Workmen of Gujarat Electricity Board, Baroda

Vs

The Gujarat Electricity Board, Baroda

Civil Appeal No. 2431 of 1966

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

19.12.1968

JUDGMENT

BHARGAVA, J. -

1. This appeal, by special leave, is directed against an Award of the Industrial Tribunal, Gujarat, in an industrial dispute referred to it by the Government of Gujarat at the instance of the appellants who are 466 workmen of the Gujarat Electricity Board, Baroda (hereinafter referred to as "the Board"), represented by the Saurashtra Vidyut Kamdar Sangh (hereinafter referred to as "the Sangh"). The dispute referred to related to two matters. One was the demand made in respect of rates of dearness allowance to be paid to the workmen. The second demand was that those of the workmen, to whom Contributory Provident Fund or Employees Provident Fund Scheme was applicable, should be granted gratuity equal to 15 days wages for every year of service in addition to the Provident Fund benefits, while those workmen, who were entitled to pension according to the Pensionary Scheme in force, should have their pension calculated after adding 50 per cent. of the dearness allowance to the basic pay.

2. The facts needed to explain the second demand may first be stated. The supply of electricity in the State of Saurashtra, prior to the year 1954, was being carried out departmentally by the Government of Saurashtra and the workmen employed in the power houses were, consequently, government servants. On 1st July, 1954, a Saurashtra Electricity Board was constituted to run the power houses and the employees of the Electricity Department of the Government were sent to work with the Saurashtra Electricity Board on deputation. On 1st November, 1956, Saurashtra became a part of the Bombay State, whereafter the Saurashtra Electricity Board was dissolved with effect from 1st April, 1957 and its assets, liabilities and employees were taken over by the Bombay State Electricity Board. The employees, who were originally in the service of the Saurashtra State Government, were entitled to the Pensionary Scheme of the Saurashtra State Government, while the Bombay State Electricity Board had a Provident Fund Scheme. The Saurashtra State Government servants, on being taken over by the Bombay State Electricity Board, were given the option of either continuing in their Pensionary Scheme or of joining the Provident Fund Scheme of the Bombay State Electricity Board in which case the gratuity already accrued to them and the equivalent of pensionary benefits were credited to their accounts. Some of the employees opted for the Provident Fund Scheme, while others continued under the Pensionary Scheme. Thereafter, on 1st May, 1960, the State of Bombay was bifurcated and a separate State of Gujarat was constituted; and, with effect from the same date, the Board came into existence. The Board took over all the electricity, power-houses and electricity schemes in the State of Gujarat from the Bombay State Electricity Board, including the workmen who are the appellants in this appeal. The assets and liabilities of the Bombay State Electricity Board were divided between the Board and the Maharashtra Electricity

Board which was constituted for the State of Maharashtra which came into existence on bifurcation of the Bombay State. The Board continued both the Pensionary Scheme as well as the Provident Fund Scheme for the employees in the manner they were in force when the employees were working under the Bombay state Electricity Board. The employees who were originally servants of the State Government had ceased to be government servants, with effect from 1st April, 1957 and later on 1st May, 1960, became the employees of the Board, so that they were no longer entitled to the rights which the State Government might subsequently grant in respect of pension under the rules applicable to the government servants. The result was that even improvements granted in the Pensionary Scheme by the State Government to its employees did not enure to the benefit of the appellants. In these circumstances, the Sangh put forward the claim that the pension of employees, who were governed by the Pensionary Scheme, should be calculated not on the basis of basic salary, but after adding 50 per cent. of the dearness allowance to it. In respect of employees, who were governed by the Provident Fund Scheme, a second benefit of gratuity was claimed.

