Philips India Ltd.

Vs

Labour Court, Madras and Others

And

State Bank of India

Vs

Central Government Labour Court and Others

Civil Appeals Nos. 833-834 (NL) and 835-836 (NL) of 1976

(D. A. Desai, V. Khalid JJ)

26.03.1985

JUDGMENT

V. KHALID, J. -

1. What is the rate of overtime allowance admissible to the employees of the two appellants working in their establishments situated in the State of Tamil Nadu is the only question raised in these appeals by special leave ?

2. M/s. Philips India Ltd. - the appellant in the first batch of appeals - a company incorporated under the Companies Act has an establishment in the State of Tamil Nadu. This establishment is governed by the Tamil Nadu Shops and Establishments Act, 1947 ('Act' for short). According to the practice followed by the company, the employees of the establishment had to render service for 39 hours a week, made up of 7 hours per day from Monday to Friday and 4 hours on Saturday. Effective from March 29, 1965, when the company switched over to five days' week, it still retained the total number of working hours per week at 39 by extending the working hours from Monday to Thursday at 7 3/4 hours and 8 hours on Friday. Thus the total working hours per week remained constant at 39. The company also introduced the rate of overtime payment at 1 1/2 times the ordinary wages for work done over and above the maximum number of working hours per week as well as for working on holidays. This rate was admissible for overtime work done beyond 39 hours per week but this was subject to an important condition that whenever the total working hours exceed either 8 hours per day or 48 hours per week, the employees were entitled to overtime at twice the ordinary wages as mandated by Section 31 of the Act.

3. State Bank of India ('Bank' for short), the appellant in the seconds batch of appeals, paid overtime allowance at the rate as awarded by the National Industrial Tribunal (Bank Disputes) popularly known as Desai Award. The Tribunal fixed the working hours not exceeding 6 1/2 hours a day from Monday to Friday and not exceeding 4 hours a day on Saturday. After thus fixing working hours at 36 1/2 per week, the Tribunal proceeded to give direction about rate of overtime allowance admissible to the employees governed by award. Modifying the rates as awarded by the Shastri

Award, the Tribunal directed that the rate of overtime allowance would be 1 1/2 times the wages as explained in the relevant portion of the award for every quarter of an hour of overtime work done for which payment has to be made. (See para 10.46 of the Desai Award.)

4. Eleven employees of the company filed Claim Petition No. 329 of 1971 in the Labour Court at Madras under Section 33-C(2) of the Industrial Disputes Act, 1947 (I.D. Act for short), inviting the Labour Court to compute the monetary benefit in respect of overtime allowance for the work done beyond the prescribed hours of work per week as provided in Section 31 of the Act. In other words, they claimed that in view of the provision contained in Section 31 of the Act, the employees of the company working in the establishment at Madras are entitle to overtime wages at double the rate of ordinary wages for work done in excess of 39 hours per week and not at 1 1/2 times the rate of ordinary wages as is being done by the company.

5. Another Claim Petition No. 306 of 1971 was moved for identical relief by some other employees of the company.

6. Similarly three employees of the State Bank of India filed three separate Claim petition Nos. 19, 20 and 21 of 1964 before the Central Government Labour Court, Madras praying for identical relief on almost identical grounds. In other words, they claimed overtime wages at double the rate of ordinary wages as prescribed in Section 31 of the Act.

7. Though the matters were before two separate Labour Courts and were decided at different intervals, both the Labour Courts held that Section 14 of the Act does not prescribe number of working hours per day but it merely specifies maximum number of working hours that can be introduced by an employer in an establishment governed by the Act. But once the employer chooses to prescribe working hours per day or total numbers of working hours per week less than permissible under Section 14, the rate of overtimes allowances as prescribed in Section 31 would be applicable to the workmen notwithstanding the fact that the prescribed number of working hours per day or total number of working hours per week were less than the maximum which the statute permitted. Accordingly, both the Labour Courts computed the monetary benefit by granting overtime allowance at the rate of double the ordinary wages and the difference between what was paid by the employer in each case at 1 1/2 times the ordinary wages and what became payable as per the Court's order was directed to be paid to each employee.

