

(1985) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 423 of 1982

A.J. Verghese and others

APPELLANT

Vs

Bharat Aluminium Co. Ltd. and another

RESPONDENT

Date of Decision : 05-03-1985

Acts Referred:

Companies Act, 1956 — Section 617

Madhya Pradesh Industrial Relations Act, 1960 — Section 33

Citation : (1985) JLJ 712 : (1986) MPLJ 379

Hon'ble Judges : C.P. Sen, J;B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; G.M. Chaphekar with A.K. Khaskalam for Respondent No. 1 and V.S. Shroti, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

This is a petition under Art. 226 of the Constitution for a writ in the nature of mandamus for directing the respondent No. 1 to fix uniform working hours for all the employees of the ministerial staff whether working inside the plant or outside in the administrative building.

Bharat Aluminium Company Limited (hereinafter called BALCO) is a Government company u/s 617 of the Companies Act, 1956. All the shares of the company are fully owned by the Government of India and the Board of Directors are also appointed by it including the Chairman-cum-Managing Director. BALCO has its head office at New Delhi and its factory at Korba where it manufactures aluminium ingots, sheets, coils and other products. It also owns two Bauxite mines one at Phutka Pahad and the other at Amarkantak. The company employs about 3000 employees including about 500 in the ministerial staff. Since its inception before the administrative building and other buildings were constructed, the ministerial staff working in the plant as well as in certain technical and maintenance departments inside or outside the plant were having

working hours of 48 hours per week, while those working in the administrative side were having working hours of 41 1/2 hours per week. The BALCO has its own standing orders under the provisions of Industrial Employment (Standing Orders) Act, 1946. Under Paragraph 21 of the Standing Orders, the hours of working of workmen can be fixed by the management from time to time subject to the provisions of law applicable to the workers. The respondent No. 2 Bharat Aluminium Mazdoor Sangh is the representative union of BALCO and it is affiliated with Indian National Trade Union Congress. In order to increase the efficiency, a settlement was arrived at and registered between BALCO and the representative union on 18-10-1976 u/s 33 of the M.P. Industrial Relations Act providing uniform working hours of 48 hours per week for all employees whether working inside the plant or outside in the administrative building. Consequently, all the employees started working 48 hours a week whether posted inside the plant or outside in the administrative building. The agreement was valid for a period of 4 years. When the agreement was coming to an end the representative union presented a charter of demand for reducing the working hours of the staff working in the administrative building from 48 hours to 36 hours a week. After prolonged negotiations at all stages it was found that the efficiency did not increase by increasing the working hours of the employees in the administrative building from 41 1/2 hours to 48 hours and. therefore, a settlement was arrived at and registered on 19-11-1981 restoring the original working hours in the administrative building i.e. from 48 hours to 41 1/2 hours a week. But thereafter these 18 petitioners who are members of the clerical staff and posted inside the plant made a representation that fixing different working hours for the clerical staff who are similarly situated is discriminatory and uniform working hours of 41 1/2 hours should be fixed for all members of the clerical staff whether working inside the plant or outside in the administrative building. Since nothing was done, a registered notice was sent to the management and then present petition has been filed on 25-3-1982.

The petitioners case is that the members of the ministerial staff serving in different departments of BALCO belong to one cadre, their services are inter-transferable, scale of pay similar and so also other conditions of service. These petitioners are not members of the Bharat Aluminium Mazdoor Sangh and they were not parties to the agreement dated 19-11-1981. They are aggrieved by the agreement which is highly discriminatory by fixing 41 1/2 hours a week for those working in the administrative building while 48 hours a week for those working in the plant, in technical and maintenance establishments, stores, Medical and Township Departments and there is no rational basis for this discriminatory treatment. After making representation and serving a notice, the present petition has been filed challenging the settlement dated 19-11-1981 as highly discriminatory and ultra vires of Arts. 14 and 16 of the Constitution. Since the petitioners cannot raise a dispute before the Labour Court because of the registered settlement between the management and the representative union, they have no option but to file this petition. BALCO in its return submitted that

