Kamani Metals & Alloys Ltd.

Vs

Their Workmen

Civil Appeal No. 634 of 1965

(M. Hidayatullah, C. A. Vaidialingam, S. M. Sikri JJ)

24.01.1967

JUDGMENT

HIDAYATULLAH, J. –

This is an appeal against the Award, April 23, 1964, of the Maharashtra Industrial Tribunal, Bombay (Mr. Meher) in reference (IT) 271 of 1962. The Award was given in a dispute between the Kamani Employees Union, Bombay and the Kamani Metals & Alloys Ltd. The Company is the appellant before us. The reference was occasioned by a demand raised by the Union on February 25, 1960 in relation to wage scales and classifications, dearness allowance, production bonus, permanency for daily-rated workmen and grades and scales of pay, dearness allowance and abolition of marriage-clause for monthly paid employees. At first a reference was made to a Conciliation Board by the Government on September 8, 1962. The conciliation was frustrated for some reasons and on December 14, 1962, the Bombay Government acting under section 10(1)(d) of the Industrial Disputes Act, 1947 referred the dispute to the Tribunal for adjudication. By the Award now under appeal, some points were decided in favour of the Company and some others in favour of the workmen. The workmen have not appealed and the Company has also confined this appeal to some of the points decided against it.

We are concerned with a Company which is carrying on the business of melting and manufacturing all kinds of rolled products of non-ferrous metals and alloys, copper land copper-based alloys, such as sheets, strips, coils etc. According to the Company the process of manufacture, unlike the general engineering industry, involves only the melting of the non-ferrous metals and casting them into suitable slabs for the subsequent processes of hot and cold rolling to alter their shape, size and metallurgical properties. The product so wrought serves as a base raw material for making products such as automobiles, telephones, radios and other electrical gadgets, etc. The Company claims that it cannot be described as a general engineering industry.

The main contentions in this appeal concern the revision of wages and monthly pays and the fixing of wage scales and time scales in respect thereof, respectively, and the increase in dearness allowance by adopting a new system of calculation. The Company also complains that the Award has been given retrospective operation entailing heavy burden upon it. In support of the above contentions the Company states that its financial capacity does not bear the revision either of the wages and pays on the one hand or the dearness allowance on the other. It submits that the Tribunal in revising the wages, pays and the dearness allowance has followed wrong principles and ignored those laid down by this Court. Much of the argument in respect of wages to daily rated workmen and pays to monthly-rated workmen is common and it will not be necessary to refer to the argument twice over in the course of this judgment.

This is the first revision of wages and the dearness allowance in this Company during the last 20 years. The wage scales and the dearness allowance were fixed unilaterally to start with. The minimum basic wage was fixed at Rs. 30 per month or Rs. 1.16 per day which was the minimum settled by the Bombay Textile Standardization Award and the First Central Pay Commission for Government servants in or about 1950. The Tribunal has raised the minimum wage to Rs. 1.35 per day, which is equivalent to a wage of Rs. 35 per month. The maxima have also been raised proportionately. Similarly, in the case of monthly rated workmen the minimum monthly salary, which was Rs. 60 for the lowest grade clerk, has been raised to Rs. 85/- and the maximum has been increased in almost the same proportion. The Company contends that this increase is based upon wrong principles inasmuch as the wages and pays in this company have been compared not only with the companies operating non-ferrous metals in the same way but with general engineering concerns and has taken an irrelevant factor, namely, the yield from incentive bonus into consideration, has made wrong grades and unnecessary adjustment in making fitments without taking into account the financial burden thus involved and the capacity of the Company to bear it. We shall consider these submissions.

In dealing with these contentions we shall being by considering one contention which, if accepted, will cut at the very root of the case for revision of wages. It has, however, no merit. The submission is that there is no change of circumstances justifying a revision of wages and pay scales or dearness allowance. It can hardly be maintained that wages fixed so far back do not need revision, when, as every one knows, commodity prices have soared high, the general level of wages has gone up and in some industries there have been two or three revisions already and in some others Wage Boards have been appointed to revise of fix wages. We can take judicial notice of these facts. In this Company no revision has taken place and the demand is, therefore, not unjustified.

