
(1990) 02 CAL CK 0018
In the Calcutta High Court
Case No : Matter No. 1584 of 1989

Gillanders Arbuthnot and Company Ltd.	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

West Bengal Workmens House Rent Allowance Act, 1974 — Section 4, 8

Citation : (1991) 1 CALLT 193 : 94 CWN 806

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—The Court: In this application under Article 226 of the Constitution of India, the petitioner originally challenged an award passed on February 6, 1989 by the 5th Industrial Tribunal, West Bengal in case No. VIII-56, 1979 which is annexure T to the writ petition. By a supplementary application filed with the leave of the Court, the petitioner has also challenged the connected order of reference being Order No. 1037-IR/IR/11L-406/78 dated 14.3.79 of the Government of West Bengal, Labour Department.

2. The matter was hotly contested by the respondent No. 3, the union of the workmen of the petitioner by filing affidavits.

3. The issues were referred by the Government to the 5th Industrial Tribunals, West Bengal hereinafter referred to as the Tribunal. The petitioner has come up against the decision made in respect of issue No. 2 only which is as follows :-

"Whether the demand for payment of House Rent Allowance to these workmen who are residing in tin sheds is justified? To what relief, if any, are the concerned workmen entitled ?"

The Tribunal passed a very lengthy award and the argument of the respondent No. 3 before this Court was lengthier.

4. It appears from the evidence on record that some of the employees of the petitioner "live" in the accommodation provided by the company almost from time immemorial. The quality and the quantity of accommodation provided by the petitioner was questioned by the respondent No. 3.

5. The dispute came about in the following way :-

In or around the year 1974, the West Bengal Legislature enacted an Act called "The West Bengal Workmen's House Rent Allowance Act, 1974", hereinafter referred to as the 1974 Act. This Act which came into effect from 1st October, 1975 for the first time imposed an obligation on the employers to pay House Rent Allowance to the workmen concerned @ 3 1/2%, subsequently enhanced to 5% of the wages.

6. Under the provisions of Sub-section (4) of section I, it is provided that the Act shall apply to every industry in which 50 or more workmen are employed. The two provisos to the said sub-section are not material for our purpose.

Section 4 of the said 1974 Act provides as under :

(1) "Every employer shall be bound to pay to every workman House Rent Allowance which shall be 5% of the wages payable to the workman for his services in the industry during a month or Rs. 15/- whichever is higher.....

(2)

(3).....

(4) Where the workman in an industry is given house accommodation by the employer and a deduction is made there for from his wages then,-

(a) If the amount deducted for such house accommodation is higher than the house rent allowance admissible under sub-section (1), the deduction shall be reduced by the amount mentioned in that sub-section and no house rent allowance shall be payable to the workman ; and

(b) if the amount deducted is less than the house rent allowance admissible under sub-section (1), the said allowance shall be reduced by the amount deducted and balance paid to the workman."

7. It was strenuously contended both before the said Tribunal and before this Court by the respondent No. 3 that the accommodation provided by the employer to some of the employees is not "House Accommodation" as the word "House Accommodation" connotes something entirely different. It denotes a place where a workman can live with the members of his family and invites guests and relatives to visit or live with them. It was further contended that in the accommodation provided in the premises of the petitioner, the workmen concerned are strictly prohibited from bringing in any friends, guests or relatives. The arrangements, sanitary and otherwise are not also adequate and the accommodation provided by the employer cannot, in any sense of the term be

called "House Accommodation" within the meaning of sub-section (4) of Section 4 of the 1974 Act and as such despite the provision for free accommodation, the members of respondent No. 3 are entitled to get House Rent Allowance in terms of sub-section (1) of Section 4 of the 1974 Act.

8. The respondent No. 3 contended before the learned Tribunal that the accommodation provided by the petitioner to some of its employees is merely for taking rest in between two shifts of duty and word "reside" used in the order of reference, in effect, refers to such places of rest provided to the workmen concerned.

9. Mr. Bikash Chandra Bhattacharjee, the learned Advocate tried to contend strenuously before this Court that the word "reside" means taking rest also.

10. The Concise Oxford Dictionary, 4th Edition revised by E. McINTOSH gives the meaning of the word reside as follows :

"Reside-have one's home, dwell permanently, at, in, abroad, etc.; (of officials) be in residence ; (of power, rights etc.) rest or be vested in person etc; (of qualities) be present or inherent in."