the petitioner No. 1 was an active member of the Bharat Aluminium Mazdoor Sangh and he participated in the negotiations which resulted in the settlement of 19-11-1981 though he is not a signatory to the settlement. Since the settlement was arrived at between the management and the representative union, it is binding on all the employees under S. 97 of the M.P. Industrial Relations Act, 1960, and as such the petition is not tenable. Since the settlement of 19-11-1981 is going to expire on 31-3-1985. the proper course for the petitioners would be to present a charter of demand for having uniform working hours for all the members of the clerical staff. Besides, these petitioners are not at all adversely affected by the settlement of 19-11-1981. They are posted inside the plant and working 48 hours per week prior and after to 18-10-1976. Though members of the clerical staff constitute a common cadre, those working inside the plant and in the Technical and Maintenance Departments constitute a different class by themselves as their working is co-related with the working of the plant and they cannot have different working hours than the other employees working in the plant. If they are given different working hours, then the working and production in the plant will be jeopardised. In the absence of clerical staff for the full 8 hours in the plant and also in the Technical and Maintenance sections, the work by the other employees would come to a stop without the store and Technical Department working for full 8 hours and the other employees in the plant cannot work for 8 hours a day. The representative union in its return has supported the case of the management and further submitted that the petitioners 1 to 4, 11, 13 and 14 were members of the union and otherwise also the petitioners are bound by the settlement arrived at by the management with the representative union. As the petitioner No. 1 has fallen out with the office bearers of the representative union, he has now formed a rival union and wants to undo the settlement arrived at. By way of rejoinder, the petitioners have further pointed out that some of the members of the clerical staff though working in the same building have different working hours and this has been replied by the respondent No. 1 by saying that this anomalous position arose due to oversight. Some employees who were working in the site while being posted inside the plant continued to work for 41 1/2 hours a week without being noticed by the management but after 18-10-1976 all the employees in the plant are working 48 hours a week.

The question to be considered is whether by providing different working hours for the clerical staff belonging to the same cadre in the administrative side and in the plant offends Art. 14 of the Constitution. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. The principle does not take away from the State the power of classifying persons for legitimate purposes. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough. Differential treatment does not "per se" constitute violation of Art. 14. It denies equal

protection only when there is no reasonable basis for the differentiation. It is the function of the management to adjust or vary the hours of work of the employees within the limits prescribed by law. Within the prescribed limit, the management has the right to alter the period of work. The petitioners' contention is that the clerical staff whether working in the administrative side or in the plant belong to the same cadre and draw the same scale of pay, yet the working hours in the administrative side is 41 1/2 hours while those in the plant is 48 hours in a week without any justification. It has been rightly pointed out by the learned counsel for the respondents that the clerical staff working in the plant are class by themselves though they belong to the same cadre and drawing the same scale of pay as the clerk working in the administrative side because their work in the plant is linked with the working of the plant and the manufacturing process there. If the workers in the plant have to work for 48 hours in a week, the other employees there must also work for full 48 hours otherwise the production will be affected. If the clerical staff works only for 41 1/2 hours, the working of the workmen in the plant for 7 1/2 in a week would be affected as the work of the clerical staff there is inter-linked with the production in the plant. The working of the clerical staff in the administrative side is not directly concerned with the working of the plant. The clerical staff in the administrative side were having 41 1/2 hours a week but this was increased to 48 hours a week by mutual settlement between the management and the representative union on 18-10-1976 for a period of 5 years. This was again changed to 41 1/2 hours as the change was found not conducive to increase the efficiency in the working by subsequent settlement dated 19-11-1981. It may be mentioned here that the petitioners all through have been working for 48 hours a week as they were posted in the plant even prior to 18-10-1976 and thereafter till today. They are not at all affected by the increase in the working hours of the clerical staff in the administrative side from 41 1/2 hours to 48 hours since 18-10-1976. So their only grievance can be that their working hours should have also been reduced from 48 to 41 1/2 hours. It is pertinent to note that change from 48 hours to 41 1/2 hours by mutual settlement dated 19-11-1981 was done after charter of demands was made by the representative union. No demand was made that the working hours of the clerical staff in the plant should also be reduced to 41 1/2 hours because they knew that their working is inter-linked with the working in the plant and their working hours cannot be reduced. The Supreme Court in *The Oil and Natural Gas Commission Vs. The Workmen*, held that the mere fact that while the workshop was under completion and there was no enough accommodation for the office/administrative staff in the workshop building, they were accommodated in another building and worked there along with other clerks for only 6 1/2 hours in a day for six months, will not make it a condition for their service. On completion of the administrative building in the plant, their working hours was increased to 8 hours a day and this change was upheld by the Supreme Court in view of the fact that the reduction in the working hours of the office staff from 8 hours to 6 1/2 hours would adversely affect "the working in the factory. In *Workmen of British Overseas Airways*