8. The Bank and the company filed in all five writ petitions questioning the correctness of the two common orders made by the two Labour Courts, under Article 226 of the Constitution in the High Court of Judicature at Madras. All the five writ petitions came up before a learned Single Judge of the Madras High Court who was of the opinion that there was a conflict in the matter of interpretation of Sections 14 and 31 of the Act in two decisions of the same court being (i) Railway Employees' Co-op. Bank Ltd. v. Labour Court ((1960) 2 LLJ 215 (Mad HC) and (ii) K. P. V. Shaik Mohd. Rowther & Co. v. K. S. Narayanan ((1972) 2 LLJ 385 (Mad HC) and therefore he referred the petitions to a Division Bench. All the writ petitions were accordingly heard by a Division Bench of the same High Court.

9. The High Court took notice of the fact that the Act does not define overtime work which according to the High Court means work done beyond the normal working hours in any establishment to which the Act applies. The High Court then proceeded to observe that the proviso to Section 14(1) only lays down that overtime wages may be paid for the work done in excess of the normal working hours. The High Court then held that once the employer prescribed daily working

hours as well as the weekly total, work rendered in excess of the prescribed working hours would constitute overtime work and when the statute prescribe the rate of overtime work, it is obligatory upon the employer to make payment at the statutory rate. Section 50 of the Act was called in aid to observe that if the existing rights and privileges of an employee in any establishment are more favorable to him than those created by the Act, the same were preserved. Accordingly, it was held that even if Section 14(1) was interpreted as prescribing normal working hours and that work in excess of the normal working hours so prescribed would constitute overtime which would attract Section 31, yet once the employer prescribed hours less than the statutorily permissible working hours, any work done beyond the prescribed working hours would be overtime work and the rate of overtime work should be governed by Section 31 of the Act. The High Court accordingly discharged the rule and confirmed the orders made by both the Labour Courts. Hence these appeals by special leave.

10. It is not in dispute that the working hours in the Bank were governed by Desai Award. So also the rate of overtime allowance was governed by the Desai Award till the Labour Court ruled to the contrary. Similarly, the company had prescribed its own working hours and provided for its own rate of payment for overtime work and the payment was made accordingly till the Labour Court ruled to the contrary. It is of importance to note that in both the cases the working hours were less than one maximum permissible under Section 14 of the Act. It is equality important to note that the rates of payment for overtime work in both the establishments prescribed by them were for the period of overtime work in excess of their own prescribed working hours and up to the statutory limit prescribed in Section 14 of the Act. It is admitted that where the overtime work exceeded the statutorily prescribed limit, the rate of payment for overtime work was the one statutorily prescribed in Section 31 of the Act. Therefore, the contours of controversy is on a correct interpretation of the relevant provisions of the Act, what would be the rate of overtime allowance admissible to the employees of the establishments of the employer in each case situated in Tamil Nadu State for overtime work done in excess of the prescribed number of working hours by the employer and up to the number of working hours statutorily permitted. In other words, what ought to be the rate of overtime allowance for the work done in excess of 39 hours per week in the case of the company and 36 1/2 hours per week in the case of the Bank and up to 48 hours per week in each case.

11. At the outset let us notice the relevant provisions of the Act. Section 14 provides for daily and weekly hours of work. It reads as under :

> 14. Daily and weekly hours of work. - (1) Subject to the provisions of this Act, no person employed in any establishment shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week :

Provided that any such person may be allowed to work in such establishment for any period in excess of the limit fixed under this sub-section subject to payment of overtime wages, if the period of work, including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week.

Section 31 prescribes rate of wages for overtime work. It reads as under :

> 31. Wages for overtime work. - Where any person employed in any establishment is required to work overtime, he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages.

