a sudden recession in the world price of tea. Fluctuations commenced in the middle of June, 1951 and there was a rather rapid decline in prices of tea in November, 1951. Cachar prices came down from 1-10-1 per lb. on October 30, 1951 to 1-2-11 per lb. on March 17,

1952. The prices of Cachar tea ranged between 0-14-4 per lb. to 0-12-11 per lb. between June and August 1952. In May the price came down to 0-12-3. After June 1952 the price of Cachar tea ranged between 1-1-0 to 0-12-2. The decline in prices covered a long period and was unprecedented in its character. To add to the difficulties of the tea industry there was a notification under the Minimum Wages Act dated March 11, 1952 raising wages of labour substantially. A representation was made to the Government of India by Associations of Tea Producers in March and April, 1952 regarding the difficulties of the industry as a result of the steep fall in prices. The Government of India appointed a two-member Committee (known as the Official Team) to investigate into the matter. Before the team concluded its investigation the situation had taken a critical turn and the tea industry in Cachar was on the verge of a total collapse. By January 22, 1953, 82 out of 111 gardens in Cachar district had closed down. The Official team recommended conversion of food concessions into cash, arrangement for credit facilities through suitable co-operative banks and postponement of the implementation of the Plantation Labour Act for a period of two years. As regards the question of the revision of the Minimum Wage the tea industry was asked to make necessary representation to the State concerned. In its report dated January 31, 1953 the Minimum Wage Committee observed that the estates in Cachar District stood on an entirely different footing and expressed a fear that almost all of them were likely to go out of business if the existing low prices of tea continued for any length of time. Even at the time of the Minimum Wage Notification a number of estates were known to be uneconomic and the increase in wages rates resulting from the Notification was a severe blow to them. The hope that prices of tea would rise was completely belied and events so conspired that most of the estates turned out to be uneconomic. The Committee further observed that it was realised that labour could ill-afford to agree to any suggestion to reduce the existing minimum wage but the situation was such that drastic measures had to be considered in the interest of the labourers themselves. It is to be noted also in this connection that Cachar labourers who have been settled on the estates for generations had alternative sources of income in this common with the village folk in the neighbourhood. In pursuance of the recommendation of the Committee there was a revised notification dated February 9, 1953, under the Minimum Wages Act with regard to all the tea estates in the District of Cachar and the uneconomic tea estates in the Assam Valley. The notification provided that there shall be no issue of food-stuffs at concessional rates and no cash compensation as such in lieu thereof. But with a view to mitigate the hardship of labour due to suspension of food concessions, the existing dearness allowance was raised temporarily for all Cachar tea estates at the rate of one anna for adults and six pies for minors for each working day. After the issue of the revised notification the economic condition of the tea estates improved and many tea estates started refunctioning. Many of the workmen who were retrenched were taken back in employment and others were provided alternative employment in tea estates outside Cachar district in the Assam Valley district or elsewhere.

The case of the Cachar Chah Sramik Union (hereinafter called the Union) before the Industrial Tribunal was that there was no genuine crisis which could justify retrenchment, lay off or even reduction of working days in a week. According to the Union the financial crisis was manipulated by the management because of the notification under the Minimum Wages Act issued in March, 1952. The object of the management to force the Government to revise that notification and at the same time to crush the growing trade union movement. It was contended that the introduction of short working hours and retrenchment were unfair labour practice. The Union claimed compensation on the ground that the measures taken by the management were wholly unjustified. It was alternatively contended that even if the measures were justified, the workmen were entitled to compensation on account of involuntary unemployment which they had suffered for no fault of theirs. The opposite view was put forward by the management and it was contended on its behalf

that it was compelled to reduce the number of working days and, in some cases, to resort to retrenchment because there was a real and sudden financial crisis in the industry and the industry could not be run with profit without resort to these measure.

