

# PATNA HIGH COURT

Chotanagpur Chamber of Commerce and Industries

Vs

State of Bihar

Civil Writ Jurisdiction Cases Nos. 910 of 1981 (R) with 812 of 1983

(U.P. Singh, J.)

07.08.1986

## JUDGMENT

### **U.P. Singh, J.**

1. Since common questions of law are involved in both the writ applications they have been heard together and are being disposed of by the common judgment.
2. The principal point is that the Government of Bihar in revising Variable Dearness Allowance (VDA) at 4 paise per point of increase in the cost of living index per day has exceeded its jurisdiction and authority. In CWJC No. 910 of 1981 (R), the Notification of the Government of Bihar dated 24-2-1981 (Annexure-1) has been challenged where by it has revised the Variable Dearness Allowance (VDA) at 4 paise per point of increase in the cost of living index per day. Earlier VDA was fixed at 2 paise per point of increase in the cost of living index per day. As a result of the said revision of VDA on the basis of the said notification, neutralization will be more than 100% and, therefore, it is challenged that in revising VDA, the Government has exceeded its jurisdiction.
3. The effect of the said notification on the computation of VDA is explained on the basis of the figures disclosed by the Respondents in paragraph 7 of the counter affidavit. Hence the figures are not disputed. To take an illustration in the case of Road Construction and Building Operations (Annexure-1 of the rejoinder to the counter affidavit filed on behalf of the petitioner) it will appear that on the basis of the consumer price index of July-December, 1980, the cost of living index is 403 for April, 1981 (i.e. the period after 24.2.1981(sic), being the date of notification). Compared to the cost of living index for the preceding period, the increase in cost of living index is 27 points (i.e. 403 on the basis of July-December, 1980 consumer price index minus 376 points, on the basis of January to June, 1980 consumer price index). This increase of 27 points in the consumer price index is in terms of percentage 7.18% compared to the consumer price index of the earlier period, i.e. February 1981. If the VDA is to be fixed on the basis of the impugned notification, the said VDA will be 27x4 paise i.e. Rs. 1.08 P, per day. Thus there has been an increase of VDA at 13.70% compared to the total wages of Rs. 7.88 P. for the just preceding period, i.e. February, 1981 (For which the consumer price index is the period January to June,

1980). Thus, while the increase in the consumer price index is 7.18% increase in the VDA is 13.70% i.e. much more than 100% (i.e. 190.80%). Similarly on the basis of the consumer price index for January to June, 1981, the cost of living index is 425 and there has been an increase of 22 points compared to the cost of living index for the just preceding period. In terms of percentage, the cost of living index has been increased by 5.46%. If the VDA is to be fixed at 4 paise per day, it comes to Rs. 0.88 per day and in terms of percentage, the increase in VDA is by 9.82%. Hence, while the cost of living index has increased by 5.46% the VDA, has increased by 9.82% i.e. 179.9% neutralisation. Similarly, on the basis of the consumer price index of July to December, 1981, there has been an increase of 32 points compared to the cost of living index for the just preceding period. In terms of percentage there has been an increase of 7.53% in the consumer price index. By fixing the VDA at 4 paise per point, the VDA comes to Rs. 1.28 P. per day. The increase in the VDA is, therefore, by 13.10%. Thus while the consumer price index has increased by 7.53%, the VDA has increased by 13.10% which is 172.8% neutralisation. Similarly for the other periods also, the increase in the VDA exceeds 100% of the cost of living index.

4. For the loading and unloading (vide Annexure 1-A to the rejoinder filed by the petitioner to the counter affidavit dated 9.11.1984, the consumer price index of January to December, 1980 is 390. For the preceding period on the same basis, the consumer price index was 350. Hence there has been an increase of 40 points in the consumer price index. In terms of percentage the increase comes to 11.43%, by fixing VDA at 4 paise per point, it amounts to Rs. 1.60 paise (40x4 paise) per day. In terms of percentage, the increase in VDA compared to the preceding period is 25.92%. While the consumer price index has increased by 11.43% the VDA has increased by 24.92% which is 218% neutralisation.

5. Similarly, if the consumer price index of January to December, 1981, is taken into account, the increase in (sic) the consumer price index is 51 points, i.e. 13.08%. But the VDA on the basis of the notification is fixed at Rs. 2.04 P. per day i.e. 25.44%. Thus while the cost of living has increased by 13.08% the increase in the VDA compared to the preceding period is 25.44%. In other words, the VDA has increased by 194.5%. The other period also have been similarly shown in the chart which was handed, over in the course of argument. The facts and figures shown therein are not controverted.

6. Thus, it will be clear that the VDA fixed by the notification has been more than 100% of neutralisation of cost of living index. Principle has now been settled beyond controversy in a number of decisions of the Supreme Court and in view of the decision of the Supreme Court in the case of *Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandali Ltd. Etc.*, the notification in so far as it fixes the VDA in excess of 100% neutralisation of cost of living index is illegal, invalid and without jurisdiction. The decision of this Court dated 24-11-1982 in C.W.J.C. No. 1867 of 1981 (R) and analogous cases, the same notification came up for consideration but on the facts of those cases, it was held that there was nothing on the record on the basis of which it could be held that while raising the rate of the neutralisation for Variable Dearness Allowance from 2 paise per point to 4 paise per point, an attempt was made to give cent per cent neutralisation. In the facts of the present case, it must be held that as a result of the revision of VDA on the basis of the said notification, neutralisation will be more than 100% and hence the Government in revising VDA at 4 paise per day has exceeded its jurisdiction and authority.

7. In so far as C.W.J.C. No. 812 of 1983 (R) is concerned, the petitioners, Singhbhum Chamber of Commerce and Industries have challenged the notifications dated 24th February, 1981 and 7th October, 1982 (Annexures 1 and 2). The points are identical which have been considered in the present writ application (C.W.J.C. No. 910 of 1981 (R) and no new point has been urged.

8. Therefore, the notification in so far as it fixes the Variable Dearness Allowance in excess of 100% neutralization of cost of living index are illegal, invalid and without jurisdiction. In the result, both the writ applications are allowed but there will be no order as to costs.

Cases Referred.

<sup>1</sup> AIR 1980 SC 31