M/S. Hindustan Hosiery Industries

Vs

F. H. Lala and Another

Civil Appeal No. 548 of 1970

(S. N. Dwivedi, P. K. Goswami JJ)

08.02.1974

JUDGMENT

GOSWAMI, J. -

1. This appeal by special leave is directed against an award of the Industrial Court, Maharashtra (hereinafter referred to for brevity as the Tribunal), of 20th January, 1970. There was a reference by the Mill Mazdoor Sabha, Bombay (briefly the Sabha) under Section 73-A of the Bombay Industrial Relations Act, 1946, in pursuance of a notice of change dated 22nd August, 1968. The Sabha demanded revised basic wages for the time-rated workmen of several categories and also a rise of 50 per cent in the wage of the piece-rated workers in the Consumers' Price Index bracket 621-630 (old series). The Sabha also demanded dearness allowance of 10 paise per day for every rise of 10 points or part thereof above the said slab. They also claimed the benefits retrospectively from 1st June, 1968. The Sabha submitted its statement of claim on 14th February, 1969.

2. It appears that the appellant is a partnership firm which was constituted and commenced production in April, 1967. The firm manufacturers and sells nylon and hosiery goods such as socks, under-garments, and the like. It is registered with the Maharashtra State Directorate of Industries as a small scale industry. Prior to April 1967, all the partners of the appellant were partners of a firm known as M/s. Hindustan Hosiery Factory. That firm again was constituted and commenced business on and from 15th December, 1963 after the dissolution of Indian Hosiery Factory on 14th December, 1963, due to differences amongst the partners. On the same date, some other partners of Indian Hosiery Factory constituted another firm known as Stretchlon Private Ltd. While Stretchlon Private Ltd. continued to function, Hindustan Hosiery Factory was closed in August 1966 and the appellant constituted and commenced business in the name and style of Hindustan Hosiery Industries with effect from 17th April 1967, on which date another firm also commenced business under the name and style of Hindustan Hosiery Mills. It appears that all these three firms, namely, Stretchlon Private Ltd., the appellant and the Hindustan Hosiery Mills are off-shoots of the India Hosiery Factory with a complement of 800 workmen which was actually the pioneer in the industry.

3. The Sabha contended before the Tribunal that the consolidated wages paid to the employees were extremely low. According to the Sabha, the time-rated workmen got as low a wage as Rs. 2.50 per day and never higher than Rs. 3.50 per day. The piece-rated workers, who, according to the Sabha, are skilled workers, earned between Rs. 6 and 7 per day. The Sabha, therefore, claimed a revision of the wages of both the categories.

4. The appellant resisted the claim. According to the appellant, it is a new concern and has employed some of the workers of the Hindustan Hosiery Factory. The average daily wages of the

piece-rated jobs vary from Rs. 6 to Rs. 10.20 per day and are adequate. The work involved in the jobs is not of highly skilled nature. The appellant further contended that the company was only of two years standing and the wages paid by it are higher than those earned by employees of other concerns in the industry. Its financial position also cannot be assessed as it is hardly two years old. The demands are excessive and the appellant cannot bear the additional burden arising out of these demands.

5. The appellant has in its employment about 250 workers. The Tribunal has before it a statement (Ext. C-2) filed by the appellant showing the number of employees receiving wages below Rs. 5 per day, another statement (Ext. C-3) with regard to the other employees and also the books filed by the appellant, and observed that many of the piece-rate and time-rated employees got as low a wage as Rs. 4.60 per day and Rs. 2.50 per day respectively. It, therefore, held that "on the face of it the wages provided for the workmen of the factory appear to be inadequate and low and even in a loss-making concern such wages have to be raised". The appellant started its business on 17th April, 1967. The Tribunal found from the statement, Ext. U-1, filed by the Sabha regarding its financial position that the appellant "earned substantial profits in the period of 8 months in 1967 and in 1968". The Tribunal found that during the period of 20 months since April, 1967, the appellant has earned a profit of Rs. 1,51,000 in eight months of 1967 and Rs. 1,88,000 in 1968. These profits are after deduction of depreciation, interest and bonus. The Tribunal observed that the appellant having a capital of Rs. 2,28,000 in 1967 and Rs. 3,42,000 in 1968 was prosperous and its financial position was sound. The Tribunal also observed that "the wages paid to the employees on the piece-rate and the time-rate are very low and require revision".

