
(1962) 10 KL CK 0023
In the High Court Of Kerala
Case No : O. P. No's. 535 and 1038 of 1962

Parvathi Mills Ltd.

APPELLANT

Vs

Workmen of Parvathi Mills and Others

RESPONDENT

Date of Decision : 16-10-1962

Acts Referred:

Citation : (1963) KLJ 9

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K.V.R. Shenoj, P.K. Kurien, G. Balagangadharan Nair, K.A. Nayar, K. Sukumaran and V. Desikan in O.P. 535 of 1962 and 2nd Respondent in O.P. 1038 of 1962 and M.P. Menon in O.P. 1038 of 1962 and Respondents in O.P. 535 of 1962, for the appearing parties;

Judgement

Vaidialingam, J.—In O. P. No. 535 of 1962, learned counsel Mr. P. K. Kurien, for the petitioner-management, challenges the award of the Industrial Tribunal, Alleppey, dated 30-1-1961 in Industrial Dispute No. 22 of 1959 and published in the State Gazette on 30th January 1962, in so far as its findings are against the management on issue Nos. 7, 18, 20, 21, 24 and 27. Against the same award Mr. M. P. Menon, learned counsel on behalf of the Union, challenges in O. P. No. 1038 of 1962 a part of the finding recorded by that Tribunal making certain provisions in a gratuity scheme framed by that authority under issue No. 7 and he also challenges the findings recorded by the Tribunal on issue No. 13 as against the Union.

2. The other aspects that have been dealt with in the award in question do not arise for consideration in either of these writ petitions.

3. The A. D. Cotton Mills at Quilon was purchased by the present management on 30-8-1957. There was no doubt a very serious controversy in these proceedings as to whether the petitioner management can be considered to be a successor in interest of the A. D. Cotton Mills and on that aspect the finding now recorded by the Industrial Tribunal is against the management.

4. In particular, issue No. 7 related to the framing of a gratuity scheme in respect of the workers serving the present management.

5. The contention that appears to have been raised on behalf of the management was that there has already been a Pre-Provident Fund scheme that was in force in the A. D. Cotton Mills and which liability has also been taken by the present management and therefore the workers concerned are not entitled to another benefit by way of gratuity scheme. Another contention that appears to have been raised by the management was that the financial capacity of the management, which has to be taken into account for such purposes as laid down by decisions of court, is such that it does not justify or warrant the framing of a gratuity scheme involving, as it does, the management in huge financial commitment.

6. So far as that is concerned, the Industrial Tribunal has considered the demand of the Union and in that connection it has also considered the financial position of the A. D. Cotton Mills and it proceeds on the basis that the present management must be made liable for past services of the workmen under the A. D. Cotton Mills.

7. In this connection, the Industrial Tribunal considers the financial position of this management in particular. In considering that aspect, it takes into account the fact that in 1956, the A. D. Cotton Mills has made a profit of Rs. 2,25,509-8-3. But it also takes note of the fact that for the year 1957, the A. D. Cotton Mills had sustained a net loss of Rs. 1,15,868-12-0. Considering the profit and loss statements of the management itself, namely, Parvathi Mills (P) Ltd., evidenced by Exts. 12 and 13 for 1958 and 1959, the Industrial Tribunal accepts the position that both these balance sheets evidence that both for 1958 and 1959 the Parvathi Mills had incurred a loss of Rs. 1,94,472.61 and Rs. 1,41,041.33 respectively. These aspects appear to have been very much stressed before the Industrial Tribunal by counsel appearing for the management to show that the management cannot certainly bear the burden of a gratuity scheme. It appears also to have been stressed before the Tribunal that the proposed gratuity scheme will involve the management in an expenditure of about eight lakhs and that the capital of the company is only about five lakhs. Another aspect that appears to have been stressed was that the company's borrowings were to the tune of 25 lakhs. These aspects do not appear to have been controverted and the Tribunal also has accepted all these statements made on behalf of the management.

8. But the Industrial Tribunal is of the view that in framing the gratuity scheme, no doubt, for the present management, it can and it is also entitled to consider the financial position of the A. D. Cotton Mills, whose successor the present management should be considered to be.

9. In that connection, the Industrial Tribunal takes note of the fact that though the A. D. Cotton Mills incurred a loss in 1933 it has been making regular profits from 1934 forward and in particular in 1943, the A. D. Cotton Mills has made a

profit of about 6 lakhs of rupees.