Upon these rival contentions the Industrial Tribunal held, in the first place, that the financial crisis was genuine and was not a result of any manipulation and that the management was entitled under cl. 8(a)(i) and (iii) of the Standing Orders to lay off the workmen for an indefinite period. The Tribunal further held that the management was also entitled to retrench workmen under cl. 9 of the Standing Orders. The Tribunal considered that even if the lay off and retrenchment were bona fide and justified, the workmen were entitled to a reasonable compensation and fixed the quantum of compensation at the rate of one week's pay for every four months of unemployment. Finally the Tribunal held that the provision of khet land and other amenities like housing and medical facilities available to the workmen should be taken to adequately represent one week's wages. After laying down these principles the Industrial Tribunal examined the case of each individual garden and awarded compensation in some cases while refusing to grant any compensation in others.

On behalf of the appellant-Union Mr. Aggarwala submitted, in the first place, that cl. 8(a) of the Standing Orders had no application to the present case and the Tribunal was not justified in holding that the financial difficulty facing the tea estates was a matter beyond the control of the management, and the workmen could not, therefore, be laid off by the management under this clause. The relevant portion of cl. 8 reads as follows :

> "Closing and re-opening of sections of the industrial establishments, and temporary stoppages of work, and the rights and liabilities of the employer and workmen arising therefrom.
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> (a)(i) The manager may at any time in the event of fire, catastrophe, break down of machinery, stoppages of power or supply, epidemic, civil commotion, strike, extreme climate conditions or other causes beyond his control, close down either the factory or field work or both without notice.
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> (iii) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be; when, however workmen have to be laid off for an indefinitely long period their services may be terminated after giving them due notice or pay in lieu of thereof."

In support of this argument Mr. Aggarwala referred to the decision of this Court in Workmen of Dewan Tea Estate v. Their Management ([1964] 5 S.C.R. 548.). But the ratio of that decision has no application to the present case in which the material facts are different. In Workmen of Dewan Tea Estate v. Their Management ([1964] 5 S.C.R. 548.). there was no sudden slump in the price of tea but there was difficulty experienced by the management in obtaining financial facilities from banks. It was an individual case of management experiencing financial difficulty, and it was, therefore, held by this Court that the stoppage of financial assistance will not fall within the phrase "stoppage of power or supply" in cl. 8(a)(i) of the Standing Orders. It was also pointed out in that case that there was no evidence produced on behalf of the management to substantiate its plea of non-availability of finance. There was also no evidence on the record to justify the assumption of the

management that the financial difficulty faced by it was beyond its control. The material facts in the present case are different. It has been found by the Industrial Tribunal that there was a sudden slump in the price of tea in the world markets, that the recession of prices of tea commended in the middle of 1951 and continued during the whole of 1952 for a period of about 18 months. The low level of prices reached in May, 1952, was unprecedented. The Tribunal has also found that the economic crisis of the tea industry in Cachar region was real and was caused by reasons beyond the control of the management of the tea estates. In our opinion, the last part of cl. 8(a)(i) which refers to "other causes beyond his control" would cover a case of sudden slump in the world market and the consequent financial difficulties of the tea estates. We accordingly hold that the lay off in the present case was justified by cl. 8(a)(i) and (iii) of the Standing Orders and the argument of Mr. Aggarwala on this aspect of the case is not warranted.

As regards retrenchment, we are satisfied that the management had also the additional power of retrenching workmen under cl. 9 of the Standing Orders which reads as follows :

> "Termination of employment and notice thereof to be given by the employer and workmen.
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> Notice of termination of employment, whether by Manager or by worker, shall be given equal to the wage period of the worker concerned.
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> Provided that -
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> (a) The Manager may terminate the employment of a worker forthwith and pay his wages for the wage period (equivalent to his average earnings over the preceding period of three months) in lieu of notice.
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> (b) Notice of termination of employment shall be necessary only in case of permanent workers and not in the case of outside or temporary workers except insofar as is laid down in any agreement entered into between the Manager and such outside or temporary workers.
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> (c)..
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> (d) Where the employment of any worker is terminated the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day on which his employment is terminated.
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> ...."

