Workmen of Bhajrang Jute Mills, Ltd. Vs Bhajrang Jute Mills, Ltd. and Others

Court: Andhra Pradesh High Court

Date of Decision: Dec. 22, 1959

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 10, 7

Citation: (1960) 1 LLJ 604

Hon'ble Judges: Seshachalapati, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Seshachalapati, J.
This is an application under Article 226 of the Constitution of India to call for the records relating to the Industrial

Dispute No. 45 of 1966, on the file of the Industrial Tribunal, Andhra Pradesh, Hyderabad, and to quash the award dated 11 November 1957

made therein.

2. The petitioners are the workmen of Bhajrang Jute Mills, Ltd., Guntur, represented by Bhajrang Jute Mills Staff Union. The respondent 1 is

Bhajrang Jute Mills, Ltd., represented by its manager for the time being.

3. The petitioner-union made certain demands for the fixation of scales of pay, minimum wages and increase in the dearness allowances to the

workmen. The management did not agree. There were some attempts at conciliation which proved abortive. Thereupon, the Government of

Andhra Pradesh by G.O. Ms. No. 156, dated 19 February 1957, issued a notification u/s 10(1)(c) of the Industrial Disputes Act (Central Act,

1947) in these terms:Ã¯Â¿Â½

4. The following notification will be published in the Andhra Pradesh Gazette:Ã¯Â¿Â½

Notification

5. Whereas an industrial dispute has arisen between the workmen and the employers of the Bhajrang Jute Mills, Guntur, in respect of matters

mentioned in the annexure to this order;

6. And whereas in the opinion of the Governor of Andhra Pradesh it is necessary to refer the said dispute for adjudication;

7. Now, therefore, in exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act) Central Act

14 of 1947), the Governor of Andhra Pradesh hereby refers the said dispute for adjudication to the industrial tribunal having its place of Sitting at

Hyderabad.

Annexure

I. (i) Whether the demand of the work men for fixation of scales of pay of various categories of monthly paid staff is justified?

(ii) If so, what should be the scales ?

II. (i) Whether the demand of the work men for payment of dearness allowance at the rate of 3 annas per point over the Eluru cost of living index

is justified.

(ii) If not, to what relief, are they entitled ?

The reference was duly registered as Industrial Dispute No. 45 of 1957 by the Industrial Tribunal, Hyderabad, and was enquired into. Eight

witnesses on behalf of the union and three witnesses on behalf of the management were examined. A large number of documents were filed in the

case. On a consideration of the evidence, oral and documentary, the tribunal held that the revision of scales of wages or enhancement of dearness

allowance in accordance with the demands of the workmen could not be made. However, the tribunal held that there was a great disparity In the

wages of the mazdoors, namely, scavengers, sweepers, lorry cleaners and canteen workers and that there was no justification for such a

difference. The tribunal, therefore, directed that the mazdoors should be paid in addition to 11 annas per day, a dearness allowance of Us. 1-1-0

per day. aggregating to Rs. 45-8-0 per month. As to the clerks, it was held that the starting pay should be raised to Rs. 40, with a flat dear-ness

allowance of Rs. 30. Aggrieved by that order the union have filed the present petition.

8. Mr. Rajeswara Rao, the learned Counsel for the petitioners, has raised before me the following contentions:

(i) that "the appointment of the tribunal that passed the present award is incompetent;

(ii) that the finding of the tribunal that the question of fixation of minimum wages had not been referred to it is palpably incorrect, as in the very

process of revising the scales of pay is implicit the question of fixation of minimum wages;

(iii) that the finding of the tribunal that it had not been proved that the management had the necessary financial capacity to warrant a revision of

scales of wages or enhancement of dearness allowance In accordance with the demands of the workmen is entirely opposed to the evidence

tendered in the case; and

(iv) that the tribunal has ignored the crucial evidence tendered in the case and declined to draw the necessary inferences from the proved facts

thereby committing a manifest error of law that justifies and warrants interference by this Court under Article 226 of the Constitution.

9. On behalf of the respondents, it had been contended by Mr. K. Srinivasamurthi that the finding of the tribunal that the management has not the

financial capacity to justify the revision of scales of pay and the enhancement of dearness allowance in the manner asked for is correct; that the

finding of the tribunal on this part of the case is not vitiated by errors of fact much legs by errors of law, that on a comprehensive survey of all the

facts proved Including the wages paid to the staff in establishments of comparable industries in the locality, the reliefs granted by the tribunal are

just and proper and that there is no case whatever for interference with the award which has been rendered on a fair review of the evidence and

which is not afflicted with any jurisdictional infirmity or patent error of law.