6. The appellant wanted the Tribunal to follow the wage scale of William Industries submitted by the appellant as per Ext. C-1. But the Tribunal in the absence of any details with regard to the financial position of that company or its profit making capacity, did not consider it appropriate to consider that as a comparable unit. The Sabha, on the other hand, contended that the appellant was more prosperous than Stretchlon Private Ltd. and produced an award of the Industrial Court in the case of Stretchlon Private Ltd. dated 10th April, 1967, published in the Maharashtra Gazette of 11th May, 1967. It appears that the demand for increase of wages in the case of Stretchlon Private Ltd. was made in 1966 within three years of its functioning from 15th December, 1963, and before the Industrial Court in that case profit and loss accounts for the years 1963-64 and 1964-65 were made available. It further appears that in the said award the Industrial Court took note of the position of three other smaller concerns, some of which were even running at a loss and still were paying wages higher than the Stretchlon Private Ltd. The Industrial Court, therefore, awarded Rs. 5 per day "as a reasonable and fair minimum wage to the Stretchlon employees of the lowest category in the Consumers' Price Index bracket 621-630". Although the Sabha in this case has asked for different rates of basic wages for employees in five categories, the Tribunal directed that the first 13 categories being the lowest paid workers should receive Rs. 5 per day in the Index bracket 621-630. The next group serial Nos. 14 to 19 were given Rs. 5.50 per day in the same bracket, serial Nos. 20-21 were given Rs. 7 per day, serial No. 22 Rs. 7.50 per day and serial No. 23 Rs. 8.50 per day in the aforesaid bracket. The Tribunal also granted for every rise of 10 points or part thereof, above the Index bracket 621-630, dearness allowance at the rate of 10 paise per day. With regard to the claim for 50 per cent rise in piece-rates the Tribunal only granted 30 per cent in the Index bracket 621-630 and the same dearness allowance as above. The Tribunal also granted the benefits retrospectively with effect from 1st February, 1959.

7. It is contended on behalf of the appellant that the Tribunal erred in ignoring the difference between minimum wage and fair wage. It is submitted that the Tribunal was in fact granting fair

wage and did not take into account the well-settled relevant factors into consideration in making the award. The appellant emphasises that the Tribunal absolutely ignored the aspect of the capacity of the appellant to bear the burden of the additional rise in wages on account of this award. The appellant also submitted that the Tribunal ought not to have ignored the settlement with regard to wage arrived at by the Hindustan Hosiery Mills with the Sabha. By the settlement, the said partnership firm constituted by the other group of partners of Hindustan Hosiery Factory agreed with the Sabha to give an increase of Re. 1 per day in the wages of the workers getting Rs. 5 per day or less and an increase of 50 paise per day in the wages of the workers getting more than Rs. 5 per day. The appellant was prepared to allow this increase which would have imposed an additional burden of Rs. 56,022 per year.

8. The respondent, on the other hand, submits that the Tribunal has awarded only minimum wage. Even if it is assumed that the wage awarded is a little higher than the minimum wage, it is certainly lower than the lowest level of the fair wage. The learned counsel submits that in order to allow the wage increase the Tribunal had before it materials from the evidence furnished in the Stretchlon award as well as the trend of wage rates with which the Tribunal must be expected to be familiar in the region and in the industry.

9. It is well settled that no industry can be allowed to carry on its business if it is unable to pay the minimum wage to its employees. The industry with which we are concerned is, however, not a scheduled industry in which the State Government has fixed any minimum wage under the Minimum Wages Act. The appellant submitted from certain Gazette notifications the minimum rates of wages prescribed by the State Government in case of some eight different industries between the years 1960 and 1972 where the monthly wages have been fixed between Rs. 90 and Rs. 128 per month. The appellant submits that there is no justification whatsoever for allowing the present increase of wages without following any principle and even higher than the statutory minimum wage fixed in respect of other industries in the State. In the written statement filed before the Court, the Sabha stated in paragraph 5 and 6 as follows :

> "5. The present wages of both the piece-rated and time-rated workers are excessively low and are much lower than those considered to be the absolute minimum payable by any employer to his workers in the Bombay Region. These wages are also much lower than those paid by comparable concerns in the industry.
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> 6. The second party concern is well in a position to bear the additional burden that may be placed upon it by the revision of the wages and the grant of dearness allowance as demanded by the Sabha.
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> The appellant, however, in para 5 of their written statement before the Tribunal stated that it could not
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> bear the additional burden which may arise on account of the revision of wages and D.A. as demanded by the first party and submits that for awarding wages and also D.A. it is not only the ability but also the stability of the concern which should be considered by this Honourable Court".

