

Workmen Employed By M/S. Indian Oxygen Ltd.

Vs

M/S. Indian Oxygen Ltd.

Civil Appeal No. 806 of 1982

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

02.05.1985

JUDGMENT

D. A. DESAI, J. -

1. In exercise of the power conferred by Section 4(k) of the U.P. Industrial Disputes Act, 1947 ('Act' for short) the Government of Uttar Pradesh by its order dated May 23, 1975 referred the following dispute to the Industrial Tribunal for adjudication. The reference is in Hindi. Agreed translation of the industrial dispute referred for adjudication reads as under :

Whether, the variable dearness allowance payable by the employers to their workmen should be revised and it should be linked with the consumer price index for industrial workers at Kanpur computed by Labour Bureau, Simla ? If yes, then from what rate (sic) and with what other details.

2. There are two rival unions of the workmen employed by the Indian Oxygen Ltd. ('Company' for short) in its industrial undertaking at Kanpur. They are the Indian Oxygen Karamchari Union ('Karamchari Union' for short) and the Indian Oxygen Sharamik Sangh ('Sharamik Sangh' for short). There is a federation of trade unions formed at various centres where the Company has its industrial undertakings. Sharamik Sangh is affiliated to the federation. Karamchari Union claims to represent the workmen employed by the Company at Kanpur. The demand and the consequent industrial dispute which led to the reference were espoused by Karamchari Union.

3. The Karamchari Union in its statement of claim stated that the Company is a unit of the multinational British Oxygen Company. The Indian Unit of the multinational corporation operates under the name and style of M/s. Indian Oxygen Ltd. The industrial activities of the Company comprises manufacture and sale of industrial and medical gases etc. It was stated that while the wage structure is in respect of workmen employed by the Company all over the country the dearness allowance formula varies from centre to centre. Briefly it was stated that the workmen of the Company employed at Bombay, Madras, Hyderabad, Bangalore and Delhi are in receipt of higher dearness allowance compared to the workmen employed in Kanpur Unit. The immediate provocation for raising the demand was an award by the Industrial Tribunal, Delhi by which the dearness allowance of the workmen employed in Delhi unit was linked to consumer price index for Delhi prepared by the Labour Bureau, Simla which resulted in a substantial increase in the dearness allowance available to the workmen posted at Delhi. Soon after the award was published the Karamchari Union submitted a demand on January 7, 1975 for revising the rate of dearness allowance for workmen employed in Kanpur Unit and as there was no adequate response from the employer, the matter was taken into conciliation. The Company in its attempt to thwart the demand

being pursued entered into a settlement with the Sharamik Sangh in respect of the dearness allowance and then approached the Labour Commissioner, Kanpur for registering the settlement. Failing to obtain the registration, the Company unilaterally enforced the new scheme of dearness allowance linked to the all-India average consumer price index prepared by Labour Bureau, Simla. The Karamchari Union did not accept the revised formula, and pressed its demand that the dearness allowance should be linked to all-India consumer price index number prepared by Labour Bureau, Simla for Kanpur centre, after adopting the linking factor as has been done in the award by the Industrial Tribunal at Delhi. The conversion ratio was suggested at 4.83 linked to January 1970 index number.

4. The Company consistent with the employer culture put forth number of preliminary objections so as to delay the adjudication of the demand. All the preliminary objections failed as per the decision of this Court in *Indian Oxygen Ltd. v. Workmen* ((1979) 2 SCR 911 : (1979) 3 SCC 291 : 1979 SCC (L&S) 271). After the matter went back for adjudication on merits it was contended on behalf of the Company that the settlement arrived at between the Sharamik Sangh and the Company would be binding on the members of the Karamchari Union and the Tribunal should not adjudicate the dispute on merits. This settlement has been stigmatised by this Court to be a collusive one. (See page 920). It was further contended that the Company is desirous of linking dearness allowance to all-India average consumer price index for working class with base 1960 = 100 and that the Tribunal should avoid accepting a demand of a few workmen where a majority of the workmen have accepted and are satisfied with the revised formula introduced by the Company.

5. The Company employs 5400 workmen in all its establishments all over the country. Out of total strength of 5400 workmen, 3030 are employed in gas manufacturing unit. The employment strength in Kanpur Unit is roughly about 200. It is not in dispute that the basic wages of all workmen employed all over the country by this Company are occupation-wise uniform but the dearness allowance paid to workmen differs or varies from place to place. This ought to be so as will be presently pointed out.

