

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9 of 1977. A

Appeal by Special Leave from the Award of the Industrial Tribunal, Gujarat dated 8th October, 1976 in Reference No. 11 of 1975., published in the Gazette Part I-L dated November 11, 1976.

H. R. Gokhale, A. P. Hathi and Ashok Grover for the Appellant.

R. K. Garg, P. H. Parekh, Miss Manju Jetley and K. Vasudev for Respondent No. 1. B

The Judgment of the Court was delivered by

GOSWAMI, J.—This appeal by special leave is directed against the award of the Industrial Tribunal, Gujarat, of October 8, 1976. Although it is a composite award disposing of two references by the State Government, we are concerned in this appeal with Reference (IT) No. 11 of 1975 as per the State Government notification of January 21, 1975 and even out of the two questions referred to therein only with regard to one of these regarding dearness allowance. C

The relevant issue which arises for consideration in this appeal may be quoted below :

“All workmen should be paid dearness allowance at the rate of 100% dearness allowance paid to the workers of the Cotton Textile Mills at Ahmedabad”. D

Before we advert to the submission of Mr. H.R. Gokhale, appearing on behalf of the appellant, it will be appropriate to indicate that there is no dispute about granting of dearness allowance of the pattern of what is known as the Ahmedabad Textile D.A. The question to be determined by the Tribunal was only with regard to the percentage of the Textile D.A. to be paid to the employees of the company. E

The Tribunal has noticed that—

“the recent trend in the several industries—textile, engineering and others, in Ahmedabad, Baroda and in some other parts of the State of Gujarat, is to make a demand for dearness allowance on the lines of the dearness allowance paid to the workers of the cotton textile mills at Ahmedabad, with a varying percentage”. F

The Tribunal describes this as what in ordinary parlance is called the “Textile D.A.” and reckons it “as before the revision of the basic wage in the mills prior to 1-1-1974”. G

The company is manufacturing high precision ball and roller bearings in collaboration with a West German company. It has its plant in the district of Baroda with a manufacturing capacity of 24 lakh pieces of bearings per annum upto 1973 and 28.82 lakh pieces per annum from 1974. The company was incorporated in April, 1962 and went into commercial production from June 1965. Its registered office is in Bombay and has its sales offices in Bombay, Calcutta, Delhi and Madras. The plant is being operated almost to full capacity from June 1965 onwards. The production has also increased progressively. H

A The number of workers on 31-8-1974 was about 630. The company is said to be the third largest unit in the ball bearing industry in the country—the other two concerns being Antifriction Bearings and the Associated Bearings, the next one to the company being Shriram Bearings.

B Two questions are raised before us by Mr. Gokhale. Counsel is conscious of his limitations in an appeal by special leave under Article 136 of the Constitution and has, therefore, fairly enough confined his submissions within narrow bounds and we fully appreciate this stand. The first submission of Mr. Gokhale in the forefront of his argument is that the Industrial Tribunal has failed to consider the impact of the rise in dearness allowance granted by it on the financial capacity of the appellant to bear the burden.

C It is true that in considering the question of dearness allowance the capacity to pay of the company is one of the most important considerations. Mr. Gokhale has pointed out that the additional liability as a result of the award would be Rs. 8,29,312 in 1975, Rs. 7,42,563 in 1976 and Rs. 12,42,395 in 1977 and the percentage increase over the annual wage bill will respectively be 36.76%, 32.91% and 55.07% for the said three years. He has also pointed out that the company was able to declare 8% dividend for the first time in the year 1970-71 and had been incurring loss for the earlier years from 1962-63. He also points out that although dividends have been progressively increasing from 8% to 12%, from 1970-71 to 1974-75, only 8% dividend was declared in the year 1975-76. Besides, the company has to spend huge sums for replacement costs which, according to counsel, the Tribunal has not properly taken into account. It is true that the Tribunal has mentioned in the award that this could be done in a phased manner. Mr. Gokhale submits with some justification that this was purely a management function and the Tribunal should have taken the figures as furnished by the management in making reserves for replacement costs. We have, however, seen that although a substantial sum was kept as reserve towards the replacement costs, only a fraction of it was actually utilised. The company, therefore, cannot make any grievance about the manner in which the Tribunal has dealt with this aspect. Mr. Garg, on behalf of the respondents, also drew our attention to paragraph 4 of the company's written statement (page 62, Volume 1) where after having referred to certain offers made by it the company was prepared to the "increase of about Rs. 15 lacs in the employee cost in the very first year.".

