
(1971) 11 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 170 of 1970

Associated Cement Companies Limited, Bamangawan and
Kymore Mines, Kymore, M.P. APPELLANT

Vs

G.C. Agarwala, Presiding Officer, Central Government
Industrial Tribunal-cum-Labour Court, Jabalpur and another RESPONDENT

Date of Decision : 10-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) MPLJ 194

Hon'ble Judges : S.P. Bahrgava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : T.M. Nanawati, R.S. Dabir and A.P. Tare, for the Appellant; Gulab Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhawe, J.

In this petition the Award, dated 11th February 1970 (Annexure A), delivered by respondent No. 1, the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, is under challenge.

The Associated Cement Companies Ltd. (the petitioner here) carries on the business of manufacture of cement and has cement factories at various places in India. It also carries on the business of mining limestone which is used as raw material for the manufacture of cement. The present dispute is with the workers at the mines of Bamangawan and Kymore. They are represented by the Kymore Quarry Karmachari Sangh, Kymore (respondent No. 2).

On the recommendations of the Wage Board the wages to be paid to workers engaged in cement industry have been fixed by the petitioner-Company. The pattern adopted by the Wage Board was to divide the workers in five categories, namely, (a) to (e), the last category being that of unskilled workers. The wages

fixed for category (e) being the lowest and those of other categories being graduated upwards. It appears that after the Wage Board Award was announced, a grievance was made that the Wage Board had not taken into consideration the fact that in the quarrying operations of the limestone quarries certain special and heavy equipment is used which requires special skill and also calls for strenuous work. In a Bilateral Agreement (Annexure B), dated 23rd June 1967, that matter was also settled. The settlement was reached between the petitioner-Company on the one side and the 15 unions of the workers from various parts of India, including Kymore Quarry Karmachari Sangh, Kymore, on the other. The relevant part of the settlement is to the following effect:

Capacity

Shovels

3-4 C. yard capacity and above.

Draglines

Clam-Shell

Grantry Crane

Mobile

Lifting capacity 15 tonnes and above,

Bulldozers

Angled ozers

100 H. P. and above.

Traxcavators,

11/2 c. yard capacity and above.

Draglines,

Payloaders

Scrapers

11 e. yard and above.

Dumpers used in quarrying operations.

10 tonnes capacity and above.

Joy Blast Hole Drills

6" dia. and above.

Special Equipment Allowance will be paid at the rate of:

A

Grade ...

..

.. 35 paise per day.

B

Grade ...

..

.. 25 paise per day.

C

Grade ...

..

.. 15 paise per day.

The operators working on any of the above types of equipments but of lesser capacity than described in Column 2 above will be paid an allowance at the rate of:

A

Grade...

..

.. 20 paise per day.

B

Grade ...

..

.. 15 paise per day.

C

Grade ...

..

.. 10 paise per day.

It is further agreed that the workmen operating on any of the following equipments shall be paid allowance shown below:

A

Grade...

..

.. 20 paise per day

B

Grade...

..

.. 15 paise per day

C

Grade...

..

.. 10 paise per day

The above allowance shall be paid with effect from 1st July 1967.

It appears that some doubt was raised as to the interpretation of the expression "on the day they perform work". The question was as to whether the workers were to be paid at the rate fixed :if they worked for the whole period of their working day, or whether they became entitled to it even if they worked on the said equipment for a very short time. The petitioner-Company, therefore, issued a Circular, dated 11th July 1967 (Annexure C), to all its branches clarifying the position. The Circular was to the following effect:

THE ASSOCIATED CEMENT COS. LTD. DEPARTMENT OP L. E. A. No. LRA/80-A/103-C/655 Bombay, 11th July 1967.

Confidential ALL WORKS (excluding Bhupendra, Shahabad, Madhukkarai and Kistna Factory) for action.