3. The demand for dearness allowance was that it should be linked with the scale prescribed for the Ahmedabad Mill Owners' Association. The workmen demanded that employees, drawing up to Rs. 50 as basic pay, should be given dearness allowance at the scale applicable to Ahmedabad Mill Owners' Association; there drawing between Rs. 50 to Rs. 100, dearness allowance at that scale, plus Rs. 5 and those drawing above Rs. 100, dearness allowance at that scale, plus Rs. 10. This demand was put forward before the Board originally on behalf of all the 9,208 employees of Class III and Class IV and some employees of Class I and Class II whose salary was below Rs. 300 per mensem, who were working either in the Gujarat Region or the Saurashtra region. These employees were represented by seven different unions, one of which was the Sangh who represented above 3,000 employees working in the Saurashtra Region. The six unions representing the employees working in the Gujarat region amicably settled these disputes with the Board by entering into agreements. The Board gave some increase in dearness allowance retrospectively with effect from 1st October, 1961, while the second demand relating to gratuity and calculation of pension after adding 50 per cent. of the dearness allowance was given up. The Sangh declined to accept this settlement, whereupon the Board offered terms in accordance with the settlement to all the employees in the Saurashtra Region individually. Out of the total of 3,042 in the Saurashtra Region, 622 signed General Standing Order 56, under which the Board had made it offer to individual employees on the basis of the settlements arrived at before the reference to conciliation; 1152 signed before the date of the failure report by the Conciliation Officer; 2058 signed before the reference, and 518 signed after the reference. Thus, the dispute, after the reference, became confined to the remaining 466 employees who did not, on individual basis, accept the offer made by the Board. The Tribunal considered this dispute, relating to the dearness allowance raised by these employees through the Sangh as also the other demand relating to gratuity and calculation of pension, and, by the impugned award, rejected these demands. Consequently, the workmen have come up in this appeal through the Sangh.

4. The main ground for rejecting these demands, on which the award is based, is that the Board does not have the capacity to meet the additional expenditure that would have to be incurred if these demands are acceded to. Before the Tribunal, this aspect of the case was sought to be met by the Sangh by urging that the total wage packet, including the dearness allowance claimed by them in the demand, would only satisfy the requirement of a minimum wage, so that the Board's capacity to pay was irrelevant; but the award shows that Sangh completely failed to provide any material to prove that the total wages, including the dearness allowance as offered by the Board on the basis of the settlements, are less than the minimum wage. This court in Hindustan Antibiotics Ltd. v. The workmen and others (1967 1 SCR 652), recognised the three concepts of minimum wage, fair wage

and living wage by quoting the following passage from the decision in The Hindustan Times Ltd. v. Their workmen (1964 1 SCR 234), and stating that it briefly and neatly defined the three concepts :

> "In trying to keep true to the two points of social philosophy and economic necessities which view for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of the average employee regarded as a human being in a civilsed society'. Above the fair wage is the 'living wage' a wage 'which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which the needed for their health and physical well being, enough to enable him to qualify to discharge his duties as a citizen'."

These decision make it clear that, if the claim be for a minimum wage, the employer must pay that wage in order to be allowed to continue the industry; and, in such a case, the capacity of the industry to pay is irrelevant. However, if the industry is already paying the minimum wage, and the claim is for fair wage or living wage, the capacity of the industry to pay is a very important factor and the burden above the minimum wage can only be justifiably imposed if the industry is capable of meeting that extra burden. On this principle, in the present ease, if the appellants had succeeded in showing that they were not receiving even the minimum wage on the basis of the offer made by the Board in line with the settlements arrived at with the other unions and individual workmen members of the Sangh, there would have been full justification for granting additional dearness allowance, ignoring the inability of the Board to meet that extra expenditure. The finding of the Tribunal, however, is that the demand of the workmen is not confirmed to minimum wage, but that, as a result of the demand, the wages will be above the minimum wage. Learned counsel appearing for the appellants before us also did not try to contend that the wages, which were being paid by the Board, were lower than the minimum wage, so that the claim for the additional dearness allowance cannot be considered without taking into account the capacity of the Board to meet the additional expenditure.

