

(1990) 11 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 2309 of 1987

Industrial Workers" Union

APPELLANT

Vs

Allied Publishers Subscriptions Agency and Others

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5)

Citation : (1991) 3 BomCR 8

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Nishita Mhatre, for the Appellant; C.U. Singh, for the Respondent

Judgement

D.R. Dhanuka, J.—The petitioner is a trade union duly registered under the Trade Unions Act, 1926, representing the workmen employed with respondent No. 1, a partnership firm. The petitioner-union has impugned Award Part III made by the Industrial Tribunal in Reference (IT) No. 48 of 1983 in so far as the said award pertains to the respondent No. 1 and its employees. By the impugned part of the said Award, certain demands made by the workmen of respondent No. 1 were rejected.

2. The facts and circumstances leading to the filing of this petition, in brief, are as under:---

3. (a) On 29th May, 1981, the petitioner-union served its Charter of Demands on respondent No. 1 as well as a company known as Allied Publishers Private Limited raising various demands. By the said Charter of Demands, the workmen sought (1) revision of wage scales, (2) classification, (3) adjustment, (4) dearness allowance, (5) house rent allowance, (6) leave travel concession, (7) educational allowance, (8) cycle allowance, (9) leave provision, (10) accumulation of service leave and (11) restoration of uniforms etc. In the said Charter of Demands, it was stated that the employers should accept the said demands made with effect from 1st January, 1981. In view of the report

submitted by the Conciliation Officer under sub-section (5) of section 12 of the Industrial Disputes Act, 1947, the Government of Maharashtra made a joint reference in respect of the said demands to the Industrial Tribunal for adjudication by its Order No. A.D.A 2982/2462/Lab-II dated 11th January, 1983. It was the contention of the workmen of the respondent No. 1 firm that there was functional integrality between the respondent No. 1 and the above referred company known as Allied Publishers Private Limited and they were entitled to be treated on par with the workmen employed by the said company in respect of revision of wage scales, etc. The Industrial Tribunal made its Award Part I on 26th April 1984 holding that the joint reference made by the Government of Maharashtra in respect of both concerns was maintainable. On 10th July 1984, the Industrial Tribunal made its award known as Award Part II granting interim relief to the extent of Rs. 75/- per month from 1st July, 1984 to the workmen employed in Allied Publishers Private Limited. On 29th August, 1986, the Industrial Tribunal made its award known as Award Part III. By the said Award, the Industrial Tribunal granted six of the demands in respect of the employees concerning Allied Publishers Private Limited with effect from 11th January, 1983. By the said Award, the Industrial Tribunal granted rest of the demands in respect of the said Allied Publishers Private Limited from the date of the award.

(b) As regards the demands pertaining to the respondent No. 1 firm are concerned, it is necessary to state certain facts in order to appreciate the subject-matter of controversy. A closure notice was served on the workmen of the 1st respondents. The undertaking of respondent No. 1 was in fact closed with effect from 15th September, 1982. At the material time, disputes were pending between the workmen and the respondent No. 1 firm in relation to the factum of the closure and the claims pertaining thereto before the Labour Court. At all material times, the respondent No. 1 had employed ten workmen only. The said workmen were pressing their demands for the wage revision, dearness allowance and in all other respects as set out in the Charter of Demands for the period commencing from 29th May, 1981 onwards.

(c) The Industrial Tribunal did not adjudicate upon the various demands made by the petitioner-union concerning the respondent No. 1 firm on the grounds mentioned in paragraph 80 of the impugned award. On behalf of the petitioners, reliance was placed before the Industrial Tribunal on the judgments of the Hon"ble Supreme Court in the case of Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, , and The U.P. Electricity Supply Co. Ltd. v. The Workmen, reported in 1971(2) L.L.J. 528, and also the judgment of this Court dated 21st December, 1973 delivered by Rege, J., in Misc. Petition No. 903 of 1973, Hind Cycles Ltd. M.G. Chitale. The petitioners contended before the Industrial Tribunal that the demands of the petitioner-union pertaining to the respondent No. 1 firm were liable to be adjudicated on merits, even though there was a dispute about the closure of the undertaking pertaining to the respondent No. 1 firm with effect from 15th September, 1982 and even if it was held that the said closure was valid. In other words, it was the contention of the petitioner-union before the