G We find that the Tribunal has exhaustively gone into the whole matter with care and kept in view the five principles laid down by this Court in the *Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen*(1), the 5th one being additional financial burden which dearness allowance would impose upon the employer and his ability to bear such burden. We are unable to find any infirmity in the Tribunal dealing with the point of the financial capacity of the employer to bear the burden. The Tribunal finally observed as follows :—

(1) [1969] 2 S.C.R. 113.

"On a careful consideration of all the relevant factors, in my opinion, the dearness allowance paid to the PBI (Precision Bearings India) workmen at the minimum level of basic pay from Rs. 26—upto Rs. 100—should be from 80 per cent, of the textile D.A. to 89 per cent, of the textile D.A. phased over a period of three years. The dearness allowance in the higher pay scale of Rs. 101—to Rs. 200—should be 40 per cent and in the still higher slab of Rs. 201 and above, should be 20 per cent, the percentage for the higher two slabs remaining the same".

The 40 per cent and 20 per cent of the basic wages in the higher slabs were in addition to the Ahmedabad Textile Dearness Allowance granted in the award. This takes us to the second objection of Mr. Gokhale.

It is submitted that in the charter of demands of the union there were two specific demands with regard to dearness allowance. These were as follows :—

1 : 1. It is demanded that the existing minimum dearness allowance of Rs. 146/- should be modified and that all the workers including workers known as staff should be paid minimum dearness allowance at the rate of full dearness allowance that is being paid to Textile workers at Ahmedabad, i.e. 100% of Ahmedabad Textile rate.

1 : 2 With the above minimum dearness allowance the workers and workers known as staff should be further continued the higher dearness allowance as under—

Below Rs. 100 pay—100% Ahmedabad Textile Dearness Allowance.

Pay range between Rs. 100 to Rs. 200—100% Ahmedabad Textile DA+40% of basic

Pay above Rs. 200/—100% Ahmedabad Textile DA+20%+ of basic."

Even though the demand for dearness allowance was as above, the State Government referred the dispute only in the form set out at the outset. The Government did not entertain the claim of dearness allowance in addition to the 100% D.A. paid to the workers of the cotton textile mills at Ahmedabad. In other words, while the claim of the union was Ahmedabad Textile D.A. plus, the Government did not entertain the dispute between the parties in that form. We find great force in the above submission of Mr. Gokhale. The Tribunal in view of the content of the dispute referred to it had no jurisdiction in this reference to grant anything more than 100% of the Ahmedabad Textile D.A. on the outside. Since the Tribunal after having given appropriate consideration to all aspects of the matter granted varying percentage from 80% to 89% phased in a particular way, it had virtually rejected the union's claim for 100% of the Textile D.A. Having done so, there was no scope for allowing to the higher brackets of wage earners in addition 40% and 20% of basic wages as dearness

A allowance. This part of the award is, therefore, beyond the scope of the reference and must be quashed which we hereby do. If the Government at a future time intends to entertain a dispute of this nature with regard to higher brackets of wage earners that will be a different dispute but such a claim could not be entertained by the Tribunal in the present reference.

B We may observe that during the course of the proceedings before the Tribunal the clerical and the supervisory staff seem to have withdrawn from the reference and even an application was filed by some of them before the Tribunal to confine the dispute as pertaining to the manual and technical workers. The Tribunal, however, did not accede to this request and proceeded on the footing that all the members of the staff were included in the reference.

C We should not be taken to suggest that the 40% and 20% plus is either wrong or excessive by way of high cost allowance. Indeed, we even felt that the lowest bracket upto Rs. 100/- needed full neutralisation of the rise in the cost of living as has been held in *Killick Nixon Limited v. Killick & Allied Companies Employees Union*.⁽¹⁾ Nor do we fail to see the force of Shri Garg's submission that social justice perspectives being integral to industrial jurisprudence, the high cost allowance as a component of D.A. is not impermissible in principle. It is a legitimate item. But we disallow because there is a deliberate omission to make a reference of that item and so falls outside the jurisdiction of the tribunal. That is why we have expressly observed that such a dispute may well be referred by Government, if it considers fit, and this decision will not bar such a course.

E In the result the appeal is partly allowed. The award of the Tribunal with regard to the 40% and 20% for the higher two slabs is set aside. In all other aspects the award of the Tribunal stands. The appellant will pay the costs (one set) of the respondents as ordered at the time of granting the special leave and will also pay interest as ordered therein.

F The arrears calculated in terms of the Award now upheld will be paid to the respondents in two equal instalments, the first instalment within three months from today and final instalment within three months thereafter.

S. R.

Appeal partly allowed.

(1) [1975] Supp. S.C.R. 453.