10. The first objection of the petitioners is that Sri Mir Siadat All Khan, who has been appointed as the Chairman of the Industrial Tribunal,

Andhra Pradesh, Hyderabad, does not possess the requisite statutory qualification, u/s 7 of the Industrial Disputes Act. Section 7(3) of the Act

prescribes the qualifications. It is stated therein that where a tribunal consists of one member only, that member, and where it consists of two or

more members, the chairman of the tribunal, shall be a person whoÃ¯Â¿Â½

(a) is or has been a Judge of a High Court; or

(b) is or has been a District Judge; or

(c) is qualified for appointment as a Judge of a High Court:

Provided that no appointment under this Sub-section to a tribunal shall be made of any person not qualified under Clause (a) or (b) except with the

approval of the High Court of the State in which the tribunal has, or is Intended to have, its usual seat.

It is alleged that Sri Mir Siadat All Khan is not a Judge of any of the existing High Courts in India, and that he being an ex-Judge of the Hyderabad

High Court which had been abolished under the provisions of the States Reorganization Act, 1956, would not give him the necessary qualification.

There is no substance whatever in this contention (?). Clause (a) of Section 7 requires that the chairman should be one who is or has been a Judge

of a High Court. It is not in dispute that Sri Mir Siadat All Khan was a Judge of the High Court of Hyderabad, which was one of the Part ""B

States prior to the States Reorganization Act of 1956. That being so, he is a gentleman who is fully qualified to be a chairman of the industrial

tribunal. Further, it is not open to the petitioners to raise this contention at this stage. It would not appear that the objection in the form in which it

had been taken has been raised before the tribunal. That being so, the petitioners cannot be permitted to raise that point in this writ petition. On O.

A. K. Lakshmanan Chettiar v. Corporation of Madras ILR 50 Mad. 130 at 134 a Pull Bench of the Madras High Court has held that if an

applicant for a writ of certiorari armed with a point of law or fact had elected to argue the case on the merits before the Court or tribunal, he must

be taken to have submitted himself to a jurisdiction which he cannot be allowed afterwards to seek and repudiate by applying for a writ of

certiorari, The principle of this decision has recently been affirmed by the Supreme Court in Pannalal Binjraj Vs. Union of india (UOI), . The first

objection of the learned Counsel has no substance and is, therefore, rejected.

11. The principal contention of the learned Counsel, however, is that the finding of the tribunal as to financial capacity of the management is entirely

erroneous.

12. The Bhajrang Jute Mills, Ltd., Guntur, is stated to have been started in 1907. For a variety of reasons, which it is not necessary for me to

consider, now the mills languished and eventually in 1937 they went into liquidation. The present management purchased the mills in or about the

year 1940, Originally the mills were working with 50 looms and the present management when it took over and conceived the idea of working the

mills in Guntur itself increased the number of looms in due course. At present, it is stated there are 120 looms of which only 100 are working. The

petitioners allege that between the years 1941 and 1948 the capital of the company was increased from Rs. 4,03,000 to Rs. 12,50,000, that there

was a steady and growing increase in the sales and profits, that its general reserves, fixed assets and investments had been steadily on the increase,

and that at present it has large reserves. On the contrary, it is contended for the management that the mills constitute one of the smallest and most

uneconomic units in the jute industry, that the difficulties in procuring raw jute and industrial stores like coal, batching oil and other mill stores which

have got to be brought from a long distance and the general economic position with respect to the jute industry coupled with the deficits that the

management having been facing for years make it impossible for it to bear further enhancement of wages which bad reached almost the saturation

point.

13. The management have tendered evidence as to their financial capacity. The balance Bheets for the years 1950, 1951, 1952, 1953, 1954,

1956 and 1954 have been flled. A profit and loss account marked as Ex. M. 10 has also been filed. This statement shows the profits or the

deficits, as the case may be, of the respondent 1 mills from the years 1950 to 1956. In that statement the management had claimed a uniform sum

of Rs. 2 lakhs per year as a permissible deduction from the Income of the mills for rehabilitation and modernization charges. The tribunal had

rejected this claim. It is urged that having rejected the rehabilitation and modernization charges, the tribunal has committed a palpable error in the

computation of figures as to deficits.

14. For the year 1950 the tribunal has held that there was a deficit of Rs. 18,115-2-4. The profit for the year is shown in Ex. M. 10 as Rs.

3,86,390-4-10, The total amount of charges and deductions including rehabilitation and modernization expenses is shown as Rs. 5,68,275-2-6

and, therefore, a deficit of Rs. 1,81,88443-8 has been shown. If the amount of Rs. 2 lakhs claimed by the management as rehabilitation and

modernization charges is disallowed as the tribunal has, then there will be a surplus and not a deficit of Rs. 18,115-2-4. For the year 1951, the

tribunal has found that there is a surplus of Rs. 31,609-15-6. If the amount of Rs. 2 lakhs claimed as rehabilitation and modernization charges is

disallowed, the balance would be very much more than what is shown in the profit and loss account and what has been found by the tribunal.

