

Tata Iron and Steel Company Ltd. Vs Presiding Officer and Others

Court: Patna High Court

Date of Decision: Aug. 20, 1999

Acts Referred: Companies Act, 1956 " Section 391, 394
Industrial Disputes Act, 1947 " Section 10(1)

Citation: (2001) 3 LLJ 66 : (2000) 1 PLJR 411

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

In this writ application petitioner Tata Iron and Steel Company has prayed for issuance of appropriate writ in the nature of

certiorari for quashing the award passed by the Presiding Officer, Industrial Tribunal Ranchi in Reference Case No. 3/1986 deciding the reference

in favour of the respondents, the Workmen represented by Tube Company Workers" Union holding that April 1, 1983 is effective date of

amalgamation of Indian Tube Company Ltd, with the petitioner.

2. It appears that vide notification dated April 30, 1986 by the Labour Employment and Training Department, Government of Bihar the following

disputes were referred to the Tribunal for adjudication in exercise of jurisdiction u/s 10(1)(d) of Industrial Disputes Act.

3. Consequent upon amalgamation of Indian Tube Company with TISCO to what pay scale, dearness allowance and other benefits the employees

are entitled and from which date the same shall be given to them.

4. The case of Tube Company Workers" Union is that Management of Indian Tube Company Limited, hereinafter referred to as Tube Company

amalgamated, with the Management of TISCO on April 1, 1983 and that the Workmen of Tube Company are entitled to get pay scale and

dearness allowance which are being drawn by the employees of TISCO as well the workmen of the Indian Tube Company are entitled to other

benefits which are being enjoyed by the employees of the TISCO with the personal protection of other monetary benefits which are available to

and other facilities which were being enjoyed by the employees of the union prior to the date of amalgamation i.e. prior to April 1, 1983. The

further case of the respondent Union is that several monetary benefits which were available to the workmen of Tube Company and certain other

facilities which were enjoyed by the workmen of the Tube Company have either been withdrawn or reduced.

5. On the other hand case of the management is that the management of the Tube Company amalgamated with the management of the TISCO on

October 1, 1985 and that the workmen of Tube Company are getting pay scale, dearness allowance and other benefits at par with the workmen

of TISCO. The further case of the management is that the management made an agreement with the Tata Workers" Union which union was joined

by majority of the members of the Tube Company Workmen Union on February 3, 1986 by which the demand raised by the Tube Company

Workmen Union on December 2, 1985 was settled wherein it was agreed that the service conditions of the employees of the Tube Division shall

be at par with the employees of other Division of the Company at Jamshedpur. According to the management since the agreement has been

implemented before April 20, 1986 on which the present reference was made, the present reference has become infructuous.

6. The Tribunal formulated the following points for consideration in this reference:-

(I) What is the effective date of amalgamation of the Indian Tube Company with TISCO?

(II) Whether the majority of the members of the Tube Company Workers" Union joined the Tata Workers" Union on amalgamation of the Indian

Tube Co. with TISCO and if the answer is in affirmative whether the agreement, if any, entered in between the Tata Workers" Union with the

management of TISCO, shall be binding on the minority of the members of the Tube Company Workers" Union?

(III) Whether there was any industrial dispute in between the management of Indian Company Ltd. and its workmen on the date on which the

present reference was made?

(IV) Whether the Industrial Dispute which was in between the management of Indian Tube Company Ltd. and its workmen was resolved prior to

the date on which the present reference was made?

(V) To what scale, dearness allowance and other benefits the workmen of Indian Tube Company are entitled and from which date the same will be

payable to them?

7. The Tribunal considered all the three points namely point Nos. II, III and IV together and decided these points in favour the respondent/union.

The Tribunal further considered point Nos. I and V together and finally held that April 1, 1983 the effective date of amalgamation of Indian Tube

Company with the TISCO. The Tribunal further held that the pay scale, dearness allowance and other benefits should be made available to the

workmen of the Indian Tube Company Ltd. at par with the workmen of TISCO from April 1, 1983.

