

M/s. Woolcombers of India Ltd.

Vs

Woolcombers Workers Union and Another

Civil Appeal No. 2259 of 1969

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

27.08.1973

JUDGMENT

DWIVEDI, J. –

1. M/s. Woolcombers of India Limited have their factory at Jagatdal, 21 miles from Calcutta. They shall hereafter be the appellants in this case. The respondents are their workmen employed in the factory at Jagatdal. They are represented by two unions : Woolcombers Workers' Union and the Issac Holdens Mazdoor Union. On June 4, 1969, the West Bengal Government referred an industrial dispute between the Woolcombers and their workmen to the 6th Industrial Tribunal, Calcutta for adjudication. As many as 10 points of dispute were referred. Parties filed their written statements and produced their oral and documentary evidence. After examining the same on September 26, 1969. All the referred points except a part of point No. 1 and point No. 7 were decided against the workmen. Point No. 7 related to the categorisation of workmen in the factory. They were categorised into four classes : (1) highly skilled workmen, (2) skilled workmen, (3) semi-skilled workmen, and (4) unskilled workmen. The finding on point no. 7 was not impugned in this appeal. A part of point no. 1 relating to the fixation of grades and scales of pay was decided against the workmen. There is no appeal against this part of the award by the workmen. The remaining part of point No. 1 relating to the fixation of the basic wage and dearness allowance was decided in favour of the workmen. The basic wage of the workmen was fixed in the following manner :

#(1) highly skilled workmen - Rs. 32/- per week
(2) skilled workmen - Rs. 28/- per week
(3) semi-skilled workmen - Rs. 25/- per week
(4) unskilled workmen - Rs. 22.50 p. per week##

They were also given an increment of Rs. 10/- over the basic wage. The basic wage of other employees was fixed in the following manner :

#(1) Clerk Grade I Rs. 150-5-170-8-250
(2) Clerk Grade II Rs. 130-5-200
(3) S. B. Clerk Rs. 200-10-300
(4) S. A. Clerk Rs. 270-10-370
(5) Driver Rs. 120-5-140
(6) Darwan Rs. 90/-
(7) Sweeper Rs. 86/-
(8) Junior Laboratory Rs. 130-10-170-12-206-15-251-18-305
(9) Assistant Senior Laboratory Rs. 180-15-240-20-300-25-400
(10) Assistant Overlooker Rs. 180-15-290-20-410##

2. Before the award, all the workers were getting dearness allowance at the flat rate of Rs. 94.10 p. The award has varied the dearness allowance in the following manner :

(1) Employees getting Rs. 100/- or below per month - dearness allowance at Rs.

150/- per month.

(2) Employees getting between Rs. 100/- and 200/- per month - dearness allowance at Rs. 60/- per month for the second Rs. 100/-.

(3) Employees getting between Rs. 200/- and 300/- per month - dearness allowance at Rs. 20/- for the additional Rs. 100/-.

3. This rate of dearness allowance will remain in force so long as the point for the cost of living fluctuates between 650 and 750. If the point goes beyond 750, per 5 points there will be an increase of Re. 1/-. Similarly, if the point goes below 650, per 5 points there will be a decrease of Re. 1.

4. The Tribunal has not stated the reasons in support of its conclusions. This criticism of Shri Chaudhary, counsel for the Woolcombers, appears to us to be right. As regard basic wages, the Tribunal says only this : "I am inclined to lay down the basic wages of the workmen those who are highly skilled workmen will get Rs. 32/- per week as their basic wages. Those who are skilled workmen will get Rs. 28/- per week as their basic wages. Those who are semi-skilled workmen will get Rs. 25/- per week as their basic wages Those who are unskilled workmen will get Rs. 22.50 p. per week as their basic wages". As regards the basic wages of other employees, the Tribunal says : "Now in the light of the enhanced pay as revised by me in respect of skilled, unskilled, semi-skilled and highly skilled workers, I want to revise" the existing wages of clerks, drivers, durwan, sweeper, laboratory assistants and overlookers.