Explanation. - For the purpose of this section, the expression "ordinary rate of wages" shall mean such rate of wages as may be calculated in the manner prescribed.

12. The first question which must engage our attention is : whether Section 14 upon its true interpretation prescribes daily working hours in an establishment as also total number of working hours per week for which work may be taken in any week without incurring the liability to pay higher rate of wages of overtime work. A bare perusal of Section 14(1) would show that it prescribes a ceiling on working hours. Obviously, it cannot be interpreted to mean that the employer must provide maximum number of working hours as therein set out in the establishment governed by the Act. It is open to the employer to prescribe working hours for a day and total number of working hours for a week lees than the ceiling prescribed by the statute. Section 14 puts an embargo on the employers' right to prescribe working hours beyond therein prescribed subject however, to its liability to pay higher rate of wages for the overtime work done. The proviso however, makes it very clear that the upper limit fixed by the substantive provision can be exceeded up to the ceiling fixed by the proviso and not beyond in any case. This is a prohibition in public interest for safeguarding the health which may be adversely affected by fatigue, stress and strain consequent upon continuous work daily or for total number of hours in a week. This simultaneously ensures a weekly off day even if the employer prescribes number of working hours as provided in Section 14(1). Section 14(1) therefore, upon its true construction permits an employer to prescribe daily working hours not exceeding 8 hours a day and total number of working hours at 48 in a week. By the proviso, the employer can take overtime work if the working hours do not exceed 10 hours in any day and 54 hours in a week. The proviso makes it abundantly clear that any work taken in excess of the working hours prescribed in the main part of sub-section (1) of Section 14 would constitute overtime work. Eight hours a day and 48 hours in a week would constitute normal working hours. Anything in excess of 8 hours a day but not exceeding 10 hours a day and 48 hours a week and not exceeding 54 hours a week will constitute overtime work. This becomes clear from the language used in the proviso when it says that the bar imposed by sub-section (1) of Section 14 may be breached to the extent provided in the proviso. The expression used is that "no such person" meaning thereby that person, who would be required to work 8 hours a day or 48 hours a week, may be allowed to work in excess of that limit subject to payment of overtime wages. Eight hours a day and 48 hours a week constitute normal time of work at ordinary wages and any work in excess of the time prescribed for work would attract the liability to pay overtime wages. Undoubtedly, the High Court was right in saying that the expression 'overtime' is not defined in the Act but when Section 14(1) prescribes permissible hours of work both daily and weekly and makes it obligatory to pay overtime wages for work in excess of the permissible hours of work, the expression 'overtime' renders itself easy of understanding. Overtime work attracts the liability of paying overtime wages.

13. 'Over' is a prefix qualifying the expression 'time' which is well-understood. 'Over' as a prefix generally indicates excessive or excessively; beyond an agreed or desirable limit. There are more than 150 expressions to which 'over' is added as a prefix. One such expression is 'overtime'. Collins English Dictionary reprinted and updated in 1983 gives the meaning of the expression 'overtimes' as (i) work at regular job done in addition to regular working hours ... (iii) time in excess of a set period ... (v) beyond the regular or stipulated time (vi) to exceed the required times for (say a photographic exposure). Webster's Third New International Dictionary gives the meaning of the expression 'overtime' as (i) time beyond or in excess of a set limit; working time in excess of a minimum total set for a given period; in excess of a set time limit or of the regular working time. Therefore, even though the expression 'overtime' is not defined in the Act, its connotation is unambiguous. In no uncertain terms, it means in the context of working hours, period in excess of the prescribed working hours.