Before we deal with the other contentions it is necessary to make a few preliminary observations about the principles which are to be followed. In questions of this type it is first desirable to consider what amount is necessary to maintain and even improve the workers' standard of living, how wages of the workers concerned compare with those paid to workers of similar grade and skill by other employers in similar or other industries in the region and what wages the establishment or industry can afford to pay. There are the fundamental principles which have to be borne in mind. The first, however, is a general inquiry into the structure of wages which it may not be necessary to examine elaborately each time because that inquiry is generally made independently of individual cases. The data is usually compiled by labour conferences and experts. The other two matters, of course, require attention.

Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because conditions vary from region to region, industry to industry and establishment to establishment. To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing,

medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realised that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above-mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal. As time passes and prices rise, even the fair wage fixed for the time being tends to sag downwards and than a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100% neutralisation lest it lead to inflation, the dearness allowance is often a little less than 100% neutralisation. In course of time even the addition of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary. This revision is done on certain principles.

These principles have been stated in more than one case of this Court. The Company, however, relies upon Novex Dry Cleaners v. Its Workmen ([1962] 1 L.J 271). The principles laid done in that case have been accurately summarized in the head-note thus :

> ".... But in fixing a fair wage, the capacity of the industry to bear the burden of the said wage scale is a very relevant and very important factor. Before comparing the establishment in question with other establishments engaged in the same trade in the region, it would be obviously necessary for the industrial tribunal to compare the establishments in respect of their standing, the extent of the labour force employed by them, the extent of their respective customers and what is more important, a comparative study should be made of the profits and losses incurred by them for some years before the date of the award. It is well known that in fixing the wage structure on a fair basis; an attempt is generally made in assessing the additional liability imposed on the employer by the new wage structure and trying to anticipate whether the employer would be able to meet it for a reasonably long period in future.
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> Where the award simply fixed the wage scales on the assumption that the establishment in question was comparable to the other two establishments in the same region without considering the aspects mentioned above, it must be set aside. In the consequence, the industrial tribunal was directed to reconsider the question of fixation of wage scales in the light of the principles mentioned supra.
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> #. . . . . ."##

The Company contends that many of the matters here stated have not been considered and the Award being defective for that reason deserves to be set aside. This is not a proper approach. The observations no doubt lay down the principal guide-lines but they are not intended to operate with the rigidity of a statutory enactment. The Court has indicated what lines of inquiry are likely to lead to the discovery of correct data for the fixation of fair wages in the sense explained above. In this task all the relevant considerations must enter but fruitless inquiries into matters of no particular importance to a case are hardly to be insisted upon because rather than prove of assistance, they might well frustrate the very object in view. Each case requires to be considered on its own facts. In

the case before us, all relevant circumstances have, in our opinion, entered the determination, and it has not been shown to us that any other circumstance could or should have been considered. In fact the argument was that the tribunal considered some irrelevant things and this has vitiated the finding. We shall now consider the specific objections.

The Company has a capital of Rs. 40,00,000. Its sales in 1957-58 to 1961-62 increased from Rs. 1,81,18,873 to Rs. 2,31,50,485 and its profits in 1962-63 were of the order of Rs. 28 lakhs, excluding Rs. 5 1/2 lakhs for depreciation and Rs. 2 lakhs for managing agency commission. The burden of the increased wage bill will not be more than 1/10th of its net profits, to say nothing of some other savings by way of reduction of income-tax. The tribunal held that the burden could be borne and we agree. One part of the inquiry, namely, the capacity to pay the increased wage bill was satisfied.

The next part of the inquiry involved the application of the principle of industry-cum-region. This principle is that fixation or revision of scales of wages, pays or dearness allowance must not be out of tune with the wages etc. prevalent in the industry or the region. This is always desirable so that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In attempting to compare one unit with another care must be taken that units differently placed or circumstanced are not considered as guides, without making adequate allowance for the differences. The same is true when the regional level of wages are considered and compared. In general words, comparable units may be compared but not units which are dissimilar. While disparity in wages in industrial concerns similarly placed leads to discontent, attempting to level up wages without making sufficient allowances for differences, leads to hardships.

