

The Workmen of the Calcutta Electric Supply Corporation Ltd.

Vs

The Calcutta Electric Supply Corporation Ltd.

Civil Appeal No. 1924 of 1968

(C.A. Vaidialingam, A.N. Grover, A.K. Mukherjea JJ)

01.05.1973

JUDGMENT

MUKHERJEA, J. –

1. This appeal by special leave from an Award, dated January 31, 1968, of the Second Industrial Tribunal, West Bengal, relates essentially to the manner of calculation of overtime wages for non-factory personal (including the members of the clerical staff) of the Calcutta Electric Supply Corporation Ltd. (hereinafter referred to as the Company). The question that was referred to the Tribunal for adjudication was framed by the Government of West Bengal in its order of reference in the following manner :

"How wages for non-factory personnel (including the member of the clerical staff) should be calculated and the date from which overtime wages for such personnel should be thus calculated ?"

2. The Tribunal in its Award directed that the overtime rate for non-factory personnel should in no case be less than the time-rate. The Tribunal further directed that no employee should get overtime at more than the time-rate until he has completed 48 hours a week but that as soon as he exceeds 48 hours, the overtime rate should be 1 1/2 times the time-rate. This rate of overtime wages in favour of the non-factory personnel was directed to be given effect to from February 4, 1967, which was the date of reference. The workmen of the company have now come on appeal against the decision of the Tribunal in so far as the Tribunal limited the overtime wages to the time-rate for any period short of 48 hours a week.

3. It appears that different categories of employees of the company have different weekly hours of work prescribed for them. The weekly hours for some are 48, for others 40 and for some others 35. The learned Tribunal seems to have been impressed by the fact that overtimes was paid to different categories of workmen at different rates and that they were calculated by different systems. The Tribunal tried to rationalise the situation by providing the payment of overtime at uniform rates to all employees up to 48 hours a week; all employees were to get over-time for any period in excess of their weekly hours of work but less than 48 hours a week at their time-rates. For periods exceeding 48 hours a week, however, all workmen were to receive overtime wages at 1 1/2 times their respective time-rates. This is how the Tribunal according to the respondent company sought to establish uniformity in the matter of payment of overtime wages. The appellants contended that payment of wages for overtime at the time-rate cannot be taken as overtime payment at all. If an employee has to work beyond his scheduled working hours he should get proportionately more wages for each such extra hour. The respondent tried to meet this grievance by saying that in some

cases the weekly hours of work were less than 48 only because in the centers concerned, there was not sufficient work to keep the employees busy for 48 hours every week. Even so the company would have been at liberty to fix 48 hours as the weekly hours of work for all employees. The fact that in the case certain employees they fixed a shorter period should they say, go against the company and they should be allowed to make the employees work up to 48 hours a week on payment of overtime wages at the time-rate. It was pointed out that the award of the Tribunal did not enable the company to get overtime work without payment of extra wages. All that it permitted the company to do was to pay overtime wages at the time-rate up to 48 hours a week. This provision meant that up to one point all workers were placed on the same uniform basis. After that point had been reached i.e. to say for any period of overtime beyond 48 hours a week, the employees were to get overtime wages at 1 1/2 time-rates.

4. The point for decision, in our opinion, is one which is completely covered by the decision of this Court in *Indian Oxygen Ltd. v. Their Workmen*. (1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 2 SCJ 235) In that case the employees made various demands of which demands No. 3 was that "the payment of overtime to office staff should be 1 1/2 time the ordinary rate beyond their normal duty hours." As regards this demand the contentions urged on behalf of the appellant company were two-fold. First, that under the Bihar Shops and Establishment Act the company could be made liable to pay for overtime work at the rate provided in that Act. viz. at double the ordinary rate when a workmen was asked to work beyond 48 hours per week as provided in that Act. Therefore, it was argued, the appellant company could not be asked to more than the ordinary rate of wages payable to workmen if they were asked to work beyond 39 hours but not exceeding 48 hours. Secondly, it was argued, that if the company were to pay 1 1/4 times its ordinary rate of wages for overtime it would be paying more than other similar concerns. This Court rejected both these contentions. Shelat, J. who delivered the judgment of the Court made the following observations regarding the first contention :

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

5. In view of this decision the matter is no longer *res integra* and we are bound by the previous decision *Mr. Ginwala* appearing for the respondent sought to argue that what this Court had

disallowed in the Indian Oxygen Ltd's case (supra) was non-payment of extra wages for the extra hours of work beyond the normal weekly hours until they exceeded 48 hours of work per week. It was argued that the real ratio of the decision in that cases was that the workmen should be entitled to overtime wages only for any period in excess of the prescribed monthly working hours. This is not, in our opinion, a correct construction of that decision where this Court clearly referred to the rate of payment for the extra hours of work. We have no doubt in our mind that the decision in that case requires payment of overtime wages for all hours in excess of the prescribed working hours at special overtimes rate and not at time-rates.

6. In this view of the matter we felt inclined to allow the appeal and to set aside the Award of the Tribunal and to direct that overtimes is to be paid for at 1 1/2 times the hourly rate for all hours of work beyond the scheduled hours and not merely for hours of work beyond 48 hours in a week. This was to apply as from the date of our order. It was, however, represented to us on behalf of the company that in respect of the period between the date of the Award and the date of our judgment the total amount involved as a result of this increase proposed to be sanctioned by us in overtime rate will be about Rs. 60 lakhs which the company, we were told, has not the capacity to pay. This might have necessitated a remand to the Tribunal on the question of capacity but the counsel for both the parties have in order to avoid any delay in the disposal of the matter agreed - very rightly and properly, in our opinion - to a suggestion made by us that in respect of the past period overtime payments for hours worked in excess of the scheduled hours up to 48 hours should be at 1 1/4 times the hourly rate instead of the hourly rate which the company has already paid in terms of Award. The arrears will be paid by 12 equal installments over a period of 2 years. We therefore order accordingly. The parties will pay and bear their own costs.

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