

(1968) 03 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 150 of 1965

Hindusthan Steel Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 14, 15
Payment of Bonus Act, 1965 — Section 2(21)

Citation : AIR 1968 Ori 129 : (1968) 34 CLT 437 : (1968) 17 FLR 402 : (1968) 2 LLJ 526

Hon'ble Judges : Barman, C.J;S.K. Ray, J

Bench : Division Bench

Advocate : L. Rath and B.B. Rath, for the Appellant; S. Misra, S.C. Misra and S.B. Nanda for Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ray, J.—The petitioner is the Hindusthan Steel Ltd., Rourkela, represented through its Deputy General-Manager, which is operating the Steel Plant as a Public Sector undertaking at Rourkela in the district of Sundergarh, having its head-office at Ranchi. This petition under Article 226 of the Constitution of India was filed for issuance of a Writ of Certiorari or any other appropriate writ or Order for quashing the award passed by the Industrial Tribunal, Orissa, opposite party No. 2, which has been published in the Orissa Gazette dated 30-4-65

2. The petitioner commissioned the Steel Plant at Rourkela in the year 1959, and in the year 1961, the petitioner-company introduced a scheme of production-bonus to enhance the production, including within its ambit certain categories of workmen who, as the management then thought, were directly responsible for the increased production. This scheme was for a period of three years and after its expiry, a new production-incentive-scheme was introduced by the management with effect from 1-8-64. This new scheme was, for the most part, a

reproduction of the old scheme with certain modifications at places, and brought within its range, new categories of workmen over and above those already covered by the old scheme. The new scheme was adopted by the Board of Directors of the Management on 3-2-64 and was introduced after an agreement with the recognized Labour Union, viz., Hindusthan Steel Ltd. Worker's Association. By virtue of that agreement, the original scheme was accepted by the Labour Union subject to this condition that the benefit of that scheme shall be extended to some new classes of workers enumerated in that agreement.

3. The management did not extend the Sew incentive-bonus scheme to the vehicle-drivers of the Hindusthan Steel Ltd., Rourkela, on the ground that the nature of their work has no nexus with the production. Thereby a dispute arose between the management of the H. S. L. and its drivers represented through the Rourkela Mazdoor Sabha, and the Labour Department of the Government of Orissa by its order dated 22nd January 1964, referred the said dispute to the Industrial Tribunal for adjudication. The question thus referred was framed as follows:

"Whether the vehicle-drivers of the Hindusthan Steel Ltd., Rourkela, are entitled to production Bonus? If so, at what rate?".

4. On receipt of this Reference the Industrial Tribunal duly noticed both parties who filed their written statements. Both the parties to the dispute also adduced their evidence in the case, both oral and documentary. After conclusion of the hearing, the Tribunal gave its award dated 31-3-65 and in pursuance of Section 17 of the Industrial Disputes Act, 1947, the said award was published in the Orissa Gazette Part VII. dated 30-4-65.

5. Before the Tribunal, various contentions, both legal and factual, were raised and the Tribunal in its award came to the following findings:

(i) The reference to him was competent and his jurisdiction cannot be said to be ousted by reason of the fact that the scheme of production-incentive-bonus has been introduced under an agreement between the management and the Labour Union and not unilaterally by the management.

(ii) Earning of profit by the industry is irrelevant to the question whether the vehicle-driver can claim benefit under the scheme.

(iii) Since introduction of the scheme, total out-put or yield of the industry had gone up and it is wrong to say that it is the sole responsibility of the management to extend the scheme to a new class of workers like the vehicle-drivers.

(iv) There is no substance in the objection of the Management that as the vehicle-drivers were getting a scale of wage higher than that recommended by the Wage Board, and were also getting dearness allowance, they should not be given the benefit of incentive-bonus.

(v) All kinds of light vehicles including buses, jeeps and ambulances are necessary in the interest of production, mobilisation of labour for which light vehicles are used, is as essential as the transport of materials in heavy trucks. Buses are necessary to bring the workmen from the township to the Plant and ambulances are necessary for removing the injured workmen from the Plant Site to the Company's hospital, and the services of vehicle-drivers in a particular department and at all levels are manifestly necessary for the efficient functioning of the Industry itself, though as amongst themselves, there may be variation as regards their duration and nature. It would not be easy to exclude drivers of buses engaged by the factory solely for the purpose of transporting its employees to the mills from their respective homes and back from the factory. He categorically held that the drivers of buses are engaged in rendering service conducive to production. A few drivers who were engaged in driving ambulances even though are excluded from the category of employees who are directly connected in the production activity, nevertheless, their services have to be recognized in any welfare scheme especially when their services are incidental to the main industry itself and it is not necessary to discriminate against a group of driver.