It is complained that the Tribunal, has done exactly the opposite, namely, that it has compared dissimilar concerns and not compared similar ones. What the Tribunal has done is to compare the Kamani Metals & Alloys (appellant Company) with the Indian Smelting and Refining Co. Ltd. and the Kamani Engineering Corporation Ltd. The appellant Company does not object to the first but to the second as it deals with non-ferrous metals and alloys and does not require engineering process in its manufacture. For the same reason a comparison with Alcock Ashdown and Co. and Richardson and Cruddas & Co. is objected to. On the other hand, it is submitted that another company Devidayal Metals Industries Ltd., Bombay was a comparable concern.

Both sides agree that a comparison with the Indian Smelting and Refining Co. Ltd. was proper. As regards Devidayal it is clear from the records that it is a much smaller concern and does not furnish a just basis for comparison. The scales of pay existing in it are considerably lower than the existing scales in many instances. As regards Kamani Engineering Corporation it is necessary to consider a few facts. In 1951 a common award was given in respect of Kamani Engineering Corporation and the Kamani Metals and Alloys. In 1958 the demand for revision of dearness allowance was rejected by a common award. This time too the charter of demands in respect of the Kamani Engineering and Kamani Metals & Alloys was the same and given within a few days of each other. These references were first pending before Mr. T. Bilgrani but as he had 551 references pending before him five references in respect of the Kamani group of industries were with drawn from him and made over to Mr. Meher. The references were heard together. The award in the Kamani Engineering was rendered on 27th February, 1964 and that in Kamani Metals & Alloys on 23rd April, 1964. Many of the exhibits were common and the two awards refer to these common exhibits. In these circumstances, the comparison was not inadmissible. The principle of fixation of wages and dearness allowance was stated by this Court in these words :

> ".... The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage-scales the tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small, it is the region part of the industry-cum-region formula which assumes importance....." (Greaves Cotton & Co. v. Their Workmen [1964] 5 S.C.R. 362 : [1964] 1 L.L.J. 344, 346).

In dealing, therefore, with only one comparable concern it was open to take into consideration the conditions existing in engineering concerns, particularly those in Kamani Engineering Corporation, which belongs to the same group and there is thus affinity between them.

We were taken through the comparative charts showing the scales of wages in these concerns and pointed out the differences particularly those operating to the disadvantage of the appellant Company. That some differences are bound to be there because of many imponderables that go into the fixation of wages, goes without saying. We are, of course, not expected to go into the matter over again in the appeal. An appeal against an award brought by special leave is not an appeal as of right. It is not intended to be an appeal on every ground of fact and of law unless this Court considers it fit to examine the matter from any special angle. Before a party can claim redress, it must show that the award is defective by reason of an excess of jurisdiction or of a substantial error in applying the law or some settled principle or of some gross and palpable error occasioning substantial injustice. An industrial adjudication by reason that it is an award cannot be assailed because some other person would have given a different award or that elaborate reasons have not been given. We have considered the comparative charts carefully and on the whole, we are satisfied that the scales of wages as fixed by this Award when compared with those existing in Indian Smelting, when they are high, are not so high as to merit special comment or interference. Sometimes they are lower. It remains, however, to consider the case from the angle of the scales of wages existing in Kamani Engineering Corporation.

