SUPREME COURT OF INDIA

Workmen of Orient Paper Mills Ltd.

Vs.

Orient Paper Mills Ltd.

C.A.No.390 of 1966

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

13.08.1968

JUDGEMENT

BHARGAVA, J.:-

1. The workmen of Orient Paper Mills Ltd., Brajrajnagar, have come up in this appeal by special leave against an award of the industrial Tribunal, Orissa. An industrial dispute between these workmen and the management of Orient Paper Mills Ltd. (hereinafter referred to as "the Company") was referred by the State Government underSection10 (1) (d) of the Industrial Disputes Act (hereinafter referred as "the Act") for adjudication by the Tribunal enumerating 30 different items of dispute. The Tribunal gave its award on all the thirty items. The special leave in this Court was sought and granted in respect of two matters covering of some of these items. The first matter related to fixation of wages, including minimum wages, and this was covered by items Nos. 1,3, 4, 22 and 26 in the schedule attached to the Order of Reference. The second matter in the appeal related to bonus covered by item No. 2 of that schedule. In the course of the hearing of the appeal, learned counsel appearing on behalf of the workmen further gave up some of the points which were the subject-matter of the items mentioned above, so that in this judgment we need deal with only those points which were argued by him in support of the appeal.

2. The first and the main point argued with regard to wages was that the Tribunal, after holding that there was no identical industry in this region comparable with the Company, came to the view that there were other industries in region in which minimum wages were higher than the minimum wages paid by the Company, but failed to fix the minimum wages in the award in accordance with the minimum wages being paid in those industries. Instead, what the Tribunal did was to work out the minimum wages, which should be paid, on an entirely different basis. It was also urged in the alternative that, even in adopting the latter course, the Tribunal committee an error inasmuch as, in making the calculation, the Tribunal only tried to neutralise about 36 per cent of the cost of living on the basis of the rise in Price Index instead of permitting neutralisation to the extent of at least 90%, which should have been done when fixing the minimum wages for the lowest class of workmen.

3. The principle for fixation of minimum wages that should ordinarily be adopted was laid down by this Court in the case of French Motor Car Co., Limited v. Workmen, (1963) Supp 2 SCR 16=(AIR 1963 SC 1327) where it was held:-

"It is now well settled that the principle of industry-cum-region has to be applied by an Industrial Court, when it proceeds to consider questions like wage structure, dearness allowance and similar conditions of service. In applying that principle, Industrial Courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing, and generally speaking similar concerns would be those in the same line of business as the concern with respect to which the dispute is under consideration. Further, even in the same line of business, it would not be proper to compare (for example) a small struggling concern with a large flourishing concern."

The Tribunal, in giving its decision, kept this principle in view, but came to the finding of fact that there were no other concerns in the same line of business as the Company in the region which could be compared with the Company. The Tribunal found that there are only two other paper mills in the region. They are the Titaghur Paper Mill No.3 situated at Chaudwar, and the J. K. Paper Mills at Rayagada. The Tribunal found that the Company is an old established business carrying on manufacture of paper on a very large scale. The Titaghur Paper Mill No. 3 started production only in April, 1960, while the J. K. Paper Mills at Rayagada started production in 1961-62 These two Paper Mills were, therefore, both of very recent origin compared with the Company. The strength of their labour-force and the annual production were also very much lower. Even the profits earned were much smaller. On these facts, the Tribunal held that it would not be proper to compare the wage structure for these Paper Mills with that of the Company. This is a finding of fact recorded by the Tribunal and nothing has been shown by learned Counsel for the Company which would induce us to interfere with this finding of fact. In fact, learned Counsel was unable to urge that this finding of fact suffered from any error at all. On this finding, it is clear that the region-cum-industry principle laid down in the case of French Motor Car Co. Ltd. (1963) Supp 2 SCR 16=(AIR 1963 SC 1327) (Supra) could not have been applied by the Tribunal when fixing the wages in the Company.

4. This Court in the same case of the French Motor Car Co., (1963) Supp 2 SCR 16=(AIR 1963 SC 1327) (supra) further indicated what principles should be adopted in such a situation where there is no concern in the same industry in the region comparable with the concern in which wages have to be fixed. That situation was envisaged as occurring whenever the particular concern in question happens to be already paying the highest wages in its particular line of business. It was held that in such a case:

"there should be greater emphasis on the region part of the industry-cum-region principle, though it would be the duty of the industrial court to see that for purposes of comparison such other industries in the region are taken into account as are as nearly similar to the concern before it as possible. Though, therefore, in a case where a particular concern is already paying the highest wages in its own line of business, the industrial courts would be justified in looking at wages paid in that region in other lines of business it should take care to see that the concerns from other lines of business taken into account are such as are as nearly similar as possible, to the line of business carried on by the concern before it. It should also take care to see that such concerns are not so disproportionately large as to afford no proper basis for comparison."

