(1969) 03 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No''s. 477 and 479 of 1968

Management of The National Projects Construction Corporation Ltd., Chandan Dam Unit	APPELLANT
Vs	
Their Workmen and Others Management of The National Projects Construction Corporation Ltd., Gandak Unit Vs Workmen of The National Projects Construction Corporation Ltd. and Others	RESPONDENT

Date of Decision : 17-03-1969

Acts Referred:
Industrial Disputes Act, 1947 — Section 10A, 11, 11(1), 18(2)

Citation : (1969) PLJR 424

Hon'ble Judges : S.C. Misra, C.J;S. Wasiuddin, J

Bench : Division Bench

Advocate : Balabhadra Pd. Singh, Monotash Mookerjee, S.B. Sanyal and Choudhary S.N. Misra, for the Appellant; Lal Narain Sinha, Advocate General, Ranen Roy, L.M. Sharma, K.N. Keshoria, J. Krishna and Sadhu Saran Sahai, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Misra, C.J.—These are two applications by the Management of the National Projects Construction Corporation Ltd. filed for cancellation of an award dated the 27th of May, 1968, made by Shri S.C. Prasad, Arbitrator, appointed by the consent of the parties, being the petitioner and respondent no. 1, the Union representing the workmen of all grades employed in the construction of the Gandak Barrage in the district of Champaran and Chandan Barrage in the district of Bhagalpur. The petitioner is a company incorporated under the Indian Companies Act, 1956, with its registered office at E-9, Defence Colony, New Delhi-3, and functions as a contracting agency. It is purely a commercial concern, and works on competitive terms with other contracting firms for executing River Valley projects in allied works. In conducting its affairs, the Corporation opens up field units and employs workmen for specific jobs according to the requirements of the particular project undertaken within the period specified by the other contracting party. The classes of workmen engaged by the petitioner are the following:

(a) Regular staff,

(b) Work-charged staff,

(c) Casual Labour (borne on muster-roll), and

(d) Persons on deputation from Central and State Governments.

The appointment of regular staff is made on an all-India basis, and consists generally of engineering, administrative, accounts and finance personal. The work-charged staff is engaged on the basis of monthly pay, and consists of two categories, civil and mechanical. They are engaged for specific jobs. Their services are payable so far as their particular work lasts, and, as soon as the particular project, in which they are employed, is completed, the engagement of the work-charged staff also comes to an end. They are recruited by the regular staff of the Corporation out of men locally available, where the project is undertaken, in accordance with the manual of orders and the rules of the Corporation. The third category consists of casual workmen who are employed occasionally and who are borne on the muster-roll on a system of daily wages without any scale of pay. Their engagement is purely of a temporary basis. They too are recruited locally according to the rules and orders of the Corporation.

In 1963, the Corporation was given the contract for construction of an earthen dam across-the river Chandan required to be completed by the end of June in the year 1968. On the 31st of January, 1967, a general strike notice was served by the President of the N.P.C.C. Workers'' Union, Chandan Dam, enclosing with the notice a charter of demands, enumerating 25 demands, which is marked Annexure A to this application (C.W.J.C. No. 477 of 1968). The Corporation was also given a contract in the same year for construction of a barrage across the Gandak river at Balmikinagar and security of service of workmen to the President of the Gandak Yojna arbitration for which they are submitting Karamchari Kalyan Sangh, Balmikinagar, separate petitions as required under the also served a general strike notice on the Industrial Disputes Act and the rules 1st of April, 1967, enclosing with the notice a charter of demands, containing 21 demands, which is marked ''Annexure'' A to the application under C.W.J.C. No. 479 of 1968. On the 11th of April, 1967, a settlement was arrived at in course of conciliation proceedings held by the Labour Commissioner, Bihar, Patna, ending in a memorandum of settlement as regards the wages of the workers borne on the muster roll, but certain specific matters were agreed to Officer, Industrial Tribunal, Bihar. Both be referred to arbitration. The Memorandum of settlement arrived at stands as follows:

The following agreement has been reached as a result of conciliation proceeding held in respect of industrial disputes arising out of the demand-cum-strike notice dated the 31st January, 1967:

(1) Keeping in view the drought condition in the state and consequential steep rise in prices of commodities since the wages of workmen of this suit were increased in the year 1966, Management agrees that no muster-roll workmen will be paid less than Rs. 3/- per day with effect from 11.4.1967.

(2) Management agrees to the flat increase of 0.50 paise per day per workman in the daily wage rates of such muster-roll workmen who are getting Rs. 3/- or above.

