

(1970) 03 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ P. No. 256-D of 1966

S.S. Light Rly. Co. Ltd.

APPELLANT

Vs

The Industrial Tribunal (Central) and Others

RESPONDENT

Date of Decision : 31-03-1970

Acts Referred:

Citation : AIR 1971 Delhi 69 : (1971) 1 LLJ 354

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : H.R. Gokhale, H.K. Puri and Harish Chander, for the Appellant; S.C. Aggarwal, for the Respondent

Judgement

1. The petitioner, the Messrs S. S. Light Railway Company Limited is one of the few private railways still operating in this country, with its Head-quarters, in Calcutta; its main terminus is at Shahdara, a suburb of Delhi, where more than hundred workmen of the said railway are employed. The petitioner seeks to quash, by means of this writ petition, the Tandon Award No. 2, dated 6th December, 1965 passed by the first respondent, the Industrial Tribunal (Central) constituted under the order of the Central Government (first respondent) and published by the Central Government on 10th January, 1966. The first respondent ordered that the workmen of the said railway were entitled men of the said railway were entitled to two increases in the dearness allowance; one of Rs. 2 per month with effect from 1st July, 1963 and the second of Rs. 3.50 per month with effect from 1st February, 1964 in the cost of living allowance, payable to the workers from the respective dates over what had been previously allowed by Shri J. K. Tandon himself under the "Tandon Award No. 1", dated 23rd March, 1963.

2. Even previously there had been an award, in August, 1944, by one Shri Abdul Shakur, a Labour Officer, who had directed the workers of the said railway should get dearness allowance on the same scale as may be in force from time to time in the North - Western Railway in addition the administration making available to

its employees, throughout the whole length of the land from Shahrampur to Shahdara, cheap grains at the rates charged by the North - Western Railway in the quantities fixed by the Rationing Authorities of Saharanpur as well as some other essential commodities which were supplied at the rates in force to the North - Western Railway employees. After the partition of the country, a part where the North - Western Railway was operating, became the territory which is now Pakistan; the portion situated in India now became separate known as the Northern Railway.

3. In February, 1948, as a result of fresh demands by the workers of the S. S. Light Railway Company and certain changes effected by the State Railways in the matter of supply of cheap grain, the terms were revised; they were further revised by a mutual agreement on 2nd December, 1951. There was a still further increase in the dearness allowance than what was allowed in the year 1959.

4. The first Tandon Award, dated 23rd March, 1963, directed the increase in the rate of dearness allowance equal to Rs. 12 per month, by which amount the emoluments fell short as then compared to those under the Northern Railway; this was in respect of all employees of the S. S. Light Railway receiving Rs. 250 or less as basic monthly salary.

5. There were further disputes arising out of the references, one by the workers asking for enhancement (Case No. 5) and the other by the Management (No. 8) for reduction. There was yet another application u/s 33 of the Industrial Disputes Act by the management. All these three cases were heard by Shri Tandon (again) who passed the impugned award dated 6th December, 1965 published on 30th December, 1965. This may be called the Tandon Award No. 2.

6. A preliminary objection has been taken by the workers to the maintainability of this writ petition on the ground that this Court has no jurisdiction to quash the award of, or issue a writ of certiorari to, the Industrial Tribunal which has its permanent Office at Lucknow. But I see no force in the preliminary objection inasmuch as a part of the cause of action has, without doubt arisen in this case within the jurisdiction of this Court. It is not disputed that some of the hearings of the said Tribunal (on the said reference by the Central Government Industrial Tribunal) took place at the chamber of the Additional Solicitor General of India in the Supreme Court premises, within the jurisdiction of this Court. The award of the Central Government was sent to and published from New Delhi by the Central Government, vide its order dated 30th September, 1965. As already noticed the undertaking of the petitioner has its main terminus at Shahdara within the jurisdiction of this Court. The Office of the workers' Union is situated at 4309, Gali Bahuji, Pahari Dhiraj, Delhi - 6. At least 156 workmen (according to the affidavit of Lala Himansu Das dated 23rd September 1967) were working at the Shahdara terminus. The order of reference dated 30th July 1964 of the Central Government, Ministry of Labour & Employment, referring the dispute as to dearness allowance, was itself made by the Government of India at Delhi.

