Workmen represented by Secretary

Vs

Management of Reptakos Brett and Co. Ltd. and another

Civil Appeal No. 4336 (NL) of 1991

(CJI Ranganath Misra, Kuldip Singh JJ)

31.10.1991

JUDGEMENT

KULDIP SINGH, J.:-

1. Special leave granted.

2. The Reptakos Brett & Co. Ltd. (hereinafter called the Company) is engaged in the manufacture of pharmaceutical and dietetic speciality products and is having three units, two at Bombay and one at Madras. The Madras factory, with which we are concerned, was set up in the year 1959. The Company on its own provided slab system of Dearences Allowance (DA) which means the DA paid to the workmen was linked to cost of living index as well as the basic wage. The said double-linked DA Scheme was included in Various settlements between the Company and the workmen and remained operative for about thirty years. The question for our consideration is whether the Company is entitled to restructure the DA Scheme by abolishing the slab system and substituting the same by the Scheme - prejudicial to the workmen - on the ground that the is lab system has resulted in over-neutralisation thereby landing the workmen in the highwage island.

3. The first settlement between the Company and the workmen was entered into on August 11, 1964. While accepting the doublelinked DA it further provided variable DA limited to the cost of living index up to 5.415.50. Further relief was given to the workmen in the settlement dated July 18, 1969 when the limit on the variable DA was removed. The Company revised the rates of DA on August 7, 1971. Thereafter, two more settlements were entered into on July 4, 1974, and January 4, 1979, respectively. Slao system with variable DA continued to be the basic constituent of the wage-structure in the Company from its inception.

4. The position which emerges is that in the year 1959 the Company on its own introduced slab system of DA. In 1964 in addition, variable DA to the limited extent was introduced but the said limit was removed in the 1969 settlement. The said DA Scheme was reiterated in the 1979 settlement. It is thus obvious that the slab system of DA introduced by the Company in the year 1959 and its progressive modifications by various settlements over a period of almost thirty years, has been consciously accepted by the parties and it has become a basic feature of the wage structure in the Company.

5. The workmen raised several demands in the year 1983 which were referred for adjudication to the Industrial Tribunal, Madras. The Company in turn made counter demands which were also referred to the said Tribunal. One of the issues before the Tribunal was as under:-

> "Whether the demand of the Management for restructuring of the dearness allowance scheme is justified, if so, to frame as schemes,

The Tribunal decided the above issue in favour of the Company and by its award dated October 14, 1987 abolished the existing lab system of DA and directed that in future dearness allowance in the Company, be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base. The Tribunal disposed of the two References by a common award. The Company as well as the workmen filed separate writ petitions before the Madras High Court challenging the award of the Tribunal. While the two writ petitions were pending the parties filed a joint memorandum dated June 13, 1988, before the High Court in the following terms:

> "In view of the settlement dated 13-5-1988 entered into between the parties, a copy of which is enclosed, both the parties are not pressing their respective writ petitions except with regard to the issue relating to restructuring of dearness allowance."

6. The learned single Judge of the High Court upheld the findings of the Tribunal on the sole surviving issue and dismissed the writ petition of the workmen. The writ appeal filed by the workmen was also dismissed by the High Court by its judgment dated September 14, 1989. The present appeal by special leave is against the award of the Tribunal as upheld by the High Court.

7. Mr. M. K. Ramamurthi, learned counsel for the appellants has raised the following points for our consideration.:-

> "(i) The Tribunal and the High Court "grossly erred in taking Rs. 26 as a pre-war wage of a worker in Madras region and, on that arithmetic, reaching a conclusion that the rate of neutralisation on the basis of cost of living index in December, 1984 was 192 per cent.
>
> (ii) Even if it is assumed that there was over-neutralisation - unless the pay structure of the workmen is within the concept of a 'living wage' and in addition it is proved that financially the Company is unable to bear the burden - the existing pay structure/ DA Scheme cannot be revised to the prejudice of the workmen.
>
> (iii) In any case the DA Scheme -which was voluntarily introduced by the Company and reiterated in various settlements cannot be altered to the detriment of the workmen."