(3) The Management agrees to sanction an interim relief of Rs. 15/- per month to every workcharged staff with effect from the date of this agreement. The Management has agreed to this interim relief against the demands pertaining to financial implication and this relief will be adjustable against any amount awarded by the Arbitrator.

(4) Parties agree for reference of the demands regarding revision of pay scales, introduction of C.P.R scheme, house rent allowance, dearness allowance, project allowance, travelling allowance and security of service of workmen to arbitration for which they are submitting separate petitions as required under the Industrial Disputes Act and the rules framed thereunder to the State Government. The Arbitrator would be requested to give his award within two months.

2. The Government of Bihar, by notification no. 111/D. 1-19011/67-L & E of the Department of Labour and Employment, referred the matter for arbitration u/s 10A of the Industrial Disputes Act, 1947 to the arbitration of Shri S. C. Prasad, Presiding Officer, Industrial Tribunal, Bihar. Both the parties filed their written statements before the Arbitrator. The Corporation produced copies of its Standing Order No. 60, made in November, 1905, as also other papers showing revision of pay scales and dearness allowance made from time to time and grant of various other benefits to the workmen, which, according to the Corporation, was done in confirmity with the broad principles of wage structure and the regional peculiarities during the years 1959, 1962, 1965 and 1966. The Corporation also produced evidence of having provided amenities like free accommodation, free water and electricity, free school for children, free medical aid, free buildings for recreation club and co-operative stores, assistance in procurement or foodstuffs for the benefit of the workmen, which shows the margin of the benefit and the rise in the percentage of wages paid to the workmen as compared to the minimum wages fixed by the Government under the Minimum Wages Act. The Corporation also produced evidence relating to its financial position and capacity, including its balance-sheets and statements of its assets and liabilities and of the reserves on account of development rebate and depreciation reserve permissible under the provisions of the income tax Act. Shri K.B.J. Sebastian, Senior Accounts Officer, was also examined for the Corporation in proof of the various matters urged in support of the case for the Corporation. The Arbitrator however, disposed of Reference No. 14 of 1967 between the petitioner and its workmen

engaged in the Chandan Dam unit and also Reference No. 5 of 1967 between the petitioner and its workmen at Balmikinagar Champaran, represented by the Gandak Yojna Karmachari Kalyan Sangh, Balmikinagar and N.P.C.C. Worker''s Welfare Union Balmikinagar by one common order. The following demands were formulated by the workmen for decision by the Arbitrator.

(1) Revision of pay scale. Even since 1960 onwards the NPCC management never revised the pay scale of the workers. Since 1962 onwards there has been a general abnormal rise in prices of the essential commodities and in the cost of living index. During the same period real wages of the workers have fallen and this has created a conflict and tension in the minds of the workers about their general standards of living. Due to this general standard of workers has been deterioration and also to the economic hardships, the NPCC management should at least give a rise of 40% in the wages of the employees.

(2) C.P.F. Scheme should immediately be introduced and the Management should implement the scheme from the very inception of the establishment.

(3) The NPCC management should provide housing facilities to the workers or instead house rent at the rate of 15 per cent of the pay.

(4) As the cost of living index has gone up and the Government of India has allowed the new D.A. to their employees and the Corporation has also followed in the case of regular employees, it is desired that work charged employees should also be allowed the same facilities as price spiral affects all equally.

(5) All categories of workers be given project allowance.

(6) The workers be given travelling allowance as per rules of the Government of India.

(7) All the workers be guaranteed security of service at the time of closure of the unit they should be transferred to another unit.

The Arbitrator, however, referred to various occasions on which the Management of the petitioner company increased the wages and dearness allowance of its workmen, and also referred to the fact that the company stated that it was not in a position to hear any further financial burden in the shape of any further rise in the wages of its workmen. After having stated in detail the stand of the employer company and also the arguments advanced on behalf of the Union of the workmen, the Arbitrator has recorded a finding that housing "facilities should be available to the employees with retrospective effect from the inception of the works" and it should take the form of giving rent free accommodation, if buildings are available, but where this is not "possible, the workers should be paid house-rent allowance" at the rate of 10% of their basic pay in the cases of "persons drawing up to Rs. 200.00 per mensem and 7?% subject to the maximum of Rs. 40.00 with marginal adjustment in other cases subject to certain conditions mentioned in this" paragraph first being that the Executive Engineer should "certify that suitable accommodation in buildings rented" by the