In the light of these views which were brought to the notice of the Tribunal, the Tribunal proceeded to consider the minimum wages paid by three Collieries, Orient Colliery, the Colliery and Himgiri-Rampur Colliery, the Rourkela Steel Plant, the Cement Factory at Rajgangpur and the Indian Aluminium Company, Hirakud which the Tribunal found were situated not very far away from the place where the Company had its factory. The Tribunal mentioned that, according to the Coal Award, the minimum wage in the Collieries at the then existing Price Index was Rs. 93-7-0; in the Cement Factory Rs. 96.88; in the Steel Plant Rs. 95/- and in the Aluminum Company Rs. 97.84 nP. The Tribunal then also took into, account the minimum wages being paid by other Paper Mills situated outside the region and thereafter recorded its own decision in the following words:-

"The conclusion that flows from these figures is that the lowest paid worker in the Paper Mill at Brajrajnagar gets more than what is paid as minimum wage in the other two Paper Mills of Orissa, but it is less than what is paid to the lowest paid worker in some of the Paper Mills outside the State. In other industries, which are comparatively close to the paper industry at Brajarajnagar, the minimum wage is above Rs. 90/- in almost all the cases."

On the basis of this finding of fact, the Tribunal held that, if the minimum wage in the Company is to be fixed more on the basis of the minimum wage prevailing in other industries in that region which. in its opinion, would be appropriate under the circumstances of the case, then a revision was really necessary. We think that the criticism of learned counsel for the workmen that the Tribunal committed an error at this stage in merely, holding that the facts found by it justified a revision and in not proceeding to fix minimum wages on the basis of the other industries in the region, is fully justified. It is to be noted that there is no mention in the award of the Tribunal that the Company at

any stage put forward the case that the Collieries, the Steel Plant, the Cement Factory, and the Aluminium Company were concerns which were not comparable with the Company. In fact, in the course of arguments before us, we asked learned Counsel for the Company to point out whether such a plea was taken at any stage by the Company and whether evidence was led to show that these concerns were not comparable with the Company, Learned Counsel had to admit that no specific plea was taken by the Company in this behalf and at least no evidence at all was led to show that these concerns are not comparable with the Company. The workmen in their written statement had relied on the wage structure in these concerns obviously on the basis that they were comparable, Since the Company never took the plea that they were not comparable, no occasion arose for the workmen to give evidence of the concerns being comparable. In fact, the Tribunal also accepted them as being comparable and that is why, in its conclusion, the Tribunal held that, in its opinion, it would be appropriate under the circumstances of the case to fix the minimum wage in the Company on the basis of the minimum wage prevailing in other industries in that region. By the expression "other industries in the region" the Tribunal was obviously referring to these concerns. Having come to this view it is clear that, to give full effect to the principle laid down by this Court in the case of French Motor Car Co. (1963) Supp 2 SCR 16 = (AIR 1963 SC 1327) (supra), the Tribunal should have proceeded to fix the minimum wage in the Company on the basis of the average minimum wage prevailing in these concerns. We have already quoted the figures of the minimum wage prevailing in these concerns. On their basis, it appears to us that there will be full justification for fixing the minimum wage in the Company at Rs. 95/- per mensem which is about the average of the wages prevailing in all those concerns. In this connection, we may take notice of the fact that, in the written statement of the workmen, the minimum wages prevailing in these concerns were shown at figures lower than those mentioned by the Tribunal; but it appears that those lower figures were given, because the wages mentioned in the written statement were based on a lower Price Index. The Tribunal considered the minimum wages in these concerns on the basis of the prevailing Price Index of 441 at Sambalpur taking 100 as the basic Price Index for the year 1939 Even when fixing the minimum wage for the Company on the basis of the alternative calculation made by the Tribunal, the Tribunal has proceeded on the assumption that the minimum wage is being fixed for the Price Index No. 441 prevailing at the time of the award taking 100 as the basic index for the year 1939. In these circumstances, we think that the minimum wage in the Company should have been fixed by the Tribunal at Rs. 95/- per mensem, following the principle laid down by this Court in the case of French Motor Car Co. (1963) Supp 2 SCR 16 = (AIR 1963 SC 1327), (supra). The Tribunal should not have proceeded to make the alternative calculation on some other basis so as to arrive at a lower figure of Rs. 73/- p. m. as the wage covering the basic wage and the dearness allowance, in addition to Rs. 11/- p. m. payable as production bonus.