5. So far as the question of capacity of the Board to pay is concerned, there is a clear finding by the Tribunal that the Board is running at heavy losses, so that it is not in a position to meet the extra expenditure of about Rs. 49 lakhs a year which will be involved if the dearness allowance is fixed as claimed by the Sangh. The Tribunal has found that the Board, when constituted on 1st May, 1960, inherited an accumulated deficit of over Rs. 2 crores from the Bombay State Electricity Board. In its own working, the Board sustained a loss of over Rs. 29 lakhs between 1st May, 1960 and 31st March, 1961, and in the two succeeding years 1961-62 and 1962-63, the losses incurred were in the region of Rs. 39 lakhs and Rs. 41 lakhs. The Tribunal, thus, held that the total loss was to the tune of Rs. 31 millions; and since the Board had undertaken a further liability of over Rs. 6.75 lakhs a year under the settlement and the offer to individual workmen, it could not possibly undertake the further burden of paying about Rs. 49 lakhs per year as increased dearness allowance. The Tribunal was also of the opinion that, considering this financial condition of the Board, there was no justification for introducing a Gratuity Scheme for workmen governed by the Provident Fund Rules, nor was there any justification for calculation of pension on the basis of adding 50 per cent. of the dearness allowance to the basis pay. Mr. Chari, counsel for the appellants, challenged this decision of the Tribunal on two grounds. The first ground was that the Tribunal was wrong in judging the capacity of the Board to pay after taking into account the deficit of over Rs. 2 crores which it had inherited

from the Bombay State Electricity Board; and the second ground was that the financial capacity of the Board should be judged only on the basis of its commercial undertakings, excluding the activities of the Board which were in the nature of national duties.

6. So far as the first point it concerned, we think that there is some force in the submission made by learned counsel. The deficit inherited by the Board from its predecessor cannot be treated as a revenue loss which will have bearing on its paying capacity. Such inherited deficit should really have been treated as capital loss; but even this loss cannot be completely ignored, because the paying capacity of an employer has to take into account even capital losses. However, even if this accumulated deficit of over Rs. 2 crores is ignored, it is clear that, during the three years after its formation, the Board itself incurred heavy losses which totalled to about Rs. 110 lakhs. Consequently, even if that accumulated deficit is not taken into account, it cannot be held that the Board will have the capacity of bearing the additional financial burden to the tune of Rs. 49 lakhs a year, if required to pay dearness allowance at the rates claimed by the Sangh.

7. On the second point, we are unable to accept the submission made by learned counsel. The Board was constituted under the Electricity (Supply) Act No. 54 of 1948, and Section 18 of that Act lays down the duties of the Board. By its very constitution, the Board is charged with the general duty of promoting the co-ordinated development of the generation, supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by any licensee. In particular, the duty of the Board is to prepare and carry out schemes with the objects mentioned above; to supply electricity to owners of controlled stations and to licensees whose stations are closed down under this Act; and to supply electricity as soon as practicable to any other licensees or persons requiring such supply and whom the Board may be competent under this Act so to supply. When the Board was constituted to carry out these duties, its capacity to bear the burden of paying wages to its employees has to be worked out after taking into account all the activities which the statute requires it to carry on. The running of Power Houses is only one of the branch of those activities. The profit that the Board can be held to have earned can only be worked out after including in the accounts all the expenditure incurred by it on all its schemes for distribution of electricity to licensees or to consumers, whether in urban areas or in rural areas. In fact, there is not even an assertion on behalf of the appellants-workmen that they were employed solely in connection with a profitable undertaking of the Board and had nothing to do at all with the other activities which the Board is actually carrying on. No doubt, learned counsel is right in urging on the basis of the decision of this court in Hindustan Antibioties Ltd. (supra) that the circumstance that the Board is an industry in the public sector does not exempt it from application of principles which apply to an industry in private sector, and the Board must also be made to pay wages on the same basis as private sector employers. This, however, does not advance the case of the appellants, because, even in a private sector, additional burden over and above a minimum wage can only be justifiably imposed in industrial adjudication, if the employer has the capacity to meet that burden. In this case, the Tribunal has refused to grant the demand of the appellants not on the ground that the Board is an industry in public sector, but on the ground that it does not have the capacity to pay. That capacity has rightly been judged on the basis of all the undertakings being worked by the Board.