Industrial Tribunal that the demands made by the workmen of respondent No. 1 survived for adjudication even if it was held by the Labour Court that there was a valid closure of the undertaking by the respondent No. 1 firm with effect from 15th September, 1982. Without properly considering and discussing the principles of law applicable in such a situation as laid down in the above referred judgments of the Hon'ble Supreme Court as well as the above referred judgment of Rege, J., cited before the Tribunal, the Industrial Tribunal disposed of the reference pertaining to the respondent No. 1 in the following terms :-

"The learned representative for union (i.e. the petitioner-union before me) urged that there will be no bar in giving wage rise to the workmen of Agency (i.e. the respondents No. 1 before me). He relied on (i) Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, . (ii) The U.P. Electricity Supply Co. Ltd. Vs. The Workmen and Others, , (iii) a decision in Writ Petition No. 903 of 1973 between Hind Cycle Ltd. v. M.G. Chitale and others. Assuming it to be so in the present case, unless the workmen obtain a finding in their favour that their retrenchment is bad because there was no closure on 15th September, 1982, they will not be able to get any relief because I propose to give the benefits only from the date of Reference. At this stage there is no finding that on the date of present Reference the workmen of Agency were in service of Agency and were entitled to get the wage rise."

The Industrial Tribunal erred in refusing to adjudicate upon the said demands on merits merely because of lack of finding by the Labour Court in respect of the dispute connected with closure notice and the retrenchment of the workers with effect from 15th September, 1982. The Industrial Tribunal observed in the last sentence of paragraph 80 of its award that in view of there being no finding to the effect that the workmen were in service of the respondent No. 1 firm on the date of reference, the demands made could not be considered on merits and stood rejected. With all respect, the Industrial Tribunal failed in its statutory duty to examine the said claim on merits. It is well-settled law that inspite of subsequent closure of the concern, demands for wage rise, dearness allowance, etc. for the period prior to the closure had got to be adjudicated on merits.

4. Before I deal with the contentions urged by the learned Counsel on either side, I must refer to one more fact which is of some significance for the purpose of dealing with the contentions made by the learned Counsel on either side. On 1st March, 1988, a settlement was arrived at between the petitioner and the respondent No. 1 firm which was filed before the 10th Labour Court, Bombay. It was provided in the said settlement that the said settlement was without prejudice to the rights and contentions of the petitioner-union and the concerned workmen in this writ petition subject to the petitioner-union not making any claim in respect of the period after 15th September 1982 which was the agreed date of closure. The respondent No. 1 firm paid certain amount to the workmen in respect of claims arising out of closure etc. as set out in the said settlement. It was agreed between the parties that the closure of the undertaking of

respondent No. 1 was valid. The only question which now survives in this writ petition for consideration is as to whether the petitioner-union representing the workmen of respondent No. 1 firm is entitled to press their demands for wage revision and allowances for adjudication on merits for the period 29th May, 1981 until the date of closure i.e. 15th September, 1982.

5. An exactly identical question arose before Rege, J., in Writ Petition No. 903 of 1973 filed by Hind Cycles Ltd. against M.G. Chitale and others. In the said writ petition, a dispute was raised by the daily-rated workers of Hind Cycles Ltd., as regards their demand for fixation of wage scales, classification, dearness allowance, etc. for the period prior to closure. Such dispute was subject-matter of reference before the Industrial Tribunal. The demands of the employees were in respect of fixation of wage scales, dearness allowance, etc. pertaining to the period 1st April 1964 to the date of closure in respect of daily-rated workers. The demand in respect of monthly-rated workers of Hind Cycles Ltd., which was pending adjudication before the Industrial Tribunal, was for the period 1st April 1966 till the date of closure. Hind Cycles Ltd. had issued a notice of intended closure of its factory from 1st August 1973. In fact, the factory of Hind Cycles Ltd. was closed with effect from 1st September 1973.

