M/s. Voltas Ltd.

Vs

J. M. Demello and Another

Civil Appeal No. 478 of 1970

(J. S. Shelat, A. N. Ray JJ)

21.07.1971

JUDGMENT

SHELAT, J. -

1. This appeal, by special leave, is against the judgment of the High Court of Bombay allowing the writ petition filed by Respondent 1 against the dismissal by the Labour Court of his application for dearness allowance made against the appellant-company under Section 33-C(2) of the Industrial Disputes Act, 1947.

2. The facts leading to the said applications are as follows :

Respondent 1, first joined the service of M/s. Volkart Bros., on March 3, 1930. On merger of that concern with the appellant-company in September 1954, he became the employee of the letter. In September 1954, the appellant-company took over the staff of M/s. Volkart Bros., on the same terms and conditions as were applicable to them when they were the employees of M/s. Volkart Bros. During the period when Respondent 1 was in the employment of M/s. Volkart Bros., he was governed by a scheme of dearness allowances framed with the consent of the parties and incorporated in an award (hereinafter referred to as the Bakhale Award), dated May 26, 1951, in I.T. No. 76 of 1950. The scheme provided both maximum and minimum dearness allowances, viz., Rs. 165 and Rs. 60/- respectively, and subject to them the dearness allowance payable was 75% for the first hundred, 37 1/2% for the second hundred and 18% for the balance of the wages.

3. The said scheme was altered by a circular, dated November 16, 1953. The two principal changes in the altered scheme were -

> (1) an increase in the minimum and maximum from Rs. 60/- and Rs. 165/- to Rs. 70/- and Rs. 300/- per month respectively, and
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> (2) linking the dearness allowance to the cost of living index in the bracket 371-380 and providing for adjustment of dearness allowance by certain percentages whenever the index moved by ten points.

On August 18, 1956, a charter of demands was served on the company on behalf of the workmen. Demand No. 5 related to dearness allowances and was as follows :

> "The scheme of dearness allowance at present at present in force should be received on the following lines with effect from January 1, 1956."

Then followed the lines on which the scheme was sought to be revised, namely, the percentages at which the dearness allowance should be paid. The parties arrived at a settlement, dated August 30, 1957, under which the company agreed to pay dearness allowance at 100% on the first hundred with 4% on every ten points' movement in the index, 50% on the second hundred with 2% on every ten points' movement in the index and 25% for the balance with 1% on every ten points' movement in the index of cost of living. The minimum dearness allowances was raised to Rs. 75/-.

4. It may be noted that there was no reference as to the maximum either in demand No. 5 or in the settlement. The case of Respondent 1 was that the scheme of dearness allowances as prevalent till then was abandoned, a fresh scheme was devised in which there was no provision for any maximum and it was, therefore, that no reference to any such maximum was made in the settlement. The company's case, on the other hand, was that the scheme of dearness allowance was not given up, that the demand was only for revision of the existing scheme, viz., to extent of revising the percentages only on the three slabs of wages, and therefore, the settlement mentioned the alternation made in the scheme, but not the maximum as there was neither a demand for its deletion, and consequently, no settlement regarding it.

5. According to the company, the maximum was raised from, Rs. 300/- to Rs. 350/- by a circular, dated March 12, 1959. That circular was as follows :

> "It has been decided to raise the present maximum dearness allowance payable to Rs. 350/- per month which will apply uniformly to all offices in India with effect from April 1, 1959.

Dearness allowance will continue to be paid on the usual basis at the rates applicable at each place subject to the maximum stated above.

#X X X X X X."##

The case, however, of Respondent 1 was that the increase in the maximum amount of dearness allowance applied only to the officers of the company and not to the workmen, that no notice of such a change was ever served upon the union, and that there was in fact no change made in 1959, in the scheme of dearness allowances, with remained without any provision as to the maximum.

6. On January 16, 1961, the union served the company with a fresh charter of demands, demand No. 9 whereof related to dearness allowance. That demand was in the following words :

> "The scheme of dearness allowances at present in force should be revised on the following lines with effect from October 1, 1960 :
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> #When the index is in the bracket 351-360,for the 1st Rs. 100/- of the basis pay/wages .... 100%; variation 5%for the 2nd Rs. 100/- of the basis pay/wages .... 50%; variation 2 1/2%for the balance .... 25%; variation 1 1/4%Minimum Rs. 90/-; variation Rs. 3/-."##

The charter of demands was referred to the tribunal presided over by Mr. Meher who gave his award (hereinafter referred to as the Meher Award), dated February 18, 1963. Paras 33 to 35 of the award dealt with dearness allowance. Para 33 first set out the union's complaint that "the existing dearness allowances scheme" did not adequately neutralise the rise in the cost of living. It then set out the existing scheme as follows :

#"For the index Number 371-380----------Basic Wage Dearness allowance Variation for10 points----------For the first 100 100% 4%For the second 100 50% 2%For the balance. 25% 1%----------##

Minimum dearness allowance Rs. 75; variation for 10 points Rs. 2."