8. Before the points are dealt with, we may have a fresh look into various concepts of age structure in the industry. Broadly, the wage structure can be divided into three categories - the basic "minimum wage" which provides bare subsistence and is at poverty-line level, a little above is the "fair wage" and finally the "living wage" which somes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another. The Fair Wages Cordmittee, in its report published by the Government of India, Ministry of Labour, in 1949, defined the "living wage" as under:

> "the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health,

> requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age."

9. The Committee's view regarding "minimum wage" was as under:

> "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities."

The Fair Wages Committee's Report has been broadly approved by this Court in Express Newspapers (P) Ltd. v. Union of India, 1959 SCR 12 : (AIR 1958 SC 578) and Standard Vacuum Refining Co. of India v. Its Workmen (1961) 3 SCR 536: (AIR 1961 SC 895).

10. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan. The Committee accepted the following five norms for the fixation of 'minimum wage':

> "(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
>
> (ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
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> (iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.
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> (iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.
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> (v) Fuel, lighting and other' miseellaneous' items of expenditure should constitute 20% of the total minimum wage."

11. This Court in Standard Vacuum Refining Company's case (AIR 1961 SC 895) (supra) has referred to the above norms with approval.

12. The concept of 'minimum wage is no longer the same as it was in 1936. Even 1957 is way-behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guicie for fixing the minimum . wage in the industry:-

> "(vi) children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage."

13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

14. A living wage has been promised to the workers under the Constitution. A 'socialist' framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are pilling-up but the day of fulfilment is nowhere in sight. Industrial wage - looking as a whole - has not yet risen higher than the level of minimum wage.

15. Adverting to the first point raised by Mr. Ramamurthy it would be convenient to quote - from the award - the contentions of the Company and the findings reached by the Tribunal. The Company's case as noticed by the Tribunal is as under:-

> "It is stated that the pre-war wage of a worker in the Madras Region was Rs. 26. It is evidenced by the decision of the Labour Appellate Tribunal reported in (1951) 2 Lab LJ 314 (Buckingham and Carnatic Mills v. Their Workers) and (1951) 2 Lab LJ 718 (Good Pastor Press v. Their Workers) It is contended that taking the pre-war mini . mum wage of worker at Madras being Rs. 26/- per month equivalent to 100 per cent neutralisalion the rate of Dearness Allowance at 26 paisa for every point above 100 points of cost of living index would work out to 100 per cent eutralisation. On the above basis at 2780 points of cost of living index in December, 1984 the 100 per cent neutralised wage should be Rs. 722.80 (basic wage of Rs. 26 plus dearness allowance of Rs. 696.80). As against the above wage a workman of lower grade in the petitioner-Company in December, 1984 was getting a total wage of Rs. 1,394/- comprising of basic plus dearness allowance plus house rent allowance and the rate of neutralisation of dearness allowance correspondingly works out to 192 per cent."

16. The Tribunal accepted the above contentions of the Company. The evidence produced by the Company, regarding prevailing DA Schemes in the comparable industries in the region, was also taken into consideration. The Tribunal finally decided as under :-

> "Taking an overall view of the rate of dearness allowance paid by these comparable concerns in the region and the higher total emoluments received by the workmen in this establishment, the slab system of dearness allowance now in existence shall stand abolished and in future, dearness allowance in the petitioner-Management would be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base and it shall be effective from the month in which the award is published in the Tamil Nadu Gazette."

17. The learned single Judge of the High Court upheld the above findings of the Tribunal. The Division Bench of the High ,Court, in writ appeal, approved the award and the judgment of the learned single Judge in the following words-

> "The learned Judge has observed that the counsel for the Management had taken him through all the relevant materials which were filed in the form of Exhibits before the 'tribunal in order to show that the matter of over-neutralisation cannot be in dispute. Thus the learned Judge proceeded on the basis that there is over-neutralisation which

called for devising a scheme for restructuring the wage scale. This finding cannot be interfered with as no materials have been placed before us by the learned counsel for the appellant to show that the Exhibits which were perused by the learned Judge do not support his conclusion. Hence, we hold that the contention that there are no compelling circumstances in this case to revise the pattern of dearness allowance is unsustainable."