5. Learned counsel for the Company urged before us that the principle of fix action of wages on the basis of comparison in the region laid down in the French Motor Car Co.'s case, (1963) Supp 2 SCR 16 = (AIR 1963 SC 1327) (supra) is not rigid, and it is not necessary that the minimum wage in the Company must be fixed at the average level of wages in the other comparable industries in the region. According to him note should be taken of the fact that, at least in the paper industry in this area, the other concerns are paying much lower wages. This point has to be rejected straightway in view of the finding that those concerns are very small and not comparable with the Company. It was also urged that, in fixing the minimum wage, the wages payable in the paper industry in other parts of the country should also be kept view. We do not think that such a consideration should be taken into account when applying the principle of fixing the minimum wage primarily on the basis of comparison between different industries in the same region. Finally, it was argued that other

amenities being provided by the Company should also be taken into account when fixing the minimum wage. In this case, however, there is nothing to show that the Company is providing any such amenities which are different from the amenities that are being provided by those concerns in the region which are being compared with the Company for the purpose of fixation of the minimum wage. Consequently, we do not think that there is any justification for departing from the figure of Rs. 95/- which is the average minimum wage payable by those industries.

6. We may, at this stage, take notice of the fact that, in considering the question of minimum wage, the Tribunal had in view the total wage packet to be received by each workman and, in the opinion of the Tribunal, it consisted of three elements. These elements are basic wage, dearness allowance and production bonus. The Tribunal in its award, held that the minimum wage, insofar as it consists of basic wage and dearness allowance, should be fixed at Rs. 73/- and there should be paid, in addition, production bonus to the extent of Rs. 11/- in each case. Thus, the total minimum wage packet which a workman should be entitled to receive was fixed by the Tribunal at Rs. 84/-. It is for this figure of Rs. 84/- that we think the Tribunal should have substituted the figure of Rs. 95/-. From the facts noted in the Award or appearing on the record, it appears that production bonus, in addition to the minimum wage, is payable in the case of Aluminium Company, Hirakud; but there does not appear to be any production bonus payable in the three Collieries, in the Steel Plant and in the Cement Factory. In the majority of the industries, which are being compared with the Company in the region, consequently, the minimum wage is the total wage packet receivable by the workman and there is no extra amount received as production bonus. There is only an exception in the case of Indian Aluminium Company. That particular Company, it appears has some special features which have been brought out in the evidence of the Management's witness, B. B. Panda. He has stated that the Aluminium Factory at Hirakud carries on its work with the help of highly automatic machines and is supplied electricity by the Government at subsidised rates. The nature of work is such that the total number of workmen employed does not exceed 125 which is a very small number as compared with the number of workmen employed by the Company. It is clear that, in the Aluminium Factory, the number of workmen who have to be paid production bonus is very small and almost insignificant as compared with the number in the Company. In these circumstances, it would be more appropriate to compare the total wage packet of the Company with the wage packet received by the workmen of other industries in the region, viz., the three Collieries, the Rourkela Steel Plant, and the Cement Factory at Rajgangpur. Comparing with them, there is justification for fixing the total wage packet of the workmen in the Company at Rs. 95/which would include production bonus. So far as annual profit bonus is concerned, it is payable in the Company also as in those other concerns. Consequently, in varying the award of the Tribunal, we would direct that the total minimum wage packet of a workman in the Company shall be fixed at Rs. 95/- consisting of the three elements of basic wage, dearness allowance and production bonus.

7. The break-up of this wage into the three elements is of some importance in this case because of the principle on which the profit bonus is paid by this Company. The profit bonus that is paid is three months basic wage and does not take into account the dearness allowance and the production bonus elements of the total wage. The Company has always treated the total wage of a workman as consisting of these three elements in the proportion of 3:3:1. On behalf of the workmen, it was urged before the Tribunal that the proportion should be 3:1:1, so that the production bonus and the dearness allowance would both be equal and 1/3rd of the basic wage. This plea of the workmen was

rejected by the Tribunal primarily on the ground that the other break-up urged on behalf of the Company was the breakup which had been accepted by mutual consent between the workmen and the Company in an earlier settlement which had been arrived at in the year 1959. We are unable to hold that the Tribunal committed any error in arriving at this decision and, consequently, the total minimum wage fixed by us must also be deemed to have the same break-up. As a result, it would have to be held that the total minimum wage of Rs. 95/- will consist of Rs. 41/- as basic wage, Rs. 41/as dearness allowance and Rs. 13/- as production bonus.