6. Prior to 1975 dearness allowance to the workmen employed in the units of the Company in North-Eastern Zone i.e. in the States of West Bengal, Bihar, Orissa, U.P., Delhi and Punjab was linked to the consumer price index number (middle class) prepared by the Bengal Chamber of Commerce for Calcutta. It may be mentioned that the Bengal index has been discontinued since 1975. It is important to note that by the two awards of the Industrial Tribunal, the office staff and the workmen employed by the Company at Delhi are being paid dearness allowance linked to consumer price index compelled by Labour Bureau, Simla for Delhi. Subsequently by a decision of this Court in *Govardhan Prasad v. Indian Oxygen Ltd.* (AIR 1984 SC 27 : (1984) 1 SCC 144 : 1984 SCC (L&S) 100) 10 workmen employed by the Company stationed at Ghaziabad were required to be paid dearness allowance to the same extent and in the same manner as was being paid under the awards of the Industrial Tribunal to the workmen of the Company at Delhi.

7. Before we delve into the narrow contentions raised in this behalf we would remove the gloss over the submission that the attempt of the Company having all-India operation, is to introduce uniformity in the matter of dearness allowance payable to its workmen all over the country. Uniformity, to an unformed mind, appears to be very attractive. But let it not be forgotten that sometimes this uniformity amongst dissimilar persons becomes counter-productive. Uniformity and equality have to be amongst equals measured by a common denominator. One can appreciate the implementation of the constitutional aspiration of 'equal pay for equal work'. In the matter of basic wages it is a consummation devoutly to be wished. But when it comes to dearness allowance any

attempt at uniformity between workman in such metropolitan areas like Delhi, Bombay, Madras, Calcutta and in smaller centres would be destructive of the concept of dearness allowance. Dearness allowance is directly related to the erosion of real wages by constant upward spiralling of the prices of basic necessities and as a sequel to the inflationary input, the fall in purchasing power of the rupee. It is a notorious phenomenon hitherto unquestioned that price rise varies from centre to centre. Dearness allowance is inextricably intertwined with price rise, it being an attempt to compensate loss in real wages on account of price rise considered as a passing phenomenon by compensation. That is why it is called variable dearness allowance. Any uniformity in the matter of dearness allowance may confer a boon on persons employed in smaller centres and those in big metropolitan areas would be hard hit. Dearness allowance by its very form and name has an intimate relation to the prevailing price structure of basic necessities at the centre in which the workman is employed. Therefore, the claim in the written statement on behalf of the Company that imbued with the equitable principle of introducing uniformity in the matter of dearness allowance, the Company with the easy availability of consent of its protege union Sharamik Sangh introduced a new scheme of dearness allowance linked to the all-India average consumer price index prepared by Labour Bureau, Simla is misleading. The Tribunal rightly observed that it is by now well-settled that dearness allowance to workmen at a particular place should depend upon the place where the workman is working irrespective of the fact that the industrial undertaking in which the workman is employed is a unit of an industrial enterprise having an all-India or inter-State operations. In *Dunlop Rubber Co. (India) Ltd. v. Workmen* ((1960) 2 SCR 51 : AIR 1960 SC 207 : (1959) 2 LLJ 826 : 17 FJR 267), a contention on behalf of the employer that in the case of an all-India concern, it would be advisable to have uniform conditions of service throughout India was repelled observing that "however desirable uniformity may be in the case of all-India concerns, the Tribunal cannot abstain from seeing that fair conditions of service prevail in the industry with which it is concerned". This view to some extent was affirmed in the *Remington Rand of India Ltd. v. Workmen* ((1968) 1 SCR 164 : (1967) 2 LLJ 866 : 33 FJR 133). Leaving aside basic wages in the matter of dearness allowance especially the Court should lean in favour of adjudication of dispute on the principle of industry-cum-region because dearness allowance is linked to cost of living index of a particular centre which has local flavour. If the concept of uniformity on an all-India basis is introduced in the matter of dearness allowance, it would work havoc, because the price structure in a market economy at places like Bombay, Madras, Calcutta, Delhi, Ahmedabad has little or no relation to smaller centres like Kanpur, Varanasi etc. If workmen working in such disparate centres are put on par in the matter of dearness allowance in the name of proclaimed all-india uniformity, not only unequals will be treated as equals but the former would suffer irreparable harm. Such an approach would deal a fatal blow to the well-recognised principle of industrial adjudication based on region-cum-industry developed by courts by a catena of decisions. Realising this situation courts have learned in favour of determination of dearness allowance linked to cost of living index, if available for the centre where the workmen is employed and in the matter of neutralisation on the industry-cum-region principle. The Tribunal having rejected this approach committed on error apparent on the record.