18. According to the Company the only purpose of DA is to enable a worker - in the event of a rise in cost of living - to purchase the same amount of goods of basic necessity as before. In other words the DA is to neutralise the rise in prices. The said purpose can be achieved by providing maximum of 100 per cent neutralisation. Accepting the calculations of the Company based on Rs. 26/- being the pre-war (1936) minimum wage in Madras region the Tribunal came to the finding that there was 192 per cent neutralisation.

19. TheTribunalaccepted Rs.26/-asthe pre-war minimum wage in Madras region on the basis of the decisions of Labour Appellate Tribunal of India in Buckingham and Carnatic Mills Ltd. v. Their Workers (1951) 2 Lab LJ 314 and Good Pastor Press v. Their Workers (1951) 2 Lab LJ 718.

20. In Buckingham case the Appellate Tribunal came to the conclusion that the basic wage of the lowest category of operatives on the living cost of index of the year 1936 was Rs. 28/-. The said wage included Rs. 16 V2 as expenses on diet. The workers relied upon the Textile Enquiry Committee's report to claim 25% addition to the diet-expenses. The Appellate Tribunal rejected the report on the ground that the recommendations in the said report were for the purpose of attaining the standard of "living wage" and not of 'minimum wage'. The Appellate Tribunal stated as under:

> "The Union however, contends that Dr. Akroyd revised his opinion when submitting a specially prepared note to assist the Textile Enquiry Committee, Bombay of which Mr. Justice Divatia was the Chairman, where he is said to have stated that 25 per cent more will have to be added for obtaining a balanced diet for a minimum wage earner. The report of that Enquiry Committee, which was published in 1940, however, shows that Dr. Akroyd added 25 per cent as the costs of the extra items to his standard menu such as sugar etc., for the purpose of attaining the standard menu of 'living wages' (final report of the Textile Labour Enquiry Committee 1940, Vol. 11, pages 70 to 71). Therefore, for the purpose of fixing minimum wages that 25 per cent is not to be added."

21. The question as to whether the recommendations of Textile Enquiry Committee were in relation to 'living wage' or 'minimum wage' came for consideration before this Court in Standard Vacuum case (AIR 1961 SC 895) (supra). This Court held as under (at p. 904 of AIR):

> "It is obvious that the Committee was really thinking of what is today described as the minimum need based wage, and it found that judged by the said standard the current wages were deficient. In its report the Committee has used the word minimum' in regard to some of the constituents of the concept of living wage, and its calculations show that it did not proceed beyond the minimum level in respect of any of the said constituents. Therefore, though the expression 'living wage standard has been used by the Committee in its report we are satisfied that Rs. 50 to Rs. 55/- cannot be regarded as anything higher than the need based minimum wage at that time. If that be the true position the whole basis, adopted by the appellant in making

its calculations turns out to be illusory."

22. This Court, therefore, in Standard Vacuum case (AIR 1961 SC 895) came to the conclusion that the Textile Labour Committee Report in the year 1940 in its calculations did not proceed beyond the minimum level of the wage structure. It was further held that Rs. 501- to Rs. 55/- was the need-based minimum wage in the year 1940.

23. The Appellate Tribunal in Buckingham case (1951 (2) Lab LJ 314) therefore, misread the Textile Committee Report and was not justified in rejecting the same on the ground that it related to the category of' living wage'.

24. We are of the view that it would not be safe to accept the findings of the Appellate Tribunal in Buckingham case (1951 (2) Lab LJ 314) (LAT) at the basis for fixing the wage structure to the prejudice of the workmen. This Court in Standard Vacuum case (AIR 1951 SC 895) (supra) has further held that in Bombay the minimum wage in the year 1940 was Rs. 50 to Rs. 55/-. On that finding it is not possible to accept that the minimum wage in the year 1936 in Madras region was Rs. 26/28. So far as the Good Pastor Press case (1951 (2) Lab LJ 718) is concerned the question of determining the minimum wage in pre-war 1936 was not before the Appellate Tribunal. It only mentioned the fact that Rs. 26/- was held to be so by some of the subordinate Tribunals. There was no discussion at all on this point. The Tribunals reliance on this case was wholly misplaced.