These being the rival contentions of the parties before the Tribunal, it was required to consider whether it was a case of bare minimum wage or something higher than it. From a perusal of the award, we are clearly of opinion that the Tribunal was considering the case from the point of view

of granting something higher than the subsistence of bare minimum wage bordering on fair wage. We have reached this conclusion since the yardstick of the present award is the Stretchlon Award which was obviously seeking to determine rather some kind of fair wage as will be clear from the following extract from that Award :

> "It (the company) can, therefore, offer to pay higher minimum wages to lowest category of employees. On due consideration of all the relevant facts and circumstances I find that Rs. 5 per day should be the reasonable and fair minimum wage to the lowest category of employees of the company".

10. Coming to the piece-rates also the Tribunal did not give any specific reasons for awarding 30 per cent increases as against the demand of the Sabha for 50 per cent rise in addition to Dearness Allowance. The Tribunal, however, observed that,

> "this increase would give adequate average daily earnings to the piece-rated employees. This increase would bring the emoluments near the level of minimum wage payable in the region and it would not place a very heavy burden on the employer".

11. We will now consider the principles settled by this Court in the matter of wage fixation. In Express Newspapers (Private) Ltd., and Another v. The Union of India and others, (AIR 1958 SC 578 : (1961) 1 Lab LJ 339) this Court was considering in an exhaustive judgment, inter alia, the concept of minimum wage, fair wage and living wage and approvingly quoted from page 9, para 10 of the report of the Committee on fair wages, to the following effect :

> "We consider that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements, and amenities".

This Court further observed :

> "There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist".(See Messrs. Crown Aluminium Works v. Their Workmen) IAIR 1958 SC 30 : (1958) 1 Lab LJ 1)
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> It was further observed :
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> "The statutory minimum wage, however, is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage, providing for some measure of education, medical requirements and amenities, as contemplated above ..... . While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will depend not only on the present economic position of the industry but on its future prospects ..... It will be noticed that the 'fair wage' is thus a mean between the living wage and the minimum wage and even the minimum

> wage contemplated above is something more than the bare minimum or subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family, a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities" ..... This concept of minimum wage is in harmony with the advance of thought in all civilised countries and approximate to the statutory minimum wage "which the State should strive to achieve having regard to the Directive Principle of State Policy mentioned above."

It was further observed :

> "It will also be noticed that the content of the expressions 'minimum wage', 'fair wage' and 'living wage' is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would our notions about the respective categories of wages expand and be more progressive".

12. In Kamani Metals & Alloys Ltd. v. Their Workmen, (AIR 1967 SC 1175 : (1967) 2 Lab LJ 55) this Court observed as follows :

> "Fixation of a wage-structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profits as this tends to divert capital from industry into other channels thought to be more profitable. The task is not rendered any the easier because condition vary from region to region, industry to industry and establishment to establishment. 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 wages is independent of the kind of industry and applies to all alike big or small. It sets the lowest 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 workmen but not at a rate exceeding his wages 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".

13. In Hydro (Engineers) (Private) Ltd. v. Their Workmen, ((1969) 1 SCR 15 : AIR 1969 SC 182) this Court further observed as follows :

> "It is thus clear that the concept of minimum wages does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be

> fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of a minimum wage".

14. In M/s. Jaydip Industries, Thana v. Their Workmen,((1972) 3 SCC 302,306) this Court referred to the observation in an earlier decision of this Court in U. Unicoyi v. State of Kerala,(AIR 1262 SC 12 : (1961) 1 Lab LJ 631) as follows :

> "Sometimes the minimum wage is described as bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective 'bare' in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enable the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand, since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker".

15. In M/s. Unichem Laboratories Ltd. v. Their Workmen, ((1972) 3 SCC 552,570-71) this Court observed as follows :

> "In the fixation of wages and dearness allowance the legal position is well-established that it has to be done on an industry-cum-region basis having due regard to the financial capacity of the unit under consideration ..... Industrial adjudication should always take into account, when revising the wage structure and granting dearness allowance, the problem of the additional burden to be imposed on the employer and ascertain whether the employer can reasonably be called upon to bear such burden ..... as pointed out in Greaves Cotton and Co. and others v. Their Workmen, (AIR 1964 SC 689 : (1964) 1 Lab LJ 342) one of the principles to be adopted in fixing wages and dearness allowance is that the Tribunal should take into account the wage scale and dearness allowance prevailing in comparable concerns carrying on the same industry in the region."