Corporation v. British Overseas Airways Corpn. ((1961) I L.L.J. 157) the Supreme Court noted with approval different working hours for those working in the office i.e. 36 hours a week and the working hours for the operational staff 39-42 hours a week. So different set of working hours can be provided looking to the exigencies of the situation and for efficient working of the establishment. In The Remington Rand of India Ltd. Vs. The Workmen, the Supreme Court noted that the company's workers at Madras work somewhat less than those at Trivendrum and Ernakulam, yet upheld the lesser working hours of the staff at Madras. The Supreme Court in AIR India Vs. Nergesh Meerza and Others, held that Art. 14 certainly applies where equals are treated differently without any reasonable basis. Similarly, in Randhir Singh Vs. Union of India (UOI) and Others, it held that equal pay for equal work is deducible from Arts. 14 and 16 in the light of the Preamble and Art. 39(d) and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. In the present case, though the clerical staff working in the administrative side and in the plant draw the same scales of pay but they have different sets of working hours and there is a rational basis for fixing different working hours. It is not the petitioners' case that the management at their sweet will has been transferring employees from the administrative side to the plant and vice versa in order to victimise the employees. The petitioners are all through working in the plant and have the same set of working hours from the beginning. Though their services are interchangeable, but it has not been pointed out that any transfer has been effected otherwise than for administrative convenience. The Supreme Court in Kishori Mohanlal Bakshi Vs. Union of India, held that there is no discrimination although persons are doing the same work but draw different scales, of pay as they belong to different cadres. Therefore, we are of the opinion that there is no violation of Arts. 14 or 16 of the Constitution in fixing different working hours for clerical staff of the same cadre working at different places.

The next question is what is the effect of the settlement dated 19-11-1981 on the employees of the respondents. S. 97 of the M.P. Industrial Relations Act, 1960, lays down that a registered agreement or settlement is binding upon all persons who are parties thereto provided further that in the case of any representative union which is a party to the agreement, all employees in the industry will be bound by such agreement or settlement. It has earlier been found that the settlement of 19-11-1981 is not hit by Art. 14 or 16 of the Constitution, otherwise no other infirmity in the settlement has been pointed out. The settlement was arrived at on the basis of charter of demand made by the representative union and after negotiations at all stages. The petitioner No. 1 participated in the negotiations though he is not a signatory to the final settlement. Other petitioners i.e. 2, 3, 4, 11, 13 & 14 were also members of the representative union. Under S. 97 all the petitioners are bound by the settlement of 1911-81 although there is no such corresponding provision in the Industrial

Disputes Act, 1947. The Supreme Court in *Herbertsons Ltd. v. Workmen* (AIR 1977 SC 322) held that if the settlement is just and fair is binding on the workers because it has to be taken as a package deal when the labour has gained in the matter of wages and yet there is some reduction in the matter of dearness allowance. In *Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others*, while considering Bombay Industrial Relations Act, 1947, the Supreme Court held that a combined reading of SS. 80, 27-A, 30 & 33 leaves no room for doubt that consistent with its avowed policy of preventing the exploitation of the workers and augmenting their bargaining power, the Legislature has clothed the representative union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in any proceeding under the Act where the representative union enters appearance or acts as representative of employees. In another case under mat Act the Supreme Court in *Textile Labour Association, Bhadra Ahmedabad Vs. Ahmedabad Mill Owners Association, Ahmedabad*, held that once the representative union of the employees has entered into a valid compromise, the same is not open to challenge by any employee. The Supreme Court in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, held that an employee is not entitled to a separate representation when he is represented by the representative union. The decision of this Court in *Hardeo Singh v. C. Govt. I.T.L.C.* (1173 M.P.L.J. (sic) did set aside the settlement under the Industrial Disputes Act because the settlement was not arrived at between all the parties. It appears there was no representative union and the petitioners although allowed to appear in the proceeding, the settlement was effected with the rival union i.e. the fourth respondent. So in that case, the settlement was found to be invalid and that is why it was set aside. It is not the decision in that case that although the settlement is otherwise valid, it would be open to challenge by an individual workman. Therefore, the petitioners only remedy was to have a fresh charter of demand and negotiate for a fresh settlement after expiry of the period of settlement dated 19-11-1981.

With the result, the petition fails and it is dismissed. There shall be no order as to costs. The outstanding security amount be refunded to the petitioners.