25. In any case we are of the opinion that purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been sky-rocking rise in the prices and the inflation chart is going up so fast that the only way to do justice to the labour is to determine the money value of various components of the minimum wage in the context of today.

26. We may now move on to the second and third point raised by Mr. Ramamurthy. We take up these points together. Mr. F. S. Nariman, learned counsel appearing for the Company, contended that the existing DA scheme can be revised even to the prejudice of the workmen and for that proposition be relied upon the judgment of this Court lit M/s. Crown Aluminium Works v. Their Workmen, 1958 SCR 651: (AIR 1958 SC 30). Mr. Ramamurthy has, however, argued that even if the contention of Mr. Nariman is accepted in principle, the Company has nor been able to make out a case for such a revision. In M/s. Crown Aluminium Works case this Court speaking through Gajendragadkar, J. (as he then was) held as under (at pp. 34-35 of AIR):-

> "The question posed before us by Mr. Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr. Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage' If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the Tribunal. In dealing with a claim for such revision, the Tribunal may have to consider, as in the present case whether the employer's

> financial difficulties could not be adequately met by retrenchment impersonnel already effected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the Tribunal may deem fit or expedient to impose."

27. The above dicta was reiterated by this Court in Ahmedabad Mills Owners' Association v. Textiles Labour Association (1966) 1 SCR 382: (AIR 1966 SC 497) wherein this Court through Gajendragadkar, C.J., laid down as under:-

> "The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should revise the wage structure, though such revision may result in the reduction of the wages paid to the employees..... if it appears that the employer cannot really bear the burden of the increasing wages bill industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business..... This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If, what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity."

28. The ratio which emerges from the judgments of this Court is that the management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all, is permissible - not even on the ground of financial stringency. It is, therefore, for the management, which is seeking restructuring of DA scheme to the disadvantage of the workmen to prove to the satisfaction of the Tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure.

29. Mr. Ramamurthy further relied upon this Court's judgment in Monthly-Rated Workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. v. Indian Hume Pipe Co. Ltd., Bombay (1986) 2 SCR 484 (AIR 1986 SC 1794) and contended that an employer cannot be permitted to abolish the DA scheme which has worked smoothly for almost thirty years on the plea that the said scheme is more beneficial than the DA schemes adopted by other industries in the region. In the Indian Hume Pipe Co. Ltd. case the management pleaded that the dearness allowance enjoyed by the workmen was so high in certain cases that neutralisation was at rates much higher than 100%. It was further contended that the management did not have the capacity to pay the slab system of DA and in the event of a claim for similar DA by other workmen the management might have to close down the

factories. Khalid, J. spoke for the Court as under (at pp. 1802 and 1803 of AIR):-

> "We thought it necessary to refer to the various awards read by Mr. Pai only for the completeness of the judgment. It has to be borne in mind that in most of these cases, awards were passed at the instance of the employees when demands were made for raising the dearness allowance paid to them. Here, we have the case of the employer trying to get over a system of dearness allowance which had worked smoothly for 18 years, on the specious plea that at the time the slab system was introduced, it was not in the expectation of anyone that the cost of price index would spiral up so much as to make it impossible for the company to pay according to this scheme. From the materials available we do not find that this plea can be accepted. The records produced show that despite this system of dearness allowance the Company has been making profits and has been improving its position year by year..... We do not think it necessary to deal at length about the evolution of the concept of dearness allowance. Suffice it to say that this Court has, often times, emphasised the need for a living wage to workmen instead of a subsisting wage. It is indeed a matter of concern and mortification that even today the aspirations of a living wage for workmen remain a mirage and a distant dream. Nothing short of a living wage can be a fair wage. It should be the combined effort of all concerned including the Courts to extend to workmen a helping hand so that they get a living wage which would keep them to some extent at least free from want. It is against this background that a claim by employers to change the conditions of service of workmen to their detriment has to be considered and it is against this background that we have considered the award review. We are not satisfied that a case has been made out on the facts available for a change..... The question is often asked as to whether it would be advisable for Tribunals and Courts to revise the wage structure of workmen to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and Courts can take judicial notice of one fact; and that is that the wages of workmen, except in exceptionally rare cases, fall within the category of mere "subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances."