(vi) Contribution by the workmen to increased production has to be judged taking them in classes or groups, and the vehicle drivers in the instant case have put in overtime services and their work-load has factually increased. In extending the benefit of the scheme to Sewage Treatment Plant workers, whose work-load has not increased, while excluding the vehicle drivers from the same, the Management has brought about discrimination; and this is neither fair nor rational. It is, therefore, necessary, in the interest of industrial peace and to avoid undesirable consequences, that the vehicle-drivers should enjoy the benefit of the scheme of production-incentive-bonus.

6. With regard to the second part of the question under reference, the Tribunal came to the following conclusion in Para 13 of the Award.

"In the result, I come to the conclusion that all vehicle-drivers of Hindusthan Steel Ltd., Rourkela, should be admitted to the benefit under the Steel Works Production Incentive Scheme (Ext. 5) with effect from 1st August, 1964. The rates and other conditions should be as provided in this scheme. For this purpose the drivers shall be brought either under the Service Group or General Group as decided by the Management in view of the nature of service rendered by them. An award is passed accordingly"

7. The very same grounds were urged before us as were pressed before the Tribunal. The opposite party urged that all those contentions have been rightly rejected by the Tribunal on the basis of the decisions of the Supreme Court, and as such those questions were no longer open for canvassing and, secondly, the findings of fact arrived at by the Tribunal are based on unimpeachable evidence on record and their correctness cannot be challenged in Writ Application, this being a case where the Writ Jurisdiction of this Court cannot be invoked.

8. The Production-incentive-scheme provided that the provisions thereof shall apply to the employees as indicated in Annexures 1 and 2 thereof. That contains an exclusion clause whereunder some specified categories of workers were excluded from the benefit of the scheme. It also provided that apart from the specified class, any other employee who may be a special or general order, be excluded from the purview of the scheme, shall also cease to get the benefit thereof. The vehicle-drivers are not to be found within the specified class of workers designated in that clause, nor has any special or general order been issued excluding them from the purview of the scheme. The departments which are included in Annexure 1 comprise of the traffic department and the Central-repair shop, besides many others, and also includes timekeepers and time-checkers. These classes of employees and departments obviously come under the non-productive group of employees whereas the departments under annexure 2 are those who are directly connected with the production. Annexure 1 also appears to comprise within its ambit many workmen in non-production departments. Though the vehicle drivers have not been mentioned specifically under Annexure 1, yet it appears that while those who are engaged in the repair of the vehicles are entitled to the benefit of the scheme, the vehicle-drivers are ostensibly excluded. It does not require much argument to notice that unless the vehicles are driven, and get out of order in the process, they are not required to be taken to the workshop for repair and that it is only after the vehicle-drivers have performed their duties, the necessity for requiring the services of the workmen in the workshop would arise. This obvious anomaly makes it patent that the vehical drivers have been subjected to irrational and unjust discrimination.

9. Before dealing with the various contentions raised on behalf of the Management, it will be proper and useful to consider the object of the industrial law as well as the various principles and doctrines which have emerged out of the adjudication of industrial disputes and are reflected in the judgments of the Tribunals and Courts. It has been accepted by the Supreme Court from time to lime that the object of industrial law is twofold, viz., (i) to improve the service conditions of the workmen employed in the industries in order to enable them to enjoy the ordinary amenities of life. and (ii) to brine about the industrial peace which would have the effect of energising production activity of the country. In dealing with industrial disputes, the courts have always emphasized the doctrine of social justice and have seen it predominant consideration As has been held by the Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others, .

"The concept of social justice is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities, nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses, to yield blindly to abstract, notions, but adopts a realistic and pragmatic approach. It. therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just

and fair to both parties with the object of establishing harmony between capital and labour and good relationship"

The Tribunal in adjudicating upon the present industrial dispute has kept these principles in his forefront and has abided by the principles of fair-play and justice.