8. The Tribunal, after holding that there was no justification for granting the demands of the workmen because the Board had no capacity to bear the additional burden, proceeded further to examine whether the Board's existing scheme of payment of dearness allowance was reasonable and took into account various factors for arriving at its finding that it could not be held that the terms offered by the Board were unreasonable. In this connection, reliance was placed on behalf of the

appellants on the fact that two Electric Supply Companies were paying wages which were much higher than the wages being paid by the Board, and there was no justification for refusing the demand for additional dearness allowance which would place the employees of the Board on par with the employees of those Electric Supply companies. One of those Electric Supply companies is the Ahmedabad Electricity Co. Ltd., Ahmedabad, in whose case wages were fixed by an Award published in 1956, Industrial Court Reporter at p. 746. The other is the Viramgam Electric Supply Co. Ltd., Viramgam, the award relating to which is published in 1958 Industrial Court Reporter at page 1010. The argument was that wages paid by the Board should not be lower than those paid by these two Electric Supply companies which were engaged in the same line of business of production and supply of electricity. The Tribunal brushed aside these examples by stating that they were not comparable with the Board. In taking this view, we do not think that the Tribunal committed any error. In Williamsons (India) Private Ltd. v. Its workmen (1962 1 LLJ 302) this court clearly laid down what criteria had been established for considering what are comparable concerns when dealing with a question of wage fixation. It was held :

> "This court has repeatedly observed that, in considering the question about comparable concerns, tribunals should bear in mind all the relevant facts in relation to the problem. The extent of the business carried by the concerns, the capital invested by them, the profits made by them, the nature of the business carried on by them, their standing, the strength of their labour force, the presence or absence and the extent or reserves, the dividends declared by them and the prospects about the future of their business these and all other relevant facts have to be borne in mind."

In the present case, it is clear that, if these various factor are taken into account, neither the Ahmedabad Electricity Co. Ltd., nor the Viramgam Electric Supply Co., can be held to be a concern comparable with the Board. As we have indicated earlier, the activities carried on by the Board are not only production of electricity and direct distribution in some areas, but also include preparation of schemes for development of supply of electricity in areas not served so far and for supply of electricity to licensees. The two concerns at Ahmedabad and Viramgam merely generate and supply electricity to consumers in the cities or towns served by them. The Board, according to the Act constituting it, has primarily to supply electricity to licensees, and not confine its supply to direct consumers like these two concerns. The supply to consumers is only under taken where there are no licensees to undertake the distribution of electricity generated by the Board, and this activity of direct supply to consumers is primarily carried on in rural areas where the population is sparsely distributed as compared to the cities or towns served by the other two concerns. Then, there is the important factor that the Board is running at a huge loss every year. The workmen did not provide figures to show what was the profitability of the other two concerns, though the awards in their cases seem to indicate that both of them are running at a profit. In these circumstances, we cannot hold that the Tribunal committed any error in ignoring the wages being paid by these two concerns, when dealing with the question of payment of dearness allowance by the Board. In this connection, a request was made by learned counsel that we may remand the case to the Tribunal in order to enable the Sangh to produce evidence to the satisfaction of the Tribunal that these two concerns are comparable, or to cite examples of other undertakings in the same industry in the Saurashtra region, or, if there be no such undertakings available, of undertakings in other industries in the Saurashtra region so as to enable the Sangh to claim wages on parity with those undertakings. We do not think that there is any justification for remanding the case for such a purpose at this stage. It was open to the Sangh to produce material before the Tribunal when the dispute was first investigated by it, and no reason it shown why the Sangh did not do so. Further, as we have indicated earlier, the very circumstances that the Board does not have the financial capacity to meet the additional burden of

the demands made by the workmen justifies the order made by the Tribunal. The further request that the remand would enable the Sangh to show whether the losses brought to the notice of the Tribunal by the Board were, in fact, net losses has also no force, because, when the losses were proved before the Tribunal by production of an affidavit on behalf of the Board and deponent appeared in the witness box, no attempt was made on behalf of the Sangh to cross-examine the deponent in order to establish that the losses had not been correctly represented. We do not think that, in these circumstance, any remand of this case is called for. It does appear that the Tribunal in its Award committed the error of comparing the Board with the Maharashtra Electricity Board and similar Electricity Boards in other States and thus acted against the principle that wages should be compared on industry-cum-region basis; but that mistake does not justify any interference with the ward which is otherwise correct and justified. The Tribunal was quite right in rejecting the demands made by the Sangh, particularly in the light of the further fact relied upon by the Tribunal that all the employees of the Board in the Gujarat region as well as a large majority of over 2,500 employees even in the Saurashtra region had accepted the existing rates based on the settlements and only 466 employees had come forward with this demand without establishing that the demand was restricted to bringing up their wages to the level of minimum wages.

9. The appeal is dismissed, but we make no order as to costs.

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