Para 34 set out the company's defence. Para 35 set out the changes made by the award in the following terms :

"I revise the existing scheme of dearness allowance as follows :

The variation for the first slab should be 5 per cent., for the second 2 1/2 per cent. and the third 1 1/4 per cent. and on the minimum dearness allowance Rs. 3. The minimum dearness allowance at cost of living index 371-380 should be increased from Rs. 75/- to Rs. 77/-. The dearness allowances should be revised at this rate from June 1, 1962 ....."

7. On December 17, 1964, Respondent 1 filed an application to the Labour Court under Section 33-C(2) for computing the benefit due to him in respect of dearness allowance payable to him under the Meher Award and claimed that the dearness allowance due to him was Rs. 360/- for June-July, 1964, Rs. 382.50 P., for August, 1964, Rs. 393.75 P., for September-October 1964 and Rs. 405/- for November, 1964, in accordance with the index of cost of living declared by the Maharashtra Government on the recommendations made by the Lakdawala Committee. His plea was that the company was not entitled to limit the dearness allowance due to him at Rs. 365/- per month on the plea that the existing dearness scheme as revised by the Meher Award provided for the maximum at Rs. 365/- per month and that he was therefore, entitled to that amount only.

8. The claim of Respondent 1 was denied by the company. The company's case was that under the scheme of dearness allowance prevailing in the company there had always been a maximum ever since the Bakhale Award, that that maximum was raised from time to time and since April 1, 1959, it had been Rs. 350/- per month. Its case further was that the maximum was not in any way affected by the Meher Award, that the charter of demands which occasioned that reference claimed revision of the existing dearness allowances scheme on certain points only, namely, a revision in the percentage variations and an increase in the maximum from Rs. 75/- to Rs. 90/- and that therefore, the rest of the scheme including its provision for the maximum of Rs. 350/- per month remained intact. The company's case was that since the demand and the reference were limited to the percentage variations only, the Meher Tribunal could not have made any other changes, such as the deletion of the maximum, for, such a change would have been beyond its jurisdiction.

9. The question, thus, before the Labour Court was what exactly did the Meher Award decide in relation to the question of dearness allowances ? There can be no doubt that there was an acute controversy between the parties -

(1) as to whether there was or not any provision for the maximum in the scheme prevailing before the Meher Award,

(2) if there was whether that Award only revised it in terms of Para 35 thereof or whether it introduced altogether a fresh scheme which had a provision for the minimum but not for the maximum.

In dealing with these questions, the Labour Court, in an elaborate judgment, went into the history of the dearness allowances scheme prevailing in the company ever since the Bakhale Award on the basis of the evidence led by both the said scheme, that the scheme which was prevailing immediately before the Meher Award contained a provision for such maximum, viz., Rs. 350/-, that the Meher Award was concerned only with the percentage variations and the increase in the minimum existing till then and as neither the demand nor the reference was concerned with the maximum, the award did not and indeed could not deal with it had therefore left it untouched. In the result, the Labour Court dismissed the application holding that the company was right in paying dearness allowances at Rs. 350/- per month to Respondent 1.

10. Respondent 1, thereupon, filed a writ petition in the High Court contending -

> (1) that the Labour Court, as an executing court, had merely to implement the Meher Award which had fixed no maximum; that it exceeded its jurisdiction when it considered the previous stages of the scheme of dearness allowances and the background for holding that the award had not dealt with or interfered with the existing maximum;
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> (2) that as regards the workmen, no maximum dearness allowances had been prevalent at the time of the charter of demands, dated January 16, 1961, that demand No. 9, therein was for the entire revision of the scheme which was then prevalent in the company and that the Meher Tribunal made its award providing therein an altogether new scheme.

The company, on the other hand, contended that the Labour Court had jurisdiction, when called upon to compute the benefits under the award, to interpret that award in order to ascertain what it had done and the benefits it had conferred. In doing so, if it came to findings of fact, those findings could not be interfered with the High Court under its writ jurisdiction. It also submitted that in any event on the true construction of the award read with demand No. 9, the reference and the pleadings of the parties, the conclusion of the Labour Court that the Meher Award did not deal or interfere with the existing maximum, was correct.