10. It was argued on behalf of the Management that the vehicle-drivers do not directly contribute to the production, and as such, are not entitled to the benefit of the scheme. It has been found by the Tribunal, on the basis of evidence on record that trucks are used inside the plant to carry materials from one place to another, jeeps and station-wagons to carry the employees from one department to another and buses to carry the employees from the township to the plant-site. As more and more departments engage themselves in production activity in larger number of shifts the chances of accident rise steeply thereby requiring the ambulances to remain in a greater state of alertness. Thus, all types of vehicles are naturally required to put in more than their standard performance as a natural result of the increased activity in the direct productive departments though the rise in the workload of different classes of vehicle-drivers may not be proportionate, yet there is no doubt that all classes of drivers put in more¹ work in consequence of increase in the production. That apart, a mileage chart of vehicles (Ext 8) has been proved in the case for the year 1964, from which it is clear that with the increase in the total mileage performed by different vehicles, there has been a corresponding augmentation in the production of ingot steel during the same period. Therefore, though it is not easy to relate the increased mileage performed by the vehicle directly to the increase in the production, yet their contribution to such increment in the production, can safely be assumed as a fact, specially in view of the admission of Management Witness No. 2. Industrial Engineer, that since after the introduction of the production-incentive-bonus scheme production has gradually increased One of the principles evolved out of the industrial adjudications, which has been accepted in the case of Burn and Co. Ltd. and Others Vs. Their Employees, . is that from, the point of view of economics, the employees in non-production departments like the clerical and subordinate staff in an Industry are deemed to contribute towards the production and on that hypothesis the scheme of incentive and production bonus to xtended to cover them. Partly on this principle and party on the finding that the vehicle-drivers have put in more than their standard performance, the Tribunal has decided that they are entitled to the benefit of the scheme. This contention has, therefore, been rightly rejected.

11. It is next contended that without a finding that the company has earned any extra profit, the extension of the benefit of this scheme to the vehicle-drivers is erroneous. It has again been settled by the decisions of the Supreme Court in. Titaghur Paper Mills Co. Ltd. Vs. Its Workmen, that payment of incentive bonus is a payment of further emoluments to the workmen depending not upon extra profit, but on extra production, as an encouragement to put in more labour than normal. Further, in view of the finding that there has been augmentation in the

production, the profit element pales into insignificance. Earning of profit depends upon many economic factors ruling at the time, for instance there may be a slump in the market or a fall in demand of the finished goods or non-availability of the market for the same. These and such other prevailing factors may affect the earning of profit with which the workmen who are stated to increase the output are not responsible therefore, this argument has no force.

12. It is next urged that similar schemes prevalent in other comparable concerns have not been extended to the vehicle-drivers. This, however, is not entirely true. The Tribunal has found that truck-drivers have been given the benefit under the production-incentive-scheme in the Steel plants at Durgapur and Bhilai owned by the petitioner, the Hindusthan Steel Ltd. In course of adjudication by the Tribunal, the management also agreed to extend the scheme to truck-drivers at Rourkela. That apart, in cases where the principle of region-cum-industry is inapplicable the benefit of production-incentive-bonus scheme can be extended on other principles some of which have been quoted above. It is obvious that in a region where the industry is first set up this principle cannot operate by reason of the fact that that industry is the only industry in the region. It is only when the region is dotted with similar industries that this principle is brought to play. Therefore, in such cases in deciding industrial disputes as to whether the scheme of incentive production bonus can be extended to categories other than the production staff, the doctrine other than this principle has to be applied. So the non-application of the principles of region-cum-industry cannot vitiate the award of the Tribunal which is founded upon other well-established principles.

13. It was also argued that the totality of the basic wages and the dearness allowance of the vehicle-drivers does not fall short of their living standard and as such, they are not entitled to the benefit of the scheme and the Tribunal has failed to bear this aspect of the matter in mind. This question has been dealt with by the Tribunal in para 7 of the Award. He has come to the finding that the wages paid to the vehicle-drivers cannot be regarded as a living wage. Having regard to the economic necessity and the prices ruling at the present time, the wages earned by the vehicle-drivers cannot even approach the standard of fair-wage, far less a living wage. The concept of minimum-wage, fair-wage and living wage has been briefly and neatly set out in the case of *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, wherein fair-wage has been said to be an approximation to the need-based minimum in the sense of a wage which is adequate to cover the normal needs of the average employees regarded as human beings in a civilized society. Above the fair-wage is the living wage which will maintain the workman in the highest state of industrial efficiency which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen. The management could have strengthened its contention by producing before the Tribunal that the ten thousand workers to whom the benefit under the new scheme has been extended are getting wages below the wages earned by the vehicle-drivers. That evidence was in their exclusive keeping.

and they have failed to produce the same. The Tribunal was, therefore, not in error in rejecting this contention of the Management.