10. The Tribunal, as I mentioned earlier, takes note of the fact that in 1957, 1958 and 1959, the A. D. Cotton Mills in 1957 and the present management in 1958 and 1959, sustained substantial loss.

11. Again it is the view of the Tribunal that it has made a local inspection of the mill in question and it expresses the opinion that conditions with regard to the petitioner mill are improving and in 1960, the Industrial Tribunal hopes that the management should have turned the corner. On this assumption, the Industrial Tribunal further proceeds to say that taking an overall view of the concern for the whole period, it cannot be denied that the A. D. Cotton Mills had made sizable profits and that the financial position of the A. D. Cotton Mills cannot be said to have been unsatisfactory. Nevertheless, the Tribunal observes that even though the successor of the A. D. Cotton Mills, namely Parvathi Mills has sustained loss for the first two years, the financial position of the Company is improving.

12. Then the Tribunal proceeds to state that inasmuch as the Parvathi Mills is to be considered the successor and as the sale of the A. D. Cotton Mills as a going concern cannot by itself bring about the termination of the service of the workers, that it will be very hard if the purchasers are not made liable for the past services of the workmen concerned.

13. It is really on these assumptions and findings of fact recorded, which I have noted earlier, that the Industrial Tribunal rejects the contention of the management that no gratuity scheme need be framed for this concern. Ultimately the Tribunal has framed a scheme, the various provisions of which are incorporated in the Award.

14. Mr. P. K. Kurien, learned counsel for the management, drew my attention to the principles laid down by the decisions of the Supreme Court, in particular to the decisions reported in *Bharath Khand Textile Mfg. Co. v. Textile Labour Association* (1960 2 L. L. J. 21) and *Jardine Henderson, Ltd. v. Their Employees* (1961 1 L. L. J. 641), where their Lordships have categorically held that in the matter of framing gratuity schemes the Industrial Tribunal must give due regard and consideration to the financial capacity of the industry in question and as to whether it will be in a position to bear that burden. No doubt, it is also observed by their Lordships of the Supreme Court in these decisions that it is not really a loss or a profit for a particular year that will have to be taken into account; but the capacity of the industry will have to be considered on a long term basis and after a consideration of the various other relevant factors stated by their Lordships in those judgments, a decision will have to be taken regarding the framing or otherwise of a gratuity scheme.

15. It is the contention of Mr. P. K. Kurien that all these considerations have been very sadly missed by the Industrial Tribunal in this case. In particular, Mr. P. K. Kurien laid considerable emphasis on the fact that even according to the findings of the Industrial Tribunal it has accepted the case of the management that for

the two years that the management has been running this establishment, namely, 1958 and 1959, the management has suffered heavy loss. Even though for 1957, nominally a statement has been furnished by A. D. Cotton Mills; really it is in evidence that the A. D. Cotton Mills was conducting the business on behalf of the Parvathi Mills, the transferee, the petitioner management. Therefore it comes to this: for the years 1957, 1958 and 1959, the management has been able to establish and that has also been accepted by the Tribunal-that there has been heavy loss sustained by it.

16. The only basis on which the Industrial Tribunal appears to have been satisfied that this industry is likely to turn the corner is on some inspection stated to have been made by it. The nature of the inspection, or as to what exactly was the impression that was left in the mind of the officer at the time of the inspection is certainly not clear from the award itself. Nothing has been stated as to what particulars have been observed by the officer or what materials were collected at such local inspection.

17. Mr. P. K. Kurien, learned counsel for the management, in my view quite rightly attacked this part of the award of the Tribunal, namely, that having found in favour of the management regarding the loss incurred by the management it should have been held that there was absolutely no necessity for framing the gratuity scheme in question.

18. Mr. M. P. Menon, learned counsel appearing for the contesting Union, no doubt, very strenuously urged that the principles laid down by the Supreme Court have been properly taken into account in the matter of framing the gratuity scheme in question. In particular, Mr. M. P. Menon, urged that the management itself, in the mediation agreement has agreed to safeguard the continuity of service of the workmen concerned. The learned counsel also urged that the Industrial Tribunal was perfectly justified in considering the financial position of the A. D. Cotton Mills as is evidenced by the records even when it was framing a scheme, no doubt, for the successor-in-interest, namely, the present management.

