M/s. Tata Chemicals Ltd.

Vs

The Workmen Represented by Chemicals Kamdar Sangh

Civil Appeal No. 2160 of 1977

(V. R. Krishna Iyer, Jaswant Singh JJ)

23.03.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against the award dated February 21, 1977 of the Industrial Tribunal, Gujarat in reference 13 of 1975 made on January 21, 1975, by the Government of Gujarat in exercise of its powers under Section 10(1)(d) of the Industrial Disputes Act, 1947 (XIV of 1947) (hereinafter called 'the Act') for adjudication of the dispute relating to five demands viz. Washing allowance, woollen jersey, unclean allowance, transport allowance and variable dearness allowance linked with Ahmedabad cost of living index and adequate dearness allowance equal to that of textile workers of Ahmedabad (which is 100% neutralisation) sponsored by the Chemicals Kamdar Sangh, Mithapur (hereinafter referred to as 'the Sangh').

2. Briefly stated, the facts leading to the appeal are : The appellant is a public limited company registered under the Indian Companies Act and has its factory at Mithapur in the State of Gujarat. As per its practice and policy of recognising and negotiating with the Union enjoying the support of largest number of its workers, it carried on its dealings with the Sangh (which was the recognised union) till January 25, 1973 when the Assistant Commissioner of labour, Ahmedabad declared as a result of the verification made by him that the Tata Chemicals Employees' Union (Hereinafter referred to as "the Employees' Union") was entitled to be recognised under the Code of Discipline in view of the fact that 55% of the total number of the employees of the concern were its members and addressed a communication to the appellant requesting it to recognise the said union. Pursuant to this communication, the appellant accorded recognition to the Employees' Union with effect from January 25, 1973. Thereupon the Sangh filed a Special Civil Application challenging the aforesaid order of the Assistant Commissioner of Labour in the High Court of Gujarat which was summarily rejected vide order dated April 3, 1973. On June 18, 1973, the Employees' Union submitted a charter of demands to the appellant which included inter alia a demand for dearness allowance at 100% of Ahmedabad Cotton Textile Rate popularly known as the Textile Dearness Allowance. In respect of these demands, the Conciliation Officer summoned a conciliatory meeting for July 26, 1973. Meanwhile on July 9, 1973, the Sangh representing about 800 workmen of the concern submitted the aforesaid charter of demands before the management which also included a demand for dearness allowance as paid to the workers of the Cotton Textile Industry. The charter also contained an intimation to the management of the Sangh's intention to resort to strike for realisation of its demands. As negotiations between the parties for an amicable settlement did not prove fruitful, the Sangh wrote to the Conciliation Officer, Rajkot, on July 17, 1973 requesting him to intervene. After preliminary discussions with both the parties, the Conciliation Officer admitted the case for conciliation on August 30, 1973. As the conciliation proceedings held by him from time to

time between September 7, 1973 and November 6, 1973 (to which the Employees' Union was also made a party at its request) did not lead to a settlement the parties, the Conciliation Officer submitted his failure report to the State Government on December 14, 1973. On even date, the appellant arrived at an agreement with the Employees' Union in respect of the demands submitted by the latter on behalf of its daily rated and monthly rated members including clerical staff. It was agreed between the parties to this settlement that it would remain in force for a period of three years with effect from January 1, 1974. A notice with regard to the settlement with the Employees' Union was put on general notice board by the appellant on December 17, 1973. On January 21, 1975, the State Government made, as already stated, a reference to the Industrial Tribunal for adjudication of the dispute respecting the aforesaid demands raised by the Sangh. In the course of the reference proceedings, the Employees' Union adopted a nebulous and shifting stand. In its anxiety to maintain its status as the recognised majority union having the sole right of collective bargaining and settling industrial disputes, it insisted in the first instance on its right to actively participate in the proceedings and inter alia questioned the right of the Sangh to raise the demand with regard to V.D.A. as also the right of the Government to refer the demand for adjudication alleging that earlier in 1968 when it raised a demand for 100% Textile Dearness Allowance, the Sangh resisted the same and entered into a settlement with the appellant Company on July 31, 1969 for a period of five years. Later on abandoning its initial stand, it supported the demand of the Sangh averring that having regard to the huge profits made by the appellant Company over the years, the workmen were entitled to payment of dearness allowance not only on the lines of the Textile Dearness Allowance but a still higher dearness allowance like that of the employees in the Bombay Head Office of the Appellant Company.

