

Messers Voltas Limited

Vs

Voltas and Volkart Employees, Union, Bangalore

Civil Appeal No. 1869 of 1974

(Y.V. Chandrachud, P.K. Goswami, P.N. Shinghal JJ)

27.07.1976

JUDGMENT

CHANDRACHUD, J. -

1. This appeal by the management of Voltas Limited, Bangalore, arises out of a reference made by the State of Mysore on November 25, 1965. The reference was made under Section 10(1)(d) of the Industrial Disputes Act, 1947, for an adjudication of some 16 demands of the workmen. We are concerned in this appeal solely with the question relating to the fixation of ceiling on dearness allowance.

2. The Additional Industrial Tribunal, Bangalore, made an award on October 16, 1967 fixing a ceiling on dearness allowance at Rs. 400. In Civil Appeal 1380 of 1968 filed by the workmen, this Court set aside the award and remitted the case back to the tribunal for a fresh decision on two questions : (1) Whether any ceiling on dearness allowance existed as regards the employees of the Bangalore branch of the company, and (2) whether such a ceiling can in law be fixed. The judgment of this Court which is dated December 21, 1972 is reported in (1973) I Labour Law Journal III (Workmen v. Voltas Ltd., AIR 1974 SC 2289).

3. Pursuant to the liberty reserved by this Court under its judgment of remand, parties filed additional evidence before the tribunal in support of their respective pleas. The respondent-workmen contended that the scheme of dearness allowance applicable to the workmen of the Bangalore branch did not provide for ceiling and no question could therefore arise of revising the ceiling on dearness allowance payable to the Bangalore employees. The workmen were, therefore, entitled to get dearness allowance linked to the cost of living index and based on their basis salaries. The company, according to the workmen, was making enormous profits, it did not ever plead incapacity to meet their demands and, therefore, a ceiling on dearness allowance could not be fixed by the tribunal under the law.

4. The appellants relied on a circular dated March 12, 1959 in support of their contention that ceiling existed on the dearness allowance payable to all of their employees including those working in the Bangalore branch. The appellants further contended that applying the region-cum-industries test, it was both lawful and necessary to fix the ceiling on dearness allowance payable to the Bangalore workmen.

5. The Additional Industrial Tribunal, Bangalore held by its award dated May 31, 1974 that no ceiling of dearness allowance existed governing the employees of the Bangalore branch and that such a ceiling could not in law be fixed. This appeal by special leave is directed against the

correctness of these findings.

6. Since after the aforesaid decision of the tribunal, this Court in *Killick Nixon Ltd. v. Killick and Allied Companies Employees Union* ((1975) Supp SCR 453 : (1975) 2 SCC 260 : 1975 SCC (L & S) 316), had occasion to consider the question as regards the fixation of ceiling on dearness allowance. The appellant-company in that case wanted to introduce a scheme of dearness allowance which provided for a ceiling of Rs. 325. It was held by this Court that the imposition of ceiling on dearness allowance was not an alien phenomenon and that unions in the course of collective bargaining had accepted in certain regions the imposition of a ceiling on dearness allowance. The problem of imposing or removing such a ceiling had to be viewed, according to this Court, from the following aspects, inter alia : [scc p. 273 : SCC (L & S) p. 329], para 33]

- (1) Condition of the wage scale prevalent in the company.
- (2) Condition of the wage level prevalent in the industry and the region.
- (3) The wage packet as a whole of each earner in the company with all amenities and benefits and its ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and industrial peace.
- (4) The position of the company viewed in relation to other comparable concerns in the industry and the region.
- (5) Pre-emptive necessity for full neutralisation of the cost of living at the rock-bottom of wage scale if at or just above the subsistence level.
- (6) The rate of neutralisation which is being given to the employees in each salary slab.
- (7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.
- (8) Degree of sacrifice necessary even on the part of workers in general interest.
- (9) The compulsive necessity of securing social and distributive justice to the workmen.
- (10) Capacity of the company to bear the additional burden.
- (11) Interest of national economy.
- (12) Repercussions in other industries and society as a whole.
- (13) The state of the consumer price index at the time of decision.
- (14) Forebodings and possibilities in the foreseeable future as far as can be envisaged.

The court added that revision of dearness allowance could not be placed on the same footing as the

revision of wages.

7. The benefit of the judgment of this Court in Killick Nixon's case was not available to the tribunal and naturally its attention was not focused on the aspects which this Court considered as important in disputes relating to fixation of ceiling on dearness allowance. Yet another remand is therefore inevitable.

8. Besides, the tribunal did not correctly comprehend the scope and nature of the inquiry which it was directed by this Court to make. By the judgment of remand dated December 21, 1972 this Court framed two specific issues and asked the tribunal to consider them on merits. The tribunal disposed of the first issue on merits but on the second issue as to whether it was lawful to fix a ceiling on dearness allowance, instead of considering the merits of the matter it took the view that the appellants were precluded from urging that a ceiling should be imposed on dearness allowance since they had not pleaded financial incapacity to pay full dearness allowance, and since by entering into settlements which did not provide for a ceiling, they had made representations to the workers from time to time that dearness allowance would be paid at the full rate. The tribunal thought that the order of remand passed by this Court had to be understood in the context of the original order of reference and since it did not comprehend the issue as regards the fixation of ceiling, that question could not possibly arise. In taking this view, the tribunal has ignored the specific direction given to it by this Court by which it was asked to consider the question on its merits. After setting out the rival arguments advanced before it, this Court observed that it was necessary to decide the two questions "for the purpose of satisfactorily determining the dispute referred to the tribunal". Since the parties had not adverted to the question of ceiling in their respective statements of claims, this Court gave them liberty to place on record whatever fresh material they desired to place on the two points. Both parties availed themselves of that opportunity and placed additional evidence before the tribunal. It was the tribunal's plain duty to consider that evidence and dispose of the second issue as well on merits.

9. Since we are remanding the matter on the second issue concerning the fixation of ceiling on dearness allowance, we do not propose to consider the correctness of some of the observations made incidentally by the tribunal on that question. But one thing has to be made clear that the workmen's Counsel is not right in his submission that eventually the tribunal did consider the second issue also on merits. The concluding portion of the award gives the impression that the tribunal was inclined to advert to the merits of the second question but there is no gain saying that the view taken by the tribunal that the appellants were precluded from raising that question virtually sealed a proper and dispassionate discussion of the matter. In any event, the tribunal, not having had the judgment of this Court in Killick Nixon's case before it, could not direct its attention to the factors considered by its attention to the factors considered by this Court as having an important bearing on the question of fixing a ceiling on dearness allowance.

10. We therefore confirm the finding of the tribunal on the first issue and remit the matter back to it for a fresh consideration of the second issue in the light of the judgment of this Court in Killick Nixon's case. There will be no order as to costs. Pending the decision of the tribunal, the appellant shall pay dearness allowance to the workmen at the Bombay rate. From out of the amount deposited by the appellants before the tribunal, the amount left after disbursal to the workmen shall be returned to the appellants. The tribunal shall dispose of the matter within four months from the date of receipt of record by it.

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