14. The question really is not what is understood by the expression 'overtime', but what is the admissible rates of payment for overtime work. If the statute permits employment for a certain number of hours of work and mandates a higher rate of wages for work done in excess of the prescribed hours of work, obviously every employer to whom the Act applies will have to pay overtime wages at the rates prescribed in the statute. Accepting what the High Court has held that Section 14(1) merely prescribes the ceiling on working hours and casts an obligation to pay overtime wages as made obligatory in the proviso, the question is what period of work shall be treated as overtime work so as to be able to claim overtime wages at statutory rate. Keeping out of consideration for the time being the working hours prescribed by the two appellants, take a case in which the working hours are prescribed as permitted by Section 14(1). Functionally translated if an establishment has prescribed working hours as permitted by Section 14(1) i.e. 8 hours a day and 48 hours a week, the employees of such establishment would be entitled to overtime wages as directed by the proviso and at the rate prescribed in the statute. To some extent, the proviso in this case has made a positive specific provision simultaneously carving out an exception to Section 14(1). The proviso first permits work in excess of the prescribed number of hours but it is hedged in with the condition to pay overtime wages. The expression 'such person' in the proviso refers to person who is required to work for eight hours a day and forty-eight hours a week. The expression 'such establishment' in the proviso would indicate that establishment which has prescribed the working hours as set out in the main part of the section namely, 8 hours a day and 48 hours in a week. In such an establishment overtime work for such a person would only be that work which would be done in excess of either 8 hours a day or 48 hours a week. Such overtime work has to be compensated at the rate prescribed in Section 31 which provides that where any person employed in an establishment is required to work overtime, he shall be entitled in respect of such overtime work to wages at twice the ordinary rates of wages. The expression 'such overtime' can refer to one contemplated by the proviso to Section 14(1) and no other. Reading Sections 14 and 31 together, a scheme emerges. The statute first puts an embargo on the power of the employers to prescribe normal working hours, not exceeding 8 hours per day and 48 hours per week. The proviso makes it obligatory to pay overtime wages for work in excess of the prescribed hours as set out in Section 14(1). Such overtime work has to be compensated by payment of overtime wages. And the rate of overtimes wages is prescribed in Section 31 namely, at twice the ordinary rate of wages. The employer would ordinarily prescribe wages for normal working hours. Once the wages for normal working hours per day and cumulative for the week or month are prescribed, they could be styled as ordinary rate of wages. Thus the employer will be liable to pay to the employee wages at the ordinary rates of wages for prescribed hours of work as permissible in Section 14(1) and whenever he takes work in excess of the prescribed hours of work the rate for overtime work prescribed by Section 31 would come into play. Sections 14 and 31 provide the whole scheme of prescribing normal hours of work to be paid for as ordinary rates of wages. They permit the employer to take work in excess of the normal working hours up to the ceiling as set out in the proviso to Section 14(1) which makes it obligatory to pay overtime wages for work in excess of the normal working hours and the rate for the same is prescribed statutorily in Section 31.

15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (see Attorney-General v. Bastow ((1957) 1 All ER 497) and as a 'settled rule' (see Popatlal Shah v. State of Madras (1953 SCR 667 : AIR 1953 SC 274). The only recognized exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lords Coke laid down that : "it is the most natural

and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers" (Quoted with approval in Punjab Beverages Pvt. Ltd. v. Suresh Chand ((1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165)).

16. Applying this well-laid canon of construction, the expression 'rate of overtime wages' in Section 31 has to be understood and interpreted in the light of the provision contained in Section 14(1) read with its proviso.

17. By reference to the statutory provisions and unhampered by precedents, it becomes clear that when normal working hours as permitted by Section 14(1) are prescribed by an employer for his employees working in the establishment to which the Act applies, wages for work in excess of such prescribed hours of work will have to be paid at the rate prescribed in Section 31. The framers of the statute provided the wholes scheme by first putting an embargo on the maximum number of working hours payable at ordinary rates and then permitting overtime work up to the ceiling, simultaneously making it obligatory to pay overtime wages at the rate prescribed in the very statute.