3. In the written statement filed by it, the appellant company not only challenged the locus standi of the Employees' Union to raise any demand on behalf of the workmen or to support the demands raised by the Sangh in view of the aforesaid settlement dated December 14, 1973 but also maintained that in view of the said settlement which continued to be in operation the Sangh was precluded from raising any dispute in respect of the demands which are the subject-matter of reference to the Tribunal for adjudication. It further contended that as the benefit accruing from the settlement had been and was being taken by all the workmen, the reference was incompetent and the Tribunal had no jurisdiction to adjudicate upon the demands incorporated therein. While it resisted the first four demands raised by the Sangh on mere technicalities, with regard to the demand for variable dearness allowance, the appellant Company averred that in view of the fact that all the employees were being paid dearness allowance in accordance with the recommendation of the Central Wage Board for the Heavy Chemicals and Fertiliser Industry and that neutralisation in the increase in cost of living under the said scheme of payment case of group-I factories was not cent per cent but was equivalent to 92 per cent, the demand for variable dearness allowance was not valid. The appellant further urged that in that matter of fixation of dearness allowance, the formula of industry-cum-region was to be adhered to and the total pay packet of the comparable concerns in the region had to be taken into consideration.

4. On an examination of the material adduced before it including the facts and figures relating to the appellant Company's investments, reserves, production, percentage of wages of workers, profits and declared dividends etc., the Industrial Tribunal came to the conclusion that the appellant Company was a very flourishing and highly integrated chemical complex of long standing whose profits were continually rising; that no other unit in the Heavy Chemicals Industry in the region could be favorably compared with the appellant Company so far as the extent and nature of production, business and financial capacity were concerned; that the industries in other parts of Gujarat like Sarabhai Chemicals, Baroda, Anil Starch, Ahmedabad, Alembic Chemicals Works, Baroda, Atul

Products, Bulsar and Ahmedabad Manufacturing and Calico Printing Co. Ltd., Chemical Division, Ahmedabad which were included in the list of heavy chemicals factories covered by Wage Board were paying 100 per cent of the dearness allowance linked to the Ahmedabad cost of living index number known as Textile Dearness Allowance and that the total pay packed which was being paid to the workers of Mithapur where the prices of essential commodities were comparatively higher than at any other place in the district like Jamnagar, Dharangadhra, Porbandar, Bhavnagar was much less than Sarabhai Chemicals, Baroda, and disallowing the objections raised by the appellant Company and considering the Textile Dearness Allowance as a scientific formula faithfully reflecting the rise and fall in the consumer price index for working class which afforded maximum protection to the workmen in the lowest basic wage slab adopted the same and inter alia directed the appellant Company to pay to all the concerned employees including the daily rated workmen in different categories in Grades I, III, V, VI, VII and VIII and the monthly rated clerical, technical and supervisor staff falling in Grades V, VI and VII uniform dearness allowance varying from 85% of the Ahmedabad Textile Dearness Allowance (old) to 95% of the Ahmedabad Textile Dearness Allowance as before the old revision phased over a period of three years beginning from February 1, 1975 that it to say at 85% from February 1, 1975 to December 31, 1976 and at 95% from January 1, 1977 and onwards.

5. Appearing on behalf of the appellant, Mr. Pai has addressed us only in regard to the Sangh's demand and the Tribunal's award in respect of variable dearness allowance. He has contended that regard being had to the fact that the aforesaid settlement dated December 14, 1973 between the appellant Company and the Employees' Union covered the demand regarding V.D.A. sponsored by the Sangh and the benefit accruing from the settlement was taken by the entire body of workmen, the aforesaid reference by the State Government as regards the V.D.A. was invalid and the Tribunal had no jurisdiction to adjudicate upon the same. He has further urged that in fixing the V.D.A., the Tribunal has erred in ignoring the industry-cum-region principle which is well recognised in the industrial world.