In dealing with the scales of pay in comparison with those existing in Kamani Engineering Corporation the Tribunal observed that higher wages were being fixed in the Kamani Metals & Alloys because the yield from incentive bonus in the Kamani Engineering Corporation was between 20 to 30% of the wages and the dearness allowance whereas in this Company it was abnormally low. Mr. Gokhale contended that the yield from incentive bonus is an irrelevant factor to take into account and observed that if persons could get higher wages by not earning incentive bonus, the result might be a disincentive to work at all. Speaking generally, his objection is right to a certain extent. But it is not right in the circumstances of this case. The Company has since 1949 introduced a scheme of wage incentive. There is no straight piece rate system under which the worker is paid a fixed amount for each unit of out-put. There is a fixation of average production for a whole group and not for the individual worker. The target in the melting section is fixed at 5000 cwt. and 1.5% on every additional 300 cwt. is fixed as bonus. Other sections have different targets and different percentages. A similar scheme also exists in the Kamani Engineering Corporation. What has happened is that the Tribunal in fixing scales of wages in the reference from Kamani Engineering fixed lower rates because it was of the opinion that quite a substantial sum was earned in that establishment by way of incentive bonus. When the Tribunal came to decide the present reference it recalled that lower wages were fixed in the Kamani Engineering Corporation case because of the

yield from incentive bonus. It, therefore, ascertained the yield in the Kamani Metals & Alloys and finding it low fixed the wages at the proper level unaffected by consideration of incentive bonus. This really means that proper wages were fixed in the Kamani Metals & Alloys without being influenced in any way by the yield from incentive bonus although in the case of Kamani Engineering Corporation lower wages were fixed because the yield from incentive bonus was very high. In these circumstances, we are of the opinion that the wages in the present case have not really been influenced by considerations of yield from incentive bonus whatever may be said of Kamani Engineering Corporation.

It was next contended that there is no case made out for adjustment of the workmen in the new time scale after granting them one additional increment after every three years' service and two additional increments after five years' service. The principle on which a point-to-point adjustment is sometimes departed from and increments are granted was stated in some cases of this Court. It is sufficient to refer to only one of them. In Hindustan Times, Ltd. v. Their Workmen ([1964] 1 S.C.R. 234, 249 : [1963] 1 L.L.J. 108, 115), the question of adjustment of existing employees into new scales was considered. It was observed as follows :

> "... It may well be true that in the absence of any special circumstances an adjustment of the nature as allowed in this case by allowing special increment in the new scale on the basis of service already rendered may not be appropriate. Clearly, however, in the present case the tribunal took into consideration in deciding this question of adjustment the fact that it had been extremely cautious as regards increasing the old wage-scales. Apparently, it thought that it would be fair to give some relief to the existing employees by means of such increase by way of adjustment while at the same time not burdening the employer with higher rates of wages for new incumbents. In these circumstances, we do not see any justification for interfering with the directions given by the tribunal in the matter of adjustments."

In this case also the fixation of scales has been very cautious. The increase from Rs. 1.16 to Rs. 1.35 in lowest category is not very high considering that these wages had existed for 12 years before they were so adjusted. Similarly, the starting wage in all the other three categories cannot be considered to be very high. The same is the case with monthly-rated workmen. The annual increment is not unduly high and in these circumstances it cannot be said that the Tribunal was in error in departing from a point-to-point adjustment to grant one or two increments based on the length of service. The discretion was exercised on sound judicial lines.

It was finally contended that the Tribunal was in error in making the Award retrospective from October 1, 1962, when the reference was made on December 14, 1962. This objection has no force. In the charter of demands the workmen had claimed retrospective revisions from July 1, 1961. The matter was referred to the Board of Conciliation on September 8, 1962. When conciliation was frustrated because of the arrest of some of the workers of the Union under the Defence of India Rules, the present reference was made to the Tribunal. The Tribunal could have easily chosen September 8, 1962 but chose an intermediate date to be fair to both sides. In our judgment, the choice of October 1, 1962 by the Tribunal cannot be characterised as either illegal or unfair. The question of incentive bonus revision was not mooted before us and the direction that incentive bonus should be calculated on the new scale from 1st January, 1964 is more in favour of the employers than the workmen and no grievance can be made about it.