8. In connection with the fixation of minimum wage, one point vehemently argued by learned Counsel for the workmen was that at least the dearness allowance element of the wage should have been made variable with the Price Index so that the labour could automatically be compensated for further rise in the cost of living subsequent to the making of the award. Learned Counsel was, however, unable to show to us that this Court or any other Tribunal has ever laid down the principle that, where the dearness allowance forms a part of the consolidated wage fixed, there should be such linking so as to bring in continuous variation of the wage, depending on the variation in the Price Index. It appears to us that an Industrial Tribunal has the discretion, in appropriate cases, of making a direction linking the dearness allowance element of a wage to the Price Index; but, at the same time, the Tribunal is entitled to choose the alternative course of fixing the wage at the prevailing Price Index and leaving the labour to raise a fresh demand and, if necessary, a fresh industrial dispute for further rise in wages, in case there is marked variation in the Price Index and the wage fixed in the award becomes out-dated. Reference in this connection may be made to the decision of this Court in Hydro (Engineers) Pvt. Ltd. v. Workmen, Civil Appeal No. 1934 of 1967, D/-30-4-1968=(AIR 1969 SC 182), where also the Court did not hold that it was compulsory to link minimum wage with the cost of living index and only envisaged that such linking may be permissible by holding that:-

"It is thus clear that the concept of minimum wage does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage."

9. In "the present case, the Tribunal chose the course of leaving it to the workmen to ask for increase in minimum wage on any further rise in Price Index and did not consider it advisable to link the wages with it. In fact, from the Award, it appears that, so far as the Tribunal was concerned, the workmen did not press for such linking when the award was being given. Consequently we are unable to hold that the Tribunal has committed any error and that, in this respect, any interference by us is called for.

10. The only other point argued be fore us in respect of wages by learned Counsel was that casual workers should also be paid minimum wages on the same basis as the permanent worker for whom

the minimum wage was fixed by the Tribunal which is being varied by us by increasing it to a total wage packet of Rs. 95/-. It appears that the Tribunal did not accept demand primarily on the ground that the distinction between casual workers and the permanent workers was recognised by both the parties in the agreement of 1959. It may be noticed that, by the very nature of employment being casual, it can be presumed that a casual worker is on a lower footing and cannot expect the same wages as a permanent employee. Therefore, the decision by the Tribunal not to equate the casual workers with the permanent employees cannot be held to be correct and must be upheld.

11. The Tribunal had directed that the increase of Rs. 12/- p. m. in the total minimum wage packet owed by it will enure to the benefit of the lowest paid female, Badli and permanent daily-rated workers also. This principle will remain effective with the modification that these workers will be entitled to the increase of Rs. 23/- p. m. substituted by us for the increase of Rs. 12/- allowed by the Tribunal.

12. Learned Counsel appearing for the Company drew our attention to the fact that the revised wages are payable with effect from 13th December, 1962, and, by this time, a period of 5 to 6 years has elapsed, so that the Company will have to pay arrears of wages for this long period. It was urged that this would cast a very heavy burden on the Company. We do not think that this reason advanced on behalf of the company will justify our making a direction that the increase in wages should be effective from some later date. The previous agreement of 1959 was binding only up to 12th December, 1962 and we think that the Tribunal was right in directing that the revised wages must take effect from 13th December, 1962. Even though arrears will have to be paid for about 6 years, it has to be kept in view that, since then, there has been a very considerable rise in the Price Index and the labour has not so far raised a fresh dispute for a further revision of wages over and above the wages fixed by the Tribunal which are being now refixed by us. In all these circumstances, we think that the revised wages should take effect from 13th December, 1962.

13. The only other dispute raised in this appeal related to the bonus for the year 1962-63. Initially, the workmen had challenged the decision of the Tribunal with regard to bonus for all the five years from 1959-60 to 1963-64, but in the course of arguments, at the last stage before us, learned Counsel for the workmen confined his arguments to the bonus for the year 1962-63 only. The main point urged by learned Counsel was that, in giving the decision with regard to bonus for this year, the Tribunal committed the error of not making calculation of surplus available on the basis of the Full Bench Formula approved by this Court in the case of The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka v. Its Workmen, 1959 SCR 925= (AIR 1959 SC 967). The Company is paying profit bonus equivalent to three months basic wage of each workman. The demand made by the workmen was for bonus equivalent to six months wages, and the argument was that, if the Tribunal had worked out the surplus available on the correct basis, that surplus would have certainly justified grant of profit bonus @ six months wages.

