
(1968) 04 OHC CK 0013
In the Orissa High Court

State of Orissa

APPELLANT

Vs

Prasad (R.D.) and Another

RESPONDENT

Date of Decision : 01-04-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 19, 29, 32, 36A

Citation : (1968) 34 CLT 570 : (1969) 1 LLJ 428

Hon'ble Judges : Barman, C.J

Bench : Single Bench

Judgement

Barman, C.J.—This matter involves the question of penalty for alleged breach of the terms of the award of an industrial tribunal by R.K. Prasad, manager, and B.D. Sharma, owner of Orient Colliery, Brajrajnagar, District Sambalpur, under Sections 29 and 32 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to as the Act).

2. On 26 May 1956, the All-India Industrial Tribunal (Colliery Disputes), Calcutta, published its award after adjudication between the coal mines referred to therein and their workmen in the matter of the industrial dispute regarding wages, inclusion of pay for lead and/or lift calculation of bonus, provident fund, etc. The said All-India Industrial Tribunal, having been presided over by Sri J.N. Majumdar, is hereafter referred to as the Majumdar award.

3. The Majumdar award was given effect to from 26 May 1956, the date on which it was published. The award was subsequently modified by a decision of the Labour Appellate Tribunal of India by its decision dated 26 January 1957, in the manner indicated below so far as relevant for the present purpose. The period of operation of the award before its expiry was extended by the Central Government and the award still continues to be binding on the parties u/s 19(6) of the Act.

4. On 18 April 1962, the conciliation officer (Central), Jharsuguda, filed a complaint petition before the Subdivisional Magistrate, Sambalpur, against the

aforesaid manager and owner of Orient Colliery for alleged offence punishable u/s 29 of the Act. The complaint is that the two accused, as persons connected with the management of Orient Colliery, have committed breach of the terms of the Majumdar award as modified by the decision of the Labour Appellate Tribunal. The alleged breach is described to be this:

Sam Sher Singh and other machine miners (machine-cut coal loaders) were not paid at the rate of As. 10-6 basic wages and As. 13-0 dearness allowance per tub of 40 1/2 cubic feet, for the period from 26 May 1956 to 30 September 1960 (contravention of Para. 665 of the Coal award read with Para. 69 of the Labour Appellate Tribunal decision) and have thereby committed an offence punishable u/s 29 read with Section 32 of the Industrial Disputes Act, 1947.

The complainant accordingly prayed that the two accused persons (respondents herein) be tried and punished according to law. The order of the Chief Labour Commissioner (Central), New Delhi, authorizing the complainant to file the petition of complaint was annexed to the petition.

5. The accused persons pleaded not guilty to the charge. Their defence, in substance, is this: The machine miners (machine-cut coal loaders) of Orient Colliery, Orissa, are being paid at the rate prescribed in Para. 665 of the Majumdar award for machine miners of Orissa; the Labour Appellate Tribunal has not effected any modification in the rate of wages as prescribed by the award for the machine miners of Orissa; therefore, they have not committed an offence as alleged by the prosecution. In his statement u/s 342, Criminal Procedure Code, the manager of the colliery, R.K. Prasad, stated that his loaders are not working as trammers for tramping the loaded tubs since beginning, and that he has a separate set of persons for tramping purposes. It was submitted that the rate prescribed in Para. 665 of the award, if read with Paras. 520 and 523 thereof, would show that it will not apply to piece-rated workers. It was contended that the accused-respondents could not be held guilty of contravention or breach of the award punishable u/s 29 of the Act.

6. It was also argued on behalf of the accused persons that they had no *metis rea* wrongful or illegal intention to violate the provisions of the Act; and in support of this contention, they relied on a decision of the Punjab High Court in *State Vs. B.D. Meattle and Others*, , where it was held that a criminal offence is only committed when an act, which is forbidden by law, is done voluntarily. English jurists give the name of *mens rea* to a violation which is the motive force behind the criminal act; if there is no *mens rea*, no offence is committed, although the act may prove detrimental to an Individual or individuals. It is only a voluntary act which amounts to an offence.

7. The Subdivisional Magistrate, Sambalpur, found the accused persons guilty of non-implementation of the Majumdar award as modified by the decision of the Labour Appellate Tribunal and sentenced each of the two accused persons to pay a fine of Rs. 100, in default, to undergo simple imprisonment for one month. On

appeal, the learned Additional Sessions Judge, Sambalpur, set aside the order of conviction and sentence passed against the accused persons and acquitted them on a finding that they are not guilty. It is against this order of acquittal that the State of Orissa represented by the Conciliation Officer (Central), Jharsuguda-the complainant in this case- has filed this appeal.