6. Mr. Tarkunde has, on the other hand, urged that the aforesaid settlement dated December 14, 1973 did not cover the demand regarding V.D.A. sponsored by the Sangh; that in any event, the said settlement was binding only on the parties thereto, and the Sangh not being a signatory to the settlement, it was perfectly open to it even though it was a minority union to sponsor the demand in question and to the Government to make the reference. He has further contended that there being no comparable concern in the region, the Industrial Tribunal was right in taking into consideration the dearness allowance paid by Sarabhai Chemicals and other concerns in other parts of Gujarat.

7. Five questions arise for consideration in this case - (i) whether the settlement of December 14, 1973 covered the demand with respect to variable dearness allowance sponsored by the Sangh, (ii) whether the aforesaid reference by the Government was invalid and the Industrial Tribunal was incompetent to make the award in question during the currency of settlement arrived at by the Employees' Union which had been duly recognised under the Code of Discipline, (iii) whether the acceptance of the benefits flowing from the aforesaid settlement not only by the members of the majority union but also by the members of the Sangh operated as an implied agreement by acquiescence and debarred the Sangh from rising the demand, (iv) whether it was legal and proper for the Tribunal to link the scheme of dearness allowance with the Ahmedabad Dearness Allowance when the recommendation of the Wage Board set up for the industry in 1968 for adoption of All India Consumer Price Index as the basis of Dearness Allowance had been accepted and was being implemented and (v) whether in fixing the dearness allowance, the Industrial Tribunal was justified in going beyond the region and taking into consideration for the purpose of comparison the dearness

allowance paid by Sarabhai Chemicals and other concerns in other parts of the State.

8. Before dealing with these points, we consider it necessary and proper to refer to a few provisions of the Act.

9. Clauses (p) of Section 2 of the Act defines "settlement" as under :

> 2. (p) 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement had been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

10. An analysis of the above mentioned clause would show that it envisages two categories of settlement - (i) a settlement which is arrived at in the course of conciliation proceeding i.e. which is arrived at with the assistance and concurrence of the Conciliation Officer who is duty bound to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute (see Tata Bata Shoe Co. (P) Ltd. v. D. N. Ganguly ((1961) 3 SCR 308 : AIR 1961 SC 1158 : 1 LLJ 303)) and (ii) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceeding.

11. For the validity of the second category of settlement, it is essential that the parties thereto should have subscribed to it in the prescribed manner and a copy thereof should have been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

12. The consequences of the aforesaid two categories of settlement which are quite distinct are set out in Section 18 of the Act which reads as under :

> 18. (1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
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> (2) Subject to the provisions of sub-section (3), and arbitration award which had become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
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> (3) A settlement arrived at in the course of conciliation proceeding under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -
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> (a) all Parties to the industrial dispute;
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> (b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they are were so summoned without proper cause;
>
> (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors assigns in respect of the establishment to which the dispute relates;

> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

13. A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of sub-section (3) of Section 18 of the Act. We are fortified in this conclusion by a decision of this Court in Ramnagar Cane & Sugar Co. Ltd. v. Jatin Chakravorty ((1960) 3 SCR 968 : AIR 1960 SC 1012 : (1961) 1 LLJ 244) where it was held as follows (SCR pp. 772-73) :

> When an industrial dispute is thus raised and is decided either by settlement or by an award to scope and effect of its operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in clauses (a), (b), (c) and (d) of sub-section (3). Section 18(3)(d) makes it clear that, where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement ... In order to bind the workmen it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to given an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, sub-section (3).

14. Similar view seems to have been held by another Division Bench of this Court in The Jhagrakhan Collieries (P) Ltd. v. Shri G. C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur ((1975) 3 SCC 613 : 1975 SCC (L&S) 63).

15. The legal position emerging from the afore-mentioned provisions of the Act being clear, we now proceed to tackle the questions set out above.