5. It may be observed that the supporting reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons, First it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

6. Shri Shanghi, counsel for the Woolcombers Workers' Union, seeks to explain away the absence of absence of reasons in the award by the argument that the Tribunal has fixed the bare minimum wage. We are unable to accept this argument. Even the fixation of the bare minimum wage is the result of a process of reasoning. There must be supporting reasons for the qualification of the bare minimum wage. But as already stated, the Tribunal has not given any reasons at all in support of the basic wages fixed for the factory workmen. More importantly, the Tribunal does not appear to have fixed the bare minimum wage. There are several decision of this Court on the meaning of the bare minimum wage. We shall refer only to one them : Kamani Metals and Alloys v. Their Workmen.

((1967) 2 LLJ 55 at 58 : (1967) 2 SCR 463 : AIR 1967 SC 1175 : 32 FJR 64) Hidayatullah, J., there said :

"To cope with these differences certain principles on which wages are fixed have been stated from time to time by this Court. Broadly speaking, the first principle is that there is a minimum wage which, in any event, must, be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lower limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage-earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realised that 'fair wage' is not 'living wage' by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal."

7. The referring order of the West Bengal Government does not ask the Tribunal to fix the bare minimum wage as explained in the aforesaid decision : nor do the pleadings of the two unions set out a clear and unambiguous plea for the bare minimum wage. Paragraph 6 of the written statement filed by the Issac Holdens Mazdoor Union states that "the conditions of service for the workmen have been kept miserably low on the lines of the jute workers". Paragraph 8 says that the basic wages of workmen of all categories "are low". This, in our opinion, is not a clear and unequivocal plea for the bare minimum wage. Paragraphs 6 and 8 make a statement of the factual position regarding the condition of service including the basic wages in the factory at the time of the reference of the dispute to the Tribunal. It is nowhere stated in the aforesaid written statement that the workers were claiming bare minimum wage. Paragraph 11 of the written statement seems to suggest to the contrary. It is said in this paragraph that the claims made in the written statement "are just reasonable and the company has capacity to meet these claims". The question whether the claim for a particular basic wage is just and reasonable or whether the employer has the capacity to pay the claimed basic wage is Wholly irrelevant to the demand of the bare minimum wage. The bare minimum wage as pointed out in *Kamani Metals and Alloys v. Their Workmen* (supra) must be paid by an employer in spite of want of financial capacity. The bare minimum wage is the "lowest limit below which wages cannot be allowed to sink in all humanity". Paragraph 3 of the written statement filed by the Woolcombers Workers Union states that the wages "paid to the workers are not only below the level of fair wages but fair below the need-based minimum even as recommended by the Fifteenth Indian Labour Conference". Paragraph 8 of the written statement reiterates that the "existing wages in the factory are much below the need-based minimum". These two paragraphs do not go beyond stating the factual position in respect of wages in the factory. They do not say that the bare minimum wage is not being paid nor do they demand it. Paragraph 7 of the written statement states that the "workers have been assured under the Constitution of India that living wages would be made available to them. The concept of living wage is dynamic and not static. It varies from time to time and country to country. Today the need-based minimum wage for the lowest paid group of the workmen cannot be less than Rs. 240/- per month per head. It was in 1961 that the floor level of fair wage for the working class had been assessed approximately at about Rs. 280/- and that of the clerical staff at Rs. 380/- per month. The living wages would be much higher still. Since 1961 the