18. The next question then is : where the employers prescribes working hours less than the maximum permissible in the statute, does he incur the obligation to pay overtimes wages at the rates prescribed in the statute ? If the employer were to contend that even though it has prescribed normal working hours less than that permitted by the statute, and therefore, it would not be liable to pay any overtime wages for the work taken in excess of its own prescribed rates of wages, the prescription of working hours less than the maximum permissible under the statute would be a facade because thereby the employer would enable itself to increase the working hours without incurring any liability to pay overtime wages. Ordinarily, therefore, where an employer prescribes normal working hours less than the maximum permitted by the statute and if it seeks to take work in excess of its own prescribed number of hours of work, the employer renders itself liable to pay overtime wages at any rate higher than the ordinary rate of wages. As explained earlier, prescribed working hours is the normal time of work and anything in excess of it is overtime work. It was not disputed on behalf of the employer that any work taken for a period in excess of the working hours prescribed by both the appellants-employers would make it obligatory for the employer to pay overtime wages and necessarily that must be higher than the ordinary rate of wages prescribed for normal working hours. This is not in dispute. Both the appellants-employers have prescribed rate of overtime wages at 1 1/2 times the ordinary wages for the period in excess of the prescribed working hours and up to the maximum permissible under the Act. Both concede that beyond the maximum number of working hours permitted by Section 14(1), there is no option with the employer but to pay overtime wages at the rate prescribed in Section 31. It is not a case as was sought to be canvassed in Indian Oxygen Ltd. v. Their Workmen ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106), where the employer contended that even though it had prescribed total working hours per week at 39 hours and as the establishment was governed by the Bihar Shops and Establishments Act, which permits maximum number of hours of work at 48 hours per week and provides for double the rate of ordinary wages for the work done beyond 48 hours per week, it was not liable to pay any overtime wages at a rate higher than ordinary wages for the excess work taken beyond 39 hours per week and up to the ceiling of 48 hours per week. This Court negatived this submission and held that once the employer fixed hours of work less than the maximum prescribed in the statute, the provisions both as to maximum hours as well as rate of overtime allowance beyond the maximum hours prescribed by the statute has no relevance and cannot be relied upon. But as the employer has prescribed total working hours at 39 hours per week, any work taken in excess of the prescribed hours of work would be overtime work and that if as contended by the employer, that it was entitled to take any such overtime work at ordinary rate of wages, it would be

paying no extra compensation at all for the work done beyond the prescribed hours of work and the company would be in that case indirectly increasing the hours of work and consequently alter its conditions of work. This extreme argument was rejected and the Court upheld the award of the Tribunal that for the period in excess of the prescribed working hours and up to the ceiling of 48 hours, the employer would be liable to pay overtime wages at the rate of 1 1/2 times the ordinary wages and dearness allowance payable to them. Let it be noted that court did not interfere with the award by saying that once overtime work is taken irrespective of maximum fixed in the statute, the statutory rate would be attracted. Undoubtedly, therefore, this decision supports the submission that where the employer prescribed working hours per day or total number of hours of work per week less than the maximum permissible under the statute, any work taken in excess of the prescribed hours of work would be overtime work and the employer would be liable to pay some compensation but not necessarily the statutory compensation which would be attracted only when the employer takes work in excess of the maximum hours of work prescribed by the statute.