BHUPENDRA, SHABAD, MADUKKARAI AND KISTNA (FACTORY) AND JAMUL

(For information only). Re: Settlement in respect of Special Equipment Allowance etc. Please refer to Clause 2 of the Settlement regarding Special Equipment Allowance. 2. Some works have enquired whether the Special Equipment Allowance will be payable on an hourly basis. The matter has been considered and we feel that it will be payable as follows:

(i) Where the Operator has not worked for any part of the day on the equipment, whether because he is on leave or otherwise, the allowance will not be payable.

(ii) Where he has worked for i hours or less, 50/- of the allowance will be payable,

(iii) Where he has worked for more than 4 hours, irrespective of the number of hours worked above 4 hours, full allowance will be payable.

DEPARTMENT OF L. R. A. Sd/- R. H. RANGA RAIL P. S. This Allowance will not be taken into account for any purpose, such as Provident Fund, Bonus, E. S. I.

(where applicable) etc.

The Circular was followed by a General Notice, dated 5th August 1957 (Annexure D), which is to the same effect.

The workers at Bamangawan and Kytmore quarries did not accept the interpretation contained in the Circular and the General Notice and raised a dispute which resulted in the matter being referred to respondent No. 1 and the impugned Award. The question referred was r

Whether the management of Bamangawan and Kymore Limestone Mines of Associated - Cement Companies Limited, Kymore, District Jabalpur, is justified in regulating the payment of Special -Equipment Allowance, prescribed in mutual settlement dated the 23rd June 1967 in the manner specified in their General Notice No. 19!, dated the 5th August 1967.

The respondent No. I came to the c inclusion that on a plain reading of the clause of the Settlement, referred to above, there was hardly any justification for the interpretation which the man ligament placed on it. The Settlement categorically provided for the entitlement "on the day they perform work on any of the equipments mentioned therein" and the expression "on the day" was significant. That would naturally mean a solar day as is commonly understood, that is, the space of 24 hours commencing at midnight and ending with m dinghy. Either the ordinary dictionary meaning of the "day" should be taken, or if any special and technical meaning must be given, which was not warranted, then it would be the working hours of the day. In either case, if the operator worked for any part of the day during the working hours, he was entitled to that allowance. Had the Intention been to provide for the Special Allowance only if the operator had handled the equipment for the whole length of the duty hours, the fact would have been specifically mentioned and there was no justification for the contention that the allowance should have been computed on hourly basis; but the management in its generosity allowed 30 per cent, for rendering work for four hours or less and full allowance for the day if work was rendered beyond four hours. The respondent No. 1 also held that as there was no ambiguity in the words used, there was no question of interpreting the same; nor could the fact, that other trade unions, which were also party to the Settlement, had not questioned the interpretation put by the petitioner-Company on the Settlement, operate as an estoppel against, the workers of the two mines in question. In this view of the matter, the various authorities cited before him were brushed aside as irrelevant.

After hearing the parties, we have come to the conclusion that the first respondent was in error in interpreting the abovesaid clause of the Settlement. It is no doubt true that the first part of the Settlement says that "on the day the work On the equipment was performed by the workers" they shall be paid at the specified rate but that the rate is prescribed "per day". When that language is considered in the light of the whole wage structure, it is clear that the wages are

fixed on the basis that the work is done for the working day, that is to say, for one shift of eight hours. From the language used in the Settlement it appears that the workers are not required to handle the said equipments every day and hence only on those days when they are required to handle the equipments they are to be paid the special equipment allowance. But that allowance is certainly "per day", that is to say, for the work done during full duty hours. This aspect of the matter the first respondent failed to take into consideration. The anomaly of accepting the interpretation put on the Settlement, by the workers can be easily illustrated. A person, who happens to work on any particular day on any of the special equipments for an hour would, on the interpretation put by the workers get the full allowance, while another person, who was required to work on it for all the eight hours, would also get the same amount. This would certainly result in heart-burning and unwarranted tendency of giving preference to one worker as against another. This could not have been the intention when the Settlement was reached. The fact that the interpretation put by the petitioner-Company was not questioned by other 14 trade unions also supports the view that we are taking. Here there is no question of applying any principle of estoppel against the second respondent. The fact that other unions have not questioned the interpretation put by the petitioner-Company can only be considered for the purpose of properly interpreting the words used in the Settlement.