cost of living index has gone very high and as such the amount of need based minimum wage is greater still than what it was in 1961". The union goes on to add : "The fact remains that the company is a fairly old one and it has sufficient resources to make available to its workmen at least fair wages with grades and incremental scales of pay on the basis of skill. It is high time that some progress should be made towards payment of living wages to the workmen by introducing grades and scales of pay with annual increments". This would show that the Woolcombers Workers' Union was claiming a basic fair wage and not the bare minimum wage. Nowhere in this written statement there is a clear demand for the bare minimum wage. On the whole the two written statements, in our view, seek to claim a basic fair wage. The statement of N. H. Khan, P.W. 1 "that the wages are very inadequate for their subsistence" again is a characterisation of the rates of wages in the factory at the time of the reference. Those words cannot spell out a demand for bare minimum wage. Expatiating on the workmen's demand for the basic wages claimed in their statement, N. H. Khan later said that "When we say that our demand for wages is need-based, I mean that my children will have adequate food and proper clothing and expenses for education. I mean by that we want minimum wages". Our attention was also drawn by Mr. Sanghi to the statement of G. Ghorai to this effect : "I have 7 dependents. One of them is of school going age. I cannot send her to school. I have two children, elder is the daughter. She is six years. My brother who is 15 is unemployed. He cannot be sent to school nor my daughter because of paucity of money. We seven live in one room flat at a rent of Rs. 15/- per month. My expenses only for marketing for daily needs, e.g., vegetables, salt, onion, ginger come to Rs. 40/- per month. I do not buy any milk. My expense of fuel and kerosenes oil come to Rs. 16/- per month. I cannot make both ends meet by my monthly pay. I am in constant debt". This statement is gain factual. It is perhaps a vivid description of the workers' plight at the time of the reference of the dispute to the Tribunal. It does not, however, state that the basic wage claimed in the written statement is the bare minimum wage. It is true that N. H. Khan has said that "we want minimum wage", but he has clarified what he meant by "minimum wage". According to him, minimum wage must include expenses for the education of the workers' children. But a basic wage which provides for the education of the workers' children is not the bare minimum wage; it is fair wage. [See Kamani Metals and Alloys Ltd. v. Their Workmen (supra), at page 58].

8. In fixing the basic wages the Tribunal states : "In increasing basic wage as I am proposing to do I am quite alive to the fact that the said wage rate cannot be in any way fair wage let alone living wage but keeping in view the financial position of the company as it is now as also the nature of work they do along with their respective skill, I am increasing the wage-structure at the rates prescribed by me".

9. According to Shri Sanghi, this passage clearly indicates that the Tribunal has fixed the bare minimum wage. We have already pointed out that the referring order of the West Bengal Government did not ask the Tribunal to fix the bare minimum wage. It is also necessary to point out at this stage that apart from the aforesaid passage in the award there is no reference at any other place therein that the bare minimum wage was being granted to the workmen. The financial capacity of an employer does not enter into the scale in the fixation of a bare minimum wage. But in fixing the basic wages the Tribunal has admittedly considered the financial capacity of the Woolcombers. It would suggest that the Tribunal has really fixed the basic fair wage. So when the Tribunal says in the aforesaid passage that the basic wages fixed by it "cannot be in any way fair wage", it does not really mean to say that it was fixing the bare minimum wage. It seems to us that the Tribunal really wanted to emphasise the fact that having regard to the financial capacity of the Woolcombers it was not awarding more than the floor level of the fair wage to the workmen. So we do not agree with Shri Sanghi that the Tribunal has fixed the bare minimum wage. Now the absence of reasons in support of the conclusions is indeed a serious flaw in the award. However, the award

cannot be set aside simply on that score, as there is evidence on the record in support of the Tribunal's conclusion. Accordingly we have gone through the entire evidence on record.

10. It is now well-settled that basic wage and dearness allowance should be determined in the light of the industry-cum-region formula, and the financial condition of an employer. So the evidence will have to be examined in the light of the those two principles.

