(1994) 08 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 3728 of 1990

Protes Engineering Company (P) Ltd. APPELLANT

Vs

Bombay V.B.N. Limaye and Others RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:
Industrial Disputes Act, 1947 — Section 12(3), 18, 18(3)

Citation : (1994) 08 BOM CK 0049

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapdia, J.—By this writ petition the company seeks to challenge the award passed by the Industrial Tribunal in Reference I. T. No. 52 of 1983 decided on 9th August, 1990. By the impugned award the petitioner company was directed to withdraw its notice of change dated 8-7-1982 seeking to revise the then existing scheme of D. A. as contained in the Settlement between the Company and the Union dated 29th January, 1974.

2. The case has a chequered history. It is not necessary to set out the different stages through which the present writ petition has undergone. The facts which are relevant for deciding the present writ petition are as follows :-

3. The petitioner is a company registered under the Companies Act. It is trading company engaged in the trading of Engineering Products. In Bombay at the relevant time in its registered Head Office there was 44 workmen. The Company also employed 44 workmen at Calcutta, Madras and New Delhi Branches. Today we are concerned with only 17 workmen. On 9th September, 1966 Settlement u/s 12(3) read with Section 18(3) of the Industrial Disputes Act was signed between the Company and the Union. It introduced a slab system of D. A. linked with the salary groups and variation in Consumer Price Index (hereinafter referred to for the sake of brevity as "CPT"). On 24th April, 1970, another Settlement u/s 12(3) read with Section 18(3) of the Industrial Disputes Act was entered into between the company and the union with regard to service

conditions of the workmen at Bombay including revised slab system of D. A. At this stage it may be mentioned that on the basis of 1934 Index the CPI stood at 604 points on 9-9-1966 when the first Settlement was entered into. On 21-9-1970 the CPI stood at 77 points when second Settlement was entered into and under which the earlier slab system having dual linkage was retained. On 29-1-1974 Third Settlement u/s 12(3) read with Section 18(3) of the I. D. Act was entered into an under which the earlier slab system having dual linkage was retained. On 29-1-1974 Third Settlement u/s 12(3) read with Section 18(3) of the I. D. Act was entered into regarding service conditions of the workmen at Bombay including revision in the slab system of D. A. The third settlement dated 29-1-1974 made a minor variation with regard to rate of D. A. At that time the Index stood at 1070 points. In 1976 the third Settlement expired. The Union vide letter dated 9-1-1978 terminated the Settlement dated 29-1-1974. The Union submitted their charter of demands by their letter dated 23-3-1978 for revision in service conditions including Scheme of D. A. The Union requested the Assistant Commissioner of Labour to intervene in the said dispute. The dispute was admitted in conciliation. The failure report was submitted by the Conciliation Officer. The Union filed their statement of claim followed by a written statement of claim followed by a written statement of the Company before the Industrial Tribunal in Reference (IT) No. 17 of 1980. This was pursuant to the demand of the workmen as stated above. When the said Reference (IT) No. 17 of 1980 was due for hearing in 1982 the Company gave letter dated 8-7-1982. It was a notice of change seeking to reduce the D. A. including ceiling. At this stage it may be noted that as per the notice of change given by the Company and as mentioned in the recital to the Annexure to the notice of change the existing scheme of D. A. in the Settlement dated 29-1-1974 stood replaced by the Scheme formulated by the Company as mentioned in the notice of change with effect from 1-8-1982. As per the notice of change the company proposed the variations for every 10 points rise or fall in the CPI No. 591 to 600. The table of variation in the rate of D. A. is reflected in paragraph 3 of the impugned Award which reads as follows :-

"3. The Scheme of Dearness Allowance as it exists in the settlement dated 29-1-1974 is as under :

-- Salary Slab Dearness Allowance Variation for when Bombay Consumer every 10 points in Bombay Price Index is between Consumer Price Index. 591-600 -- Rs. 1-200 10% 5% Rs. 201-400 8% 3% Rs. 401-600 5% 1.5% Rs. 601-1000 3% 1% Minimum 40% Rs. 2 -- By the notice of change, the Company sought to introduce the following scheme of Dearness allowance w. e. f. 1st August 1982 in so far as the workman employed in the Company''s establishment at Bombay are concerned :-