8. At this stage, it is necessary to have some idea of what is consumer price index number, how it is being compiled and what is its relevance in the matter of dearness allowance ? Pursuant to the recommendations of the Planning Commission for the Second Five Year Plan the Labour Bureau, Simla and the Industrial Statistical Organisation of the Government of India took steps to conduct fresh family living surveys among working class and middle class population respectively with a view to constructing the new series of consumer price index numbers. The working class surveys were conducted at 50 selected centres and the middle class surveys at 45 centers; 18 centres being common to both. The work of this survey was commenced in the second half of 1958 and was

concluded by September 1959. One of the centres selected for survey was Kanpur (See Ahmedabad Mill Owners' Association v. Textile Labour Association ((1966) 1 SCR 382 : AIR 1966 SC 497 : (1966) 1 LLJ 1 : 28 FJR 15)).

9. What materials and statistical information enter into the compilation of consumer price index number may be briefly noticed.

10. The consumer price index number for industrial workers (base 1960 = 100) are being compiled and published by the Labour Bureau, Simla every month in respect of 50 industrial centres scattered all over the country. Amongst them is Kanpur. The material collected is through the family surveys of working class families. There are six main groups for which indices for such centre are being compiled besides the general index. They are :

- (i) Food
- (ii) Pan, Supari, tobacco and intoxicants
- (iii) Fuel and light
- (iv) Housing
- (v) Clothing, bedding and footwear, and
- (vi) Miscellaneous

Consumer price index numbers are intended to measure relative temporal (overtime) charges in the price of a fixed basket of goods and services consumed by the index population in a current period in relation to the base period. The index numbers are compiled by using Laspeyres' Formula. Broadly stated this formula makes note of base and current prices for a particular item, quantity consumed of that item during the base period. It would appear that for the compilation of an index, there are three essential requirements namely : (1) weighting diagram which is the relative percentage share of the total consumption expenditure as revealed by the basic family budget enquiry in respect of different items, (2) base prices of the different items which go into the index basket and (3) current prices in respect of each one of the items featuring in the index basket. The weighting diagram for a centre is derived on the basis of the data collected through family budget enquiries which were conducted in the 1958-59 at each one of the 50 centres. The survey was conducted by taking all samples of working class families in each of the 50 centres and the data was collected by interviewing these families. Based on the results of the family budget enquiries, the average expenditure of a family per month on different items of consumption was arrived at. All-India average consumer price index number is a weighted average of the 50 centres' indices. This is compiled and published along with the index number for each centre (Source : Consumer Price Index : An Anatomy, published by Labour Bureau, Simla).

11. It would appear at a glance that there would be a noticeable difference between the consumer price index number for a centre and its weighted average for 50 centres which would be the all-India average consumer price index number, the latter would generally be lower than the former in some cases.

12. Reverting to the demand in this case, the Karamchari Union raised a demand that the variable dearness allowance payable to the workmen should not only be revised but it should be linked with the consumer price index for industrial workers at Kanpur. Then Tribunal by its award directed the employer to pay dearness allowance linked to the all-India consumer price index (1960 = 100) of the Kanpur Centre complied by Labour Bureau, Simla. On the question of neutralisation, the Tribunal directed the calculation in the rate of dearness allowance will remain the same as presently operative and no change is required therein. In reaching this conclusion, the Tribunal committed two manifest errors apparent on the record.

13. The Company introduced as stated in its written statement, a new scheme of dearness allowance linked to the all-India consumer price index prepared by Labour Bureau, Simla. That was a very recent innovation introduced by way of a counter-blast to the demand raised by the Karamchari Union. Prior thereto, it is an admitted position that the workmen at Kanpur were being paid dearness allowance linked to Bengal Chamber of Commerce Index Number. That was unilaterally given up by the Company. There appeared to be at least two valid reasons for scrapping that scheme : one is that since 1975 Bengal Chamber of Commerce Index which was complied for middle class families and was being artificially applied to industrial works has been scrapped. In other words, the index is no more being complied. Secondly, the constituent members of the Bengal Chamber of Commerce had started their business in India long before the present century and most of them were incorporated in England or other Western countries while the Company in the present case has been started a few decades back and therefore, re-induction of the Bengal Chamber of Commerce index Number would not be relevant.