Industry-cum-region formula :

For fixing basic wages and dearness allowance industrial adjudication sometimes leans on the industry part of the industry-cum-region formula and at other times on the region part of that formula. The industry part of the formula becomes relevant when the business carried on by the employer before industrial adjudication is also carried on by several other concerns in the region in which the employer is working. (See *Greaves Cotton and Co. v. Their Workmen* ((1964) 5 SCR 362 : AIR 1964 SC 689 : (1964) 1 Lab LJ 342 : 26 FJR 311)) The industry part of the formula is not applicable in this case because admittedly the Woolcombers is the only concern in the region carrying on the business of woolcombing. Besides woolcombing, woolcombers comb also Rayon, Nylon, Terelene, Terine, Viscose, Terycotton and Posmina. This case is accordingly governed by the region part of the industry-cum-region formula. [See *Greaves Cotton and Co. v. Their Workmen*. (supra)].

11. The region part of the industry-cum-region formula requires that comparable concerns should nearly be similar to the line of business carried on by the employer before industrial adjudication. (See *French Motor Car Co. Ltd v. Workmen*. (1963 Supp 2 SCR 16 at page 22 : AIR 1963 SC 1327 : (1964) 1 SCJ 335 : (1962) 2 Lab LJ 744 : 24 FJR 270)). The argument of the Woolcombers before the Tribunal was and still is that there are a large number of jute mills in the vicinity of their factory and that the line of business carried on by them is similar to the line of business carried on in the Woolcombers factory. The Tribunal rejected this argument. The Tribunal has pointed out that it is true that some jobs in the Woolcombers and jute mills are similar. Nevertheless it has taken the view that the Woolcombers cannot be compared with the jute mills. It has elaborately pointed out the material differences in the jobs in the Woolcombers and jute mills. The workmen of Woolcombers handle finer and costlier articles. The working operations in the Woolcombers are more strenuous and perilous. The raw materials require more skillful handling and more attention and the products are to be handled much more carefully than the products of jute mill. Wool has got many more varieties than jute. The shortest length of jute is 3 feet while that of wool is two inches. The Tribunal has concluded :

"(F) rom the entire evidence it is clear from start to finish in case of Woolcombers' work it is not only more exacting in spite of its apparent similarity but also call for more skill".

12. It has been urged by Shri Chaudhary that the differences pointed out by the Tribunal in the performance of jobs in the Woolcombers and jute mills are not borne out by the evidence on record and that they are not material for the purpose of deciding whether jute mills are comparable concerns. It has come in the evidence of workmen that many of them work in conditions of "intense heat"; and this is admitted also by the Woolcombers' witness, B. B. Roy. One of the workmen's witnesses has stated that often workers faint on account of working in intense heat. Again, the evidence of the workmen also shows that many of them work in high powered light which causes

very great strain on their eyes. B. B. Roy has also admitted that some of the workers work in very difficult conditions of dust. In short the evidence shows that the work in the Woolcombers requires much more caution, precision and attention than the work in the jute mills. Naturally, the workers are put to much more mental and physical strain than the workers in the jute mills.

13. B. B. Roy, Woolcombers' witness, has compared the job of certain workmen in the Woolcombers with the job of workmen in the jute mills. For instance, according to him soap makers' job in the Woolcombers is similar to emulsion tank attendant of Anglo India Jute Mills. Soap makers' job, according to him, is to make soap solution in a tank, while emulsion tank attendant's job is to make emulsion of soap, oil and water. He has made similar comparisons between other jobs. Sensory similarities in jobs may be taken into consideration in finding out comparable concerns in the region, but in our judgment they should not be regarded as decisive. Industrial adjudication should also give due weight to the widely disparate skill and mental and physical strain in the performance of jobs. Greater skill, like greater merit, should ordinarily receive more material recognition. Greater mental and physical strain calls for more expenditure on the worker's renewal of himself and should accordingly be better rewarded. No workmen will be willing to entertain an arduous and perilous task for inadequate remuneration. Inadequate remuneration will not conduce to industrial peace. Considering all the circumstances of the case, we think that the Tribunal has not gone wrong in its conclusion that the Woolcombers cannot be compared with jute mills.