Shri Gulab Gupta, learned counsel for respondent No. 2, urged that the respondent No. 1 had the jurisdiction to interpret the Settlement one way or the other and this Court would not exercise its jurisdiction under Article 226 of the Constitution only because it would like to interpret the said clause of the Settlement in a different manner, this Court not being an appellate Court. In support of his contention, Shri Gupta relied on the decisions of this Court in *Jagdish Narayan Babulal Jaiswal v. Collector, Damoh*, 1962 MPLJ 363 (F.B.) wherein it was held by one of the Judges that the powers of the High Court under Article 226 of the Constitution are not the same as the powers of appeal to correct all errors of judgment on the part of the authority concerned; and that if the authority has acted within the ambit of its power, the High Court will not interfere unless it is shown that it has acted mala fide. He also relied on *M.P.S.R.T. Corporation, Bhopal v. S.T.A.A. Gwalior* 1966 MPLJ 471 and *Chunnilal Ken Budha Ram Vs. Shri Radhacharan Baldeo Prasad and Others*, wherein similar observations occur. We may, however, usefully refer to the decision of their Lordships of the Supreme Court in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, wherein their Lordships held :

Writ of certiorari can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. Errors of fact, though they may be apparent on the face of the record, cannot be corrected. Though it cannot be easy to lay down an unfailing test of general application it is usually not difficult to decide whether the impugned error of law is apparent on the face of the record or not.

In that case, certain clauses of an agreement between the Ambica Mills Co. and its workers were interpreted by the appellate authority under the Payment of Wages Act. That interpretation was not accepted by the High Court and a writ of certiorari was issued. It was held by the Supreme Court that the High Court was justified in doing so, as the wrong interpretation of the clauses of the agreement amounted to an error of law apparent on the face of the record. The situation in this case is in no way different. The contention of Shri Gupta that this Court should not exercise jurisdiction under Article 226 of the Constitution cannot, therefore, be sustained.

Shri Gupta then urged that it was not correct to assume that the workers were casually asked to operate the special equipments. He urged that, as a matter of fact, each operator was attached to a specified special equipment. It was only occasionally when there was a break down in the machine that the operator was required to work elsewhere; and inasmuch as the special allowance formed part of the wages, there was no justification for calculating the special allowance on hourly basis. This aspect was not put before the respondent No. 1 ; nor was it considered by him. We are not, therefore, called upon to take this factor into consideration. Our attention was drawn to the notice to admit facts served by the Union wherein it was stated that the workmen concerned in the reference were heavy equipment operators and operated the special equipments for which a special equipment allowance was paid as part of their ordinary duty under the terms and conditions of their employment, as also to the reply of the petitioner-Company wherein the Company has stated that the employment of the persons concerned was in usual course on basic wages for operating the vehicles concerned; and that the terms and conditions of their employment did not provide for any particular allowance for operating the equipment. From this it was tried to be urged before us that the position was not disputed by the petitioner-Company that the workers were employed to operate the special equipments to which the special allowance was attached. In our opinion, the answer given by the petitioner-Company does not fully accept the contention raised by Shri Gupta. Apart from that, this ground was not canvassed, or at least it does not appear to have been canvassed, before the first respondent. We are not, therefore, called upon to consider this matter, for which there is no sufficient material before us. This contention must, therefore, be rejected.

For the abovesaid reasons, the petition is allowed with costs. The Award, dated 16th February 1970 (Annexure A), given by the respondent No.1 is quashed. Hearing fee is fixed at Rs. 100. The security deposit shall be refunded to the petitioner.