14. On behalf of the Karamchari Union, it was contended that in devising a dearness allowance formula, the region-cum-industry principle should ordinarily be accepted. As pointed that earlier, dearness allowance generally has a local flavour. A man is exposed to the vagaries of the market where he resides and works, even though he may be an employee of a national, multinational or transactional industrial empire. The workman is concerned with the vagaries of price fluctuation in the area in which he resides and works for gain and to which he is exposed. Therefore, the region-cum-industry principle must inform industrial adjudication in the matter of dearness allowance. In *Woolcombers of India Ltd. v. Woolcombers Workers Union* ((1974) 1 SCR 504 : (1974) 3 SCC 318 : 1973 SCC (L&S) 551), this Court following its earlier decision in *Greaves Cotton and Co. v. Workmen* ((1964) 5 SCR 362 : AIR 1964 SC 689 : (1964) 1 LLJ 342 : 26 FJR 311), held that in devising basic wages and dearness allowance structure, industrial adjudication sometimes leans on the industry part of the industry-cum-region formula and at other times, on the region part of the formula as the situation demands. This well-recognised principle of industrial adjudication cannot be given a go-by on the specious plea that the workmen are employed by an industrial undertaking which has an all-India operation. In this case, the Tribunal has overlooked this important principle of industrial adjudication.

15. Before we examine the second manifest error committed by the Tribunal in narrowly constraining the terms of reference, it would be advantageous to briefly recapitulate what relevant consideration have to be kept in view in devising dearness allowance formula. This aspect is no more *res integra*. In *Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen* ((1969) 2 SCR 113 : (1969) 1 LLJ 751 : 35 FJR 337), after reviewing all the earlier decisions, the Court restated the principles on which a fair and just dearness allowance formula must be devised. They are :

1. Full neutralisation is not normally given, except to the very lowest class of employees.

2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
3. The basis of fixation of wages and dearness allowance is industry-cum-region.
4. Employers getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.
5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.

16. We need not examine whether the dearness allowance formula as at present existing is valid according to the principles herein extracted because we are not devising a dearness allowance formula for the workmen working in the industrial undertaking of the Company at Kanpur for the first time. The demand is for upward revision of the dearness allowance formula and its linkage.

17. The terms of reference extracted hereinbefore unmistakably show that the workmen sought upward revision of the variable dearness allowance by linking it to the consumer price index number for industrial workers at Kanpur computed by Labour Bureau, Simla. If the demand is to be granted, the Tribunal was requested to specify the rate and other details. Interpreting this reference the Tribunal observed that the new dearness allowance formula which was in vogue at the time of the reference as being related to all-India average consumer price index number for industrial workers in accordance with the settlement with the Sharamik Sangh which settlement was found to be collusive by this Court yet the Tribunal must proceed on the basis that dearness allowance was being paid to the workmen at Kanpur as per the settlement and that cannot be wished away. This approach overlooks a vital fact that the introduction of the new formula under a collusive settlement led to the demand for revision. The Tribunal rejected the submission that it must examine and devise a new formula in relation to the Bengal Chamber of Commerce Index Scheme which was in vogue before the formula as per the collusive settlement was introduced. If the settlement between the Company which is found to be collusive by this Court is to be the starting point of revision of the dearness allowance formula as has been done by the Tribunal, the conclusion is inescapable that the Tribunal started from a wrong premise and landed itself into an utterly unsustainable conclusion. This is the second apparent error on the face of the record which would impell us to interfere. More so because the genesis of the demand for a revision of the dearness allowance was the collusive settlement. The Tribunal committed a grave error in accepting the settlement as the starting point of the revision.

18. The demand of the Karamchhari Union was that the Tribunal should first take into account, relevant to a certain date, the all-India consumer price index number for Kanpur centre (1960 = 100) and then the index figure should be multiplied by the conversion factor of 4.83 and then dearness allowance should be linked to the figure is worked out. The Tribunal rejected this demand on the ground that in the statement of claim, the Karamchhari Union demanded payment of dearness allowance according to Simla Index Number for Kanpur. The Tribunal took note of the fact of the linking factor but observed that as the same has been discontinued by the Labour Commissioner, U.P., the demand has been essentially for dearness allowance according to the Simla Index for Kanpur. This reasoning manifests an error in approaching, appreciating and evaluating the demand

for revision of dearness allowance.