Similarly, the finding of the tribunal that there is a deficit of Rs. 1,48,494-0-11 in 1952 is an obvious error, because if the amount of Rs. 2 lakha for

rehabilitation and modernization charges is disallowed there will be surplus and not a deficit of Rs. 51,50545-1. For the year 1953, nowever, in the

Ex. M. 10 it is shown that there was a deficit of Rs. 2,50,078-8-4, Deducting the sum of Rs. 2 lakhs for the rehabilitation and modernization

charges, there will be clearly a deficit of Rs. 50,078-8-4, For the year 1954, according to Ex. M-10 there is a total deficit of Rs. 3,46,229-9-10.

After deducting the amount of 2 lakhs disallowed, the net deficit would be at Rs. 1,46,220-940. In 1955 a deficit of Rs. 1,10,894-6-8 is shown. If

this amount is set off against Rs. 2,00,000 (disallowed), there would be a surplus of Rs. 89,105-9-4. For 1956 a deficit of Rs. 2,46,12944-2 has

been shown. If this is set off against the sum of 2 lakhs (disallowed), there would be a deficit of Rs. 46,129-14-2.

15. Mr. Rajeswara. Rao contends that the observation of the tribunal that there was a deficit for the year 1950 and a deficit in 1952 and 1953 is

much an obvious error in the appreciation of evidence that no weight could be attached to the finding of the tribunal on the question of financial

capacity of the management. But it seems to me that this has no material bearing on the question as to the present financial capacity of the

management. It ia well recognized that the demands of workmen for enhanced rate of scale of wagesÃ¯Â¿Â½or bonus and such other reliefsÃ¯Â¿Â½can

only be met and made exigible from the trading profits and the revenues. The profits earned in the past which had either been utilized in building up

the general reserves or in incurring other expenses cannot now be taken into account to assess the financial capacity of the industry to bear the

burden which is sought to be laid on it by the revision of scales of pay and other reliefs.

16. In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, the Supreme Court approved of the

classification of the newspapers establishments based on an average gross revenue for a three-year period-If that standard is adopted, the relevant

years in this case would be the years 1954, 1955 and 1956. From the figures given in Ex. M. 10 and giving fall effect to the disallowance of the

two lakhs towards rehabilitation and modernization charges every year, the position would be that in 1954 there was a deficit of Rs. 1,46,220-9-

10, a surplus of Rs. 89,105-9-2 in 1955 and a deficit of Rs. 46,129-14-2 la 1956, Therefore, the overall picture for the relevant three years prior

to the present reference u/s 10(1)(c) of the Industrial Disputes Act is that the respondent-mills have been working at a deficit. The miscalculation

and errors committed by the tribunal with respect to the computation of the figures relative to the years 1950, 1952 and 1953 are not of real

consequence. It is, therefore, unnecessary for me to consider the further contention of Mr. Rajeswara Rao, that the manifest misreading by the

tribunal of proved facts and figures would constitute an error apparent on the face of the record which warrants interference by this Court.

17. Mr. Rajeswara Rao very strongly relied upon the fact that the tribunal had excluded the profits alleged to have been made by the mills in

Calcutta, Cuttack, and other outside places during the years 1950 to 1952 and in 1956 amounting to the sum of Rs. 7,62,565-12-3. It is argued

that these profits should have also been taken into account and that the entire undertaking must be viewed as a single unit. Reliance for this

contention has been placed on the observations of the Supreme Court in Baroda Borough Municipality Vs. Its Workmen, where it was held that

the income earned by a municipality in its electricity department cannot be treated as separate from its income from other departments, but should

be regarded as part of the entire municipal fund or property. Even on that footing it remains to be seen whether the tribunal was in error in not

taking these profits into consideration. The profits stated to have been made in Calcutta in the year 1950 were with respect to a profit in the

purchase of gunnies at Calcutta. Similar profits in the year 1951 were with respect to Cuttack jute and Athagan jute account. In the first place, the

profits of 1950 and 1951 will not be strictly relevant for the present enquiry. In the second place, the 1956 profits were with respect to the

proceeds of the sale of a land which can only partake of a fixed asset and not a revenue item. In the third place, even if these profits were to be

taken Into account, they cannot avail the present workmen, because the present workmen have not contributed anything to the earnings of those

profits vide Shalimar Rope Works Mazdoor Union v. Shalimar Rope Works, Ltd. 1956 I L.L.J. 370 and Peirce Leslie & Co., Ltd, v. its

workmen (1956 I L.L.J. 458). It seems to me, therefore, that the conclusion of the tribunal that the management has no financial capacity to meet

the present demands of the workmen is substantially correct.