16. As the first two questions are inseparably linked up, we propose to deal with them together. Although, prima facie there seems to be considerable force in the Sangh's stand that paras 2.3, 3.1, 3.2 and 3.3 of the aforesaid agreement of December 14, 1973 arrived at between the Employees' Union and the appellant Company related only to the special pay and did not cover the Sangh's demand for variable dearness allowance linked to the Ahmedabad cost of living index, we do not consider it necessary to go into this question, as the said agreement not having been arrived at during the course of a conciliation proceeding, it could not, according to Section 18(1) of the Act bind any one other than the parties thereto. A fortiori, the fact that the Employees' Union which had been duly recognised under the Code of Discipline arrived at the aforesaid agreement with the

appellant Company could not operate as a legal impediment in the way of the Sangh (which was not a party to the agreement) to raise a demand or dispute with regard to the variable dearness allowance linked to Ahmedabad cost of living index or affect the validity of the reference by the Government or the jurisdiction of the Industrial Tribunal to go into the dispute. The conclusion that a minority union can validly raise an industrial dispute gains support from Section 2(k) of the Act which does not restrict the ambit of 'industrial dispute' to a dispute between an employer and a recognised majority union but takes within its wide sweep any dispute or difference between employer and workmen including a minority union of workmen which is connected with employment or terms of employment or conditions of labour of workmen as well as the observations made by this Court in Workmen v. M/s. Dharampal Premchand (Saughandhi) ((1965) 3 SCR 394 : AIR 1966 SC 182 : (1965) 1 LLJ 658).

17. It may also be relevant to mention in this connection that both the Counsel for the Employees' Union and the Counsel for the appellant Company admitted before the Industrial Tribunal that the aforesaid agreement had been terminated by two months' notice (see p. 39 of the Industrial Tribunal's Award). We have, therefore, no hesitation in holding that neither the Sangh was precluded from raising the demand or the dispute, nor was the Government debarred from making the reference nor was the Industrial Tribunal's competence to go into the dispute and make the award affected in any manner. The first two questions are decided accordingly.

18. Re Question 3 - This question is no longer res integra. In Jhagrakhan Collieries (P) Ltd. v. Shri G. C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (supra), Sarkaria, J. speaking for the Bench observed that (SCC p. 619, para 17) -

> an implied agreement by acquiescence, or by conduct such as acceptance of a benefit under an agreement to which the worker acquiescing or accepting the benefit was not a party, being outside the purview of the Act, is not binding on such a worker either under sub-section (1) or under sub-section (2) of Section 18. It follows, therefore, that even if 99% of the workers have impliedly accepted the agreement arrived at by drawing V.D.A. under it, it will not - whatever its effect under the general law - put an end to the dispute before the Labour Court and make it functus officio under the Act.

19. Accordingly, the theory of implied agreement by acquiescence sought to be built up on behalf of the appellant on the basis of the acceptance of the benefits flowing from the agreement even by the workmen who were not signatories to the settlement is of no avail to the appellant Company and cannot operate as an estoppel against the Sangh or its members.

20. Re Question 4 - It is a matter of common knowledge that the spiral of prices has been constantly rising and the basket of goods and services has been costing more and more day after day since the outbreak of the Second World War in September, 1939. It is equally well known and indeed is not disputed that in the relevant years the prices of essential commodities and cost of living have been comparatively higher at Mithapur than at other places in the district like Jamnagar, Dharangadhra, Porbandar, Bhavnagar etc. and the appellant Company had not been maintaining uniform standard of dearness allowance and had been paying higher dearness allowance to the workmen in its Head Office at Bombay than to its workmen at Mithapur. The statistics extracted from various annual reports etc. exhibited in the case [particularly Exhibit 15(6)] go to show that the appellant Company which was established more than 40 years ago besides being a highly integrated chemical complex based on the solar evaporation of sea water in India is the largest solar salt producing concern in the