14. This argument fails, because it appears to us that the demand, as put forward before the Tribunal

for bonus equivalent to six months' wages, was, in fact, never made by the workmen on the basis that the surplus calculated under the Full Bench Formula would justify bonus being granted at that rate. The Tribunal, in this connection, has quoted the pleading of the workmen in their written statement before it. The pleading makes it clear that the claim or six months' wages was not based on the Full Bench Formula, but on the ground that certain clerical staff was being paid bonus which, in effect, amounted to about six months' basic wages because the bonus was calculated in their case by taking into account the consolidated wages, including dearness allowance, while in the case of the workmen, the dearness allowance element of the wages was being ignored and bonus was calculated only by taking into account basic wages. We agree with this interpretation of the pleadings of the workmen. Further, there is one very significant circumstance, viz., that this dispute was raised by the workmen before the expiry of the year 1962-68. Initially, there was an attempt that the dispute be referred to the Industrial Tribunal underSection10 (2) of the Act on the basis of an agreed enumeration of subjects of dispute drawn up by the workmen and the Company together. That reference underSection10 (2) of the Act, however failed due to some technical defect. The reference was ultimately made by the Government underSection10 (1) of the Act, but it was made in the same form in which the parties had agreed to refer it. The reference was made by the Government on the 4th October 1962. At that time, the year 1962-68 was still running and the accounts for that year could not possibly have been closed and made available. The balance-sheet and the profit and loss account of that year could only be prepared after the closure of the year on 31st March, 1963. In fact, the reference included a dispute even for the year 1963-64 which year had not even started running. On the face of it, at the time of the reference there could be no question of applying the Full Bench Formula for calculation of surplus, because there were no completed accounts for the two years 1962-63 and 1963-64. This circumstance makes it clear that the claim for higher bonus Could not, at the time of reference, have been based on the availability of surplus according to the Full Bench Formula. The Tribunal was, therefore, quite correct in not trying to work out the surplus according to the Full Bench Formula and in awarding bonus on that basis. In this connection, learned Counsel for the workmen urged that, at least by the time when the Award was give the completed accounts for the year 1962-63 were available; but it seems to us that this circumstance is of no assistance The award had to cover the year 1963-64 also and at least for that year the accounts could not possibly have been completed, as that year was still running when the award was given by the Tribunal on the 11th January, 1964. Further, the Tribunal was expected to decide the dispute only as referred to it and, at the time of reference at least, there was not and there could possibly not be a claim for higher bonus on the basis of the application of the Full Bench Formula.

15. The claim was, in fact, based on the circumstance that, according to the workmen, the bonus in their case was being calculated as equivalent to three month's basic wages, while, in the case of some clerical staff, the calculation was made on the basis of their consolidated wages consisting of basic wages and dearness allowance. The argument is incorrect. In the case of even the lowest paid clerical staff, to whom dearness allowance is separately payable, the bonus is only calculated on the basis of basic wages, and the dearness allowance is ignored. There is some clerical staff which does not get any dearness allowance at all and it is only in those cases that the bonus is worked out on the basis of the total wages paid. In such cases, the calculation is still on the basis of basic wage, because it cannot be assumed that their wage is a consolidated wage consisting of the two elements of basic wage and dearness allowance lumped together. In fact, the principle which is being applied is the simple one of calculating the bonus payable @ three months' basic wage in each case and in no case is the dearness allowance taken into account. There is, therefore, no discrimination or

inequality as urged on behalf of the workmen.

16. Finally, it was urged that even the casual and Badli workers should be allowed bonus on the same basis as the permanent workers. The Tribunal rejected this demand on the ground that, under the Agreement of 1959, the workmen and the Company had agreed specifically to exclude these classes of workers in regard to payment of bonus. We are unable to hold that the Tribunal committed any error of law, requiring interference by us, in basing its decision on the principle contained in the earlier Agreement of the parties and in holding that there was no justification to introduce a new element of payment of bonus to casual and Badli workers at this stage. The claim in this respect also fails.

17. As a result, the appeal is only partly allowed inasmuch as the minimum wage fixed by the Tribunal in the Award is varied as indicated by us above. The rest of the Award of the Tribunal is upheld. Since, in this appeal, the principal dispute related to the fixation of minimum wage of the workmen and we are allowing the appeal of the workmen in that respect, we direct that the workmen will be entitled to their costs of this appeal from the Company.

Appeal partly allowed.