11. In considering these rival contentions the High Court first set out the five stages of development which had occurred in the history of the company in the matter of dearness allowances and which had been considered by the Labour Court, viz. -

> (1) the Bakhale Award, dated May 26, 1951, the features whereof were -
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> (i) a provision for the maximum and the minimum,
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> (ii) percentage of neutralisation on three slabs in the wages;
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> (2) the circular of November 16, 1953, by which dearness allowance was linked with the index of cost of living, the basic bracket of which was 371-380, the adjustment of the dearness allowance on the movement of the index by 10 points, and the maximum raised to Rs. 300/- per month;
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> (3) the charter of demands, dated August 18, 1956 and the agreement, dated August 13, 1957, by which the existing scheme was revised and the minimum and the percentages of variations were revised;

(4) the circular, dated March 12, 1959, by which the maximum was again raised from Rs. 300/- to Rs. 350/- and which inter alia stated;

(i) that the increase would apply uniformly "to all offices in India", and

(ii) that dearness allowances "will continue to be paid on usual basis at the rates applicable at each place subject to the maximum stated above", and

(5) the charter of demands and in particular demand No. 9 and the Meher Award.

The High Court then observed that the charter of demands, the Reference to the Tribunal of demand No. 9 and the pleadings before the Tribunal did not refer to any existing maximum and that according to the award the existing scheme of dearness allowances was that which the Tribunal set out in Para 33 of its award, i.e., without any maximum being there mentioned and that it was such a scheme which the award revised. Relying on the absence of any reference to any maximum, the High Court negatived the company's contention that the demand was for alteration of the existing scheme only. That being so, the company, according to the High Court, ought to have brought forward as its defence its case that there was an existing maximum, which should be retained in the scheme, and not having done so, the company "must be held to be estopped now from contending that this matter had not arisen before the Tribunal and had accordingly not been decided". The High Court also rejected the company's plea that a demand for revision of the scheme meant not its total abolition abolition and substitution of another scheme in its place and held that such a demand would ordinarily mean that the scheme in its entirety was to be replaced by another scheme and that what the award in fact had done was to frame "a complete and entire scheme". The High Court thought that to accept the company's plea that the existing maximum was not touched upon by the award meant regarding a proviso in the award that the maximum dearness allowances payable to a workman was Rs. 350/- per month, a construction not permissible in the absence of reference to such a maximum in the award. The High Court also held that the award had "to be construed without reference to the previous history and facts on which the Labour Court relied", that it was not permissible for the Labour Court to rely on such facts, and that even if it was so permissible, it would have come to the same conclusion, viz., that the scheme was not qualified by any maximum. On this reasoning the High Court set aside the Labour Court's order basing its interference with that order on the ground that the Labour Court fell into a gross error in examining the previous history as to the dearness allowance, which was irrelevant, thereby deciding the matter in a manner "which was altogether erroneous and unjustified", and directed the Labour Court to compute the dearness allowance without any reference to the maximum.

12. These conclusions were seriously challenged before us. The contention was that the Labour Court in dismissing the application acted within its jurisdiction, and that there was no error apparent in its decision justifying the issuance of certiorari. On the other hand, Mr. Tarkunde supported the High Court's order arguing, firstly, that the Labour Court as an executing court under Section 33-C(2) could not consider facts anterior to the reference to the Meher Tribunal for the purpose of interpreting that award, secondly, that on the construction of that award, as well as the pleadings of the parties before the Tribunal and demand No. 9, the Labour Court was in error in holding that a ceiling of Rs. 350/- subsisted, and thirdly, that even if the Labour Court could enter into such anterior facts, its construction of the Meher Award was patently wrong.

13. The question as to the scope of jurisdiction of a Labour Court under Section 33-C(2) has been a subject-matter of several decisions of this Court. It is not necessary to go into those decisions once

again as in the Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar, ((1968)1 SCR 140) all those decisions were examined and the propositions deducible from them were formulated. As stated in propositions (5) and (8), proceedings under Section 33-C(2) are analogous to execution proceedings and a Labour Court called upon to compute benefits claimed by workmen is in the position of an executing court and as such competent to interpret an award where there is a dispute as to the rights thereunder or as to its correct interpretation. Obviously, if the award is unambiguous, the Labour Court is bound to enforce it, and under the guise of interpreting it, it cannot make a new award by adding to or substracting anything therefrom. Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so by an application under Section 33-C. As held in The Central Bank of India v. Rajagopalan,((1964)3 SCR 140, 152) a claim under Section 33-C(2) postulates that the determination of the question about computing in terms of money may in some cases have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section. While inquiring into the question as to the existence of such a right, and construing the award, the Labour Court can look into the demand by the workmen in order to ascertain whether the award under which the right is claimed was or was not beyond the scope of the demand; in other words, whether the award was within jurisdiction. (cf. also Bombay Gas Co. Ltd. v. Gopal Bhiva.((1964) 3 SCR 709, 715-716)) This position was conceded by Mr. Tarkunde.

