

(1957) 04 PAT CK 0004
In the Patna High Court
Case No : Misc. Judl. Case No. 265 of 1956

Jhagrakhand Collieries Ltd.

APPELLANT

Vs

Central Government Industrial Tribunal at Dhanbad and
Others

RESPONDENT

Date of Decision : 03-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : AIR 1957 Patna 471

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : P.R. Das, B.K. Choudhary, L.K. Choudhary, A.K. Choudhury and S.B. Sanyal, for the Appellant; Government Advocate, Jaleswar Prasad and Sadhu Saran Sahal, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In this case the petitioner, Jhagrakhand Collieries. Limited, has obtained a rule from the High Court calling upon the opposite parties to show cause why a writ in the nature of certiorari should not be issued to call up & quash the award of the Central Government Industrial Tribunal, dated the 14th February, 1947, in Reference No. 11 of 1955, published by the Central Government in Notification No. LR II-2 (40/55), dated 5th March, 1956. Cause has been shown by the learned Government Advocate on behalf of the Union of India and the other opposite parties to whom notice of the rule was ordered to be given.

2. The petitioner is an incorporated company carrying on the business of working coal mines at Jhagrakhand in the State of Madhya Pradesh. The petitioner is the owner of several coal mines in Jhagrakhand, and previous to the year 1948 Jhagrakhand was located in Korea State which was an independent State subject to the paramountcy of the British Crown. On the 15th November, 1947, the

Korea State issued a notification called the "Korea Award" with regard to the colliery workers working in the coal fields of Korea State. The notification is in the following terms:

"Government Notification (Korea Award) published in the Korea State Gazette, dated 15-11- 1947 -- Annexure A.

"A".

Korea State Gazette Extraordinary published by Authority. Baikunthpur, November 15, 1947.

Notification.

Dated Baikunthpur, 15th November, 1947.

Subject:-- Wages of Colliery Workers.

Whereas there has been a general rise in the prices of essential commodities necessitating a positive policy to bring about an improvement in the conditions of workers in the Coal Mining Industry.

And where as the wages of Colliery workers have been increased in the coal fields of Bengal, Behar, Orissa, C. P. & Berar which are bound to have repercussions in the coal fields of Korea State.

Now, therefore, the Korea State Government after a careful consideration of all factors affecting the industry in the State and in order to assure minimum wages to colliery workers, hereby orders as follows:--

(1) Minimum basic wages to be paid to workers for an 8 hour shift.

(i) Coal cutters:

(a) Underground -- at a rate of Re. 1/- per (i) 300 cft. in case of machine cutting.
(ii) 25 cft. in case of hand cutting. (iii) 45 cft. in case of splid blasting.

Note: All, measurements to be in the solid.

(b) Quarries:-- At a rate of As. -/12/- per

(i) 60 cft. in case of blasting. Note : Measurement to be in the loose.

(ii) Loaders:

(a) Underground-- At a rate of As. -/14/-per 100 cft. of coal loaded from the working face.

(b) Quarry:-- At a rate of As. -/10/6 per 100 cft. of coal loaded from the working face.

(iii) Trollymen or Trammers:

(a) Underground:-- At a rate of AS -/12/-per day.

(b) Quarry: At a rate of As -/11/- per day.

(iv) Adult male time-rated workers:--

(a) Underground:-- At a rate of As -/8/- per day.

(b) Surface:-- At a rate of as -/8/- per day.

(v) Adult female Time Rated workers:--

(a) Underground:-- At a rate of As -/7/- per day.

(b) Surface:-- At a rate of As -/6/- per day.

Note: -- I. Holes required for drilling are to be paid for separately.

II. In machine-cut galleries and quarries where all coal is obtained by blasting the person who performs the operation of dressing and breaking the coal may be classed as a "dresser". He shall be treated as a time rated worker getting a basis wage of not less than Re. 1/- per day.