6. In this case, it was contended on behalf of the employers that the demand for fixation of wage scales necessarily related to the future working of the respondent No. 1 firm and since the undertaking was closed, the said demand could not be adjudicated in view of the closure. In the above referred judgment, Rege, J., referred to the judgments of the Hon'ble Supreme Court in the case of *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and *The U.P. Electricity Supply Co. Ltd. v. The Workmen and others*, reported in 1971 (2) L.L.J. 528. It was held by the Hon'ble Supreme Court as well as by this Court in the above referred case that the dispute as to the revision of wage scales, dearness allowance, etc. raised by the employees for the period when the industry was very much in existence survived for adjudication and it was not correct to state that the said claims need not be adjudicated if it related to the past working of the industry. It was held by the Court that the said demands did not become non est in view of the closure. It was held by this Court (Rege, J.) that the Industrial Tribunal was under a duty to adjudicate upon the said demands of the employees which related to the past undertaking of the industry when it was existing and it made no difference that the said demands which survived for adjudication were for the period prior to the date of closure and the said demands did not survive for adjudication in so far as the future working of the industry is concerned. In that case, the Industrial Tribunal had taken the view that it was entitled to continue with the adjudication proceedings in the said reference and adjudicate upon the demands on merits for the period upto the date of closure. It was further held that after such adjudication on merits, it was for the Industrial Tribunal to decide the date from which such adjudication will be effective. In this case, the Industrial Tribunal has not gone into the merits of the said demands at all and has not adjudicated upon the quantum of the claims

pertaining to these demands at all.

7. Mr. Singh, the learned Counsel for the respondent-firm has contended that even if there was some infirmity in the approach of the Industrial Tribunal in or in its order of not adjudicating upon the said demands on merits, no relief should be granted to the petitioners in view of certain admitted facts borne out by the record which were highlighted by the learned Counsel. In the first instance, the learned Counsel for the respondent No. 1 firm contended that the petitioner-union itself had made a demand to the effect that there should be parity in respect of wage revision and other allowances, etc. between the workmen of the respondent No. 1 firm and the workmen of Allied Publishers Private Limited. The Industrial Tribunal had clearly held in paragraph 75 of its award that none of the claims in respect of the employees pertaining to Allied Published Private Limited could be awarded for the period to the date of reference. In other words, in respect of the employees of Allied Publisher Private Limited, demands in respect of revision of wage scales, dearness allowance, etc. were granted only from the date of reference, i.e. 11th of January, 1983. Shri Singh invited my attention to paragraph 80 of the said award and contended that even in respect of the employees of the respondent No. 1 firm the Industrial Tribunal was of the view that the relevant demands could be granted in favour of the workmen only from the date of reference and not for any anterior period. The learned Counsel for the respondent No. 1 submitted that since the undertaking of the respondent No. 1 firm was already closed on 15th September, 1982, the said award should be interpreted to mean that the Industrial Tribunal had already held in exercise of its discretion that the said demands for the period 29th May 1981 till 15th September, 1982 were not acceptable to the industrial Tribunal. The learned Counsel for the respondent No. 1 firm contended that the petitioner-union had not challenged the said award dated 29th August, 1986 in respect of the employees concerning Allied Publishers Private Limited or raised any dispute or contention to the effect that the said demands of the employees of Allied Publishers Private Limited ought to have been granted for the period prior to the date of reference. It is, therefore, contended by the learned Counsel that the petitioner-union now cannot seek a direction from this Court to the effect that the Industrial Tribunal should adjudicate upon the said demands on merits for the period 29th May, 1981 until 15th September, 1982. The learned Counsel has further contended that the petitioner-union cannot now resile from its statement of claim and its principal contention of parity regarding the date from which the revision wage scales, dearness allowance, etc. should be operative. The learned Counsel for the respondent No. 1 firm further contended that since the employees of Allied Publishers Private Limited have got the benefit of revision in wage scales, etc. from 11th January, 1983, the petitioners were also not entitled to any benefit for the period prior to 11th January, 1983.

8. I am afraid, there is a fallacy in the submission made by the learned Counsel for the respondent No. 1 firm. The learned Counsel for the respondent No. 1 firm has interpreted the impugned award as if the Industrial Tribunal had already

exercised its discretion and applied its mind on the question as to the date from which the award pertaining to the respondent No. 1 shall become effective and has recorded a positive finding to the effect that the benefits to be available to the employees of the respondent No. 1 should be operative from the date of reference and not for the period prior thereto. It is not possible to read the said award and interpret it in so far as it pertains to respondent No. 1 in this manner. The learned Member of the Industrial Tribunal has merely recorded in the award that the matter could not be pursued as no finding of the Labour Court was available to him on the question as to whether the workmen were in employment of the respondent No. 1 on the date of reference. The Industrial Tribunal has further recorded in the award that in absence of any such finding on the above issue from the Labour Court in Reference (IDA) No. 461 of 1983, the claims of the workmen of the respondent No. 1 were liable to be rejected ipso facto. I cannot read in the said award more than what is exactly stated in it by the learned Member of the Industrial Tribunal.