14. Demand No. 9, which related to dearness allowance, was that "the scheme of dearness allowance at present in force should be revised on the following lines.....". The lines for revision were, firstly, as to the basic bracket in the index of cost of living, i.e. 351-360 instead of 371-380, secondly, as to the percentages of variation, and thirdly, as to the raising of the minimum dearness allowances from Rs. 75/- to Rs. 90/-. An argument was raised, both before the High Court and repeated before us, which emphasised the word 'revise' in the demand for dearness allowance as against the word 'abolish' in deemed No. 2 which was concerned with grades and wage scales. We may not give any undue importance to the use of such a different phraseology in the two demands, for, such demands cannot be expected to have been drafted with meticulous care as to the precise meaning of each of the words therein. But there is no gain-saying that demand No. 9 did postulate that there was a dearness allowance scheme existing in the company when those demands were served on the company and the workmen felt that it did not adequately neutralise the rise in the cost of living, and therefore, the scheme should be revised as regards the basic bracket, the percentages of variation and the minimum dearness allowance payable under that scheme. This is evident from the contentions of the parties before the Meher Tribunal which noted them by stating that whereas the workmen contended that "the existing dearness allowance scheme" did not adequately neutralise the rise in the cost of living, the company's contention was that "the existing scales is fair", but that the company showed its willingness to "revise" the scheme by accepting the percentages of variation suggested by the workmen provided they did not press their demand for revision of wage scales. It is clear from the award also that Tribunal, in the light of these rival contentions, held that "some revision in the dearness allowance scheme is necessary", and revised it by directing that the percentages in the variation should be 5% for the first slab, 2 1/2% for the second and 1 1/4% for the balance and 3% on the minimum dearness allowance. It raised the minimum from Rs. 75/- to Rs. 77/-, but declined to revise the basic bracket in the index of cost of living the existing 371-380 to 351-360, demanded by the workmen.

15. There can, therefore, be no doubt whatsoever that there was an existing scheme of dearness allowance, that workmen felt that it was not satisfactory and wanted its revision in certain particulars, viz., in the percentages of variation, the basic bracket and the amount of the minimum.

In Paras 145 to 147 of its statement of claim before the Meher Tribunal, the union set out "the existing scheme for dearness allowance", the demand for a revision, viz., in the basic bracket, in the percentages of variation and the minimum, and claimed that "the existing dearness allowance scheme" failed to meet its object of neutralising the rise in the cost of living, and also claimed, by citing dearness allowance paid by the other companies, that the dearness allowances paid by the company was the lowest. In Para 125 of its written statement, the company, on the other hand, pleaded that the existing scheme was fair, having regard to the scales of pay, allowances and other terms and conditions, and said that it was agreeable to have a revised scheme set out therein if the workmen did not press for revising the wage scales. In the revised scheme suggested by it, it adopted the variation on percentages demanded by the workmen, but insisted that the minimum should remain the same, viz., Rs. 75/-. No doubt, neither the statement of claim by the union, nor the written statement of the company referred to the maximum and clearly for that reason that Tribunal also in its award did not refer to it and concerned itself with the contentions of the parties : (1) as the basic bracket; (2) the percentages of variation and (3) increase in the minimum.

16. The principal controversy between the parties, as is clear from the other opening paragraphs of the judgment of the Labour Court, was whether the scheme of dearness allowance, as revised by the Tribunal, contained the ceiling. As already stated, the case of Respondent 1 was that he was entitled to the dearness allowances as set out in his application, that under the award there was no ceiling and that by paying Rs. 350/- per month, the company withheld from him the benefit accruing to him under the award. The company, on the other hand, alleged that though the award revised the scheme of dearness allowance as prevailing in the company, it did not affect the existing ceiling of Rs. 350/-, and therefore, there was no question of Respondent 1 being deprived of any benefit due to him under the award. Thus, the controversy between the parties before the Labour Court was whether there was a ceiling in the existing scheme, and if so, whether the Meher Award did away with that ceiling.