-- Basic Salary D.A. payable when Variation for every 10 points the CPI for the work rise or fall over the EPI ing class in the city 591-600. of Bombay is in the range of 591-600 -- Rs. 1-200 10% 3.00% Rs. 201-400 8% 0.75% Rs. 401-600 5% 0.50% Rs. 601-1000 3% 0.25%-- A bare reading of the notice of change and the scheme mentioned therein as framed by the Company as compared to the scheme of D. A. under the Settlement dated 29-1-1974 the rate of D. A. for the salary slab of Re. 1/- to Rs. 200/- was 5% which was sought to be altered under the Notice of change to 3% that under the scheme of D. A. under the settlement dated 29-10-1974 for the salary slab of Rs. 200/- to Rs. 400/- the variation was 3% whereas under the notice of change the variation was 0.75% Similarly, in case of salary slab of Rs. 400/- to Rs. 600/- the variation was 1.5% under the Settlement whereas it was 0.50% under the notice of change, so also with regard to salary slab of Rs. 601/- to Rs. 1000/- the variation was 1% under the Settlement whereas it stood reduced to 0.25% under the notice of change. Under the Settlement there was no ceiling prescribed, whereas under the notice of change ceiling came to be prescribed. It was laid down that the maximum D. A. payable under the notice of change/scheme shall not exceed Rs. 1,500/- per month, whereas under the Settlement there was no ceiling on D. A. On 11-10-1983 the then Industrial Tribunal passed an award. On that day the C. P. I. stood at 4000 points. Under the said award slab system was retained. However, rate of D. A. was reduced from 5% to 4% at the initial slab of Rs. 1/- to Rs. 200/- (basic salary). The said award came to be challenged by the Union. It is not necessary to mention the various stages through which the matter has undergone. However, the fact remains that the said award was implemented by the Company. It has never been challenged. The Union preferred Writ Petition No. 944 of 1984 in this Court against the award passed by the Industrial Tribunal on 11-10-1983. During the pendency of the Writ Petition No. 944 of 1984 the award dated 11-10-1983 was not stayed. The Company, therefore, implemented the award. Ultimately on 23-1-1986 by judgment an order in Writ Petition No. 944 of 1984 the award of the Tribunal dated 11-10-1983 was set aside. The matter was remanded back to the Tribunal. Ultimately on 9-8-1990 the present impugned award came to be passed against the company. Being aggrieved by the said award the Company has come by way of this writ petition. At the time of admission interim relief was refused. As per the impugned award of the Industrial Tribunal, the Company was in a sound financial position. Even today in the writ petition this aspect has not been challenged by the company. The Industrial Tribunal came to the conclusion after considering the various judgment of this Court and the Supreme court that the ceiling of D. A. was not required to be fixed and so also reduction in the rate of D. A. was not warranted. The Industrial Tribunal came to the above conclusion on the basis that the present case did not deal with adjudication. The workmen had not sought revision of any D. A. The Tribunal found that the present case arose because the company had given notice of change by which the Company sought reduction in D. A. alteration of the existing D. A. system to the detriment to the workmen. It was for the Company, which sought restructuring of D. A. scheme to the disadvantage of the workmen, to prove that the wage structure in the industry concerned was well above the minimum level and that the Company was not in a financial position to bear the burden of the existing wage structure. Since the company failed to satisfy the second test referred to above, the Industrial Tribunal allowed the reference and directed the Company to withdraw the notice of the change.