11. The same Dictionary 7th Edition by J. B. Sykes defines the word "reside" in exactly the same way.

12. The Sansad English-Bengali Dictionary, 5th Edition also gives the same meaning as given in the two editions of the Concise Oxford Dictionary. The portion which gives the meaning as rest to the word "reside" is proceeded by the words in bracket (of power, rights etc.), which means that some qualities reside in a person. As for example, it may said "the ultimate power rests with the Prime Minister". So by the word reside, we can never mean a place where people can take rest,

13. From the above discussion it would be apparent that from the order of reference, the word "reside" has been used in the ordinary, accepted sense of the term viz. to live. It also does not stand to reason why the Government in choosing the language used in an order or reference should choose an obsolete or obscure words in preference to the word which is commonly acceptable.

14. In that view of the matter, the order of reference itself becomes, to some extent unmeaning. If workmen are permitted to reside in the company's premises then sub-section (4) of Section 4 will exempt from the obligation of paying the House Rent Allowance.

15. But we need not go into that question in the present case although Mr. Bhattacharjee has argued that the accommodation provided by the petitioner to its workmen cannot, by any stretch of imagination, be said to be "house accommodation" within the meaning of the accepted sense of the term. Because of the fact that the accommodation provided by the petitioner falls far short of the concept of "house accommodation".

16. It is not necessary to go into the technical niceties in the instant case. Section 8 of the 1974 Act provides as follows :-

Section 8.-Power to exempt:

The State Government may if it thinks fit so to do in public interest, by notification exempt any class of industry from the provisions of this Act for such period and subject to such conditions if any, as may be specified in the notification.

17. The petitioner has annexed a notification of the Labour Department being No. 125/IR/KW/11L/1A-107/74 dated 8th January, 1976 published in Part I, the Calcutta Gazette February 12, 1976, page 485 which is, annexure "C to the petition from which it appears that under the powers conferred by Section 8 of the 1974 Act, the Governor was pleased to! exempt from the provisions of the said Act those industries which either provide free accommodation to their workmen or allow house accommodation to them on rent which is subsidised by the management at a rate higher than what is due to such workmen as House Rent Allowance under the said Act subject to the condition that in respect of the workmen who do not enjoy either of these two benefits the said industries shall be bound by the provisions of the said Act.

18. From the said notification it appears that in certain conditions, the 1974 Act itself has no manner of application so that the question of the qualitative and quantitative aspect of the matter will not arise at all.

19. The said notification can be split up into two parts; the 1st part provides that if an employer provides "free accommodation" (not necessarily house accommodation) to their "workman" (which does not include the members of the family or friends of the workman concerned), the provisions of the 1974 Act will not apply at all in such cases, the 2nd part is not necessary for our purpose. In the latter part of the said notification it has been reiterated that this exemption is subject to the condition that in respect of the workmen who do not enjoy either of these two benefits will be entitled to the House Rent Allowance in terms of the 1974 Act.

20. In the instant case, it is an admitted position that some of the members of respondent No. 3 are given free accommodation or in other ways the petitioner provides free accommodation to some of its workmen. The act of providing such free accommodation to the workmen of the petitioners exempts the petitioner from any obligation imposed under the provisions of the 1974 Act or in other ways the provisions of the said 1974 Act has no manner of application where such "free accommodation is provided to the "workmen" of the petitioner. If the Act itself does not apply to the given set of circumstances, the question of qualitative and quantitative concept of the "house accommodation" as provided in Section 4 of the 1974 Act will not arise at all. The notification is issued not under any Rule making power so that it could have been contended that Rules cannot override the provisions of the Act but the power to exempt is a part of the

Act itself and the notification is issued in accordance with the provisions of Section 8 of the 1974 Act.

21. In view of the discussions made above it is apparent that the somewhat elaborate discussion made by the learned Tribunal is nothing but an exercise in futility which failed to take into account the essence of the matter. Even if the order of reference is not struck down being unmeaning, yet the award impugned cannot be sustained in law.

22. In the circumstances, this application succeeds and the award impugned in the writ petition which is annexure "I" thereof is hereby set aside and quashed. All interim orders shall automatically stand vacated with the passing of this judgment.

23. I make it clear that if any of the workman of the petitioner chooses to give up the free accommodation provided by the petitioner, the petitioner will pay to the workman or workmen concerned the House Rent Allowance in terms of the provisions of the 1974 Act.

A prayer was made for stay of the operation of this order, such prayer is refused.