SUPREME COURT OF INDIA

Indian Oxygen Ltd.

Vs.

Workmen

C.A.No.560 of 1966

(J. M. Shelat, V. Bhargava and C. A. Vaidialingam, JJ.)

05.08.1968

JUDGEMENT

SHELAT, J.:-

1. This appeal, by special leave, is against the award dated September 28, 1964 of the Industrial Tribunal, Patna.

2. The appellant company is an all India complex having establishments in different parts of the country. In Bihar alone, it has two factories, one at Jamshedpur and the other at Ranchi, and has depots at Patna and other towns. The factory at Jamshedpur is an establishment under the Bihar Shops and Establishments Act.

3. Certain disputes having arisen between the appellant company and its workmen employed in the factory at Jamshedpur, the company and the said workmen represented by their union called the

Indoxco Labour Union, Jamshedpur, made a joint application dated September 7, 1963 to the Government of Bihar for a reference under Sec. 10 (2) of the Industrial Disputes Act, 1947. By a notification dated October 23, 1963, the Government referred five disputes to the Tribunal for adjudication. We are concerned in this appeal with only two disputes arising from demands Nos. 3 and 5. These demands were,

No. 3 - "The payment of overtime to office staff should be 1 1/2 times the ordinary rate beyond their normal duty hours."

No. 5.-"Union representatives should be allowed special leave to attend to law courts for matters connected with the workers and the management, to attend to annual conventions of their federation, to attend to Executive Committee meeting of the union-federation and convention of central organisation i. e. INTUC." As required by Rule 3 of the Industrial Disputes (Bihar) Rules, 1961, the statement accompanying the said application signed by the District Manager on behalf of the company and the General Secretary of the said union representing the said workmen contained inter alia the following information, namely,

(c) Number of workmen employed in the undertaking affected--352

(d) Estimate number of workmen affected or likely to be affected by the dispute--352."

It is quite clear from the said application and the statement signed by the parties, (1) that the said disputes concerned the 352 workmen employed in the company's factory at Jamshedpur and (2) that these 352 workmen were represented by the Indoxco Labour Union.

4. The said notification also stated "Whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of Indian Oxygen Limited, Jamshedpur-7 and their workmen represented by Indoxco Labour Union, Jamshedpur, regarding the matters specified in their joint applications dated 7-9-1963 annexed hereto.. .. . . Now, therefore, in exercise of powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar is pleased to refer the said dispute. . . . . " The notification thus makes it clear that the disputes referred to the Tribunal were disputes set out in the said agreement and statement and were between the management of the appellant company's factory at Jamshedpur and their workmen represented by the Indoxco Labour Union.

5. It appears, however, that the union at its general meeting held on January 6, 1963, purported to

amend its constitution by a resolution passed thereat by changing the name of the union to Indian Oxygen Workers Union and making the workmen of all the establishments of the appellant company in Bihar eligible for its membership. Exhibit C is the copy of a letter dated January 21, 1963 by which the Secretary of the said union informed the District Manager of the appellant company at Jamshedpur of the said purported amendment. The Tribunal appears to be of the view that the constitution of the said Indoxco Labour Union came to be amended as from Jan. 6, 1963 and that as the said reference was made in October 1963, i. e., after the said purported amendment, "the mention in it of the dispute as a dispute between the company and Indoxco Labour Union does not materially affect the position that the dispute raised by the union is in respect of the employees of the company wherever they may be stationed. Consequently, the award in this case shall be effective in respect of all of them and cannot be restricted to the workmen working at Jamshedpur". So far as the workmen's demands Nos. 3 and 5 were concerned, the Tribunal after observing that the company's wage scales were satisfactory, compared the rates of overtime paid by other industrial concerns in Jamshedpur and awarded 1 1/4 times the ordinary wages for overtime work exceeding 39 hours but not exceeding 48 hours per week. If the overtime exceeded 48 hours per week, 48 hours of work being the maximum provided by the Bihar Shops and Establishments Act, the company would be liable to pay at double the ordinary rate of wages as provided in that Act. Regarding demand No. 5 the union produced three letters addressed to its Secretary, (1) a letter by the General Secretary of the Tata Workers Union, (Ext. I) dated November 30, 1963, wherein it was stated that the officials of that union were granted special leave to attend the union's executive committee meetings, the meetings of their federation and the meetings of the I.N.T.U.C, if held at Jamshedpur; (2) a letter dated January 25, 1964 by the General Secretary of Golmuri Tinplate Workers Union, Jamshedpur, to the effect that members of the executive committee of that union were relieved from duty with pay to attend meetings of the executive committee or any other meetings called by the union except mass meetings and the union's delegates were also allowed special leave with pay to attend I. N. T. U. C, sessions; and (3) a letter dated December 7, 1963 by the secretary of Telco Workers Union, Jamshedpur, to the effect that members of the executive committee of that union and office bearers were allowed to attend union's meetings without loss of pay. The Tribunal noted that the appellant company had been allowing without loss of pay the representatives of the workmen to attend proceedings before conciliation officers and Industrial Tribunals. This concession, it considered, was sufficient and, therefore, rejected the demand for special leave with pay to attend the law courts. But it awarded that the union's representatives should be given special leave to attend (1) meetings of its executive committee, (2) meetings of the federation of the union, (3) the annual convention of that federation when held at Jamshedpur and (4) the convention of the I.N.T.U.C.

