

Messrs. Karamchand Thapar and Brothers (P) Ltd.

Vs

Their Workmen

Civil Appeal No. 1209 of 1968

(C.A. Vaidialingam, A.N. Grover, S.N. Dwivedi JJ)

06.04.1973

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, by the company is against the award, dated February 1, 1968, of the Fourth Industrial Tribunal in case No. VIII-218 of 1967, directing the appellant to pay dearness allowance according to the rates on the basis of the Bengal Chamber of Commerce Scheme, for both the clerical and the subordinate staff, linked with the rise and fall in the cost of living index.

2. By its order, dated April 22, 1967, the Government of West Bengal referred for adjudication the following issue :

"Whether the existing rates of dearness allowance require any modifications ? If so, to what extent and from which date ? Whether the Scheme of D.A. should be linked up with rise and fall in the cost of Living Index ? If so, what should be the basis ?"

According to the union, there is a big gap between the existing wage and the living wage of the workmen in the company. The company was paying dearness allowance to its workmen at a rate which was far less than that paid by other comparable concerns of the region. It was the further case of the union that the Bengal Chamber of Commerce Scheme of dearness allowance, as was being followed by all concerns of the local region, provides for about 90 per cent. Neutralisation in the cost of living up to a certain stage of pay, 45 per cent. neutralisation up to another stage and 22 1/2 per cent. Neutralisation for the rest of the pay. Though there has been, from time to time, adjudication regarding the claim of the workmen, there has been a very steep rise in the cost of living index and living conditions, and, therefore, there is justification for revising the existing rates of dearness allowance. The union further pleaded that the dearness allowance should be linked with the price index and the cost of living and that the financial position of the company was such that it can afford to give dearness allowance according to the Bengal Chamber of Commerce Scheme.

3. The appellant controverted the claims of the workmen on the ground that the demand of the workmen to award dearness allowance according to the Bengal Chamber of Commerce Scheme has been consistently rejected by the Tribunal and also by this Court. Company's financial position was not such as to justify any modification in the existing rates of dearness allowance.

4. The tribunal has accepted the claim of the workmen in the manner indicated above.

5. Mr. G. B. Pai, learned counsel for the appellant, has referred us to the previous awards relating to

this company as well as the decision of this Court rendered on a former occasion declining to grant to the workmen dearness allowance according to the Bengal Chamber of Commerce Scheme. The counsel pointed out that, in the absence of any fresh materials placed by the union before the Tribunal, the direction making the appellant pay dearness allowance according to the said scheme is quite unjustified. The counsel also pointed out that the financial capacity of the appellant as well as the additional burden that the company will have to bear, if the said Scheme is to be implemented, has not been at all considered by the Tribunal.

6. Mr. Chagla, learned counsel for the workmen, on the other hand, pointed out that, in none of the previous awards nor in the judgment of this Court, had it been stated that at no time the appellant can be made to pay dearness allowance on the basis of the Bengal Chamber of Commerce Scheme. The reasons given for rejecting the claim of the workmen at that time no longer continue to exist. He further pointed out that in view of the changed conditions, the Tribunal was perfectly justified in considering the claim of the workmen and accepting the same. He also pointed out that the appellant did not place any material before the Tribunal to show that its financial position was such that it could not bear the burden of paying dearness allowance according to the Bengal Chamber of Commerce Scheme. Evidence was let in to show that there has been a very steep rise in the cost of living index and there was ample justification for the Tribunal for revising the existing scales of dearness allowance.

7. Having given due consideration to the contentions of the learned counsel, the materials on record and the reasons given by the Tribunal, we are satisfied that the award does not require any interference at our hands.

8. There was an earlier award of February 4, 1952, by the Industrial Tribunal, which was confirmed by the Labour Appellate Tribunal on September 12, 1952. There was a further award by the Industrial Tribunal on October 3, 1960. Issue No. 5 related to dearness allowance. The union contended that the company is financially prosperous and stable enough to give to its workmen dearness allowance in accordance with the Bengal Chamber of Commerce Scheme. According to the union, no distinction should be made in the rate of dearness allowance regarding the staff working in the Dalhousie Square region, when there was no difference in the paying capacity as between the constituent members of Bengal Chamber of Commerce and the appellant. The appellant then appears to have urged that no company outside the Bengal Chamber of Commerce paid dearness allowance according to the Scheme. The Tribunal in the same award, when considering the scales of pay and grades, had recorded a finding that the financial condition of the appellant was quite good. But it took note of the fact that the constituent members of the Bengal Chamber of Commerce had started their business in India long before the present century and most of them were incorporated in England or other western countries. On the other hand, the appellant-company has been started only thirty-five years ago and its work is confined only to coal, engineering, sugar and paper industry. But it has recorded a finding that its trade and business were of an expanding nature and that a good deal of support and protection was given to the sugar and paper industries by the Government. The Tribunal's further view is that "the appellant is in the path of steady prosperity". On this ground, the Tribunal considered it fair and proper to increase the rate of dearness allowance and accordingly fixed the rates of dearness allowance, which were on a lesser scale than that under the Bengal Chamber of Commerce Scheme.