4. Mr. Shetye, the learned Counsel appearing on behalf of the Company submitted that in the present case two aspects were required to be considered by the Tribunal namely whether there was over neutralisation and secondly whether in the facts and circumstances of the case on account of phenomenal increase in the CPI the Company was right in re-structuring the D. A. pattern so as to reduce the rate of D. A. and prescribe the ceiling on D. A. Mr. Shetye submitted a statement showing the rise in the Index. The rise in the Index has been mentioned earlier in my judgment. Rise in C. P. I. It is not in dispute. According to the statement now produced by the Company in view of the rise in the C. P. I. the workmen concerned were required to be paid by the Company salary, which according to the company clearly indicated over neutralisation. In the above circumstances, it was submitted that the Industrial tribunal has failed to consider the abovementioned important aspects in the impugned award. The statement produced by the Company shows that a Peon drawing a basic salary of Rs. 250/- was D. A. in May, 1994 amount to Rs. 6,955/- The Total salary of basic plus D. A. was Rs. 7,185/- In addition to the above, he was as entitled to other benefits as enumerated in the statement. Similarly, an accounts Assistant Shri R. S. Thakur who was paid basic salary of Rs. 915/- was receiving D. A. based on the above Index in May, 1994 of Rs. 14,143/- His total salary of basic plus D. A. was Rs. 15,058/- This was apart. From other benefits which were paid by the Company. Mr. Shetye fairly stated that the award passed by the Industrial Tribunal dated 9-8-90 being implemented all these years. He submitted that in the present case a remand is required to be made to the Industrial Tribunal because the Industrial Tribunal has not considered the question of over neutralisation and consequently whether a ceiling was required to be prescribed and whether the rate of D. A. should be reduced in the above circumstances. He submitted that the most important compelling circumstance in the present case was that on account of phenomenal increase in the index the salary paid to the 17 workmen would constitute heavy wage distortion in the Bombay region an in the circumstances the Industrial Tribunal should have introduced the ceiling of D. A. as well as the Industrial Tribunal should have reduced the rate of D. A.

5. On the other hand, Mr. Dudhia, the learned counsel for the Union submitted that in the present case financial position of the Company is not at issue. In fact the finding of the Industrial Tribunal is that the financial position of the company is so strong that it can absorb even the increase in the salary on account of the increase in the CPI. He further submitted that the Industrial Tribunal has also recorded a finding of fact that over neutralisation was there even when the earlier three Settlements took place. He submitted that in the present case we

have to see the impugned award in the context of the prior dispute. Mr. Dudhia submitted that in the present case prior to the present reference the third Settlement came to an end in 1976. In 1978 the Union submitted the charter of demands which ultimately culminated in Reference (IT) No. 17 of 1980 and when that Reference was due for final hearing the Company has given the notice of change. He further submitted that the recital to the notice of change itself indicates that the Company sought restructuring of D. A. scheme contemplated by the above three Settlements, which was to the detriment to the workmen and, therefore, in such cases principles of adjudication like industry-cum-region or principle dealing with over neutralisation will not apply, because essentially in the present case the Company sought to restructure the D. A. Scheme contemplated by the above three Settlements. It was not a case where the workmen sought revision of wages. It was not the case where the workmen sought increase in D. A. and, therefore, it was not the case of adjudication. In the circumstances, it was submitted by Mr. Dudhia that principles of adjudication are not attracted and what applies are the principles dealing with validity and the bonafides of the Settlement between the Company and the Union. Mr. Dudhia placed heavy reliance on the judgment of the Supreme Court in the case of Workmen v. The Management of Raptakos Brett. & Co. Ltd. & Anr. reported in 1991 2 C. L. R. 863. Paragraph 28 of the said judgment of the Supreme Court indicates that where the management seeks re-structuring of D. A. Scheme to the disadvantage of the workmen it is for the Company to prove that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of existing wage structure. Mr. Dudhia fairly stated that the first criterion is fulfilled. However, the second criterion has not been fulfilled in the present case, because the Company is financially in good position to bear the burden of the existing wage structure and accordingly it is submitted by the learned counsel for the Respondent No. 2 that in the above circumstances the Tribunal was right in directing the Company to withdraw the notice of change. Mr. Dudhia also relied upon the Judgment of the Supreme Court in the case of Hebertson Ltd. v. The Workmen of Herbertsons Ltd. and others reported in 1977 LIC 162 in support of his contention that the question of adjudication has to be distinguished from the question of Settlement. He submitted that as per the judgment of the Supreme Court in Herbertsons (supra) it is laid down that principles of adjudication with regard to fixation of D. A. are distinct and separate from the principles applicable in the matter of Settlement between the Company and the Union. A settlement cannot be judged on the touchstones of the principles of adjudication. Mr. Dudhia relied upon the judgment of the Supreme Court to the same effect reports din the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, .

