

(1983) 11 GUJ CK 0005

Gujarat High Court

Case No: None

Jyoti Ltd.

APPELLANT

Vs

Jyoti Karmachari
Sangh

RESPONDENT

Date of Decision: Nov. 29, 1983

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1)(d), 10(1)(d), 33A

Citation: (1984) GLH 616 : (1984) 1 GLR 506

Hon'ble Judges: R.C. Mankad, J; R.A. Mehta, J

Bench: Division Bench

Judgement

R.A. Mehta, J.

This petition by the employer is directed against the award by the Industrial Tribunal in a reference u/s 10(1)(d) of the Industrial Disputes Act whereby the Tribunal granted the demand of special compensation of Re. 1/- per day (the demand was for Rs. 8/- per day) per each actual working day to each of the workmen who had been transferred from the pattern shop in the main factory of the company at Baroda to the pattern shop of the Company established by the Company at village Dashrath on National Highway No. 8 from the date they had been made to work in that pattern shop in that village.

2. Mr. V.B. Patel, the learned Counsel for the petitioner-Company has raised the two following contentions against this award:

(a) The reference of the industrial dispute itself was barred in view of the settlement in Complaint Nos. 50 to 78 of 1975 and the consequent consent award in terms thereof passed on 11-12-1975; and

(b) the demand for such compensation for loss on account of additional time was not legal and justified.

3. Regarding the first contention it was pointed out that 29 out of 45 workmen who were sought to be transferred, had filed complaints u/s 33-A against shifting of the pattern shop and their apprehended transfers consequent thereof, and it was contended that since such complaint was required to be adjudicated upon as if it were a dispute referred to the Industrial Tribunal, subsequent reference would be barred. The terms of the settlement are as follows:

The parties in the above matter beg to file this settlement as under:

1. That the opponent company shall be entitled to shift the pattern shop from its present premises to a place opposite Gujarat State Fertilizers Company, where the company has its shed.
2. That by the said shifting of the department, the company shall not change the service conditions to the detriment of the workmen who may be required to be transferred to the new place.
3. That the workmen to be transferred to the new shed as stated above will be given to and fro S.T. bus fare from the Nyayamandir to the new place opposite Gujarat State Fertilizers Company.
4. That the workmen to be transferred will continue to be the employees of the company.
5. That the workmen to be transferred will be given tea twice in a shift and a Katori of vegetable once in a shift at the same rate at which it is being given in Jyoti Limited, Baroda.
6. That in case the transferred workers are called back from the new shed to the Baroda factory, the above arrangement and facility and amenities given by this settlement will be immediately withdrawn.

It is, therefore, requested that an Award in terms of present settlement be made.

4. From the aforesaid settlement it clearly transpires that the company was entitled to shift the pattern shop without change in the conditions of service to the detriment of the workmen and it was agreed that they would have same conditions of service including tea twice in a shift and a Katori of vegetable once in a shift at the same rate. The provisions of the amount of S.T. Bus fare from Nyayamandir to the new place was clearly intended to compensate for the additional expenditure that might be required to be incurred by the workmen consequent upon the shifting out of the city limits. The provision of the payment of State Transport bus goes to show that the municipal and city bus service would not be available and the workmen would be required to board the bus from Nyayamandir for going to the place of work and it would be reasonable to presume so having regard to the fact that the provision was made for payment of the State Transport bus fare and the State Transport buses would be having only one or two stops or stations and at the old

place of pattern shop there may not be any such stop or station. Therefore, the provision of State Transport bus from Nyayamandir to the new place was merely intended to secure and preserve the same conditions of service without detriment to the workmen so as to prevent reduction or erosion in the wages. Such settlement or complaint u/s 33-A cannot be held to be a bar to raising of the dispute for improvement in the conditions of service, if otherwise justified on merits.

5. The Tribunal which tried the Reference was coincidentally presided over by the same Presiding Judge R.C. Israni who had passed the consent award. In the complaints in para 9 of the present award it has been found and recorded that "on going through the settlement it appears that this aspect as covered by this demand of the grievance of the concerned workmen was neither considered nor any settlement was arrived at between the parties in that respect. The said question clearly appears to have been kept open as it was not touched at all during that settlement". The present grievance is for improving the conditions of service on the ground that the concerned workmen have to spend extra hours of time for attending to new premises and for the inconveniences they as well as their family members will be put to because of the said change. Such a demand for improving the conditions of service can properly be a subject-matter of an independent reference and it cannot be said to be barred because of the settlement of the complaint u/s 33-A of the Act.

6. As regards the second contention, the learned Counsel urged that the additional payment of S.T. bus fare from Nyayamandir to new place took care of compensation for additional time also and the amount of bus fare is not a fixed amount for all time but it is the amount of bus fare that may be varying from time to time. No such inference is possible when actual bus fare is provided, may be variable from time to time, nor any evidence has been led by the management to prove that the payment of the bus fare included any such element of compensation.

7. It was also urged that the demand for compensation for loss of additional time for attending the new and distant place of employment was not justified on the ground that every employee is bound to report at the place of his employment. In this connection reliance was placed on the judgment of the Calcutta High Court in the case of Shalimar Paints Ltd. v. Third Industrial Tribunal Calcutta 1971(2) L.L.J. 58. It was a case of demand of conveyance charges as a result of additional expenses incurred by the employees on account of the transfer of undertaking from one place to another. Relying on an English case regarding deductible expenses from gross income, the learned Single Judge of the Calcutta High Court held that just as an employee cannot make a claim for extra allowance when he shifts his residence to a more distant place from his office there can be no claim for compensation when the employer shifts his business or undertaking from one place to another, and the employer has an inherent right to choose his place of business. The learned Judge also held that the cost of travelling from the residence of the workmen to his place

of work is capable of being made an express term of his employment and in absence of such an express stipulation, such an implied term of employment only may be the subject-matter of an industrial dispute. With respect to the learned Judge of the Calcutta High Court, it is not possible to agree with the judgment. Change of his own residence by a workman is an act of his own volition and it cannot be equated with the change of place of work by the employer. The workman has agreed to work at a particular and existing place of work and when the employer shifts that place, the employee has no voice and the two cannot be equated. When the employer shifts the place of work, he changes the conditions of service and the contracted place of employment. Moreover, if the cost of travelling were conditions of contract whether an express or implied, the same could be a subject-matter of industrial dispute. An industrial dispute arises when the workmen desire to improve their conditions of service and the industrial adjudication is available to impose new obligations on the employer in the interest of social justice and can also involve the parties in a new contract as observed by the Supreme Court in [Atic Industries Ltd. Vs. Workmen](#), . In that case the Supreme Court has also recognised that an employer could be made to shoulder the burden in respect of medical expenses as well as to re-imburse workmen regarding transport expenses. Thus the Calcutta view appears to be incorrect in principle and contrary to the law laid down by the Supreme Court in the aforesaid case.

8. As to the quantum of Rs. Re. Vper day as against the demand of Rs. 8/- per day, no argument has been advanced before us. The Tribunal has found that the distance from Baroda Railway Station to Fertilizernagar near the new place is about 8 kms. and having regard to all the circumstances of the case, the Tribunal has awarded Re. 1/- per day to each of the transferred workmen and there does not appear to be any reason to interfere with the same at the instance of the Company.

9. In the result, the petition fails and is dismissed with costs. Rule discharged. The Tribunal has directed the payment of arrears within one month from the publication of the award and also the current payment from time to time. The said award was stayed by an interim order of this court. This interim order shall stand vacated forthwith and it is directed that the petitioner shall comply with the award within one month.