This brings us to the question of the monthly-rated workers. Most of the points which we have

discussed in relation to the daily rated workmen are common. We have seen the scales which have been fixed and compared them with the rates obtaining in Indian Smelting and the Kamani Engineering and other concerns and are satisfied that they have not been put so high as to merit interference at our hands. It is, however, contended that the Tribunal has gone beyond the Reference inasmuch as the Reference was in respect of special categories of monthly-rated employees by designation but the Tribunal has fixed the new scales not only for those workmen but for all clerical and other workmen which were classified as Grades A, B, C and D in 1950. It is true that the Tribunal had not only fixed the new scales for those categories of monthly-paid employees who were named in the order of reference but has also provided that those scales shall apply to clerks in the A, B, C and D Grades. It is, however, clear that even the monthly-paid employees mentioned by name belong to one category or another in the Grades A to D. It would have been highly invidious if some persons in the Grades were to receive more pay than the others in the same Grade. The Award, therefore, treats the Reference as referring to the 4 Grades although only some of the class who go by special designations in each Grade have been mentioned. The intention, however, was to have a general revision of the scales of payment to all workers paid monthly and the Tribunal was, therefore, right in not reading the Reference as restricted to only a few classes. By doing so the Tribunal has avoided further industrial unrest and disputes and has really given effect of the underlying object of the reference.

This brings us to the last question which is related to the dearness allowances payable to the monthly-rated workmen. Previous to the present Award the dearness allowance was payable in this company in the following manner :

> #"On the 1st Rs. 100 - 60 per cent. with a (upto Rs. 100) minimum of the D.A. paid to the Textile Operatives by the Bombay Mill-owners Association.On the 2nd Rs. 100 - 20 per cent. of the 2nd (upto Rs. 200) hundred rupees.On the 3rd Rs. 100 - 15 per cent. of the 3rd (upto Rs. 300) hundred rupees.On the 4th Rs. 100 - 10 per cent. of the 4th (upto Rs. 400) hundred rupees.On the 5th Rs. 100 - 10 per cent. of the 5th (upto Rs. 500) hundred rupees.On every hundred above 5 per cent. of everyRs. 500 - of basic hundred rupees.##

The above percentage of dearness allowance is applicable when the Bombay Cost of Living Index rests between 311 to 320. Variation in the above percentage to be allowed per 10 point movement in the index. First slab - 3 per cent. of dearness allowance; 2nd slab 1 1/2 per cent. of dearness allowance; 3rd slab 1 per cent. of dearness allowance; 4th slab 3/4 per cent. of dearness allowance and the last slab 1/2 per cent. of the dearness allowance."

In the Award this has been altered to a scheme which is as follows :

> #On the first Rs. 100 basic pay (upto Rs. 100) 60%On the second Rs. 100 basic pay (upto 35% of the 2nd 100 Rs. 200) rupees.On the third Rs. 100 basic pay (upto 15% of the 3rd 100 Rs. 300) rupees.On the Rs. 301 basic and above 10% of the balance.##

NOTE : The minimum dearness allowance will be the revised textile scale.

The above percentage of dearness allowance is applicable when the Bombay Consumer Price Index is between 311 and 320. Variation per 10 point movement in the index should be as follows :

#First slab of Rs. 100 basic pay 5% (e.g. dearness allowance will be 65% of basic pay when index is between 321 and 330).Second slab of 100 basic pay 1 1/2%Subsequent slabs 1%".##

It is contended that linking the dearness allowance, after the consumer price index 321 to wages has made a departure from the fixation of dearness allowance fixed in the Kamani Engineering Corporation in which, under the same circumstances, the percentage after the consumer price index of 321 is that of the dearness allowance and not of the basic salary. On the other side, we were shown a number of awards in which dearness allowance has been fixed in the same manner as by this Award. It appears that the case of Kamani Engineering was treated as a special case because the incentive bonus there was yielding a third of the total earnings of the workmen and it was considered that if the dearness allowance was also raised then a very great burden would be thrown upon the employer by reason of the incentive bonus. We cannot, therefore, use the precedent of the award in the Kamani Engineering Corporation because of these special facts. We are satisfied that in many other companies dearness allowance has been ordered to be calculated in the same manner as has been done by this Award and we see no reason, therefore, to interfere.

For these reasons we find no force in this appeal. It fails and will be dismissed with costs.

Appeal dismissed.

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