In addition to the same the said award has been published in Delhi and is also enforceable by the Central Government. It was held by the Division Bench of the Bombay High Court in *Damomal Kausomal Raisinghani Vs. Union of India and Others*, that the Bombay High Court could exercise jurisdiction under Article 226 if the effect of the order by the Government authority at Delhi fell on the petitioner at Bombay. The previous Division Bench decision of the same High Court in *W.W. Joshi and Others Vs. State of Bombay and Others*, was followed.

7. My attention was drawn, on behalf of the workers, to the decision of the Division Bench of this court in *Shiv Shanker Lal Gupta v. Commr. of Income Tax Bombay*, Air 1968 Delhi 295. In that case the person whose premises were searched and documents and money recovered by an order of the Income Tax Commissioner Bombay u/s 132(1) if the Income Tax Act invoked the writ jurisdiction of this Court on two grounds: (1) that he was challenging the validity of certain provisions of the Income Tax and (2) that though the money was seized at Bombay it had become part of the Consolidated Fund of India. The Division Bench held that since the Central Government was not a necessary party to the said writ petition the jurisdiction of the Delhi High Court could not be invoked by merely making the Central Government a party, O. 27-A Rr. 1 and 2 of the CPC were invoked for the petitioner that the Central Government was not a necessary party at all. It was further held that the money seized did not become part and parcel of the Consolidated Fund of India. The facts before the Division Bench, Therefore, are clearly distinguishable.

8. The workers cannot derive any assistance from the Full Bench decision of the Allahabad High Court in *Azmat Ullah and Others Vs. The Custodian, Evacuee Property, U.P., Lucknow*, . It was held in that case that the Allahabad High Court could not issue a writ of mandamus to the Custodian of Evacuee Property U. P. commanding him to treat as a nullity, an order made by the Custodian General in New Delhi in the exercise of its revisional powers u/s 27 of the Administration of Evacuee Property Act 1950 so long as that order is valid and subsisting. The question here is different. I can see no impediment to quash the order of the Central Government accepting and publishing the award at Delhi by the High Court at Delhi, if on the merits, it becomes necessary to do so.

9. Once an award is published it can be enforced. Section 29 of the Industrial Disputes Act provides for penalties for breach of the settlement of award. Such enforcement by the Central Government can be even at Delhi within the jurisdiction of this Court.

10. Article 226(1-A) as amended in 1963 (15th Amendment) reads as follows:-

"The power conferred by Clause (1) to issue direction, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is

not within those territories."

11. The preliminary objections to the maintainability of the writ petition is, Therefore, overruled.

12. The Tandon Award No. 2 held that the dearness Allowance granted earlier under Tandon Award No. 1 had become one of the conditions or terms of service concerning the dearness allowance payable to the employees of the S. S. Railway. It was stated by Shri Gokhale, who appeared for the management, that despite the award the railway had been paying the dearness allowance, etc. at a rate even higher than what has been awarded under Tandon Award No. 2. He referred, however, to the finding of the Tribunal concerning the financial condition of the S. S. Light Railway. It would be best to set out what the Tribunal found in its own words concerning the financial position of the Railway:

"The crucial thing to consider is whether the economic condition of the Undertaking is such that a frantic action, namely, the cutting down further of the already meagre wage packet of the workmen is but the alternative to save the situation and the Undertaking.

Tribunals have some times interfered with contracts but they would refuse to do so unless there are some really strong, dominant and compelling reasons with no alternative otherwise to save the situation. From the material before me I am unable to come to the conclusion that the present is a case of that nature. The Tribunal would like to be convinced beforehand that all other avenues of economy as well as of increasing the revenue have been explored and have failed. And that unless the increases asked are refused unemployment would be forced. Railway of a public utility service. Fare rates and freights are regulated by the Railway Board which, there is no reason to think, would not sanction increases in them if the overall consideration, etc. justified. It would not be right also to conclude that there was no further scope despite the increasing economy and the prosperity of the area through which the Railway operated that the company's revenue would remain static. There are actually reasons to hope that results would be better in future. The budgeted figures for the current year are themselves proof of some improvement at least in future.

