Bombay Gas Co. Ltd.

Vs

Jagannath Pandurang and Others

Civil Appeal No. 358 of 1973

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

12.08.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal arises out of the judgment of the Bombay High Court in Special Civil Application No. 1967 of 1965.

2. The 118 respondents are workmen of the appellant company working in different departments of the company's works. Respondents 1 to 14 are Syphon Pumpers. They filed 14 applications before the Additional Authority under Section 15 of the Payment of Wages Act claiming overtime wages for the period February 1957 to January, 1958. Respondents Nos. 15 to 20 are mains workers. They filed 66 applications before the same authority claiming overtime wages for the period December 1956 to November 1957. Respondents 81 to 118 filed 38 applications before the Third Additional Authority claiming wages for weekly off days. They belonged to the mains, heating appliances and fitting departments. They had joined the appellant company after 1948. The relevance of the reference to their having become workers of the company after 1948 will become clear when we deal with the facts of this case later.

3. Before the Authority under the Payment of Wages Act the company contended that all the claims were barred under an award of the Industrial Tribunal in Ref. No. 54 of 1949, which was made on 30-3-1950 and published on 11-5-1959. The Authority held that (1) the claims of the booster attendants for wages for overtime work and weekly off days were covered by the award, (2) the claims of applicants other than booster attendants were not covered by the award, and (3) the Bombay Shops & Establishments Act was not applicable to them, and dismissed the applications of respondents 1 to 80. The applications made by respondents 81 to 118 were allowed by the Third Additional Authority holding that the award was no bar to those applications and that the provisions of the Bombay Shops & Establishments Act were applicable.

4. Appeals were filed by respondents Nos. 1 to 80 in the Court of Small Causes, Bombay. The appellant company filed an appeal against the judgment in the applications of respondents Nos. 81 to 118. The Court of Small causes dealt with the appeals filed by the workmen as well as the appeal filed by the company and by a common judgment held that the claims of workers for overtime wages and wages for weekly off days were barred by the award. The workmen's appeals were therefore, dismissed and the company's appeal was allowed. It was, however, held that the appellant company was a commercial establishment within the meaning of that term under the Bombay Shops & Establishments Act.

5. All the workmen filed a writ petition, out of which this appeal arises, challenging the judgment of the Court of Small Causes. The High Court held that the claims of the respondents were not barred by the award and remanded the applications of respondents Nos. 1 to 80 to the Authority under the Payment of Wages for ascertaining and decreeing the amount. As regards, respondents Nos. 81 to 118 the judgment of the Third Additional Authority under the Payment of Wages Act was restored.

6. As the award of the Industrial Tribunal, Bombay in Ref. No. 51 of 1949 is the most important factor that has to be taken into account in considering this appeal it would be proper to refer to portions of that award which relate to this appeal. About 28 demands covering a variety of subjects were referred to the Tribunal. The demands out of which this appeal arises were Nos. 11 and 12 dealt with in paragraphs 113 to 126 of the award. Demand No. 11 was as follows :

> (a) Workers should get a paid weekly off.
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> (b) Workers of Mains, Services and District fittings departments and lamp-repairers, who have been adversely affected in the matter of their earnings on account of closing down of the overtime and Sunday work, should be compensated for the loss suffered by them compensation being the amount lost by them since the scheme was introduced.
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> Demand No. 12 was as follows :
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> All work extending beyond the scheduled hours of work should be paid for at overtime rate (i.e., double the rate of wages).

In discussing demand No. 12 the Tribunal pointed out that what the workers were asking for was paid weekly day off for those workers who were actually getting a weekly day off, though without pay. It appears that in this company prior to 1946 most of workers used to work for all the seven days of the week. By about August 1946, however. Weekly days off were enforced upon the major section of the workmen. The company and the union had entered into an agreement about June 1946 as regard wage scales of various categories of workers. The Tribunal, therefore assumed that in respect of most of the daily rated workers the wages must have been fixed on the basis of what their monthly income would be for 25 working days. In the cases of the classes of workers specifically mentioned in demand 11(b) a weekly day off was enforced some time in the year 1948, while in the case of lamp repairers the weekly day off was enforced from 1st April 1949. Those categories of workers therefore used to work for all the 7 days of the week and earn wages for all the days till a short time before the reference. The Tribunal therefore proceeded on the basis that in their case it cannot be said that daily rates of wages were fixed with reference to a month of 26 working days and, therefore, with the introduction of the weekly day off the wages of these workers were reduced and that the concession of a weekly off would be a very doubtful benefits if as a result the monthly income of these workers was to go down. The Tribunal granted the demand under demand No. 11(b) in respect of workers who had been working on Sunday also till 1948.

