

The Management of National Projects Construction Corporation Ltd.

Vs

Their Workmen and Others

Civil Appeals Nos. 2163 and 2164 of 1969

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

08.10.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. The appellant, the National Projects Construction Corporation Ltd., was engaged in execution of two projects, Chandan Das Project and the Gandak Ram Project. On 31st January, 1967 the N. P. C. C. Worker's Union of the Chandan Dam Project gave a notice of strike and on 1st April, 1967 the Labour Union of the Gandak Dam Project gave a similar notice. These notices were accompanied by a charter of demands which are practically the same in both cases. Thereafter a settlement was arrived at with both these unions on 11-4-1967 in the presence of the Labour Commissioner, Bihar, the terms of which were also similar. By that settlement certain questions were agreed to be referred to arbitration and those questions are found in paragraph 4 of both the settlements. The dispute with both the labour unions was accordingly referred to the arbitration of the presiding Officer, Industrial Tribunal, Bihar, Patna on 3rd May, 1967. The arbitrators award was sought to be quashed by means of a writ petition filed by the appellant before the High Court of Patna. A Division Bench of the High Court dismissed the writ petition except in respect of one point which is not important for the purpose of this appeal. This appeal is filed against the judgment of the Patna High Court by way of certificate granted by the High Court.

2. The points canvassed before us were regarding the wages of the muster roll workmen and the project allowance for them. In the settlements referred to earlier the relevant portion regarding these workmen reads thus :

Keeping in view the drought conditions in the State and consequential steep rise in prices of commodities since the wages of workmen in this unit were increased in the year 1966, management agrees that no muster roll workmen will be paid less than Rs. 3 per day with effect from April 11, 1967.

Management agrees to the flat increase of 0.50 paise per day per workman in the daily wage rates for such muster roll workmen who are getting Rs. 3 or above.

In these two projects there were three categories of workmen : (1) regular staff, (2) work-charged staff, and (3) casual labour (borne on muster-roll). The regular staff consisted of engineering, administrative, accounts and finance, supervisory as well as non-supervisory personnel. The work charged staff was monthly paid and was of two categories, that is, civil and mechanical. The casual workman was one whose employment was of an occasional or casual nature and was borne on the muster roll on daily wages for such purpose. In fact the charter of demands by both the labour

unions also makes clear this distinction between muster roll employees, who are called daily-rated workman, and work-charged employees and regular employees. The demand in respect of the muster roll employees as far as the wages are concerned was that they should be given a minimum of Rs. 4 per day. Another demand was that the muster roll employees who had served for 240 days must be brought on work-charged cadre. By the settlements already referred to the wages of the muster roll workmen were raised to a minimum of Rs. 3 and an increase of 50 paise in the case of persons who were getting Rs. 3 or more earlier. In respect of them there had also been earlier settlement in 1966. When, therefore, in Clause 4 of the settlement it was agreed that certain questions were to be referred to arbitration that can only be in reference to workmen other than muster roll workmen. That clause in the settlement reads thus :

4. Parties agree for reference of the demands regarding revision of pay scales, introducing of C.P.F. Scheme, house rent allowance, dearness allowance, project allowance, travelling allowance and security of service of workmen to arbitration for which they are submitting separate petitions as required under the Industrial Disputes Act and the rules framed thereunder to the State Government. The Arbitrator will be requested to give his award within two months.

As the revision of pay scales of the muster roll workmen was already covered by the settlement the revision of their pay scales was not one of the points agreed to be referred to arbitration. Nor can the question of introducing C.P.F. Scheme, house rent allowance, dearness allowance, project allowance, traveling allowance arise in their case. The daily rated or muster roll workmen would be local recruited workmen.

3. What the Industrial Tribunal has done is to allow a 25 per cent increase in the wages of all labour including muster roll workmen. The result was that the muster roll workmen get a double advantage, that is, the increase which they secured as a result of settlement and the further increase of 25 per cent granted by the Tribunal whereas the other categories of workmen got only the 25 per cent increase. It appears that before this settlement the daily rates of muster roll workmen were Rs. 1.75 in Chandan Dam and Rs. 2.25 in Gandak Dam. As a result of the settlement they got more than 40 per cent which was demanded in the charter of demands in the strike notice in respect of other categories. In that charter what was demanded for muster roll workmen was a minimum daily wage of Rs. 4. In any case these things make it absolutely clear that the question of pay scales of muster roll workmen was decided as a result of the settlement and that was not one of the questions referred to the arbitrator. The Industrial Tribunal was therefore acting beyond its jurisdiction in allowing a 25 per cent increase in the wages of the muster roll workmen. The only reason the Industrial Tribunal has given for holding that the wages of the muster roll workmen was also a matter referred to it is that the point under reference by itself does not exclude muster roll workmen and that it clearly mentions that the parties had agreed that the demands regarding revision of pay scales, etc. of the workmen should be referred to arbitration and no exception has been made against the muster roll workmen. As we have already pointed out this is a wrong reading of the reference. That clause in the settlement should be read along with the rest of the settlement and charter of demands and if that had been done there would have been no room for this misunderstanding.

4. On the other hand the only point relied upon by the High Court for holding that the wages of the muster roll workmen was also one of the items referred to arbitration is that the reference in the case of Chandan Dam Project mention all the two thousand workmen employed in the project as workmen affected or likely to be affected by the dispute. But it failed to notice that the similar agreement in respect of Gandak Dam Project does not refer to the number of workmen involved at all. Therefore no distinction can be made between the two cases on this ground. The document by

which the reference is made is in a standard form which mentions the total number of workmen employed in the undertaking affected and the estimated number of workmen affected or likely to be affected by settlement. In filling those columns the parties may or may not necessarily take into consideration the number of workmen whose case is already covered by the settlement and no argument could be built upon the basis of the entries in those two columns. We are, therefore, clearly of the opinion that the wages of the muster roll workmen was not one of the points agreed to be referred to the arbitrator for adjudication.

5. As regards the project allowance the Industrial Tribunal took the view that the mere fact that the work-charged staff and the muster roll staff are appointed for a particular work and some of them happen to be local people should not stand in the way of their getting project allowance and those of these two classes of workmen who come from distant places should be given this allowance in the same way as the members of the regular staff. The Industrial Tribunal itself realises that the basis on which project allowance is granted to the regular staff is to compensate them for depriving them of the amenities in posting them to out of the way places during construction periods. Once that is admitted the question of giving the work-charged workmen and the muster roll workmen, who do not have a regular place where they are expected to work and in whose case, therefore, there is no question of their being posted to any place, any project allowance would not arise. The question of posting can arise only in the case of regular staff. Moreover, it is difficult to check in each case whom among these two categories of staff have come on transfer from other places and belong to places more than 50 miles away. Also there can be no question of work-charged workmen and muster roll workmen coming on transfer. This part of its order seems to arise out of a confusion of thought on the part of the Industrial Tribunal. On the other hand it cannot be said that no question regarding muster roll workmen was at all referred to arbitration. Clause 4 is all comprehensive. One item in the charter of demands was project allowance for all workmen and the settlement covered only wages for the muster roll workmen. The High Court has not dealt with the question of project allowance at all. Apparently this question was not urged before the High Court. Nor is it raised in the petition for leave. Before us only the question of project allowance granted to muster roll workmen was challenged. There is therefore no justification for interfering with the award of the Industrial Tribunal in so far as the question of project allowance is concerned even though it may be difficult to work it in practice.

6. In the result therefore the award of the arbitrator is set aside insofar as it granted a 25 per cent wage increase to the muster roll workmen. There will be no order as to costs.

</html