19. Therefore, according to the learned counsel, notwithstanding the fact that the three years 1957, 1958 and 1959 appear to have been loss periods and no doubt, that is an established fact-nevertheless the view of the Tribunal is, that the situation will improve and that is also perfectly in accordance with the tests laid down by the Supreme Court. No doubt, this stand was also attempted to be supported by the learned Government Pleader; but I am not satisfied that this contention can be accepted. In *Bharatkhand Textile Mfg. Co. v. Textile Labour Association* (1960 2 L. L. J. 21) the Supreme Court had laid down the principles which will have to be taken into account in the matter of framing gratuity schemes. Mr. Justice Gajendragadkar at page 30 of the said reports observes:

It is not disputed that the benefit of gratuity is in the nature of retrial benefit and there can be no doubt that before framing a scheme for gratuity industrial

adjudication has to take into account several relevant facts; the financial condition of the employer, his profit-making capacity, the profits earned by him in the past, the extent of his reserves and the chances of his replenishing them as well as the claims for capital invested by him, these and other material considerations may have to be borne in mind in determining the terms of the gratuity scheme. This position has always been recognized by industrial courts (Vide *Arthur Butler & Co. (Musaffarpur) Ltd. v. Arthur Butler Workers' Union* (1952 2 L. L. J. 29). It appears also to be well recognized that though the grant of a claim for gratuity must depend upon the capacity of the employer to stand the burden on a long-term basis it would not be permissible to place undue emphasis either on the temporary prosperity or the temporal adversity of the employer. In evolving a long term scheme, a long-term view has to be taken of the employer's financial condition and it is on such a basis alone that the question as to whether a scheme should be framed or not must be decided, and if a scheme has to be framed the extent of the benefit should be determined (Vide: *Boots Pure Drug Company (India) Ltd. v. Their Workmen* (1956 1 L. L. J. 293.)

From the above extract it will be seen that the learned Judge has emphasized that the financial condition of the employer, his profit making capacity, the profits earned by him in the past, the extent of his reserves and the chances of his replenishing them as well as the claims for capital invested by him, these and other relevant material considerations have to be taken into consideration in determining as to whether a gratuity scheme is to be framed or not.

20. No doubt, Mr. M. P. Menon, learned counsel, urged that in this case the Tribunal was perfectly justified in taking into account the financial condition of the previous employer of the workmen, namely, A. D. Cotton Mills. According to Mr. P. K. Kurien, learned counsel for the management, it looks as if the Industrial Tribunal was, though nominally framing a scheme for Parvathi Mills, the present management, in fact, attempting to frame a scheme only for the predecessor of the present management, namely, A. D. Cotton Mills.

21. The principles above extracted have also been reiterated in the later decision of the Supreme Court in *Jardine Henderson Ltd. v. Their Employees* (1961 1 L. L. J. 641) wherein Mr. Justice Wanchoo has delivered the judgment on behalf of the Bench.

22. In my view, the approach made by the Industrial Tribunal in this regard is thoroughly erroneous. I am in complete agreement with the contentions of Mr. P. K. Kurien that when the question of framing a scheme for this management, namely, Parvathi Mills, was being considered, the Industrial Tribunal had absolutely no jurisdiction to consider the financial ability or otherwise of the A. D. Cotton Mills which had ceased to be in the picture at the material stage.

23. I have already referred to the various reasons given by the Industrial Tribunal for framing a scheme and I have also shown that very largely the

financial position of the A.D. Cotton Mills appears to have very much influenced the Industrial Tribunal in coming to the conclusion that the gratuity scheme should be framed for the management in question, notwithstanding its categorical and definite findings that for the three years when the present management is in the scene, namely, 1957, 1958 and 1959, the management has been able to establish a loss and the figures have also been mentioned in the award itself.

24. I am not satisfied that the Industrial Tribunal is entitled to consider the financial condition of A. D. Cotton Mills when it was framing a scheme in respect of the successor-in-interest, namely, Parvathi Mills.

25. Mr. M. P. Menon, no doubt, very strenuously urged that the mediation agreement will clearly show that the management in question has agreed to recognise the continuity of service of the workmen. In my view, that has absolutely no relevancy in considering as to whether a gratuity scheme is to be framed for this management or not. That has to be, as I have already indicated, considered in the light of the various principles laid down by the Supreme Court, and, therefore, inasmuch as I am not satisfied with the approach made by the Tribunal in this matter of framing a gratuity scheme, the scheme will have to be set aside.