8. This writ petition was admitted on November 5, 1992 for deciding the limited question as to what is the effective date of amalgamation of the

Tube Company with the petitioner/TISCO and what pay scale, dearness allowance and other benefits the workmen of Tube company are entitled

and from which date the same will be payable to them.

9. Mr. C.M. Mishra, learned Counsel appearing for the petitioner assailed the award on the ground inter alia that the Tribunal has committed

serious error of law, which is apparent on the face of the award and that the relevant materials on record have not at all been considered or

overlooked by the Tribunal. The learned Counsel further submitted that amalgamation of one company with another company requires sanction of

the Court under the provisions of the Companies Act. Order of sanction made by the Court comes into effect only when certified copy of order is

filed with the Registrar, learned Counsel submitted that the Companies Act as such does not give any protection to the employees of Transferor

Company with regard to their absorption/ employment in the transferee company. Learned Counsel referred to paragraph Nos. 7 and 15 of the

amalgamation, a copy of which is Annexure 11 here and submitted that scheme itself envisaged that the amalgamation shall take effect from the

date when the copy of order of Calcutta and Bombay High Courts sanctioning the scheme shall be filed with the appropriate Registrar of

Companies and such date would be considered as effective date for the purpose of the scheme viz, implementation of the transfer of employees.

Learned Counsel further referred relevant portion of the order dated August 1, 1985 passed by Bombay High Court and relevant portion of the

order dated May 15, 1985 passed by the Calcutta High Court. Learned Counsel therefore, submitted that certified copies of the orders of

Bombay and Calcutta High Courts were filed with Registrar of Companies on October 1, 1985. Learned Counsel further submitted that in terms

of the scheme and in terms of the orders passed by the High Courts, one day before the filing of the orders before the Registrar, i.e. on September

1, 1985 a general offer was given by the Chairman-cum-Managing Director of the Company to the employee of the Tube Company inviting them

to exercise their option and unless they decline the offer in writing their services in the Tube Company Ltd. will be transferred in the petitioner"s

company without any interruption. Learned Counsel therefore submitted that on the basis of relevant clause of the scheme and the orders passed

by the High Courts the effective date shall be October 1, 1985 and not from April 1, 1983. Learned Counsel then submitted that ""appointed date

relatable to the transfer of assets and liabilities of Tube Company to Tisco. It is specifically, laid down for accounting purposes and also for the

termination of the relationship of buyers and sellers of Tubes manufactured by Tube Company. It is contended that charter of demand was

submitted by the Tube Company Workers" Union on May 7, 1985 to the General Manager of the Tube Company and not to the petitioner

TISCO and the employee of Tube Company continued to draw their wages from Tube Company prior to October 1, 1995. It is therefore,

contended that in my view of the matter effective date can be only October 1, 1985 and cannot be April 1, 1983.

10. On the other hand Ms. M.M. Pal, learned Counsel appearing for the Workers" Union submitted that the effective date and the appointed date

of the scheme of amalgamation of the Tube Company with the petitioner Company are in consonance with the judgment of Bombay and Calcutta

High Courts on that point. Learned Counsel drew my attention to the relevant paragraphs of the scheme particularly paragraph Nos. 5 and 7 and

submitted that on the reading of the scheme and the order together it is abundantly clear that the effective date of amalgamation is April 1, 1983.

Learned Counsel then submitted that Tribunal was given positive and satisfactory reason in the award and there is no perversity or other error of

law or error of fact. Learned Counsel then submitted that factually merger of two companies took place w.e.f April 1, 1983 from which date

workmen have become entitled to extra monetary benefits by reason of amalgamation.

11. From perusal of the impugned award it transpires that on the main issue i.e. Issue Nos. 1 and 5 the Tribunal has come to the finding that as per

Ext. M-12 and M-15 scheme of amalgamation was to be effective from April 1, 1983 and the scheme of amalgamation was to take effect finally

from October 1, 1985. The Tribunal therefore, held that April 1, 1983 is the effective date of amalgamation of Indian Tube Company with TISCO

and therefore, the workmen of the Tube Company are entitled to get all benefits at par with the workmen of TISCO from April 1, 1983.