19. Before we examine the error, let it be made clear that where for a certain industrial centre, a dearness allowance formula is in vogue and it is linked to some consumer price index number, whenever the base year for consumer price index number is changed, a fresh linkage requires a conversion ratio. In the absence of a conversion ratio, the whole scheme falls out of gear and becomes unworkable. To illustrate, in the textile industry, the consumer price index number was compiled on the basis of base year 1939 = 100. The year 1939 was chosen as the year in which the Second World War engulfed the world which completely overhauled the consumer pattern and the prices of essential articles. Over years the price spiral relentlessly moved upward and that too so rapidly that in most of the industries where even though 100% neutralisation was not given by devising a dearness allowance yet the dearness allowance for a given month was occasionally double or treble of the basis wage. This was unjust, unfair and from an economist's point of view, imprudent. Therefore, as pointed out earlier, a fresh survey was undertaken in 1958 with the base year 1960 = 100. A fresh index was compiled and continues to be compiled with 1960 = 100 as base year. In fact, the 1960 = 100 base year is being replaced. We will however, confine ourselves in this appeal to the base year of 1960 = 100. Now if those industrial undertakings in which dearness allowance formula was linked to the base year 1939 = 100 are to be delinked and relinked to the index number compiled on the base year 1960 = 100, before the fresh number is adopted, a linking or a conversion ratio between 1939 = 100 and 1960 = 100 will have to be computed. Only then a fresh linkage can be devised. This very obvious fact has been wholly overlooked by the Tribunal when it merely awarded that the workmen of the Company at Kanpur should be paid dearness allowance linked to the all-India consumer price index number (1960 = 100) for Kanpur Centre compiled by Labour Bureau, Simla. This approach overlooks the linking factor. The rejection of the linking or conversion factor makes the scheme devised by the award unworkable, ineffective and in fact unjust. In this connection, we may refer to the Ahmedabad Mill Owners' Association case ((1966) 1 SCR 382 : AIR 1966 SC 497 : (1966) 1 LLJ 1 : 28 FJR 15) in which this Court after noting the fact that the base year having changed, pointed out that the question of linking factor loomed large and assumed importance. The Court had before it the admitted position that there was only one index existing in Ahmedabad which was based on the new series (1960 = 100) and the old series (1939 = 100) has rightly gone out of existence since it had become antiquated. Two alternatives were submitted to the Court for its consideration. It was submitted that an entirely new scheme of basic wages based not on the pre-War level of 1939, but based on the cost of living of 1960 as the base year be devised and then award dearness allowance in relation thereto. In the alternative, it was submitted that an arithmetical method of linking the old and the new series be devised. The Tribunal had accepted the conversion ratio at 3.17. This was attacked on diverse grounds. After examining the whole gamut of arguments, this Court held that the linking factor of 3.17 was valid and correct.

20. Approaching the matter from the same angle, and avoiding the arguments which have been rejected by this Court in the aforementioned judgment, we are of the opinion that the conversion ratio of 4.83 is valid and correct and the Tribunal ought to have accepted the same.

21. It is usual in the matter of dearness allowance to examine the paying capacity of the employer. Rightly Mr. Pai did not at all contend that this employer cannot bear the additional burden. We therefore, need not stray into this aspect at all.

22. On behalf of the Karamchari Union, it was seriously contended that the award of the Industrial Tribunal at Delhi between this very Company and its workmen at Delhi be accepted. We need not

examine the same as the comparison between Delhi and Kanpur is ill-conceived and untenable. Delhi is the capital of the sub-continent and it is fast growing. Kanpur is at best a district town though undoubtedly an important industrial centre in U.P. But the comparison would be invidious.

23. Accordingly, this appeal partly succeeds and is allowed. The award of the Industrial Tribunal that the workmen of the Kanpur Unit of the Indian Oxygen Ltd. should be paid dearness allowance linked to all-India consumer price index (1960 = 100) for Kanpur centre compiled by the Labour Bureau, Simla is modified to read that "the dearness allowance should be paid according to all-India consumer price index number for Kanpur (1960 = 100) compiled by Labour Bureau, Simla after applying conversion factor also called linking factor of 4.83". In all other respects i.e. the date of enforceability etc. the of the award remains unaltered except for the modification herein granted. The appeal is allowed to this extent with costs quantified at Rs. 3000.

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