(2) Any class of employees not entitled for any increase in wages under the provisions given above may be granted an increase of 12 1/2 per cent. in their basic pay.

X X X X (10) Disbursement of wages:--

The employees shall be responsible to ensure that all the workers in the colliery get their wages including dearness allowance in accordance with the new basic wages provided under this order. The Government, may, by rules provide suitable sanctions against any infringements apart from the provisions of any other law or enactments in force.

(ii) This order shall apply retrospectively with effect from 1st November, 1947.

By order Sohan Lal Srivastava, Chief Minister Korea State."

With regard to the interpretation of Clause (2) of the award there was a dispute between the petitioner and respondent No. 3, the Chhatisgarh Colliery Workers Federation. It was contended by respondent No. 3 that Clause (2) of the Korea Award imposed, an obligation on the petitioner to give the workmen other than those mentioned in Clause (1) thereof an increase of 12 1/2 per cent. in their basic pay.

The contention of the petitioner was, however, that Clause (2) did not impose any obligation on the petitioner to give an increase, but there was a discretion conferred on the petitioner either to allow or not to allow an increase to any particular workmen. On the 4-2-1955, respondent No. 3 gave a notice of a strike u/s 22(1) of the Industrial Disputes Act, and the main reason of the strike notice was the non-implementation of the Korea Award in respect of an increment of 12 1/2 per cent, in the basic wages of the workers with effect from the 1st of November, 1947.

Thereafter there was meeting between respondent No. 3 and the Management of Jhagrakhand Collieries and conciliation proceedings were held. The minutes of the conciliation proceedings (Ext. 15) are printed at page 19 of the supplementary paper-book. These minutes show that respondent No. 3 claimed, according to paragraph (2) of the Korea Award, that the Management was to grant increments at 124 Per cent. in the basic wages to all employees who were not entitled to any increase in wages under the provisions of paragraph (1) of the award.

It was, submitted, however, on behalf of the management that the power to grant increment was discretionary. The matter was then referred by the Central Government u/s 10(1) of the Industrial Disputes Act; for adjudication of the Industrial Tribunal at Dhanbad. The order of reference is to the following effect:

"Government of India, Ministry of Labour.

ORDER

L. B. 2(40)/55 -- Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Jhagrakhand Collieries Limited and their workmen, in respect of the matters specified in the Schedule hereto.

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal at Dhanbad constituted u/s 7 of the said Act.

The Schedule.

Are the workmen of the Jhagrakhand Collieries who were not entitled to any increase in wages under para 1 of the Notification issued by the Korea State Government, dated 15th November 1947, entitled to any increase in wages in accordance with paragraph 2 thereof and if so to what extent and from which date such increase should be allowed.

Sd. E. P. S. Eswaran, Under Secretary."

On 14th of February 1947, the Chairman of the Industrial Tribunal made an award, holding that the workmen falling under paragraph (2) of the Korea Award were entitled to increments with retrospective effect from the 27th of September, 1952. The relevant portion of the award is as follows:

"14. To summarise, my findings are as follows: All the workmen not covered by para (1) of the "Korea Award" are entitled to 12 1/2 per cent. increase on their basic pay (as it stood on 1st November, 1947) whose pay did not exceed Rs. 30/- per mensem. In the case of workmen drawing higher salaries the following

increments will be allowed on their basic pay:--

Those drawing from Increment Minimum

Rs. 31 to Rs. 100 p.m. on 1-11-1947 :? as basic pay 10% Rs. 4

Rs. 101 to Rs. 200 p.m. on 1-11-1947 :? as basic pay 7?% Rs. 10

Rs. 201 to Rs. 400 p.m. on 1-11-1947 : ? as basic pay 5% Rs. 15

In case of workmen not drawing more than Rs. 30/- per mensem on 1st November, 1947, the increase in the basic pay will be allowed with effect from 1st November, 1947, and all the arrears will be paid within three months from the date of the publication of this award. In case of workmen who drew more than Rs. 30/- per mensem as basic pay on 1st November, 1947, will be entitled to the increase in their basic pay with effect from 27th September, 1952, and the arrears will be paid within six months of the publication of this award. This award only applies to the workmen as defined u/s 2(a) of the Industrial Disputes Act, 1947, and not to every employee."