6. The first contention urged on behalf of the appellant company was that the Tribunal was in error in making its award operative not only to the said workmen at its Jamshedpur factory but also to workmen at its other establishments and that in doing so it acted beyond jurisdiction. In our view, this contention must be upheld.

7. In the first place, the agreement by which the parties agreed to refer the said disputes for adjudication was clearly between the management of the appellant company's factory at Jamshedpur and the workmen employed in that factory and represented by their said union, the Indoxco Labour Union. The statement accompanying that agreement clearly state that the disputes agreed to be

referred to were between the workmen of that factory and the management of that factory. The notification referring those disputes to the Tribunal also made it clear that the disputes referred to were those set out in the said agreement and the statement and no other disputes and further that they were the dispute between the parties to that agreement. There was no evidence before the Tribunal that similar demands were raised by workmen engaged in the appellant company's other establishments. Even assuming that the Indoxco Labour Union validly amended its constitution so as to extend its membership to the company's other workmen in its other establishments, inasmuch as the disputes referred to the Tribunal were only those set out in the said agreement and the said statement, any award made by the Tribunal in respect of those disputes must necessarily be confined to the disputes referred to it, the parties to those disputes and the parties who had agreed to refer those disputes for adjudication.

8. Next, as to the claim of the Union that it had amended its constitution on January 6, 1963, and, therefore, as the workmen of the factory at Jamshedpur came henceforth to be represented by the Indian Oxygen Workers Union which represented also workmen employed in the appellant company's other establishments, the reference extended to them also and the Tribunal's award would cover them also. We fail to see any connection between the purported amendment of the union's constitution and the reference made by the government on the basis of the said agreement and the said statement. These, as aforesaid, related to the disputes between the management and the workmen of the appellant company's factory at Jamshedpur who alone had made the aforesaid demands and disputes arising from those demands only were agreed to be referred to and were actually referred to the Tribunal by the said notification. There is nothing to show in that notification that other workmen of the company had raised similar demands or that there were any disputes existing or apprehended which were included in that reference.

9. The question next is whether the union's constitution was duly amended on January 6, 1963 as claimed by the union and held by the Tribunal. The constitution of the union prior to its purported amendment contained amongst other Articles, Articles 1 and 3. These Articles read as follows:

"Article No. 1. Name and Address:

1.This Union is a Trade Union Organization of wage earners of the Indian Oxygen and Acetylene Co. Ltd., Jamshedpur and shall be called Indoxco Labour Union.....

3. The situation of the Registered Office shall not be changed except by resolution of the General Body Meeting specially held for the purpose. Any change of the address of the Registered Office of the Union will be communicated to the Registrar of the Trade Unions within 14 days of such change."

Article XII of the said constitution deals with alteration of rules and Clause (c) thereof provides that

copies of all new rules and amendments or revisions of rules shall be submitted to the Registrar within the prescribed period as required by Section 28 (3) of the Trade Unions Act, 1926. This rule had to be incorporated in the constitution in view of the express terms of that section.

10. Section 6 of the Trade Unions Act provides that a trade union would not be entitled to registration under the Act unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide amongst other things for its name and the manner in which the rules shall be amended, varied or rescinded. Section 28 (3) provides that a copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration. Section 29 contains the power of the appropriate government to make regulations and sub-section 2 (a) provides that without prejudice to the generality of the power in sub-section (1) such regulations may provide inter alia for the manner in which trade unions and their rules shall be registered. Section 30(3) lays down that regulations so made shall be published in the official gazette and on such publication shall have effect as if enacted in this Act. In pursuance of the power to make regulations the central Government framed Central Trade Unions Regulations, 1938, regulation 9 whereof provided that on receiving a copy of an alteration made in the rules of a trade union under Section 28 (3), the Registrar shall register the alteration in the register maintained for this purpose and shall notify the fact that he has done so to the secretary of the trade union.