26. No doubt, if the materials were not sufficient or if certain materials on record have not been properly taken into account, I may have to ask the Industrial Tribunal to reconsider this aspect. But in view of the fact that there is no other material which has to be adverted to excepting the material furnished by the A. D. Cotton Mills when it was the owner of this business and the definite and positive evidence furnished by the present management showing a loss and which material has also been accepted by the Industrial Tribunal, I do not think there is any scope for a reconsideration of this aspect. Therefore, the framing of a gratuity scheme under issue No. 7 will have to be set aside and deleted.

27. One of the contentions that is raised in the writ petition by the Union in O. P. No. 1038 of 1962 relates to a provision made in particular in clause 7 of the gratuity scheme framed under this award. Inasmuch as the gratuity scheme itself is set aside, it is not necessary to consider the attack made on this particular provision. Therefore, that point need not be considered in connection with O. P. No. 1032 of 1962.

28. The other issue that is under attack by the management is issue No. 18 relating to the giving of uniforms to the workers mentioned therein. In my view, though Mr. P. K. Kurien, learned counsel for the management, criticized the approach made by the Industrial Tribunal on this aspect, I am not satisfied that he has been able to make out that the criticism is well founded. The direction of the Industrial Tribunal under Issue No. 18 regarding the supply of two sets of uniforms for the particular workers mentioned therein has to be sustained and the contentions of the learned counsel on this aspect have to be rejected.

29. The other issues that arise for consideration are issues Nos. 20 and 21. Issue No. 20 relates to the question whether the Foreman, the Chief Electrician and other employees in the supervisory grades are to be granted any scale of pay and if so what should be the scale and what should be the weightage and from which date the scales should be introduced. Issue No. 21 in turn is also closely allied to this issue and that was to the effect "Should the employees of the supervisory cadre including Foreman, Chief Electrician and others be paid any Dearness Allowance and if so at what rate and from what date".

30. There is a very strenuous attack made by Mr. P. K. Kurien learned counsel for the management, both in regard to the fixation of basic wages under issue No. 20 as well as the award of dearness allowance under issue No. 21. In particular, the learned counsel also urged that the giving effect to the increased basic wages retrospectively with effect from 1-6-1957 and also giving effect to the dearness allowance incorporated under this award again retrospectively from the periods mentioned therein are both illegal and arbitrary.

31. In particular Mr. P. K. Kurien, learned counsel for the management, urged that evidence has been let in to show in this case, and particularly, Ext. 60, that the salary that is payable to the workers covered by issue No. 20 included also dearness allowance and that aspect has not been taken into account by the Industrial Tribunal in fixing the basic salary under issue No. 20 or the dearness allowance under issue No. 21. Ext. 60 has also been relied upon by the learned counsel to urge that the fitting in of some of these people in grade No. 1 as mentioned in paragraph 11 of the award is also erroneous.

32. This contention is met by Mr. M. P. Menon by urging that the Union has been consistently setting out a case that there has been no dearness allowance paid by the management in respect of these persons; and at no stage has the management come out with a clear cut case that any part of the salary that is being paid to these persons included dearness allowance and if so what part of it represented dearness allowance.

33. The learned counsel also urged that Ext. 60 which has been very strongly relied upon by the management contained only a very bald statement giving the name of the person mentioned therein and also stating that the salary is inclusive of dearness allowance. The learned counsel urged that if really the management's case that a part of the amount mentioned in Ext. 60 actually includes dearness allowance also, there was a duty on the part of the management to state as to what part of that amount mentioned in Ext. 60 represented the basic salary and what part of it represented dearness allowance. In my view, the contention of Mr. M. P. Menon, learned counsel for the Union, will have to be accepted in this regard. No doubt, Mr. P. K. Kurien referred me to Ext. 60 which is extracted in the award itself and also to the evidence shown in Ext. 60 as inclusive of dearness allowance also.

34. In this connection, Mr. P. K. Kurien referred me to a document, Ext. 10

wherein it will be seen that the monthly rated employees were getting a dearness allowance of Rs. 30/- per month. The learned counsel also urged that there is no controversy in this case that the workmen under this management were being paid Rs. 26/- per month as dearness allowance.