30. We agree with Mr. Ramamurthy that the DA scheme - which had stood the test of time for almost thirty years and had been approved by various settlements between the parties - has been unjustifiably abolished by the Courts below and as such the award of the Tribunal and the High Court Judgments are unsustainable.

31. Mr. Nariman has also relied on the judgment of this Court in Killick Nixon Ltd. v. Killick & Allied Companies Employees Union, (1975) SuppI SCR453: (AIR 1975 SC 1778) to support the findings of the Tribunal and the High Court. The said case does not lay down that in all cases the slab system of DA should be abolished to the prejudice of the workers. In the said case this Court on the facts of the case came to the conclusion that the employer had made out a case for putting a ceiling on the dearness allowance. The ratio of that case cannot be extended to interfere with the existing DA schemes in every case where such schemes are beneficial to the workmen.

32. Mr. Nariman has invited our attention to para 20 of the Award wherein the tribunal has held as under:

> "These figures as detailed in Ex.M-13 would establish that the company is not in a

financial position to bear the additional burden on account of increased wages."

33. From the above finding it was sought to be shown that the Company has proved to the satisfaction of the Tribunal that financially it was not in a position to bear the burden of the existing DA scheme. We do not agree with the learned counsel. The Tribunal gave the above finding in the reference made on behalf of the workmen asking for bonus increase and various other monetary benefits. While rejecting the demands of the workmen the Tribunal gave the above finding which related to the additional burden accruing in the event of acceptance of the workers demands. The Tribunal nowhere considered the financial position of the company vis-a-vis the existing DA scheme. The Company neither pleaded nor argued before the Tribunal that its financial position had so much deteriorated that it was not possible for it to bear the burden of the slab system of DA. The Tribunal has not dealt with this aspect of the matter while considering the demand of the Company for re-structuring the DA scheme.

34. It has been pleaded by the company that its workmen are in a high wage island and as such the revision of DA scheme was justified. The Company also produced evidence before the Tribunal to show that comparable concerns in the region were paying lesser DA to its workmen. On the basis of the material produced before the Tribunal all that the Company has been able to show is that the DA paid by the Company is somewhat higher than what is being paid by the other similar industries in the region. There is, however, no material on the record to show that what is being paid by the company is higher than what would be required by the concept of need based minimum wage. In any case there is a very long way between the need based wage and the living wage.

35. Mr. Nariman reminded us of the limits on our jurisdiction under Article 136 of the Constitution of India and relying upon Shaw Wallace & Co. Ltd. v. Workmen, (1 978) 2 SCC 45 : (AIR 1978 SC 977) and The Statesman Ltd. v. Workmen, (1976) 3 SCR 228 : (AIR 1976 SC 758) contended that so long as there is "some basis, some material to validate the award" the "jurisdiction under Article 136 stands repelled". The Tribunal and the High Court, in this case, have acted in total oblivion of the legal position as propounded by this Court in various judgments referred to by us. Manifest injustice has been caused to the workmen by the award under appeal. We see no force in the contention of the learned counsel.

36. In view of the above discussion we are of the view that the Tribunal was not justified !in abolishing the slab system of DA which was operating in the Company for almost thirty years. We allow the appeal and set aside the award of the Tribunal and the judgment of the learned single Judge in the writ petition and of the Division Bench in the Writ Appeal. The reference of the Company on the issue of restructuring of the dearness allowance is declined and rejected. The Appellant-workmen shall be entitled to their costs throughout which we assess at Rs. 25,000/-.

Appeal allowed.

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