9. The above award, which related to several matters, was challenged by both the company, the present appellant, and its workmen before this Court in civil Appeals Nos. 27 to 29, 102 and 103 and the decision is reported in *Karam Chand Thappar and Brothers Ltd. and Others v. Their*

Workmen ((1964) 1 LLJ 429 at p. 434.). The workmen contended before this Court in their appeal that the Tribunal should have awarded dearness allowance according to the Bengal Chamber of Commerce Scheme. The company also challenged the award of dearness allowance even at a rate lesser than that awardable under the Scheme. The claims of both the parties regarding the dearness allowances have been dealt with by this Court. After a reference to the reasons given by the Tribunal, this Court rejected the contentions of both the company and the workmen. The net result no doubt is that the Tribunal's decision not to grant dearness allowance to the workmen according to the scheme, was approved by this Court. But the reasons for such rejection by the Tribunal have been mentioned by us earlier.

10. But it is to be noted that in the award, dated October 3, 1960, the Tribunal had fixed the rate of dearness allowance at 100 per cent. on the first hundred rupees; 50 per cent. on the next hundred rupees and 25 per cent. on the remaining salaries of the clerical staff. For the subordinate staff, however, the dearness allowance was fixed at Rs. 48/-.

11. The question of dearness allowance was again the subject of consideration before the Fourth Industrial Tribunal, West Bengal, Calcutta, in its award, dated November 23, 1965. The appellant-company strenuously opposed the claim of the workmen for awarding dearness allowance at the rate of Bengal Chamber of Commerce Scheme. The stand taken by the company was that it is a member of the India Chamber of Commerce, which has formulated a different rate of dearness allowance and that it was paying accordingly. The Tribunal, on a consideration of the facts and circumstances, has expressed the opinion that the Scheme of Bengal Chamber of Commerce has, more or less, adopted a practical device to cope up with the fluctuating price level and it is not reasonable to adopt the rate prescribed by the Indian Chamber of Commerce and accordingly rejected the latter. The Tribunal has referred to the decision of this Court already adverted to, which also appears to have been relied upon by the company. But the Tribunal held that the reasons given by the Tribunal in its award, dated October 3, 1960, and which were approved by this Court, no longer continue to exist, as the company has become a fully developed and strong business concern and fit to be compared with any other established company. But the Tribunal felt that it may not be proper to place a heavy financial burden on the company and accordingly it awarded dearness allowance again at a rate lesser than that envisaged under the Bengal Chamber of Commerce Scheme. The Tribunal found that the rates fixed by it can be easily paid by the company in view of its sound financial condition. It is to be noted that, even in this award, the Tribunal was almost inclined, in view of the changed circumstances, to adopt the Bengal Chamber of Commerce Scheme, but it desisted from doing so as it felt that a heavy financial burden should not be placed on the company, though it was in a prosperous condition.

12. We cannot accept the contention of Mr. G. B. Pai, that at no time the Bengal Chamber of Commerce Scheme can be adopted, even if the circumstances warranted, merely on the ground that on previous occasions such a claim made by the workmen has not been accepted. We have already indicated the reasons which prompted the Tribunal at the earlier state for not adopting the said scheme. In 1960, though its financial condition was considered to be sound, the appellant was only about 35 or 40 years old in the business. This Court also has not held in the appeal against the award of 1960 that the appellant should never be made to pay dearness allowance according to the scheme. but in 1965 the Tribunal has found that the appellant's progress was satisfactory, but it again refrained from imposing upon it dearness allowance according to the scheme solely on the ground that the financial burden will be a little heavy.

13. All these aspects have been taken into account by the Tribunal in its present award. It has found

that there is no evidence placed by the appellant that its financial position was such that it will not be able to bear the burden of paying dearness allowance at the rate envisaged by the Bengal Chamber of Commerce Scheme. The witnesses on the side of the appellant have not stated that the company's finances are bad; nor have they stated that it cannot bear the burden of dearness allowance according to the scheme. If the appellant's plea was that it could not pay dearness allowance according to the Scheme, it should have placed material before the Tribunal and satisfied the claim in that regard. The tribunal has recorded a finding that the appellant's financial position is such that it can pay dearness allowance according to the Scheme. It is no doubt true that in the award of dearness allowance the paying capacity of the appellant is a very material factor. The principle is settled that if the paying capacity of the employer increases or the cost of living shows an upward trend, the industrial employees would be justified in making a claim for the re-examination of the rates of the dearness allowance. The Tribunal will not be normally justified in rejecting it solely on the ground that enough time has not elapsed after the making of the award. The question regarding revision will have to be examined on the merits of each individual case by the Tribunal concerned. There is a chart, Ext. 4, giving the cost of living index for Calcutta from 1947 to 1967 for the various months. When the award, dated November 23, 1965, was passed, it will be seen that the cost of living index was 533 points in November 1965. It shot up to 592 in November 1966 and to 613 in June 1967. Particulars regarding the rest of the months are not available. The present award under consideration was made on February 1, 1968, and it has also to take effect from that date. Therefore, the cost of living index, which was 533 points in 1965, has shot up to 613 and this clearly shows that there has been a very steep rise in the price index, which itself will justify a revision of the rate of dearness allowance as awarded in 1965. No contention regarding the financial ability of the employer having been seriously raised before the Tribunal or even in the special leave petition before this Court, it is idle for Mr. Pai to contend that the appellant cannot bear the additional burden.

14. Having due regard to the materials on record, we are not satisfied that the Industrial Tribunal committed an error in awarding dearness allowance to the workmen of the appellant according to the Bengal Chamber of Commerce Scheme. In the result, the appeal fails and is dismissed with costs.

</html