9. In view of the judgment of Rege, J., in the above referred Writ Petition No. 903 of 1973 and the judgments of the Hon"ble Supreme Court in the case of Pipraich Sugar Mills Ltd. and The U.P. Electricity Supply Co. Ltd., cited above. I have no hesitation in holding that the impugned award suffers from an error of law apparent on the face of the award in so far as it pertains to the respondent No. 1. I have also no hesitation in holding that there is a clear omission to adjudicate the demand of respondent No. 1 on merits and then declare the date from which the award would become operative. In any event, to this extent the impugned award is vague and is not satisfactory.

10. The Industrial Tribunal has held that there is no functional integrity between the respondent No. 1 firm and Allied Publishers Private Limited. The demands made by the employees of the respondent No. 1 firm will have to be examined on their own merits on the footing that the respondent No. 1 is an independent concern in the light of the above findings already recorded. The workmen of the respondent No. 1 firm are now not tied down to their contention of parity, as no such parity in the very nature of things is now possible. The demands made cannot evaporate and have got to be adjudicated in light of other relevant material on record. Sometimes a claimant may make a larger claim. If such a larger claim is not acceptable to the Tribunal, the Tribunal is not entitled to dismiss the claim in toto on the footing that the claim is not proved as laid.

11. In view of the above discussion, I hold as under :-

(1) The impugned award dated 29th August, 1986 is quashed in so far as it pertains to the respondent No. 1 firm only. The said award shall stand and shall be operative in respect of adjudication between Allied publishers Private Limited and their workmen.

(2) The Industrial Tribunal need not record fresh evidence. The Industrial Tribunal may, however, permit the parties to lead further evidence on merits in

its discretion, if it so deems fit.

(3) The Industrial Tribunal shall adjudicate upon the following demands only on merits for the period and restrict their operation for the period 29th May, 1981 until 15th September, 1982 and it need not adjudicate upon rest of the demands in view of the closure of the undertaking:-

- a) Revision of wage scales;
- b) Dearness allowance;
- c) house rent allowance;
- d) Leave Travel Concession;
- e) Educational allowance;
- f) Cycle allowance;
- g) Leave provision.

The learned Counsel for the petitioners has fairly conceded that the remaining demands, i.e. demands for classification, adjustment, accumulation of service leave and restoration of uniforms, do not now survive for adjudication.

(4) The Industrial Tribunal is directed to adjudicate the said demands on merits on any view of the matter. After the process of adjudication is completed, the Industrial Tribunal shall also address itself on the question as to from what date the award is to be made operative. The Industrial Tribunal may do so in exercise of its discretion in the light of well-settled principles, as it deems fit. Finding on both aspects i.e. adjudication of demands on merits as well as the date from which the award is to be operative, would be essential to eliminate the possibility of any further remand. Accordingly, the Industrial Tribunal is requested and directed to make its decision on both points as indicated above. In any event, on any view of the matter, the workmen will not be entitled to any benefit for the period beyond 15th September, 1982 as the workmen have solemnly agreed in the settlement dated 1st March, 1982 that they are not pressing for any claim after 15th September, 1982.

(5) In case the Industrial Tribunal records a finding and comes to the express conclusion that the award on remand should be made operative only from the date of reference, it would follow that the workmen would not be able to derive any benefit of the revision in wage scales, dearness allowance, etc. in reality as their claim is restricted to the period 29th May, 1981 to 15th September, 1982 only and the date of reference is 11th January, 1983. On any view of the matter, the Industrial Tribunal shall record its reasons in support of each of its finding and also its conclusion regarding the date from which the award should operate. All findings must be recorded by the Tribunal keeping in mind that if the matter is again brought to the High Court, the High Court should have the benefit of the view of the Tribunal on all the relevant aspects and there should be no possibility

of any further remand.

(6) Having regard to the facts and circumstances of the case, there shall be no order as to the costs of the petition.

(7) The Industrial Tribunal is requested to dispose of the reference on remand in pursuance of this order within period of six months from the date of receipt of the reference of this order.

(8) The Prothonotary & Senior Master shall forward the writ and a copy of this judgment to the Industrial Tribunal expeditiously.