

(1979) 03 BOM CK 0040

Bombay High Court

Case No: Spl. Civil Application No. 502 of 1974

Bharat Cotton Growers"
Co-operative Spinning
Mills Limited, Sangli

APPELLANT

Vs

Miraj Taluka Girni
Kamgar Sangh and
Others

RESPONDENT

Date of Decision: March 21, 1979

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 42, 42(2)

Citation: (1979) 39 FLR 173 : (1979) 1 LLJ 487

Hon'ble Judges: S.H. Naik, J; M.L. Pendse, J

Bench: Division Bench

Judgement

Naik, J.

By this petition, the petitioner-society challenges the award of the President of the Industrial Tribunal, Bombay, dated 14th January, 1974.

2. The facts giving rise to this petition are briefly these : The petitioner-society was registered to on September 9, 1964 for the purpose of manufacturing and selling yarn at Sangli. About Rs. 17 lakhs and odd were collected from the shareholders and about Rs. 30 lakhs and odd were secured as loan from the Government. According to the petitioner, the trial of manufacturing yarn commenced on July 4, 1970 and actual commercial production as such started from March, 1971, 25,000 spindles were sanctioned by the Government but actually 12,500 spindles were in operation. On May 24, 1971 the union gave a notice of change about the charter of demands. The charter of demands consists of 4 demands. In respect of two demands, viz., the demand to get dearness allowance at the rate of 100% of the cost of living index for Sholapur from 1st August, 1970 and a second demand for wages and dearness allowance from 1st August, 1970, there being no agreement, a reference was made. The statements of claim were filed by the

respondent-union and the petitioner filed its written statement. The claim of the workmen was that huge profits were being made for which they are contributing by their efforts, while the petitioner-society wanted the Tribunal to believe that it was in fact meeting with lessees. After a careful consideration of the evidence, the learned president repelled the contentions of the petitioner and he expressed a definite opinion that the petitioner-society was in a sound financial position and he further took the view that it had a very bright prospect of getting larger profits and has, therefore, acceded with to the demands of the respondents. However, since at the time of the argument, the claim of dearness allowance was restricted to 93% of the Sholapur Cost of Living Index from 1st August, 1970, he directed that the same shall be paid in addition to the payment of ad hoc amounts as per the recommendations of the Central Wage Board for the Cotton Textile Industry. He further directed that dearness allowance wages at that rate shall also be paid from 1st August, 1970 inasmuch as the society had already started making these payments from 1st October, 1971.

3. The propriety of the said order is challenged by the petitioner. Mr. Ramaswami, the learned counsel for the petitioner, after having taken us through certain portions of the award of the learned president, stated that he did not want to challenge the award on merits, but he, however, submitted that the portion of the award granting relief from a date prior to the date of demand is not justified. He submits that the Tribunal could not go beyond the date of demand and in this case, since the demand itself was made on May 24, 1971, the award which directs the payment prior to that date, i.e., from August 1, 1970 cannot be sustained in law. Secondly, he submitted that the Court has not taken into consideration the financial position by the time the award came to be passed. Having regard to the submission of Mr. Ramaswami, at the outset of his addresses that he is not going to challenge the award on merits and that he is going to restrict his challenge to the award only to its being made retrospective, we find no substance in the second submission of Mr. Ramaswami. With regard to his first submission which is the real submission to be considered in this petition, Mr. Sowani, the learned advocate for respondent No. 1, submits firstly, that the award is passed by the Tribunal in its discretion and, therefore, it should not be interfered with and secondly, he submits that by the demand itself the workers have asked for the relief from August 1, 1970 and, therefore, no exception could be taken to the award.

4. The short question, therefore, for our decision in this petition is whether having regard to the admitted facts that the demand itself was made by a notice of change dated May 24, 1971, the Tribunal was justified in directing the payment of dearness allowance from a date prior to it, viz., from August 1, 1970. Undoubtedly, under sub-s. (2) of S. 42 of the Bombay Industrial Relations Act, 1946, a notice of change has got to be given by the employees desiring a change. It is true that in the notice purporting to have been issued under the said Section on May 24, 1971, the workmen have demanded that the relief of dearness allowance should be given to them from August 1, 1970. It is also true that the Tribunal has, in fact, held that effective production did commence from July 4, 1970 and,

therefore, the Tribunal acceded to the request of the workmen. In the instant case, the date of demand itself is made on May 24, 1971. Therefore, when the Tribunal found from the facts of this case that the petitioner-society was in a financial position to meet the demand, the Tribunal was perfectly justified in effecting that change or giving effect to that demand from the date of that notice of demand from May 24, 1971. How, simply because, as is urged by Mr. Sowani, in that notice the workmen have made a demand that they should be given the benefit from August 1, 1970, it could not be said that that date is the date of the demand or change contemplated under S. 42 of the Bombay Industrial Relations Act, 1946. That, in fact, is the demand but that should not be confused with the date of demand. The date of demand would be the date when such a demand is made by notice of change and it should not be confused with a date from which a demand may be made in the notice of change or notice of demand. We are, therefore, not impressed with the submission of Mr. Sowani that because in the demand notice or notice of change dated May 24, 1971 the workmen had demanded the reliefs from August 1, 1970, the Tribunal had jurisdiction to do so and was justified in doing so.

5. Normally, as we have stated, the change should be prospective from the date of demand. In support of his submission that no change could have been made prior to the date of demand, Mr. Ramaswami relied on the judgment of the Supreme Court in the case of *Jhagrakhand Collieries (P) Ltd., and another v. Central Government Industrial Tribunal, Dhanbad, and others*, reported in 1960 II L.L.J. 71. The relevant observations relied upon by Mr. Ramaswami are at page 77. They are to this effect :

"Now, if the respondents did not make a specific claim until September, 1952 it would not be fair or just to allow them the benefit of the present increase directed by the award even prior to the date of the demand."

The second decision relied upon by Mr. Ramaswami is also of the Supreme Court in the case of [Cox and Kings \(Agents\) Ltd. Vs. Their Workmen and Others](#), . In paragraph 33 of the judgment, the Supreme Court has observed that after taking into consideration all the circumstances of the case, the Court was of the opinion that the Labour Court was not justified in awarding compensation to the workmen for wages relating to the period prior to 25-10-1972, i.e., the date on which the demand notices for reinstatement were served on the management and to that extent the contention of the appellants was accepted. It would, thus, appear that no relief prior to that date of demand ought to have been granted by the Tribunal. Mr. Sowani, however, tried to distinguish the two cases relied upon by Mr. Ramaswami, but we find no force in his submission inasmuch as in *Jhagrakhand Collieries*" case, the Supreme Court has, in fact, purported to lay down the law to the effect that it would not be fair or just to allow any relief prior to the date of the demand notice. We, therefore, accept the contentions of Mr. Ramaswami that the award of the Tribunal directing payment of dearness allowance and revised wages from August 1, 1970 to May 23, 1971 must be quashed and the relief must be restricted from the date of demand, viz., from May 24, 1971 and onwards.

6. The rule is made absolute accordingly. There shall be no order as to costs. Oral application for leave to appeal to the Supreme Court is rejected.