19. Learned counsel for the respondent contended that the trend of decisions is in favour of holding that the rate of payment for overtime work prescribed by the statute would be admissible even where the employer prescribed total number of working hours less than the maximum permissible under the statute. Reliance was placed on A. K. Basu v. I. C. I. (India) Pvt. Ltd. ((1975) 1 LLJ 239 (Cal HC) wherein a Division Bench of the Calcutta High Court after referring to the provisions of the West Bengal Shops and Establishments Act, 1963 held that once the employer prescribed total number of working hours at 36 per week and the statute permitted total number of working hours at 48 hours a week, according to the dictionary meaning, the employee has worked overtime. Once he was called upon to work beyond 36 hours, the rate of overtime payment would be as prescribed in the statute. In reaching this conclusion, reliance was placed on the decision of the Indian Oxygen Ltd. ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106). We have already explained the ratio of the decision of this Court in the case of Indian Oxygen Ltd. ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106) and it does not bear out the observations of the High Court. Reliance was also placed on Carew & Co. Ltd. v. Sailaja Kanti Chatterjee ((1972) 2 LLJ 359 (Cal HC). A learned Single Judge of the Calcutta High Court has taken the same view after distinguishing the decision in the case of Indian Oxygen Ltd. ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106). The reasons which appealed to the learned Judge to distinguish ratio of the decision in the case of the Indian Oxygen Ltd. ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106) failed to impress us. In fact, the decision in that case clearly rules that the statutory rate of overtime wages has relation only to the maximum number of hours of work permissible under the statute and any work in excess thereof.

20. Reverting to the facts of both the cases, it is undoubtedly true that Section 14(1) does not prescribe normal hours of work but merely put an embargo on the employer's right to prescribe daily and weekly hours of work beyond permissible under the statute. But where the statute itself prescribes such permissible hours of work and also makes it obligatory to pay overtime wages and prescribes rates, it can only mean work in excess of the maximum hours of work permissible under the statute which alone would attract the rate of payment for overtime work. 'Such overtime work' in Section 31 would and could only mean overtime as understood in the proviso to Section 14(1) which has reference to maximum hours of work permitted by Section 14(1). This is how the statute has to be read as a whole.

21. We must not be understood to say that where the statute prescribes maximum number of daily and weekly hours of work and the employer prescribes less than the permissible hours of work, work taken in excess of such prescribed number of hours

> will not be overtime work, or that the employer would not be liable to pay wages for such work at a rate higher than the ordinary wages. An attempt to so contend was made before this Court in Indian Oxygen Ltd. v. Their Workmen ((1969) 1 SCR 550 : AIR 1969 SC 306 : (1969) 1 LLJ 235 : 35 FJR 106). That contention was repelled and this Court held :
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> ... If the company were asked to pay at the rate equivalent to the ordinary rate of wages for work done beyond 39 hours, but not exceeding 48 hours a week, it would be paying no extra compensation at all for the work done beyond the agreed hours of work. The company would in that case be indirectly increasing the hours of work and consequently altering its conditions of service.

The only question in such a situation would be as to what ought to be the rate of wages payable. Such a rate must be the subject-matter of agreement between the parties or an award by industrial adjudication. Any work taken for a period in excess of the maximum permissible under the statute would indisputedly attract the statutory rate of overtime wages.

22. Both the employers have prescribed the rate of overtime wages at 1 1/2 times the ordinary wages for overtime work in excess of its prescribed hours of work and up to the maximum permissible under Section 14(1). Therefore, they cannot be accused of indirectly extending their working hours. Both employers conceded that for work for a period in excess of the maximum permissible hours of work under the statute must be paid for and is being paid for at the rate prescribed in the statute. In our opinion, therefore, the High Court was in error in directing the employers to pay for overtime work in excess of the prescribed hours of work and up to the maximum permissible under Section 14(1) at double the ordinary wages by invoking Section 31. For these reasons, both these sets of appeals will have to be allowed and the common judgment of the High Court governing all the five writ petitions as well as the common orders of both the Labour Courts will have to be quashed and set aside and the applications made by the employees under Section 33-C(2) of the I.D. Act will have to be dismissed.

23. Accordingly, all the appeals in both the batches succeed and are allowed and the judgment of the High Court from which these appeals arise is quashed and set aside as also the applications made by various employees under Section 33-C(2) of the I.D. Act are dismissed.

24. While granting leave this Court directed that the appellants irrespective of the decision in these appeals will have to pay costs to the respondents in one set only. In accordance with this direction, the appellants shall pay costs to the respondents in one set only.

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