14. Shri Chaudhary's main grievance is that the Tribunal has made no endeavour to select for comparison concerns nearly similar to the line of business carried on by the woolcombers. We are satisfied that it is a just grievance. The Tribunal has given no reasons in support of its conclusion regarding the fixation of the basic wages and dearness allowance. Nor has it compared the woolcombers with any other concern. The workmen no doubt produced some oral evidence in respect of certain concerns. In his evidence Nabi Hasan Khan has sought to compare the Woolcombers with the Hindustan Lever Ltd., Exide Associated Battery, National Insulated Cable Co., Titaghar Paper Mill No. 2, Calcutta Electric Supply, Shyamnagar Works and Incheck Tyre. Those concerns are situated near the Woolcombers' factory. The workmen also examined P. D. Raj Dhar from Hindustan Lever Ltd., Amrit Lal Karmakar from Titaghar Paper Mill No. 2 and Binoy Kumar Ganguli from Rolling and Steel Ropes Ltd. to show that the basic wages and dearness allowance payable to the workers of those concerns were much higher than the basic wages and dearness allowance paid to the workmen of the Woolcombers. It does not seem that the Tribunal has relied on the workmen's oral evidence. It has merely commented that presumably this evidence had been led for the purpose of "impressing upon me that the basic wages and dearness allowance of those concerns are much higher than those enjoyed by the employees of the Woolcombers".

15. Indeed the Tribunal could not rely on this oral evidence. The workmen did not specify in their written statement the names of the comparable concerns in the region. Accordingly the Woolcombers could not have a reasonable opportunity of effective confrontation of the workmen's witness. More importantly, it should be remembered that "in dealing with the comparable character of an industrial undertaking, the industrial adjudication does not usually rely on oral evidence alone. This question is considered in the light of material evidence and circumstances which are generally proved by documentary evidence. What is the total capital invested by the concern, what is the extent of its business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concern, what is its standing in the industry to which it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is comparable with another in the matter of

fixing wages. Now, it is obvious that these questions cannot be decided merely on the interested testimony either of the workmen, or of the employer and his witnesses". See *Workmen of Balmer Lawrie and Co. v. Balmer Lawrie and Co.* ((1964) 5 SCR 344, 353 : AIR 1964 SC 728 : (1965) 1 SCJ 190 : (1964) 1 Lab LJ 380 : 27 FJR 450) The absence of any documentary evidence is a fatal defect in the circumstances of this case. Accordingly, we cannot uphold the Tribunal's award on basic wages and dearness allowances.

16. The question now is : what course should we adopt ? We can set aside the award and direct the Tribunal to make a fresh award after allowing the parties to produce evidence in relation to comparable concerns in the region. The other course is to call for a finding from the Tribunal in regard to basic wages and dearness allowance in the light of our judgment. The adoption of the first course may unduly delay the final award, for it is not improbable that an appeal may be filed in this Court against the fresh award. The reference was made some time in June, 1968 and five years have already gone by without the award becoming final. The adoption of the second course, on the other hand, is likely to avoid undue delay. It appears to us that having regard to the circumstances of this case, we should adopt the second course. We would defer our decision on the question of financial capacity of the industry to bear the burden of the increased basic wages and dearness allowance till the finding of the Tribunal is received by this Court.

17. While selecting comparable concerns in the region for the purpose of determining basic wages and dearness allowance of the workmen of the Woolcombers, the Tribunal should bear in mind that the selected concerns are as nearly similar to the line of business carried on by the Woolcombers as possible. The selected concerns should not be disproportionately larger than the Woolcombers. The concerns should as far as possible be compared with the Woolcombers as to their standing, extent of their labour force, extent of their customers, their profits and losses and any other relevant considerations.

18. We direct the Tribunal to record a fresh finding on the quantum of the basic wages and dearness allowance by applying the region part of the industry-cum-region formula and in the light of our judgment. Parties are allowed to adduce their evidence on this limited question only. The Tribunal should send its finding to this Court within four months from the receipt of the record from this Court. Costs will abide the event.

</html