3. The argument put forward by Mr. p. R. Das on behalf of the petitioner is that the award of the Industrial Tribunal is illegal and ultra vires because the Tribunal has gone beyond the scope of the reference. In support of this argument learned Counsel referred to Section 10(4) of the Industrial Disputes Act (Act XIV of 1947) which states:

"10(4). Where in an order referring an industrial dispute to a Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto."

4. In this connection learned Counsel read portions of the award of the Industrial Tribunal and pointed out that in the course of the award the Tribunal has said that the "Korea Award" was an administrative order and had no legal sanction behind it and further that the scope of the reference was not merely the interpretation of paragraph (2) of the Korea Award but power was granted to the Tribunal to adjudicate and give an award as to what increments should be allowed to several class of workers and whether the increments should be allowed with retrosnective effect. It is true that these findings have been given by the Tribunal in the course of its award. But on a fair reading of the whole award it appears to me that in substance the Tribunal was addressing itself to the legal interpretation of paragraph (2) of the Korea Award. The question of legal validity of the Korea Award was not a question referred to the Tribunal by the Central Government u/s 10(1) of the Industrial Disputes Act. It is true that the Tribunal has said at one place that it was deciding independently of the Korea Award. But that is only an observation which is unnecessary for the proper investigation of the question referred by the Central Government.

It appears to me that in substance and in effect the Tribunal was addressing

itself to the question of law mentioned in the order of reference, namely, what is the correct interpretation of paragraph (2), of the Korea Award. To put it differently, the Tribunal was investigating whether in the context of the circumstances of the case the employer was exercising its discretion properly and granting appropriate increase of wages to the workers covered by paragraph (2) of the Korea Award. The view taken by the Tribunal is that the word "may" in paragraph (2) of the Korea Award should not be interpreted as "shall", but the discretion granted to the employer was not to be exercised arbitrarily or capriciously. It was held by the Tribunal that there was an obligation imposed upon the employer to judge the question of wage increase in the context and circumstances of each case. But the employer has refused to judge and has acted arbitrarily and capriciously and, therefore, in the eye of law there was refusal on the part of the employer to exercise its discretion. The Tribunal then examined the question of the increase of wages with regard to several class of workers covered by paragraph (2) of the Korea Award. The Tribunal came to the conclusion that in the circumstances of the case the workers were entitled to the increments mentioned in paragraph 14 of the award with retrospective effect from the 27th of September, 1952.

In my opinion, therefore, the award of the Tribunal has not gone beyond the scope of the terms of reference, and the argument of Mr. P. R. Das on this point cannot be accepted as correct.

5. I think that the Industrial Tribunal has rightly expressed its view on the question of the interpretation of paragraph (2) of the Korea Award. Paragraph (2) of the Korea Award no doubt states that

"any class of employees not entitled for any increase in wages under the provisions of paragraph (1) of Award may be granted an increase of 12 1/2 in their basic pay."

The language employed is the language of enabling power, but that does not mean that the power may be exercised arbitrarily or capriciously. The correct interpretation is that an obligation was imposed on the employer to judge the case of each worker or class of workers in accordance with the principles of justice. That is, -in my opinion, the right view to take, and there is a decision of the Madras High Court, *the Secretary of State v. Augustus John Arathoon* ILR 5 Mad 173 (A), in support of this view.