8. The provisions of Para. 665 of the Majumdar award read with Para. 69 of the decision of the Labour Appellate Tribunal which are alleged to have been contravened by the accused-respondents-so far as material-are quoted below:

665. (Paragraph 665 of the Majumdar award)The basic rate of loader will be As. 9-6 per tub of 40.5 cubic feet and this will bring him in category V, as his output has been assessed at two tubs per shift. It has been stated that the loader has also to tram tubs. He will get for this one anna as allowance for every tub trammed."

" 69. (Paragraph 69 of the Labour Appellate Tribunal's decision.) Total emoluments of all categories up to category X-

Categories Basic wage Dearness allowance RS. A.P. RS A.P. * * * V ... 1 5 0 1
11 8 * * *

9. In this context it is also necessary to mention the total emoluments of all the categories of workers including category V as stated in Para. 520 of the Majumdar award. These are stated thus:

520: In the result, the total emoluments of all the categories of workers up to category IX would be as follows:

Categories Basic wage Dearness allowance RS. A.P. RS. A.P. * * * V ... 1 3 0 1
11 8 * * *

10. The question is; Do the machine-cut coal loaders of the accused persons" colliery come within category V as described in Para. 520 of the Majumdar award read with Para. 69 of the Labour Appellate Tribunal's decision as quoted above ? In other words, the point in substance is whether the Labour Appellate Tribunal's decision regarding payment of basic wage and dearness allowance to category workmen is applicable to the machine-cut coal loaders of the accused persons" colliery. The stand of the State is that it is applicable whereas the case of the accused persons is that it is not.

11. The points urged in argument on behalf of the accused-respondents are these : Under the Majumdar award (Para. 663) categorization of time-rated workers settled in the award for Bengal and Bihar will apply for Orissa with the emoluments fixed for categories I to IX and the Orient Colliery are paying their workers at the rates as prescribed in Para. 665 of the Majumdar award quoted above. It was also submitted that under the Majumdar award piece-rate and time-rate workers in category V have been equated under Para. 665 of the award. The Majumdar award further made it clear in Para. 522 that their

categorization in Para. 520 does not apply to piece-rated workers; in Para. 523, it is stated that the case of piece-rated is slightly different and that it is not disputed that the workings vary from area to area on account of differences in geological factors. The defence point is that the provisions in Paras. 522 and 523 of the Majumdar award that the rate does not apply to the piece-rated workers are attracted by the decision of the Labour Appellate Tribunal. In Para. 127, the Labour Appellate Tribunal decided that under the Majumdar award a workload of 2½ tubs of 36 cubic feet per shift has been prescribed for the loader and he has been placed in category V and as such his total emoluments per day amount to Rs. 3-7-5 including basic wage of Rs. 1-3-0 and dearness allowance of Rs. 1-11-8 which, it is said, the accused-respondents' colliery has been paying according to the Majumdar award as admitted by the conciliation officer (P.W. 4) who stated:

The colliery was paying according to the rates laid down according to the Majumdar award.

12. The learned Government Advocate appearing for the State relied, inter alia, on Paras. 137, 138 and 141 of the decision of the Labour Appellate Tribunal. In Para. 137, the Labour Appellate Tribunal fixed for category V workmen a basic wage of Ea. 1-5-0 on which they would be entitled to dearness allowance of Rs. 1-11-8 making his total earnings by way of basic wage and dearness allowance to Rs. 3 0-8; that from the pre-award total emoluments of Rs. 2-12-0 for loading two tubs, the loader would, on the basis of his earnings of a category V workman now earn Rs. 3-10-4; in Para. 138, the Labour Appellate Tribunal by providing a workload of two tubs and placing the loader in category V, gave him the same basic wages as they have given to the pick-miner who cuts and loads one tub of 36 cubic feet. In further support of the prosecution case, the learned Government Advocate relied on Para. 141 of the decision of the Labour Appellate Tribunal read with the last sentence in Para. 663 of the Majumdar award. In Para. 141, the Labour Appellate Tribunal decided that-

In the result, for the loader in Bengal and Bihar, we fix the basic wage of Rs. 1-5-0 plus Rs. 1-11-8 as dearness allowance making his total wage Rs. 3-0-8 for loading two tubs of 36 cubic feet. For one tub of 36 cubic feet the remuneration by way of basic and dearness allowance would be Rs. 1-8-4 and the loader shall be paid at the rate for every tub or part of a tub in excess of two tubs loaded by him in any shift; in other words for output higher than two tubs his basic and dearness allowance per tub will not go down but remain constant at Rs. 1-8-4 per 36 cubic feet.