18. The second ground upon which the tribunal had rested its decision is that on a comparison of comparable industries on the local or country-

wise basis, there is no justification for granting of the reliefs claimed by the workmen. The tribunal had considered the wages of the staff in the

Krishna Jute Mill. Eluru, Hemalatha Textiles, Guntur, two of the cement companies of the Visakhapatnam and Tadepalligudem, and Nelllmarla and

Chittivalasa Jute Mills, Visakhapatnam. It held that Nellimarla and Chittivalasa Jute Mills, Visakhapatnam cannot be taken as a basis of

comparison, for those mills are much larger in scope of business and constitute a bigrger economic unit with about 500 looms. Therefore, the

tribunal rejectedÃ¯Â¿Â½in my view rightlyÃ¯Â¿Â½the relevance of the wage-structure in the Nellimaria and Chittivalasa mills. It had also rejected for cogent

reasons the comparison with the Hemalatha Textile Mills or the cement companies. It has, therefore, confined itself to jute mills in the

neighbourhood and has, on evidence, oral and documentary, found that the salaries and clearness allowance of the staff of the Bhajrang Jute Mill is

generally much better than those of the Krishna Jute Mill. There is really no substance in the contention of Mr. Rajeswara Rao that though the

tribunal referred to the principle of industry-cwm-reglon basis in Para. 10 of its award, what really dominated its mind is its erroneous

apprehension of the financial incapacity of the management. No doubt the tribunal had addressed itself in the main to the question of financial

incapacity, but it would be a misreading of the award to say that the comparison with similar jute mills in the neighbourhood did not enter Into the

reasoning adopted by the tribunal or Into the conclusion to which It had reached.

19. It has been contended that the financial capacity and prevailing rates of wages in similarly situated industries have no relevancy in the case of

fixing of a minimum wages and an industry that does not provide its workmen with the minimum wage has no right to exist. It is true that in the fast-

evolving social philosophy of the world in general and of our country in particular, it is becoming increasingly recognized that a worker is entitled to

a minimum wage. In fact one of the directive principles of our Constitution is that the State shall endeavour to secure by suitable legislation or

economic organization or any other way, to all workers, agricultural, industrial or otherwise, work, living wage, conditions of work ensuring decent

standard of living and full employment of leisure, social and cultural opportunities. But the argument that the fixation of rates of wages and scales of

pay and dearness allowance is de hors the financial capacity of an industry is, to my mind, too broadly stated. Admittedly this IB not a case where

the industry has been notified under the provision of the Minimum Wages Act (Act XI of 1948). In such a case therefore, the financial capacity of

the industry to sustain their additional burden is a very necessary consideration. In Express Newspapers (Private) Ltd. and Another Vs. The Union

of India (UOI) and Others, referred to already, Bhagwati, J., observed as follows:Ã¯Â¿Â½

In the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of

the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to

pay the same irrespective of such capacity.

The tribunal is right in holding that the reference by Government u/s 10(1)(c) of the Industrial Disputes Act did not include the question of any

minimum wage, but was only with reference to the fixation of the scales of pay and the dearness allowance. In those circumstances, there is no

point in contending that the tribunal should have addressed itself to the question of fixing the so-called minimum wage without any reference to the

capacity of the industry. The various categories of employees in the mills have asked for the benefits in their statement. So far as clerks are

concerned, the tribunal had fixed their starting pay at Ra. 40 instead of Rs. 30. It had also fixed a flat rate of Rs. 30 as dearness allowance. With

respect to the mazdoors, such as scavengers, sweepers, lorry cleaners and canteen workers, etc., the tribunal found that any distinction between

them was unnecessary and that they could be given identical wages of 11 annas per day with a dearness allowance of Rs. 1-1-0 per day totalling

to a remuneration of Rs. 45-8-0 per month.

20. In an application under Article 226 of the Constitution of India this Court does not exercise the powers of a Court of appeal. It is not its

function to review the faota and the evidence and to investigate whether the conclusions to which the tribunal had come are sustained by cogent

evidence. The supervisory Jurisdiction of this Court is confined to cases where the subordinate tribunals exceed their jurisdiction, or not without

legal authority or perpetrate an error of law patent on the record or violate some principles of natural justice. Where none of these circumstances is

present, the High Court will not interfere with the award, which the tribunal had made after a fair survey of the material placed before it.

21. In the result, the petition fails and is dismissed with costs of the respondent 1. Advocate''s fee Rs. 100.