12. Before appreciating the rival contentions made by the learned Counsel appearing for the parties and finding arrived at by the Tribunal it would

be useful to first look into the order passed by the Bombay High Court and the relevant clauses of the scheme of amalgamation.

13. From perusal of the order passed by the Bombay High Court it transpires that an application under Sections 391 and 394 of the Indian

Companies Act was filed by the petitioner-TISCO being Company Petition No. 39/84 praying for sanction of an arrangement embodied in the

scheme of amalgamation of the Tube Company with the petitioner TISCO. The Bombay High Court passed order on August 1, 1985 granting

sanction for amalgamation. The relevant portion of the order reads as under:

This Court doth hereby sanction the arrangement embodied in the scheme of amalgamation annexed as Exhibit "C" to the petition and annexed

hereto as Schedule II, and doth declared the same to be binding on the transferee-Company and its members and also on the transferor Company

and its members and this court doth further order that the scheme of amalgamation be and it is hereby effective from the 1st day of April, 1983,

which date is hereinafter referred to as "the Appointed Day.

.....

And this court doth further order that the transferee Company shall prior the day immediately preceding the effective date referred to in Clause 15

of the scheme of amalgamation by a general notice offer employment to all the employees of the transferor-Company on their existing remuneration

and conditions of service and all such employees of the transferor-Company as are in its employment at the close of business of the aforesaid day

and as shall not expressly in writing declined such offer shall continue in employment in the said undertaking as employees of the transferee-

Company without interruption in service and on the same remuneration and condition as or on remuneration and conditions not in any way less

favourable to such employees than these applicable to them at the aforesaid day the transferee-Company shall be legally liable to pay to any such

employee in the event of the retrenchment such compensation as he may be entitled to receive under the Industrial Disputes Act, 1947 or any

substituted enactment on the basis that his service has been continuous and has not been interrupted by the transfer of the undertaking of the

transferor-Company to the Transferee- Company.

14. From perusal of the relevant portion of the order quoted above it is manifest that April 3, 1983 is the appointed date i.e. the date from which

scheme of amalgamation became effective. It is also not disputed by the respondent that April 1, 1983 is the appointed date when entire business

and undertakings of the transferor-Company stood transferred and vested in the transferee Company. The latter part of the order further declares

that the transferee company prior to the date immediately proceeding the effective date referred to in Clause 15 of the scheme of amalgamation by

a general notice to offer employment to all the employees of the transferor company on their existing remuneration and conditions of service and

such employees of the transferor company in absence of any express declination shall continue in the employment of the transferee company and

the transferee company shall be legally liable to pay to any such employee in the event of his retrenchment or on such declination on such

compensation as may be entitled to under the law.

15. It is therefore, clear that the effective date used in the order of the High Court refers to the effective date mentioned in Clause 15 of the scheme

from which date transferee company shall be liable to pay remuneration compensation etc. It is therefore, necessary to look into the clause of the

amalgamation scheme along with other clauses which reads as under:

1. ""This scheme of arrangement and amalgamation (hereinafter referred to as "the Scheme") is effective from April 1, 1983 or such other date as

the appropriate High Court may direct, which date is hereinafter referred to as "the Appointed day.

2. ""On and from the appointed day, the entire business and undertaking of the Indian Tube Company Limited, a public Company having the

Registered Office at 43, Chowringhee Road, Calcutta 700 071 (hereinafter referred to as "the Transferor-Company") shall without any further act

or deed be and the same shall stand transferred to and vested in and be deemed to have been transferred to and, vested in the Tata Iron and Steel

Company Limited, a public Company having its Registered Office at Bombay House, 24, Homi Mody Street, Fort, Bombay 400 023 (hereinafter

referred to as "the Transferee Company") pursuant to the provisions of Section 394 of the Companies Act, 1956 (hereinafter referred to as the

"said Act") for all the estate and interest of the transferor Company subject nevertheless to all changes if any then affecting the same and on the

appointed day the transferor Company shall be amalgamated with the transferee Company.