The last sentence of Para. 663 of the Majumdar award is that the categorization settled in the award for Bengal and Bihar will apply for Orissa with the emoluments that they had fixed for categories I to IX as discussed above. Relying on this interpretation of the award as modified by the decision of the Labour Appellate Tribunal, it was submitted on behalf of the State that the said decision which increased the rate of the loaders as included in category V is final;

and that the accused persona admittedly had not paid basic wage and dearness allowance at the rates fixed by the said decision of the Labour Appellate Tribunal, from 26 May 1956 to 30 September 1960, and that the accused-respondents should be held to have violated the directions contained in the said decision of the Labour Appellate Tribunal which u/s 17 of the Act is binding and cannot be questioned.

13. On the question of absence of mens rea, the learned Government Advocate, relying on a decision of the Bombay High Court in *State v. Caufield Holland, Ltd* 1953 I L.L.J. 458, submitted that although generally speaking a person cannot be convicted unless he commits an overt act with a wrongful or illegal intention yet, after examination of the scheme, the policy and the object of the Industrial Disputes Act, it is clear that mens rea is not intended to be an essential constituent of the offence u/s 29 of the Act. It is, therefore, not open to the accused persons to take the defence that unless the breach committed by them was wilful or was actuated by mens rea they would not be liable for the penalty imposed by Section 29,

14. In my opinion, the Bombay decision, as distinguishable has no application to the present case. That was a decision given before the amendment by substitution of Section 29, by Section 20 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956). The original section, before its amendment under which the Bombay High Court decided the case read as follows:

If any person commits a breach of any term of any settlement or award which is binding on him under this Act, he shall, on his first conviction therefor, be punishable with fine which may extend to two hundred rupees and in the event of a second or subsequent conviction, with fine which may extend to five hundred rupees.

Section 29 after its amendment, reads as follows:

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and the Court trying the offence, if it finds the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation to any person who, in its opinion, has been injured by such breach.

15. The reasoning on which the Bombay High Court laid emphasis on the proposition that mens rea is not intended to be an essential constituent of the offence u/s 29 is clear from Para. 14 of the judgment where it was observed that it would also be possible to take the view that the cases of breach u/s 29 are criminal only in form because the main object of Section 29 is to provide for a summary mode of enforcing a civil right, and that the penalties under Chap. VI of the Act are intended to enforce the provisions of an award and in that sense the breaches contemplated in Section 29, could form an exception to the general rule

that mens rea an essential constituent of a criminal offence.

16. What appears to have weighed with the Bombay High Court in coming to this conclusion was that the nature and extent of the penalty imposed u/s 29, prior to the amendment, namely, only fine and not imprisonment, was a relevant factor to consider ; for the first offence the maximum penalty was Rs. 200 and for the second or subsequent offence, it extended to Rs. 500; in *Srinivas Mall V. Emperor* AIR 1947 P.C. 135, the Privy Council expressed the view that the sentence awardable for the commission of the offence in question is itself a relevant fact in considering whether mens rea is essential. It was on this reasoning that the Bombay High Court held that the application of this test to Section 29, as it then (before amendment) stood, supported the view that mens rea is not an essential constituent of the offence under that section. But after the amendment of 1956 all offences for breach of that section have been made punishable with imprisonment for a term which may extend to six months, or with fine, or with both. Therefore, the Bombay case which was decided before the amendment of Section 29, has no application to the facts of the present case governed by Section 29 of the Act after its amendment in 1956.

17. In the ultimate analysis of the position on facts, I am of opinion that it cannot be said that the interpretation given to the Majumdar award (read with the decision of the Labour Appellate Tribunal) by Sri Govind Das, learned counsel for the accused-respondents, is unreasonable. The proposition that the fixation of the emoluments for category V of the workers has to be read with Paras. 522 and 523 of the Majumdar award and that piece-rated workers are not entitled to the rates as given to workers under category V is not altogether without substance. In any case, as this relates to a matter which involves the interpretation of an award, Section 36A providing power to remove difficulties may be invoked. That section provides that if, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such labour court, tribunal or national tribunal as it may think fit.

The reasoning on which the learned Additional Sessions Judge acquitted the accused-respondents is this:

Paragraph 522 of the original (Mujumdar) award says very clearly that the categorization made in Para. 520 of the award does not apply to the clerks and monthly-rated staff as also the piece-rated workers. In Para. 523 of the same award it is said that the workers vary from area to area on account of differences in geological factors and the case of piece-rated is slightly different. In Para. 526 it has been said further that the parties have not been able to agree on the categorization of the piece-rated workers, but they have made their submissions which would be taken into consideration for fixing the wages of such workers in individual States.

All these go to show clearly that piece-rated workers are not category V workers.

I cannot hold this reasoning of the learned Additional Sessions Judge to be wrong.

20. In this view of the case, I find no reason to interfere with the order of the learned Additional Sessions Judge. In the result, the order of acquittal of both the accused-respondents is upheld and the Government appeal is dismissed.