35. Therefore, the learned counsel urged that when Ext. 60 referred to the salary to be inclusive of dearness allowance, the dearness allowance mentioned therein must be either Rs. 26/- on the basis that the persons mentioned therein are workmen, or it must be Rs. 30/- as mentioned in Ext. 10 on the basis that the persons mentioned in Ext. 60 are monthly rated employees.

36. I am not inclined to accept the contention of the learned counsel for the management. That is only going into the realm of conjecture which certainly I am not inclined to do in these proceedings.

37. The Union has set up the case that the persons mentioned under issue No. 20 are not getting any dearness allowance. If that is so, there was not only a duty but an obligation on the part of the management to show what part of the amount really represented the basic salary and what part of it represented the dearness allowance.

38. In this connection, Mr. M. P. Menon, learned counsel for the Union, is certainly well founded in his contention that the Tribunal has also accepted the contention of the Union that the management was not paying any dearness allowance to these persons because the finding of the Industrial Tribunal on this aspect in considering issue No. 21 is that it does not find any justification for denying the dearness allowance to the employees of the supervisory cadre alone. This certainly is a finding, in my view, to the effect that it is not accepting the case of the management that dearness allowance was being paid to the persons concerned and in turn of accepting the contention of the Union that no dearness allowance was being paid to these persons.

39. Therefore, the criticism leveled against the findings recorded under issues Nos. 20 and 21 that the Industrial Tribunal has not had due regard to the basic salary received by these people for fitting them in grade No. 1 cannot certainly be accepted.

40. Then the objection that has been raised by Mr. P. K. Kurien is that the Industrial Tribunal committed an error in giving retrospective effect to the increased salary from 1-6-1957 and the grant of dearness allowance again from 1-6-1956.

41. In this connection the learned counsel urged that the Industrial Tribunal appears to have been largely influenced by a previous award passed on 26-8-1957 which no doubt gave retrospective effect to the award from a slightly anterior date, namely, 12th June 1957. Whatever justification there may have been in that award to make it retrospective, the learned counsel urged that by giving retrospective effect to the directions contained in this award, the workers

have been given a benefit of increase of basic wages and dearness allowance for nearly four or five years.

42. There appears to be prima facie considerable force in this contention. The learned counsel also referred me to the decision of the Supreme Court reported in Lipton Limited v. Their Employees (1955 1 L. L. J. 431) where their Lordships on the particular facts of that case directed the award to become operative after the date of the publication of the award.

43. Mr. M. P. Menon, learned counsel for the Union rather strenuously urged that it should not be forgotten that the Union was claiming retrospectively even from 1952 to higher rate of wages and also dearness allowance to be paid to these people and the industrial Tribunal has not chosen to accept that large claim that has been made on behalf of the Union. The learned counsel urged that the fact that the award had been delayed due to some reason or other should not certainly operate to the prejudice of his clients.

44. That directions in the award can be given retrospective effect has been held by this court and I had also occasion to consider the powers of the Industrial Tribunal to give retrospectively to its directions. But the question is whether in the circumstances of this case, it was proper on the part of the Industrial Tribunal to give effect retrospectively so far as the wages are concerned as early as 1-6-1957 and so far as dearness allowance is concerned, with effect from 1-6-1956.

45. The Industrial Tribunal even in considering this aspect, namely, regarding the right of the Union for claiming higher basic wages as well as dearness allowance has repeatedly observed that the financial capacity of the management has not improved considerably and, therefore, it is not proper to place a higher burden on them. But having observed like that in my view, it was not justified in giving retrospective effect to these directions for nearly four years. No doubt, I am conscious that it is not the province of this Court to substitute its view to the view expressed by the Industrial Tribunal so long as that view cannot be considered to be arbitrary or unjust. But I am satisfied that in the circumstances of this case and more especially in view of the findings of the Tribunal itself that the financial capacity of the management is not such that it will be able to bear this burden, the proper direction to be given would be that the findings on issue Nos. 20 and 21 will take effect only from the date of the reference to adjudication, namely 23-5-1958.