7. Some doubts having arisen in respect of this portion of the award a reference was made to the Tribunal under Rule 20A of the Industrial Disputes (Bombay) Rules for clarification. The doubt raised was whether the company was bound to give a paid weekly day off to the workers of the mains department and to pay them compensation for the loss suffered by them. It appears that the company gave a paid weekly day off to all persons mentioned in demand No. 11 except workers of the mains on the ground that they were not persons who were till 1948 required to work on Sundays

and in respect of whom a weekly day off was introduced thereafter. The tribunal pointed out that the paid weekly day off was given only to people who till recently used to work on all the seven days of the week and that it was unfortunate that the company had not at the hearing of the main adjudication specifically drawn attention to the fact that the workers of the mains were not till recently required to work for all the seven days of the week. The Tribunal, however, held that it was clearly a condition laid down for the grant of this benefit that the person concerned must be one who till 1948 was required to work on Sundays and in respect of whom a weekly day off introduced thereafter.

8. The importance of the year 1948, to which we have referred to in earlier part of the judgment would now become apparent. Respondents 81 to 118 who joined the company after 1948 contended that the award did not bind them. In this they are manifestly wrong. An award of an Industrial Tribunal in a reference under Section 20 of the Industrial Disputes Act binds not only persons who were the workmen of the employer at the time the award was made but also workmen who came to work under the employer after the award. It would not be correct therefore, to hold that they would be entitled to be paid separately for the weekly day off. It must be presumed that their scales of pay were the same as for the workmen who were Working before 1948 also. There was no averment to the contrary. They cannot therefore, be allowed an extra benefit which would not be available to the same category of workmen who were working under the employer since before 1948.

9. The High Court seems to have been of the impression that these workmen were entitled to be paid for the days off either under the award or under Section 18(3) of the Bombay shops & Establishments Act. It seems to have assumed that there was a scale of wages for weekly off days under the award. That this is an obvious mistake would be apparent from a reading of paragraphs 114 and 115 of the award to the following effect :

> 114. It must be remembered that the wages of daily rated workers are ordinarily fixed with reference to what their monthly income would be on the basis of a month consisting of 26 working days. This undoubtedly secures to them the benefit of holidays with pay . . . . The company and the union have entered into an agreement about June 1946 as regards wages scales of various categories of workers . . . . that in respect of most of the daily rated workers the wages must have been fixed on the basis of what their monthly income could be for 26 working days.
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> 115. Some difference must however be made in the case of the classes of workers specifically mentioned in demand 11(b). . . . Until recently these categories of workers used to work for all the 7 days of the week and earn wages for all the days. Certainly it cannot be said in their case that their daily rates of wages were fixed with reference to a month of 26 working days . . . . The demand in respect of workers of the mains services and district fittings departments and lamp-repairers and others who were till 1948 required to work on Sundays and in respect of whom a weekly day off was introduced thereafter without any corresponding increase in their wages is granted.

The matter would be further clear when paragraph 14 of the award is read, wherein the Tribunal has observed :

> While, therefore, I approve of Rs. 30 as the minimum wage for male mazdoors (coolies) which is at present given to the workers in this company, I think both the

> maximum and the increments provided are rather low when compared to what is now-a-days awarded even in the case of some of the smaller concerns in the engineering industry. I, therefore, award to the unskilled workers (male coolies) a wage-scale of Rs. 1-2-6 to Rs. 1-10-6. If they are monthly paid their monthly wages should be arrived at by multiplying the daily wages by 26.

The total wages for 26 days at Rs. 1-2-6 a day is Rs. 30. It is not said that the categories of workers mentioned in demand No. 11(b), who were covered by the award, are paid separately for the days off. It is not contended that their wage scales have not been refixed in pursuance of the direction given in the award, except of course in the case of persons who even before 1948 were not working on Sundays also. Nor is it alleged that pre-1948 were not workers are paid differently. The reasoning of the High Court cannot, therefore, be supported and the company is entitled to succeed on this part of the case.

10. Coming now to the question of overtime, the demand before the Tribunal was that overtime rates should be double the rates of wages. That demand was rejected in the general form. The demand seems to have been made on the analogy of the provisions of the Factories Act. The Tribunal pointed out that there would be no justification in making a distinction between workers covered by the Factories Act and workers not covered by that Act in respect of overtime payment if the workers were doing the same or similar work but that the same cannot be applied in respect of all types of work particularly where the work was of a very intermittent nature, and that where the nature of the work itself was such that regular overtime becomes necessary the deterrent element must not enter in determining the rate of overtime. The union pointed out several specific categories in respect of whom injustice was done. One of those instances was that of booster attendants and their case was specifically dealt with and provided for. The grievance of the workers of the Mains Department was that they were made to work till 1-30 p.m. on Saturdays while factory workers were let off at 1 p.m. and that 47 1/2 hours a week has been a very longstanding privilege of the workmen of this company and that if they are required to work for half an hour more on Saturdays they should be paid overtime at double the rate. After discussing this question the Tribunal specifically came to the conclusion that no directions in that respect were necessary. We cannot, therefore, agree with the respondents that the sentences at the end of paragraph 126 to the following effect :

> I however recommend that where overtime work is given to workers not covered by the Factories Act, the rate should at least be the single basic wage plus dearness allowance. I do not, however, desire to give any general directions without knowing the nature of the work.
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> would cover these cases. Demand No. 12 is in respect of all workers of the company. The specific case of workers in the mains department has been dealt with and rejected; so also in the case of coke supply coolies and motor drivers. The workmen concerned here being all workmen of the mains department, the question of their being paid overtime wages under the provisions of the award does not arise.