Corporation is not available and secondly a flat "rate of 15% should be paid as house rent allowance to the "workmen who are not provided with any accommodation." The Arbitrator took into consideration the various grounds urged on behalf of the parties as to the revision of the pay scales of the employees, and ordered that it was just and proper to increase the wages by 25 per cent. As to dearness allowance claim of the workmen to have it at the Central rates, the Arbitrator has ordered that it was not just to accede to that demand, and has allowed an increase of Rs. 5/- in the dearness allowance of the workman getting up to Rs. 100/- per month, Rs. 7.50 to those getting above Rs. 100/- and up to Rs. 200/- per month and Rs. 10/- per month to others. The claim of the workmen for the introduction of Central Provident Fund Scheme and change in the travelling allowance was refused. Apart, therefore, from the above concessions, the Arbitrator also ordered the payment of project allowance to the workmen of work-charged and muster-roll categories on the condition "that only those members of these two categories will get this allowance who have come on transfer from other places to these sites and belong to places more than fifty miles away." The Arbitrator also allowed the demand of the workmen that all categories of workmen whether regular, work-charged or muster roll, who served the company for three years, should be treated as permanent in the sense that they would be given preference, if any vacancy occurs at any site, and transferred to that place; but, if, for any reason, the Corporation is not in a position to do so, it shall pay retrenchment compensation to such workmen according to law.

3. Mr. Balabhadra Prasad Singh has urged that the Arbitrator was in error, in the first place, in revising the rate of wages to be paid to the muster-roll workmen as also to the other categories of workmen without keeping in view the paying capacity of the Corporation. What was referred to the Arbitrator for an award was the fixation of a wage structure, and not revision of pay scales. It has been so held by the Supreme Court in a series of decisions, e.g. (1) Ahmedabad Mill Owners'' Association Etc. Vs. The Textile Labour Association, and (2) All India Reserve Bank Employees Association Vs. Reserve Bank of India, . The paying capacity of the employer is a necessary factor in determining the amount of wages to be paid as also the local peculiarities where the particular industry, in which workmen have been engaged, is situate. Learned counsel for the workmen has, however, urged that the Supreme Court has held that minimum subsistence wages must be paid, and, if any industry is not in a position to do so, it has no right to exist. Reference is made to the decision of the Supreme Court in the case of Express Newspaper (Private) Ltd. V. The Union of India (A.I.R. 1958 Supreme Court 578). The contention of Mr. Lal Narain Sinha for the workmen and of Mr. Ranen Roy, who appeared for some of the workmen, appears to be well-founded that, where wage structure has to be fixed, a certain minimum is an absolute necessity to be borne in mind. There is such a thing as living wages, subsistence wages. If the amount of wages paid by the industry falls short of the subsistence wages, the plea of the employer that it has not got the means to do

so cannot be entertained, and the question of paying capacity, therefore, is not a material factor in deciding the wage structure. The difference between revision of pay scale and fixation of wage structure is not a real one in several cases because fixation of wage structure has to bear in mind subsistence wages and likewise revision of wages also will be governed to a great extent by the amount requisite for the subsistence of the workmen consistent with their efficiency, the nature of the work to be done, and then also the paying capacity of the employer. In the circumstances, therefore, Mr. Balabhadra Prasad Singh has mainly concentrated his argument upon whether the Arbitrator was justified in applying the standard of revision of wages in regard to muster-roll workmen. He has referred, in this connection, to the settlement in coarse of the conciliation proceedings by the Labour Commissioner, and has urged that, since there is a provision for payment of a minimum of Rs. 3/-, an increase of fifty paise in the wages of all the muster-roll workmen, reference, which was made to the Arbitrator, excluded the consideration of the case of the muster-roll workmen. The reference must, therefore, be confined to the pay scales of the regular staff, and, at the highest, the work-charged workmen and not muster-roll workmen. He has drawn our attention in this connection to the use of the phrase "pay scale" in the order of reference. The fact that, in the charter of demands formulated by the workmen, "pay scale" was referred to in regard to other categories of workmen and not for muster-roll workmen for whom demand no. 2 was formulated, the natural inference should be that the award of the Arbitrator in respect of muster-roll workmen was beyond the terms of reference, and it must be cancelled. A good deal of argument, therefore, was addressed to the Court by learned counsel for the parties as to what is the meaning of "pay scale" -- whether it is to be confined to those workers who got monthly payment, such as members of the regular staff, engineering, administrative, etc., and the work-charged workmen, who too receive payment on a monthly basis, and this Court would exclude muster-roll workmen. Mr. Lal Narain Sinha and Mr. Ranen Roy, on the other hand, have urged that the phrase "pay scale" has got no technical significance, and that this phrase should be held to be synonymous with payment scale, which would obviously include payment to all workmen, whether as daily wages or on monthly basis. In my opinion, however, it is not necessary to deal with these matters at length, inasmuch as what exactly is the meaning of "pay scale" would depend upon the context in which the expression has been used. In the present context, it is not denied that the entire strength of the labour force engaged in the construction work at Chandan Dam was two thousand, and the charter of demands agreed upon between the parties in the form of settlement before the Labour Commissioner as also the reference u/s 10A of the Industrial Disputes Act to the Arbitrator by the Government refers to two thousand workmen. If muster-roll workmen were taken to fall beyond this category, then undoubtedly, the inference would follow that the settlement arrived at before the Labour Commissioner was final and the reference was not intended to cover the cases of muster-roll workmen. The award of the Arbitrator in that event would be unsustainable as it would be excess of jurisdiction on the part of the Arbitrator to pass any order in favour of muster-roll workmen. Since, however, it is stated that the entire number of workmen was two the sand and this number must specifically refer to those to be affected by the award, the expression "pay scale" must be interpreted as referring to the amount payable to all the workmen engaged either on the basis of daily wages or by way of monthly salary. This contention of Mr. Balabhadra Prasad Singh to the contrary therefore, cannot be accepted, and the above award cannot be held to be vitiated in respect of muster-roll workmen only on this ground.