46. In this contention, it may be necessary to give certain minor directions regarding issue No. 21. So far as issue No. 20 is concerned, the direction regarding fixation of higher rate of wages will take effect from 23-5-1958. But so far as the directions given under issue No. 21 regarding dearness allowance is concerned they will have to be modified as follows: Instead of 1-6-1956 as stated in the award, it will be from 23-5-1958. From 23-5-1958 up to 28-2-1961 the workers will get dearness allowance, at the rate of two annas. From

1-3-1961 to 15-5-1961, the rate of dearness allowance will be 2 annas 3 ps. From 16-5-1961 to 31-12-1962 the rate will be 2 annas 6ps; from 1-1-1963 to 31-12-1963 the rate will be 2 annas 9ps; and from 1-1-1964 the workers, will get dearness allowance at the rate of 3 annas, have to give some of these figures more accurately, because there is a lot of confusion in the dates given by the Industrial Tribunal under issue No. 21. Subject to these modifications under issue Nos. 20 and 21 the other findings of the Tribunal will stand.

47. The other finding that is challenged on behalf of the management is the one recorded under issue No. 24. That deals with the question as to whether the supervisory staff, which is actually doing night duty in the third shift, are entitled to get night allowance of 25 per cent of their basic wages. No doubt, the management appears to have contested this claim but the Industrial Tribunal has negatived this plea of the management. It has actually found that the supervisory staff also works in the night shift and the other workers are paid 25 per cent of their basic wages as night allowance and it does not see any, reason as to why the supervisory cadre alone should not be entitled to get this allowance also. In my view, the approach made by the Industrial Tribunal on this question is perfectly justified and no interference is called for.

48. The last finding which is the subject of attack in the writ petition of the management is the recorded under issue No. 27. Issue No. 27 related to the scale of pay of Sri. K. N. Swami, Loom Fitter, and ultimately the Industrial Tribunal has come to the conclusion that the wages of the said worker have not been properly fixed and has given a direction to the effect that the management is to pay a sum of Rs. 1260/- representing the loss of pay sustained by him and as also dearness allowance to the said worker. Though Mr. P. K. Kurien, learned for the management, urged that the approach made by the Industrial Tribunal in this regard is erroneous, I am not satisfied that the learned counsel has been able to make out the contentions raised regarding this issue. The findings recorded under issue No. 27 will be confirmed.

49. So far as O. P. No. 1038 of 1962 filed by the Union is concerned, I have already stated that one of the grounds of attack raised in this writ petition relates to provisions contained in clause 7 of the scheme framed under issue No. 7. I have already accepted the contention of the management that no gratuity scheme should have been framed in this case and, therefore, it becomes unnecessary to consider the correctness or otherwise of the various clauses contained therein. Especially as the scheme itself is wiped out, the attack on any part of the scheme has become absolutely infructuous.

50. The only other finding in respect of which there is an attack is that covered by issue No. 13. Under issue No. 13, it will be seen that in respect of certain years for which the workers have become eligible for bonus the Union appears to have made a claim on behalf of as many as 101 workers for payment of the bonus. The claim of the Union was contested by the management on two grounds, namely, that there was a practice in the management in question that

unless the workers were present at the time when the bonus was being declared, no bonus was paid to anybody else. The second ground that was urged by the management appears to have been that there is no material to show whether the various persons on whose behalf the claim is made are really existing persons. The management also urged that persons who have been taken back in their service have been paid.

51. The Industrial Tribunal has gone into the various aspects that appear to have been presented before it by the management and the Union and it is ultimately satisfied that the claim made by the Union cannot be accepted. In fact, the Industrial Tribunal is also of the view that the Union has not examined any of these 101 workers and it has not let in evidence to show that these 101 workers are members of any of the Unions mentioned in the reference order. In fact, the Industrial Tribunal feels very great doubt as to how many of these persons were even alive on that date. In view of all these circumstances, the Industrial Tribunal negated the claim made on behalf of the Union under issue No. 13.

52. I do not see any error in the approach made by the Industrial Tribunal and it has given valid and good reasons for negating the plea advanced on behalf of the Union. In the result, O. P. No. 535 of 1962 is allowed to the extent indicated above, namely, regarding issue No. 7, and the modification effected in respect of issue Nos. 20 and 21 mentioned above. In other respects, O. P. No. 535 of 1962 will stand dismissed. It also follows that O. P. No. 1038 of 1962 has to be dismissed. Parties will bear their own costs in both these writ petitions.