I deem it necessary to mention that the parties particularly the employers placed a number of statements and figures in order to show that the financial condition of the Undertaking had deteriorated considerably while there were several demands on its resources which the Management could not ignore in the interest of efficient working. While I will not reject that the Undertaking is in need of large scale replacement, renewals, etc. and further that the Undertaking is not in a position immediately to provide fully, Therefore, the employees' claim, which is, for Cost of Living Allowance will have to be placed on a superior plane. This has to be so for the reasons state above. It is in this context and with this approach that I have avoided a detailed discussion of the various figures."

13. I amendment unable to find anything in the said Tandon Award No. 2 which

goes to show that the railway is unable to pay the dearness allowance as directed by the said award. The tribunal felt that the wage packet of the workmen of the railway was already meagre and that it was not a case for taking "frantic action" to cut down further the said wage packet of the workers. In these circumstances I am unable even to visualise what serious objection the railway administration can have to the Tandon Award No. 2. This writ petition was filed as early as in the year 1966; it has not been stated before me, even now, that the financial position is such that it would be unable to pay the dearness allowance. As against Tandon Award No. 1, I am informed, the matter was unsuccessfully taken to the Supreme Court.

14. Though the present writ petition raised the ground that the dearness allowance fixed by the Tandon Award could not become a condition of service, as held by Shri Tandon, after some discussion of this question, Shri Gokhale fairly conceded that he would not be able to substantiate this ground in view of what the Supreme Court has decided in *South Indian Bank Ltd. Vs. A.R. Chacko*, . It is sufficient to cite Head-note (c):-

"Even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of Section 19(6) it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract till this new contract is displaced by a fresh contract."

15. The principle on which dearness allowance has to be granted are now well settled. It was observed by Gajendragadkar, C. J., speaking for the Supreme Court in *Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association*, that in trying to recognise and give effect to the demand for a wage, including the payment of dearness allowance, to provide for adequate industrialization against the ever-increasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage-structure would impose upon the employer can ask itself whether the employer can reasonably be called upon to bear such burden. This problem of constructing a wage-structure must be tackled on the basis that such wage-structure should not be changed from time to time; it is a long-range plan and so, in dealing with this problem, the financial position of the employer must be carefully examined. If, in a given case, on a region-cum-industry basis, it is seen that while most of the employers could afford to pay dearness allowance at certain rate it would be no answer to the demand of workmen engaged in a similar industry, alleged to be running into a loss, to say that they could not afford to pay dearness allowance. But once a fair wage structure is constructed by industrial adjudication, and in course of time experience shows that the employer cannot bear the burden of such wage-structure, industrial adjudication, in a proper case, should revise the wage structure, though such revision may result in the reduction of the wages paid to the employees. This is the manner in which the conflicting claims of labour and capital could be harmonised on a

reasonable basis; if it appeared that the employer could not bear the burden of increasing wage bill, industrial adjudication in principle, cannot refuse to examine the employer's case and could not hesitate to give him relief if satisfied, that if such relief was not given the employer may have to close down his business.

16. Very recently the Supreme Court has summed up the principles on which dearness allowance could be granted and also revised . Vaidialingam, J., speaking for the Court in Bengal Chemical and Pharmaceutical Works Ltd. Vs. Its Workmen, , referred to the previous decision on the question and set out the following principles as broadly emerging from the previous decisions:-

"(1) Full neutralization is not normally given except to the very lowest class of employees.

(2) The purpose of dearness allowance being to neutralize a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.

(3) The basis of fixation of wages and dearness allowance is industry-cum-region.

(4) Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff of factory-workmen.

(5) The additional financial burden which a revision of the wage-structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.

17. In view of the said principles, and in the face of what is admitted, namely, that the workmen of the S. S. Light Railway have been paid more dearness allowance than what had been ordered by the impugned award; clearly no case is made out for quashing the said award. Since it is seen that once of the Industrial Tribunal adjudicating on a dispute the said term regarding a condition of the service any vital change in the financial position of the management could be set up only by asking for yet another adjudication on the basis of such altered circumstances employers to pay. Nothing has been warrant any interference with the impugned award.

18. This petition, Therefore, fails and is dismissed with costs. Counsel's fee Rs. 200.

19. Petition dismissed.