11. The question however remains whether they are entitled to be paid overtime wages under the provisions of Section 18(3) of the Bombay Shops and Establishments Act. That Act was in force when the award under consideration was given. It is not correct to say that the workers are entitled to overtime payment by virtue of an amendment made to the Act in 1970. The 1970 amendment had nothing to do with the right of payment of overtime wages. The contention on behalf of the

company is that the right to overtime wages based on any ground whatsoever should be deemed to have been dealt with and rejected by the Tribunal which gave the award in 1950. Though the demand for overtime wages was in general terms it could have been or it ought to have been supported either as one of the items of industrial dispute or as flowing from out of the provisions of the Factories Act or flowing from the provisions of the Factories Act of flowing from the provisions of the Bombay Shops and Establishments Act. It was the duty of the party making the demand, who tried to justify the demand, to support it on any one of the alternative basis. They could not have been of ignorant of the provisions of the Bombay Shops and Establishments Act. (Incidentally though in this case it seems to have been conceded on behalf of the company that the workers are governed by the Bombay Shops and Establishments Act, it is contended on behalf of the company that the concession should be deemed to have been made only for the purpose of this case and not for all purposes). It is further contended that the demand for overtime wages under the provisions of the Bombay Shops and Establishments Act should be deemed to be barred on principle analogous to those of the res judicata. Reliance is placed upon the decision of this Court in Bombay Gas Co. v. Shridhar Bhau (AIR 1961 SC 1196 : (1961) 2 LLJ 629). But in that case the question whether the workmen should get overtime wages in the same way as the workmen governed by the resulted in the award of 1953 and before the Tribunal it was conceded by the workmen that they were not governed by the Factories Act and the claim for the same overtime wages as those payable to workers under the Factories Act was based on the ground that there was no reason for any distinction between the two sets of workmen. It was, therefore, held that 'so long as the award remains in force it must be held that these workmen are not governed by the Factories Act and are not entitled to the benefits thereof'. In the present case also the question under the Factories Act had been considered but not the question whether they are entitled to overtime wages under the provisions of the Bombay Shops and Establishments Act. We consider that the workmen could and ought to have raised the question that even if they were not entitled to claim overtime wages at the same rate as payable to workers governed by the Factories Act, they should at least be paid the same rate as those payable to persons governed by the Bombay Shops and Establishments Act. The workers neither put forward the contention that they were entitled to the benefit of the Bombay Shops and Establishments Act nor even that on considerations similar to those applicable to the persons governed by the Bombay Shops and Establishments Act. They should also be paid overtime wages under the provisions of that Act. Incidentally it shows that the question as to whether the Bombay Shops and Establishment Act is applicable to these workmen has been raised for the first time in these proceedings. The doctrine of res judicata is a wholesome one which is applicable not merely to matters governed by the provisions of the Code of Civil Procedure but to all litigations. It proceeds on the principle that there should be no unnecessary litigation and whatever claims and defences are open to parties should all be put forward at the same time provided no confusion is likely to arise by so putting forward all such claims. It was observed by this Court in Devilal Modi v. S. T. O. ((1965) 1 SCR 686 : AIR 1965 SC 1150 : (1965) 16 STC 303)

The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice, vide : Daryao v. State of U. P. ((1962) 1 SCR 574 : AIR 1961 SC 1457).

We are therefore, of opinion that the question of overtime wages should be deemed to have been dealt with and disposed of by the Tribunal on whatever the basis of the claim for overtime wages may be.

12. The disputes between this company and its workers quite often come to this Court. The case in Bombay Gas Co. v. Shridhar Bhau (supra) is one such. The other cases are found in Bombay Gas Co. Ltd. v. Gopal Bhiva ((1964) 3 SCR 709 : AIR 1964 SC 752 : (1963) 2 LLJ 608) and Ramlanshan Jageshar v. Bombay Gas Co. ((1961) 1 LLJ 38 (Bom)). If the workers are dissatisfied with any of the items in respect of which their claim has been rejected it is open to them to raise a fresh industrial dispute. The award has stood the test of time for 25 years, a very rare occurrence indeed these days.

13. In the result the appeal is allowed. The judgment of the High Court is set aside with the result that the petitions of all the workers stand dismissed. The special leave granted in this case was subject to the conditions that the appellant would pay the costs of the appeal to the respondents in any event. The appellant will, therefore, bear its own costs and pay the costs of the respondents.

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