16. From an examination of the decisions of this Court, it is clear that the floor level is the bare minimum wage or subsistence wage. In fixing this wage, Industrial Tribunal will have to consider the position from the point of view of the worker, the capacity of the employer to pay such a wage being irrelevant. The fair wage also must take note to the economic reality of the situation and the minimum needs of the worker having a fair-sized family with an eye to the preservation of his efficiency as a worker.

17. Wage fixation is an important subject in any social welfare programme. Wage cannot be fixed in a vacuum and has necessarily to take note of so many factors from real life a worker lives, or is reasonably expected to live or to look forward to with hope and fervency in the entire social context. It is obvious that some principles have to be evolved from the conditions and circumstances of actual life.

18. Piece-rate is what is paid by results or out-turn of work which is often described as a "task".

There is greater consideration to quantity in fixing piece-rates in some particular types of work in some industries with a guaranteed minimum. The same standard may not be appropriate in all types of piece work. With reference to particular work the importance of man rather than the machine employed may have to be dealt with differently. Even in piece-rate it will be necessary to look around to find same correlation with time-rates of the same or similar class of workers, for example, the contribution of the worker to the job, the nature of the work, the part played by the machine, the incentive to work and above all protection against any creation of industrial unrest because of the existence side by side of two categories of workers, particularly if there is no possibility of transfer of labour from one type of work to the other from time to time. Again there may be some work where special skill of the worker with or without machine may be necessary and that factor will have to be then considered. It will vary from industry to industry and from the one process to another. No hard and fast rule can be laid down nor is it possible or helpful. The Tribunal, in ab industrial adjudication, will have to see that piece-rates do not drive workers to fatigue to the limit of exhaustion and hence will keep an eye on the time factor in work. Then again a guaranteed minimum may also have to be provided so that no fault of a diligent worker he does not stand to lose on any account. There may be a misty penumbra, which has got to be pierced through upon all available material on record and also on what the Tribunal, in fairness, can lay its hands on, with notice to the parties, for the purpose of fixing the piece-rates balancing all aspects. We have only indicated broadly the bare outlines of approach in a matter so involved and sensitive as wage fixation particularly when no one at the present time can shut one's eyes to the rising spiral of prices of essential commodities. The central figure in the adjudication, however, is the wage earner who should have a fair deal in the bargain in a real sense as far as can be without at the same time ignoring the vital interests of the industry whose viability and prosperity are also the mainstay of labour. How the various competing claims have to be balanced in a given case should mainly be the function of an impartial adjudicator or an industrial proceeding unless the Legislature chooses to adopt other appropriate means and methods. Article 136 of the Constitution does not create a right of appeal in favour of any person. It confers power on the Court which should not be so exercised as to convert the Court into a Court of appeal.

19. Subba Rao, J., in Bengal Chemical and Pharmaceutical Works Ltd. v. Their Workmen, (AIR 1959 SC 633 : (1959) 1 Lab LJ 413) observed :

> "Industrial Disputes Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to each dispute and the Tribunals are, to a large extent, free from the restrictions of technical considerations imposed on Courts. A free and liberal exercise of the power under Article 136 may materially affect the fundamental basis of such decisions, namely, quick solution to such disputes to achieve industrial peace. Though Artcle 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by this Court or discloses such other exceptional or special circumstances which merit the consideration of this Court";

20. None of the arguments raised by the appellant should be sufficient to persuade the Court to interpose relief in its favour on the facts and circumstances of this case. It is not quite correct to say that the Industrial Court has not followed the principles of wage-revision expounded by this Court. The Industrial Court has taken into account the prevailing minimum wage rates in the region, and

the capacity of the appellant to bear the burden of the increased wages. Counsel for the appellant could not show to us that the wage rates fixed by the Industrial Court are unfair for the appellant or that it cannot bear the load of increased wages. The wages of the piece-rated workmen had to be increased in line with the increased wages of the time-rated workmen with the object of avoiding discrimination and heart-burning among workers and maintenance of industrial peace among them. Taking a comprehensive view of the facts and circumstances of the case, we are satisfied that no intervention is called for with the award. In the result, the appeal is dismissed. We will, however, make no order as to costs in this appeal.

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