17. The award, of course, could not do away with such a ceiling, if it was there, unless demand No. 9 and the reference to the Meher Tribunal based on that demand contained anything which required its deletion, or the demand was for a new scheme of dearness allowance altogether and not merely for a revision of the existing scheme. It is true that neither demand No. 9 nor the reference, nor the company's written statement before the Tribunal expressly mentioned the ceiling of Rs. 350/- per month. But the company's case before the Labour Court clearly was that there did exist in the prevailing scheme such a ceiling, that it was not mentioned in its reply before the Tribunal because demand No. 9 raised no controversy about it, nor did it call upon the Tribunal to delete it and that the controversy between the parties in that reference related only to the question as to the basic bracket, percentages of variation and the increase in the minimum.

18. Upon such a case being the Labour Court, that court had to and was competent to decide the question whether there was a ceiling in the existing scheme, and if so, whether it was deleted by the Tribunal, in other words, whether the demand was for doing away with the existing scheme and substituting it by a fresh scheme which had no ceiling. For that purpose, the Labour Court had necessarily to examine demand No. 9, the reference, the pleadings of the parties, and lastly, the Meher Award, and incidental to such an inquiry it had to examine the question whether there was a ceiling in the scheme existing at the time of that demand and reference. (See in this connection Ramakrishna Ramnath v. The Presiding Officer, Labour Court, Nagpur.(1970-II LLJ 306) In doing so, the Labour Court had to examine the various stages the dearness allowance scheme had from time to time gone through.

19. Admittedly, the Bakhale Award did contain the maximum. That scheme was revised by the circular, dated November 16, 1953, by which the dearness allowances was linked with the cost of living and the maximum was raised from Rs. 165/- to 300/-. That awards was terminated and a fresh demand in respect of dearness allowance was made on August 18, 1956. The demand was that the scheme of dearness allowance, "at present in force should be revised on the following lines.....". The demand resulted in the settlement, dated August 30, 1957. Neither the demand nor the settlement contained any reference to the maximum of Rs. 300/- although it did exist in the existing scheme. The case of Respondent 1 was that the said settlement did away with such a maximum and that from 1957 onwards there was no ceiling at all. This case was seriously controverted by the company which produced before the Labour Court the circular, dated March 12, 1959, by which it said that the maximum was raised from Rs. 300/- to Rs. 350/- with effect from April 1, 1959. The case of Respondent 1 with regard to this connection of the company was : (1) that no such circular was issued, at least to the knowledge of the union; and (2) that even if it was issued, it was confined to the officers of the company and did not apply to workmen. The Labour Court held that the circular was issued and that its interpretation by Respondent 1 that it applied to officers alone was not correct. The circular was issued to "all offices" of the company. It applied to all the employees of the company as is evident from its Para 2 which stated as follows :

> "Dearness allowance will continue to be paid on usual basis at the rates applicable at each place subject to the maximum stated above."

It also stated that is superseded all other previous circulars. If this circular was issued, as Labour Court held it was, there can be no doubt that : (1) there was a ceiling in the scheme prevalent at that time; (2) that it was raised to Rs. 350/- and (3) that it applied to all the employees and not merely to the officers. The Labour Court also accepted the company's case that the circular was notified on the notice board of the company and that that amounted to a notice of a change under Section 9-A of the Industrial Disputes Act. In any event, the change did not adversely affect the workmen. Nor was the question as to its validity before the Labour Court which used the circular as evidence of a ceiling existing in the scheme right from the time of the Bakhale Award.

20. If from all this evidence before it the Labour Court came to the conclusion that a calling existed in the scheme of dearness allowances prevailing in the company at all the various stages and that deletion of such a ceiling was not the subject-matter of either demand No. 9 or of the reference before the Meher Tribunal, and that its award was confined to the revision only of the existing scheme in the three matters earlier referred to, it is not possible to say that the decision of the Labour Court suffered from an error apparent on the face of its decision in respect of which a certiorari can justifiably be issued under Article 226. The confines of jurisdiction under Article 226 have been settled by a serious of decisions of this Court, from among which we need mention only the case of Syed Yokoob v. K. S. Radhakrishan. ((1964) 5 SCR 64) There was no question of any estoppel also against the company against its raising the question of the ceiling was not the subject-matter of the reference before the Meher Tribunal. Such a conclusion of the Labour Court could not be interfered with by the High Court on any one of the well-known grounds on which only such interference is permissible.

21. The High Court, therefore, was not justified in interfering with the Labour Court's order under its writ jurisdiction. The appeal has, therefore, to be allowed and the writ petition of Respondent 1 dismissed. In the circumstances of the case, however, we think it just that there should be no order as to costs.

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