In that case the plaintiff entered into a contract to supply Government with timber of a certain quality to be approved by Colonel Kerrich Superintendent of the Government Gun Carriage Factory, for which the timber was required. Before acceptance, Colonel Kerrich bona fide tested and rejected the timber tendered. In interpreting the language of the contract Muttasami Ayyer J., stated at page 180 of the report as follows:

"The object-matter of the clause in regard to Colonel Kerrich's approval is not his arbitrary choice whether or not he will accept the timber, but it is an

undertaking to judge of its quality and suitability to ordnance purposes as an expert, and to be guided by the judgment in accepting or rejecting the timber.

The demand made by the plaintiff that the sample logs be tested, the compliance with that demand, and the tabulation of the results of the test for future reference, seem to point to a mutual belief that the quality of the timber is to be judged of in a scientific manner, as the basis of Colonel Kerrich's approval or disapproval.

I need hardly add that - the principle laid down in *Aleyn v. Belchier*, 1 White & Tudor, 377, (B), that a power of appointment ought to be exercised bona fide for the end for which it is given is one of the first principles which apply to all powers, whether created by contract, or will, or law, and whether their object-matter is the nomination of an heir to a fund left by a testator, the sanctioning by a sapinda of an adoption to be made by a Hindu widow or any power to be exercised by one contracting party over the other."

I hold, therefore, that the Industrial Tribunal has taken a correct view of law as to the interpretation of paragraph (2) of the Korea Award. But even if another view is possible as to the legal interpretation of paragraph (2), it is not open to the petitioner to pray to the High Court to set aside the award of the Industrial Tribunal by a writ in the nature of certiorari, for the principle is well established by several authorities that if a question of law is specifically referred to an arbitrator for decision and he decides it, a court of law will not interfere with the award even if the court itself would have taken a different view on the point of law had it been placed before it.

For instance, in *Government of Kelantan v. Duff Development Co. Ltd.* 1923 AC 395 (C), a dispute between the Government of Kelantan and an English Company with regard to the construction of a document was referred to an arbitrator who decided against the Government of Kelantan. A motion to set aside the award was refused by Russell J., and also, by the court of Appeal. An appeal was taken by the Government of Kelantan to the House of Lords, and there it was held by the Lord Chancellor that where a question of construction was specifically referred to arbitration, the decision of the arbitrator on that point cannot be set aside because the court would have come to a different conclusion, unless it appeared on the face of the award that the arbitrator had proceeded illegally; for example, that he had decided on evidence which was inadmissible or on principles of construction which the law did not countenance. In the course of his speech the Lord Chancellor observed as follows:

"If this be so, I think it follows that, unless it appears on the face of the award that the arbitrator has proceeded on principles which were wrong in law, his conclusions as to the construction of the deed must be accepted. No doubt an award may be set aside for an error of law appearing on the face of it; and no doubt a question of construction is (generally speaking) a question of law.

But where a question of construction is the very thing referred for arbitration,

then the decision of the arbitrator upon that point cannot be set aside by the Court only because the Court would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally--for instance, that he has decided on evidence which in law was not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award; but the mere dissent of the court from the arbitrator's conclusion on construction is not enough for that purpose.

The fact that u/s 4 of the Arbitration Act the Court has a discretion to refuse a stay of proceedings when a difficult question of law arises, or that u/s 19 of the same Act an arbitrator may be required to state a special case, for the opinion of the court on any question of law, is not material; for in this case no question of stay arose, and the appellants, though at one time disposed to ask for a special case, did not press their request, but left the matter for the arbitrator to deal with. This being so, it appears to me that, unless it can be shown by something appearing on the face of the award that the arbitrator has proceeded illegally, his award must stand.