11. The combined effect of Ss. 6 (g), 28 (3), 29 and 30 (3) and regulation 9 is that registered union can alter its rules only in the manner provided in these provisions, that is, it has to send the amended rules to the Registrar within 15 days from the amendment and until the Registrar is satisfied that the amendments are in accordance with the rules of the union and on such satisfaction registers them in a register kept for that purpose and notifies that fact to the union's secretary, the amendments do not become effective. The union did not produce any evidence to show that the amendments purported to have been carried out by the said resolution dated January 6, 1963 were sent to the Registrar as provided in the aforesaid provisions nor did it produce any communication of the Registrar notifying the fact of his having registered the said amendments. The only evidence it produced was its letter dated May 21, 1964 to the appellant company which indicated that the Registrar notified to the union of his having registered the said amendments on May 13, 1964. The Tribunal's conclusion, therefore, that the union's constitution was duly amended on either January 6 or 21, 1963 or that, therefore, the Indian Oxygen workers Union represented the workmen of the company's factory at Jamshedpur and that consequently it made no difference that the name of Indoxco Labour Union as representing the workmen concerned was mentioned in the said agreement and the said statement and not that of the Indian Oxygen Workers Union is erroneous and cannot be sustained. Any award, therefore, made by the Tribunal in these circumstances can operate only in respect of the workmen of the appellant company's factory at Jamshedpur and the Tribunal's extension of that award to workmen in the company's other establishments was clearly without jurisdiction. The decisions in Associated Cement Companies Ltd. v. Their Workmen, (1960) 3 SCR 157 = (AIR 1960 SC 777) and Ramnagar Cane and Sugar Co. Ltd. v. Jatin Chakravorty, (1960) 3 SCR 968 = (AIR 1960 SC 1012) on the effect and interpretation of Section 18 of the Industrial Disputes Act, relied on by counsel for the union are beside the point and do not assist him.

12. As regards the Tribunal's finding on demand No. 3, counsel for the company raised two contentions; (i) that the company's factory at Jamshedpur having been declared an establishment under the Bihar Shops and Establishments Act, it could be made liable to pay for overtime work at the rate provided in that Act, viz. at double the ordinary rate when a workman was asked to work beyond 48 hours per week as provided therein. Therefore, the argument ran the appellant company could not be asked to pay more than its ordinary rate of wages payable to workmen if they were asked to work beyond 39 hours but not exceeding 48 hours. And (2) that the comparative statement (Ext. M) of overtime rates paid by other concerns in Jamshedpur before the Tribunal showed at if the company were made to pay 1 1/4 times its ordinary rate of wages it would, in the light of its higher scale of wages, be paying more than the other concerns.

13. In our judgment, both these contentions are unsustainable. Under the conditions of service of the company, the total hours of work per week are 39 hours. Any workman asked to work beyond these hours would obviously be working overtime and the company in fairness would be expected to pay him compensation for such overtime work. The Bihar Shops and Establishments Act has no relevance to this question as that Act fixes the maximum number of hours of work allowable thereunder, i.e. 48 hours a week, and provides for double the rate of ordinary wages for work done over and above 48 hours. It is not, therefore, as if the provisions of that Act govern overtime payment payable by an employer where maximum hours of work are governed by the conditions of service prevailing in his establishment. Therefore, no reliance can be placed on the provisions of that Act for the company's contention that it can not be called upon to pay for overtime work anything more than its ordinary rate of wages if the workmen do work beyond 39 hours but not exceeding 48 hours a week. It is obvious that if the company were asked to pay at the rate equivalent to the ordinary rate of wages for work done beyond 39 hours but not exceeding 48 hours work a week, it would be paying no extra compensation at all for the work done beyond the agreed hours of work. The company would in that case be indirectly increasing the hours of work and consequently altering its conditions of service.

14. Ext. M relied on by counsel, gives the overtime rate paid by six industrial concerns situate in Jamshedpur. Out of these six concerns, four pay overtime compensation at 1 1/2 times the ordinary wages and dearness allowance payable by them. If after taking into consideration the fact of the comparatively higher scale of wages prevailing in the appellant company, the Tribunal fixed the rate for overtime work at 1 1/4 times the ordinary rate of wages, it is impossible to say that the Tribunal, erred in doing so or acted unjustly. The company's contention, therefore as regards this demand must be rejected.