The Tribunal has found that there was no victimisation or unfair labour practice or mala fide on the part of the management in closing the gardens or in making the retrenchment. Mr. Aggarwala on behalf of the appellant did not challenge the finding of the Tribunal on its points, but learned Counsel argued that even if the management was justified, the workmen were entitled to payment of compensation according to the scale laid down s. 25F of the Industrial Disputes Act. It was conceded by learned Counsel that Ch. VA which contains s. 25F came into force on October 24, 1953 by amending Act 43 of 1953 and the retrenchment in the present case was effected long before that date. It was, however, contended that the principle embodied in s. 25F should be applied in the present case. It was said that by enacting Ch. VA the legislature was merely recognising the practice of payment of compensation by Labour Tribunals before the date of the amendment and the

legislature decided, by the amendment, to standardise the payment of compensation by prescribing a statutory rule in that behalf (See The Indian Hume Pipe Co. Ltd. v. The Workmen and another) ([1960] 2 S.C.R. 32 at p. 42.). There is substance in the argument put forward on behalf of the appellant and the Tribunal has also applied this principle in granting compensation to the retrenched workmen even though the case was not attracted by s. 25F of the Industrial Disputes Act. But the Tribunal has taken the view that one week's wages for every four months of unemployment was adequate compensation. The contention of the appellant is that the compensation should have been awarded on the scale laid down in s. 25F of the Industrial Disputes Act. We are unable to accept this argument as correct. As pointed out by this Court in The Indian Hume Pipe Co. Ltd. v. The Workmen and another ([1960] 2 S.C.R. 32 at p. 42.), Industrial Tribunals has been awarding compensation even before the enactment of s. 25F but there was no uniformity or certainty in the matter and in determining the amount of compensation the Tribunals considered a variety of relevant factors. It is manifest that in determining the amount of compensation the Tribunals exercised complete discretion and took into account whatever factors they considered relevant. In the present case, the Tribunal has estimated the amount of compensation as one week's wages for every four months of unemployment and it is not shown on behalf of the appellant that in making this estimate the Tribunal has committed any error of law or applied any wrong principle.

As regards the compensation to retrenched workmen, the Tribunal has stated in para 135 of the Award that the amenities granted to them included undisturbed possession of residential quarters and khet lands. They were also granted medial relief, fuel and other forest produce even during the period of suspension of work. The Tribunal did not attempt to evaluate accurately the pecuniary value of all these concessions but it has expressed the view that the value of these concessions would be roughly equal to one week's wages for every four months of unemployment and therefore the retrenched workmen were not entitled to any compensation in cash apart from any right to wages in lieu of a week's notice under cl. 9 of the Standing Orders. On behalf of the appellant Mr. Aggarwala said that the retrenched workmen were entitled to get a larger amount of compensation than that awarded by the Tribunal. The quantum of compensation is, however, a matter primarily for the Tribunal to estimate and it is not open to this Court to go into this question unless it is shown that the Tribunal has committed any error of law or legal principle in deciding it. As regards the workmen who were subjected to short hours of work, the Tribunal has observed that they have been granted ex gratia payments which were, in several cases in excess of the total gross wages by reason of the revision of the daily wages under the notification of February 9, 1953 under the Minimum Wages Act. On behalf of the appellant reference was made by Mr. Aggarwala to the deposition of Mr. R. M. Bipan at page 97, Part-I that the ex gratia payment compensated merely for the minimum wages cut and not the loss to labour by the short work week. But the Tribunal having examined the entire evidence reached the conclusion that the ex gratia payment was in several cases in excess of total loss of remuneration on account of the notification under the Minimum Wages Act. There is also undisputed evidence in this case to show that even in normal times short hours had to be imposed by employers upto a period of three days in a week in Cachar tea gardens. In this state of facts it is not possible for us to hold that the Tribunal was in error in holding that the ex gratia payment made by the management was sufficient compensation to the workmen who were not retrenched outright but who were put on short hours of work.

For the reasons expressed we hold that there is no merit in this appeal which is accordingly dismissed. We do not propose to pass any order as to costs.

Appeal dismissed.

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