14. Another point was taken that in extending the incentive-production-bonus to any particular category of workman, a target of production in relation to such workmen should have been fixed by the Tribunal with the aid of expert opinion, but the Tribunal has given his award without reaching a conclusion as to such target, and as such, it is wrong and illegal. It appears from the production-incentive scheme (Ext. 5) that the workers have been classified into various groups, two of such groups being Service Group and General Group. The Service Group has again been sub-divided into six categories of workers and the General Group has been sub-divided into equal number of categories. For each such group, tables have been prepared fixing targets of production and the bonus rates. This is a scheme prepared by the Management which must have had expert assistance in such preparation. The Tribunal has mainly awarded that the vehicle-drivers should either be covered under the Service Group or under the General Group and left it to the discretion of the Management to choose as to which of the groups shall cover them. Therefore it was not necessary for the Tribunal to fix the target of production and the rates. It has been held repeatedly by the Supreme Court that the introduction of incentive-production bonus scheme by fixing targets of production and the rates of production bonus is a function primarily of the Management, and once the scheme is introduced the right to claim such bonus becomes a condition of service of the workmen and the Tribunal acquires jurisdiction to vary the scheme in any manner which it thinks proper to allay industrial discontent and to bring about peace and harmony between the capital and labour. The power to vary a scheme is thus vested in the Tribunal and the extent and the manner of such variation is the result of his adjudication. In the instant case, targets of production and the rates of production-bonus have been fixed for each group. The Tribunal did not think it fit to intermeddle with the scheme, but varied the scheme to a limited extent in directing that the vehicle-drivers should be included in one or the other of the last two groups. Therefore, there is no substance in this contention.

In Para. 12 of the Award the Tribunal has stated as follows:--

"The Management is willing to give benefit to the truck-drivers under the 3rd or the service-group. The Union wants it to be extended under the Service Group to all the vehicle-drivers. In my opinion, in order to avoid discrimination and disaffection among the drivers, this should be done. But it is not necessary to fetter the discretion of the Management in this matter. Under the scheme there is last or the fourth group known as the General Group. The Drivers of Ambulance cars and buses may not be required to work as frequently as the drivers of trucks and light vehicles inside the plant. If that be so, it is left to the discretion of the Management to decide whether all the drivers should be brought under the Service Group or some of them should be admitted to the benefit of the scheme under the General Group".

This paragraph of the Award amply shows that the Tribunal has been just and fair to both parties with the object of establishing harmony between capital and labour and to avoid discrimination, has not deviated from the principles of fair-play and justice.

15. An argument was tried to be advanced that the conclusions reached by the Tribunal are not warranted by evidence and facts on record, but it has been amply demonstrated that this argument is quite baseless by taking us through substantial portions of the evidence, both oral and documentary on record.

16. This being an application for issuance of a Writ of Certiorari under Article 226 of the Constitution of India, it was contended on behalf of the workmen opposite parties that the jurisdiction of the High Court in such cases is a very limited one and this is not a case which comes within the ambit of the principles which permit exercise of Jurisdiction of the High Court for issuing a writ of Certiorari to the Industrial Tribunal which has been emphasized over and over again by a number of decisions of the Supreme Court. It would be enough to quote a passage from the decision reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, to show that this contention on behalf of the workmen is well founded. It was held there as follows:

""The jurisdiction of High Court to issue a Writ of Certiorari is a supervisory jurisdiction and the Court exercising it, is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. As error of law which is apparent on the face of the record, can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a Writ of Certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a Writ of Certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a Writ Court."

In view of this lucid exposition of the Writ Jurisdiction of the High Court, the present case is not one where the same can be exercised.

For the reasons stated above, the petition is dismissed with costs.

Hearing fee is assessed at Rs. 500/-.

Barman, C.J.

17. I agree.

Petition dismissed.