The above view is fully supported by the authorities. In *W. & T. Adams v. Great North of Scotland By. Co.* 1891 AC 31 at P. 39 (D), Lord Halsbury treated the point as settled. After referring to Lord Thurlow's judgment in *Knox v. Symmonds* (1791) 1 Ves Jun 369 (E), he proceeds: "And in, the Court of Common Pleas, forty years ago, in a case in which the arbitrator had a question of law submitted to him according to the ordinary forms of pleadings, the court having come to the conclusion that the decision of the arbitrator was, in the sense in which they understood the words, erroneous in deciding upon a question of law on demurrer, nevertheless held that the parties, having submitted that question to the arbitrator, it was for the arbitrator to determine it; in their own language, the parties had agreed to accept the arbitrator's decision upon the question of law, as well as his decision upon the facts: *Doe v. Stimpson v. Emerson* (1847) 9 LT (OS) 199 (F). In the Court of Queen's Bench, thirty years ago, that decision was adopted as being the law which would guide the court in the decision of such question."

To the same effect are the decisions of this House in *Holmes Oil Co. v. Pumpherston Oil Co.* 18 R (HL) 52 (G) and of the Judicial Committee of the Privy Council in *Attorney-General for Manitoba v. Kelly* (1922) 1 AC 268 (H) and *In re, King and Duveen* (1913) 2 KB 32 at pp 35, 36 (I). Channell, J. stated the rule concisely as follows: "It is no doubt a well-established principle of law that if a mistake of law appears on the face of the award of an arbitrator, that makes the award bad, and it can be set aside....but it is equally clear that if a specific question of law is submitted to an arbitrator for his decision, and he does decide it, the fact that the decision is erroneous does not make the award bad on its face so as to permit of its being set aside. Otherwise it would be futile ever to submit a question of law to an arbitrator." The same principle was reiterated by

the Judicial Committee in AIR 1949 334 (Privy Council) .

6. It was argued on behalf of the petitioner that the Tribunal has not considered the contention of the petitioner that since the 15th of November, 1947, the petitioner had granted an increase of emoluments to all its employees of more than 12 1/2" per cent on their basic pay. I do not think this argument is correct. The contention was raised on behalf of the petitioner before the Industrial Tribunal at the time of the hearing of the reference. The Industrial Tribunal has dealt with this point in paragraph 12 of the award as follows :

"12. The management have contended that they have neither regular fixed grades or scales of pay for their employees, nor they are entitled to any fixed annual or periodical increments and that they have given several increments to their employees who were in their service on 15th November, 1947 and that these increments exceed the amount of 12 1/2 per cent prescribed by the Korea Award. In other words, the management wants to set off these increments against the increments awarded by me. Increments were given in the normal course and they are quite independent of the increase in the basic salary contemplated by the Korea Award. The agreement, Exhibit 33, regarding the New Chirimiri Pondri Hill Colliery shows that it was agreed between the management and the women that 12 1/2 per cent increase in the initial basic salary will not be made from time to time. I am of opinion that the management have got no right to set off the increments given by them against the increments now awarded by me."

The contention on behalf of the petitioner on this; point has, therefore, been considered by the Industrial Tribunal and there is no substance in the argument of the petitioner that there is an error of law vitiating the award of the Tribunal,

7. In this connection reference should be made to the decision of the Supreme Court in the State of Madras Vs. C.P. Sarathy and Another, where it has been pointed out that the adjudication by the Tribunal under the Industrial Disputes Act is only an alternative form of settlement of the disputes on a fair and just basis having regard to the, prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to the legal rights of the parties. It was pointed out that the scope of adjudication by a Tribunal under the Act was much wider, and also in view of the increasing complexity of modern life and the interdependence of the various sectors of planned national economy, it is obviously in the interest of the public that labour disputes should be peacefully and quickly settled within the frame-work of the Act rather than by resort to methods of direct action which are only too well calculated to disturb the public peace and order and diminish production in the country, and courts should not be astute to discover formal defects and technical flaws to overthrow such settlements.

8. For these reasons I hold that the petitioner has made out no case for grant of a writ under Article 226 of the Constitution against any of the respondents. In

my opinion, this application fails and must be dismissed with costs. Hearing fee Rs. 200/- payable in equal shares to the respondents 1, 2 and 4 on the one hand and respondent No. 3 on the other.

Raj Kishore Prasad, J.

9. I agree.