4. The next point urged in support of the application by Mr. Balabhadra Prasad Singh is that the Arbitrator has failed to consider the various circumstances, and has ordered a twenty-five per cent increase in the Wages of all workmen without taking into account the fact that what the Corporation was paying to its employees was more than the rate fixed in the Minimum Wages Act as also the wages payable in similar projects to the workmen engaged. The fact, however, remains that the Arbitrator has taken into account the fact that there was no revision of the pay scale since 1966, when the prices rose exceptionally high, and it cannot be contended that the general increase of twenty-five percent ordered by him was necessarily so arbitrary and unjust as to vitiate the award.

5. The next contention urged is that, even assuming that there was some justification for increasing the rate of wages payable to the workmen, a simultaneous increase in the clearness allowance could not be justified. Dearness allowance is fixed on account of temporary increase in prices of commodities when the general scale of payment to the employees is found inadequate for that purpose. Dearness allowance has been introduced for such an exceptional situation. Where, therefore, the entire scheme of payment of wages is revised and its rate is enhanced, there can be no justification for maintaining and increasing the dearness allowance. Dearness allowance, no doubt, is a device introduced in India during the war days, when it was not feasible to order a general revision of the scales of pay admissible to the employees; but, since the general pattern is being maintained in the Indian economy, it cannot be held that a simultaneous increase in dearness allowance is to be struck down as illegal or invalid.

6. The next contention of Mr. Balabhadra Prasad Singh is that the Arbitrator ordered that the work-charged workmen and also the muster-roll workmen, on completion of the project where they are employed, should be taken to another site, and, if that cannot be done, they should be paid retrenchment compensation. The question of retrenchment compensation is relevant only when the employment is regular. In the case of work-charged workmen as also muster-roll workmen, the engagement of the former is only for the duration of the particular construction for which they are engaged, and muster-roll workmen are engaged on temporary basis. Both classes of workmen know that their engagement is temporary and they will have no claim like members of the regular staff to claim employment from the employer even after the termination

of a particular project. While it is true that, in these days of Welfare State to and the interest of the Government in the welfare of the working class, the Government in every civilised country does intervene in the contractual relationship between the employer and the employees in the industry by legislation and modifying the terms of agreement between them, but there is a limit to this function. It is true that, where the employment is of a continuous nature, the conditions of employment may, no doubt, be improved through the intervention of the agency of the State; but, where, in the very nature of the employment, it is of a temporary character, it is wholly inequitable to force the employer to continue to employ even those workmen who know that their job is purely temporary. Workmen, who are engaged temporarily, cannot for the mere fact of engagement, claim a permanent tenure, and cast an obligation upon the employer to retain such workmen even beyond the term for which their engagement has been entered into between the parties. The Arbitrator, therefore, was in error in proceeding on the footing that the muster-roll workmen and the work-charged workmen, on completion of the project, must be kept employed in some other work site, where they are taken, as if they have a right to a regular employment. This part of the award, therefore, must be struck down as suffering from excess of jurisdiction on the part of the Arbitrator. The inclusion of security of tenure in the terms of reference must be confined to the regular staff and excludes other categories.