15. As regards demand No. 5, counsel for the company very seriously challenged that part of the award as unjustified and contended that an obligation to grant special leave to attend the meetings of the executive committee of the union, the meetings of the federation and the conventions of the I. N. T. U. C, over and above the various types of leave available to the company's workmen was tantamount to the company having practically to finance the administration and management of the union. He argued that imposing such an obligation on the company cannot be justified on the ground of social justice or promotion of trade unionism. Counsel or the union, on the other hand,

sought to support this part of the award on the ground that such a demand was justified, as the Tribunal has observed, in the interest of a proper growth of trade union movement and the promotion of harmony in industrial relations inasmuch as if facilities are given to the workmen to conduct the administration of the union themselves, there would be less possibility of outside elements establishing their hold on the union.

16. We apprehend the argument does not take into consideration certain important aspects of the demand. As aforesaid, the appellant company has been allowing those of its workmen who are the union's representatives to attend without loss of pay proceedings before conciliation officers and industrial tribunals. This is fair because conciliation proceedings are likely to get thwarted if the workmen's representatives are not there to discuss the disputes and put forward their point of view before conciliation officers and wherever possible to arrive at a settlement or compromise. Over and above this facility, the workmen get various types of paid leave. As the figures of such leave are not correctly stated in the award, we collected them from counsel on both sides. The following table shows the types of leave enjoyed by the workmen:

Factory Staff:

Earned leave 21

Festival leave 10

Casual leave 7

Medical leave 15

53

Office Staff:

Earned leave 21

Festival leave 17

Casual leave 7

Medical leave 15

60

General Staff:

Earned leave 15

Festival leave 17

Casual leave 7

Medical leave

15

54

17. It is impossible to say that the leave granted by the company with full pay is not fair or even liberal. In conceding the demand of the union the Tribunal does not appear to have considered the adverse effect on the company's production if further absenteeism were to be allowed especially when the crying need of the country's economy is more and more production and employers are exhorted to streamline their management to achieve this objective and to bring down their cost in line with international cost. In awarding this demand the Tribunal also did not specify on how many occasions the executive committee meetings of the union and other meetings would be held when the company would be obliged to give special leave with pay to the union's representatives. Similarly, there is no knowing how many delegates the union would send to attend the conventions of the federation and the I.N.T.U.C. The Tribunal could not in the very nature of things specify or limit the number of such meetings for such an attempt would amount to interference in the administration of the union and its autonomy. Its order must of necessity, therefore, have to be indefinite with the result that the appellant company would not know before hand on how many occasions and to how many of its workmen it would be called upon to grant special leave. Further, in case there are more than one union in the company's establishment, the representatives of all such unions would also have to be given such leave to attend the aforesaid meetings.

18. A healthy growth of trade union movement undoubtedly would lead to industrial peace and harmony and consequently to higher efficiency. But a demand of the type we have before us has to be considered from all aspects and its implications and results have to be properly examined. In considering such a demand the first question which strikes one is as to why the meetings of the executive committee of the union cannot be held outside the hours of work. It was said that it may not be possible always to do so if an emergency arises. But emergencies are not of regular occurrence and if there be one, the representatives can certainly sacrifice one of their earned leave. There can obviously be no difficulty in so doing. The meetings of the federation and the annual conventions of the I.N.T.U.C. too can be attended by the union's delegates by availing themselves of their earned leave. Industrial adjudication, as observed in J. K. Cotton and Spinning and Weaving Mills v. Badri Mali, (1964) 3 SCR 724 = (AIR 1964 SC 737) cannot and should not ignore the claims of social justice, a concept based on socio-economic equality, and which endeavours to resolve conflicting claims of employers and employees by finding not a one-sided but a fair and just solution. A demand for special leave has, however, nothing to do with any disparities or inequalities, social or economic. On the other hand, too much absenteeism harms both the employers and the employees inasmuch as it saps industrial economy. In our view, the Tribunal, on the considerations aforesaid, was not justified in obliging the appellant company to grant special leave demanded by the union.

19. The result is that except for the overtime rate allowed by the Tribunal which we confirm, the rest of the appeal has to be allowed and the Tribunal's award set aside. We hold that the award is operative in respect of the workmen of the appellant company's factory at Jamshedpur and not the workmen of its other establishments. The demand for special leave comprised in demand No. 5 is disallowed. There will be no order as to costs.

Appeal partly allowed.