6. Reading the various judgments referred to above, the position that emerges is that principles of adjudication under Industrial Disputes Act are different from the principles of collective bargaining. Adjudication culminates into an award of the Industrial Tribunal whereas collective bargaining many result into Settlement

u/s 18 of the Industrial Disputes Act. Over-neutralisation, industry-cum-region etc. are principles of adjudication. They cannot be applied to judge the validity of a settlement between the Company and the Union. However, the present case is a peculiar case. In the present case, the Company gave notice of change seeking to alter D. A. Scheme which was in force from 1966 under the abovementioned three Settlements. By notice of change, D. A. was sought to be reduced. The notice of change ultimately resulted in reference to the Industrial Tribunal. The question, therefore, which requires to be examined is which of the two principles is applicable to the facts of this case. I am of the view that jurisdiction of the Tribunal is very wide in such cases. Ultimately, it depends on facts of each case. As stated above, the present case concerns a situation where the wage structure falls in a higher category. It does not fall in the category of minimum wage. In such circumstances, although it is open to the Company to claim revision in the D. A. System even to the prejudice of the workmen, the Company is required to make out a case for revision to the satisfaction of the Tribunal. In such cases, there is no strait jacket formula. The Industrial Tribunal has to consider all the relevant facts. The Tribunal has to ascertain whether there are compelling circumstances to warrant revision of D. A. Scheme to the detriment of the workmen. For that purpose, the Tribunal will consider financial position of the Company. It will also consider, in appropriate cases, question of neutralisation. It is not possible to state exhaustively, all the circumstances which may be relevant in a given case. It is true that principals of adjudication are different from principles relating to Settlements. However, in the present case, notice of change has been given by the employer which is not for abolition of D. A. Scheme existing in the Company from 1966, but it is for modification of the D. A. Scheme. The Company has introduced by giving notice of change, the above modifications in the form of reduction of D. A. by reducing rate of D. A. and introducing a ceiling. This is to the prejudice of the workmen. It is contrary to the settlements. The last settlement dated 29th January 1974 was terminated. In the above circumstances, this Court is of the view that ultimately it will depend on facts of each case as to which principle should apply. It is for the Industrial Tribunal to consider the entire case in every matter, taking into account the totality of circumstances. In the present case, therefore, the basic test is whether there were compelling circumstances to justify reduction in D. A. The Tribunal has rightly come to the conclusion that the financial position of the Company is sound. It is in a position to bear the burden. It is not in dispute that wage structure is at the level, higher to the level of minimum wages. There is nothing to indicate that it is a living wage. The question of over-neutralisation is not required to be examined in the present case because three settlement took place between the Company and the Union after 1966. From 1966, the Slab system is in force. As stated at the outset, we are only concerned with 17 workmen in the present dispute. It is no doubt true that the CPI index has increased phenomenally. The facts indicate that over - neutralisation in the present case has taken place even when the Company entered into the above three settlements from time to time. Further, since we are only concerned with existing wage structure applicable to 17 workmen, there is no merit in the contention advanced on behalf of the Company that it would result in wage distortion in the entire Bombay region. In the present case, the Company is in a financial position to absorb the fallout of the wage structure with regard to 17 workmen. For the above reasons, I do not find any compelling circumstances to warrant reduction of D. A. or chance in the existing D. A. system to the prejudice of the workmen. Ultimately, it depends on the facts of each case. The impugned Award is of 9th August 1990. It is being implemented for last four years. Even today, the only submission advanced on behalf of the Company is to remand the matter to the Tribunal. The Company agrees to continue to implement Award dated 9th August 1990. If that be the case, then there is no merit in the contention of the Company that payment of D. A. to 17 workmen would result in heavy wage distortion in the Bombay region.

7. In the above circumstances, I am not inclined to interfere with the decision of the Tribunal under Article 226 of the Constitution.

8. According, Rule is discharged with no order as to costs.