7. An argument was also advanced and authorities cited as to the scope of the function of an Arbitrator as distinguished from that of a Tribunal. Mr. Lal Narain Sinha has contended that, even if an award made by a Tribunal can be interfered with, an award made by an Arbitrator can only be interfered with, if it exceeds the terms of reference. In my opinion, however, this point is of academic value in the circumstances of the present case because I have held the award to be invalid only in respect of the last item which is plainly beyond the jurisdiction of the Arbitrator. It is therefore, not necessary to go more fully into the question of the distinction between an award made by a Tribunal and that made by an Arbitrator. Reference may, however, be made to the decision of the Supreme Court in (3) The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, , where the nature of the award by an Arbitrator and to what extent it can be interfered with has been considered and the following principles kid down (at page 768 of the Journal):

It may be conceded that having regard to several provisions contained in the Act and the rules framed thereunder, an Arbitrator appointed u/s 10A cannot be treated to be exactly similar to a private Arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The Arbitrator u/s 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an Arbitrator, as in a loose sense, a statutory Arbitrator and to that extent, the argument of the learned Solicitor General may be rejected. But the fact that the Arbitrator u/s 10A is not exactly in the same position as a private Arbitrator, does not mean that he is a tribunal under Art. 136. Even if some of the trappings of a Court are present in the case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State''s inherent Judicial power. As we will presently point out, he is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source.

Gajendragadkar, J., who delivered the judgment of the court, referred to the observation of Lord Atkin in (4) The King V. Electricity Commissioners Ex-parte London Electricity Joint Committee Company (1920) Ltd. and others [(1924) 1 K.B.D. 171], wherein it was stated that wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King''s Bench Division exercised in these writs. Where there is no excess of jurisdiction, law court is not in a position to interfere with the Arbitrator''s award. Reference may also be made to Section 18(2) of the Industrial Disputes Act which gives to an arbitration award u/s 10A, the character of its being binding on the parties to agreement who referred the dispute to arbitration.

8. It may, also, be observed that there is force in the contention of Mr. Lal Narain Sinha that where reference is made to the Arbitrator u/s 10A of the Industrial Disputes Act and the Arbitrator has given an award, even if he has not given elaborate reasons for arriving at a conclusion, the award cannot be challenged. The general principle of the validity of an Arbitrator''s award would also apply to such a case which is that the award can be held to be vitiated if the Arbitrator is guilty of misconduct or exceeds his jurisdiction, or does not hear the parties or fails to determine an important question referred to him to be answered. Where this has not been done, the award made by the Arbitrator cannot be called in question as a defective award. From this point of view also, it is clear that the present award cannot be regarded as unsound merely because the Arbitrator took into consideration all the circumstances and thought it proper to increase both the wages and dearness allowance of the workmen roughly by twenty-five percent on account of the abnormal rise in the prices of essential commodities.

9. The finality of the award of the Arbitrator u/s 10A of the Act and its binding character with regard to both the parties may be considered with reference to Section 11 as well, Section 11(1) runs thus:--

Subject to any rules that may be made in this behalf an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal, shall follow such procedure as the Arbitrator or other authority concerned may think fit.

The subsequent clauses of this section provide in a general way for the powers and procedure to be followed by a Board, Court, Labour Court, Tribunal or National Tribunal or a Conciliation Officer, but so far as the Arbitrator is concerned, there is no provision in any of these clauses, The implication of the absence of any such provision in the subsequent Clauses, obviously, is that, so far as the Arbitrator is concerned, Clause (1) alone is relevant which lays down that he shall follow such procedure as he may think fit. This also leads support to the conclusion that the award given by the Arbitrator cannot be challenged on any procedural ground or that a particular criterion has not been kept in view by the Arbitrator, but only on one of the grounds mentioned above. The main ground is that the award must not suffer from an act on the part of the Arbitrator in the nature of excess of jurisdiction or misconduct, or denial of natural justice, but not on the ground of any defect in the procedure in setting out the conclusion in a particular manner giving reasons for the conclusion or otherwise. This is so because the Arbitrator has been invested with authority to settle the dispute between the parties on joint agreement between them, so that he can well be expected to do substantial justice between the parties in giving his award. The award thus must be upheld as a valid award except to the extent indicated above.

In the result, these applications fail and must be dismissed. But in the circumstances, there will be no order as to costs.

S. Wasiuddin, J.

I agree