5. ""The transferor Company shall with effect from the appointed day be deemed to have carried on its business and activities of its undertaking on

behalf of and for the benefit and on account of the transferee Company and accordingly all profits accruing or losses arising or incurred by or in the

business of the transferor Company as and from the appointed day shall for all purposes be and shall be treated as profits or losses as the case

may be of the transferee Company and shall be available to the transferee company for disposition in any manner including the declaration of any

dividend by the transferee Company. As such the transferor Company shall carry on its business and activities on and from the appointed day as

economically and efficiently as possible and with utmost prudence and without creating any charge or making any alienation of or otherwise dealing

with its undertaking or any part thereof except in the ordinary course of business.

7. ""The transferee Company shall prior to the day immediately proceeding the effective day referred to in Clause 15 below of the scheme by a

general notice offer employment to all the employees of the transferor Company on their existing remuneration and conditions of service and all

such employees of the transferor Company as are in its employment at the close of business on the aforesaid day and as shall not have expressly in

writing declined such offer shall continue in employment in the said undertaking or employees of the transferee Company without interruption in

service and on the same remuneration and conditions as or on remuneration and conditions not in any way less favourable to such employees than

those applicable to them at the aforesaid day and the transferee Company shall be legally liable to pay to any such employee in the event of his

retrenchment such compensation as he may be entitled to receive under the Industrial Disputes Act, 1947 or any substituted enactment on the basis

that his service has been continuous and has not been interrupted by the transferor of the undertaking of the Transferor Company to the transferee

Company.

15. ""The X scheme although operative from the appointed day shall take effect finally from the last of the dates upon which certified copy/copies of

the order/orders of the High Courts at Calcutta and Bombay sanctioning the scheme shall have been filed with the appropriate Registrars of

Companies pursuant to Section 394 of the said Act (such last date being referred to in the scheme as "the Effective Date") for the purpose of the

scheme.

16. From perusal of Clause 15 it is abundantly clear that although the scheme of amalgamation would be operative from the appointed date; i.e.

April 1, 1983 but it shall take effect finally from the last of the date upon which certified copy of the orders of the High Courts sanctioning the

scheme shall be filed with the appropriate Registrar of the companies pursuant to Section 394 of the Companies Act. Such last date will be taken

as an effective date for the purpose of the scheme. Clause 7 of the scheme also provides that the transferee Company shall give a general notice of

offer just prior to the date preceding the effective date offering employment to all the employees of the transferor company on their existing

remuneration. It appears that in terms of the scheme and the order passed by the High Court to that effect a general notice of offer was issued by

the petitioner Company on September 1, 1985 a copy of that letter was proved and marked Exhibit and also annexed and filed as Annexure 2 to

the writ petition. It is therefore, clear that in terms of the High Court's order a general notice offering the employment to all the employees of the

transferor Company was given immediately preceding the effective date as referred to in Clause 15 of the scheme. The Tribunal has not

understood the implications of the order reading it together with Clauses 7 and 15 of the amalgamation scheme. There is no reference in the award

regarding the general notice dated September 1, 1985 which is clearly suggestive of the fact that after September 1, 1985 i.e. October 1, 1985 is

the effective date from which transfer of the employees came into effect.

17. Besides the above it is not disputed by the respondent that the concerned workmen of Tube Company continued to draw their wages from the

transferor Company (Tube Company) prior to October 1, 1985 and the employees of the transferor Company have already given benefits of

wages at par with the employees of the Transferee Company w.e.f. October 1, 1985. The finding of the Tribunal therefore, that the effective date

is April 1, 1983 from which date employees of the transferor Company are entitled to get benefits is perverse in law and contrary to the

amalgamation scheme and the order passed by the High Courts. From the facts and the materials discussed herein above, it can safely be

concluded that effective date is October 1, 1985 for the purpose of giving benefits of wages and other benefits to the employees of the Transferee

Company.

18. The writ application is therefore, allowed and the impugned order passed by the Tribunal is set aside. However, in the facts of the case there

shall be no order as to cost.