country. The statistics also show that production of soda ash in diverse forms by the appellant Company for the relevant years is considerably higher than the combined production of soda ash of Dharangadhra Chemicals and Saurashtra Chemicals - the two other concerns in the Saurashtra region. The statistics also establish that there is no other heavy chemicals concern in the region which can be favourably compared to the appellant Company in so far as the nature and extent of business, capital outlay, percentage of gross and net profits, strength of labour force, reserves, dividends on equity shares, prospects of future business are concerned. Again Chart [Ex. 13(26)] shows that the percentage of wages in the appellant Company is the lowest amongst the even companies listed therein. Considering all the relevant factors which are to be borne in mind in fixing the dearness allowance, it is evident that the appellant Company holds a unique position in heavy chemicals in the region. It is in these circumstances that the Industrial Tribunal was constrained to turn to similar industries in Gujarat and found in the light of the aforesaid guiding factors that Sarabhai Chemicals, Baroda was the nearest similar industry which could legitimately serve as a comparable concern. The statistics also establish that besides Sarabhai Chemicals, Baroda, Anil Starch, Ahmedabad, Alembic Chemicals Works, Baroda, Atul Products, Bulsar and Ahmedabad Manufacturing and Calico Printing Co. Ltd. which are included in the list of heavy chemical factories covered by the Wages Board were paying 100% of Textile Dearness Allowance to its workmen. It is also evident from Exhibit 23 that the total pay packet paid to Mithapur workers much less as compared to the total pay packet of the workers in other chemical and pharmaceutical companies alluded to in Exhibit 23. The material on the record also makes it abundantly clear that the appellant Company has been making huge profits over the years and its financial position is so stable that it could not only give variable dearness allowance on the basis of what was being paid to the workmen in the textile industry by could pay even higher allowance as was being paid to its workmen in the Head Office at Bombay. The Tribunal was, therefore, Justified in linking the dearness allowance in question to the Textile Dearness Allowance paid to the industrial workers at Ahmedabad which is based on the Report of Family Living Survey among Industrial Workers at Ahmedabad, 1958-59, compiled as a result of the joint investigation carried on in a rational and scientific manner by several institutions viz. Labour Bureau, Ministry of Labour and Employment, Government of India, Technical Advisory Committee on Cost of Living Index Numbers consisting of representatives of the Ministry of Labour and Employment, Food and Agriculture, Finance, Planning Commission, the National Sample Survey Directorate, the Department of Statistics (C.S.O.), the Indian Statistical Institute and the Reserve Bank of India etc. leading to the construction of Consumer Price Index Number for the working class which was accepted as reliable by this Court in Ahmedabad Mill Owners' Association v. The Textile Labour Association ((1966) 1 SCR 382 : AIR 1966 SC 497 : (1966) 1 LLJ 1). We are, therefore, of the opinion that notwithstanding the implementation of the recommendations of the Wage Board, there was nothing wrong about the linking of the scheme of the dearness allowance with the Ahmedabad Cost of Living Index Number known as Textile Dearness Allowance as before the revision in 1974.

21. Re Question 5. - This takes us to the determination of the last question. The decision of this Court in Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen ((1969) 2 SCR 113 : AIR 1969 SC 360 : (1969) 1 LLJ 751, 758) no doubt shows that in fixing wages and dearness allowance, the industry-cum-region formula is inter alia to be kept in view. At the same time, it had to be borne in mind that there can be no comparison between a small struggling concern and a large flourishing unit. It follows, therefore, that when there is a large disparity between the two concerns engaged in the same line of business in a region with which the Industrial Court is dealing, it is not safe to fix the same wage structure for the large flourishing concern of long standing as obtains in a small struggling concern (see French Motor Car Company Ltd. v. Their Workmen (1963 Supp 2 SCR 168

: AIR 1963 SC 1327 : (1962) 2 LLJ 744)). It cannot also be lost sight of that with the march of time, the narrow concept of industry-cum-region is fact changing and too much importance cannot be attached to region. The modern trends in industrial law seem to lay greater accent on the similarity of industry rather than on the region. It was observed by this Court in Workmen v. New Egerton Woollen Mills ((1969) 2 LLJ 782 : (1969) 18 FLR 228 : (1967-68) 32 FJR 182) that where there are no comparable concerns in the same industry in the region, the Tribunal can look to concerns in other industries in the region for comparison but in that case such concerns should be as similar as possible and not disproportionately large or absolutely dissimilar. On the parity of reasoning, it is reasonable to conclude that where there are no comparable concerns engaged in similar industry in the region, it is permissible for the Industrial Tribunal or Court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the State having similar economic conditions.

22. As in the instant case there was no comparable concern engaged in the line of business similar to that of the appellant Company in the Saurashtra region, the Industrial Tribunal did not, in our opinion, commit any error in taking into consideration for the purpose of comparison the dearness allowance paid by Sarabhai Chemicals and other concerns of the like or approximately like magnitude in other parts of the State of Gujarat.

23. For the foregoing reasons, we do not find any force in this appeal which is dismissed with costs quantified at Rs. 2000.

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