
(1990) 12 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 8/87, 3127/67 and 8521 of 1987

The Copra Trading Ests.

APPELLANT

Vs

Industrial Tribunal and others

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Minimum Wages Act, 1948 — Section 2(g), 27, 5(1)(a)

Citation : (1991) 1 KLJ 231

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, for the Appellant; M. Ramachandran, P.V. Abraham and Asok M. Cherian, Govt. Pleader, for the Respondent

Judgement

D.J. Jagannadha Raju J.

1. All these three O. Ps. arise out of the same industrial dispute which has been adjudicated as 1. D. No. 31 of 1984 on the file of the Industrial Tribunal, Alleppey. The award is dated 18.6.1986, and it was published in the gazette on 30.9.1986. O.P. No. 8 of 1987 is filed by the representatives of the management. The prayers in this O.P. are to quash Ext. P1.O. No. 1514/84/ LBR dated 20.11.1984 under which the industrial dispute was referred to the Tribunal for adjudication, and to quash Ext. P2 award dated 18.6.1986 passed by the Industrial Tribunal, Alleppey in I.D. No. 31/84.

2. O.P. No. 3127 of 1987 is filed by two unions of workers, who figured as respondents 3 and 4 in O.P. No 8/1987. In this O.P. the prayer is to the effect that Ext. P2 award should be quashed in so far as it has found that the workmen represented by the petitioner unions Kanitta workers are not entitled to the benefits of the notification dated 26-9-1981.

3. O P. No. 8521 of 1987 is filed by two other unions of workers, who figured as respondents 5 and 6 in O.P. No. 8 of 1987.

4. As these O. Ps. are intricately connected, it would be advantageous to dispose

of all the three O Ps. by a common judgment referring wherever necessary to the limited prayers in O.P. Nos. 3127 of 1987 and 8521 of 1987.

5. Shri. O.V. Radhakrishnan, appearing on behalf of the representatives of the management, contends that Ext P2 award is an instance of the Industrial Tribunal going beyond the order of reference. Having held that the notification dated 26-9-1981 is not applicable to the Kanitta workers, it committed a blunder in applying the minimum wages prescribed under that notification to Kanitta workers as an interim measure till minimum wages are notified for Kanitta workers. He contends that while the Kanitta workers do work of drying, grading, cutting, filling in bags and carrying the copra, the workers in the oil mills do entirely different types of work like machine cutting into pieces, crushing, oil pumping, filling in tins and drums and carrying them. The Minimum Wages Act treats the workers in the oil industry as a separate scheduled employment, namely, items 5 in the Schedule, while the Kanitta workers are treated as scheduled employment item 37 of the Schedule. Shri. Radhakrishnan contends that whatever may be the past legal position ever since item 37 is introduced in the Schedule with effect from 28-12-1978 these two Scheduled employments have necessarily to be treated as separate and distinct scheduled employments. The notification dated 26-9-1981 is applicable only to scheduled employment in oil mills. By no stretch of imagination, can this be made applicable to the Kanitta workers who come under item 37 of the Schedule. Shri. Radhakrishnan emphasises that the very fact that Government introduced item 37 for Kanitta workers, and the very fact that it appointed a separate committee u/s 5 (1) (a) for prescribing minimum wages for Kanitta workers and the fact that that committee submitted Ext. M3 report, is a clear indication that the legislature never intended workers in the oil industry and workers in the Kanitta to be treated alike. He places reliance upon the decision in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, *Pottery Mazdoor Panchayat v. Perfect Potteries Co.* AIR 1979 SC 1356: *The Management of National Projects Construction Corporation Ltd. Vs. Their Workmen and Others*, : and *Union of India and others Vs. Santiram Ghosh and others*, in support of his argument that an award passed by a Tribunal going beyond the terms of the reference is invalid and it has to be quashed.

6. On behalf of the workers, Shri. P.V. Abraham, who appears for respondents 3 and 4 in O.P. No. 8 of 1987 and the petitioners in O.P. No. 3127 of 1987, contends that the past history of the scheduled employment in oil industry and the workers in the Kanitta industry has to be looked into and the Tribunal on the basis of the past history came to the conclusion that introduction of item 37 relating to Kanitta workers in the Schedule has not altered the legal position. The work in the Kanittas is integrally connected with the work in the oil mill industry. Parties as well as the Legislature understood that Kanitta workers and oil mill workers belonged to one integral group. He places reliance upon an unreported judgment dated 19-8-1982 in a batch of O. Ps. by Bhat, J. Shri. Abraham contends that in this decision, Bhat, J. dealt with the effect of the 1981

notification and came to the conclusion that till separate minimum wages are notified for Kanitta workers, the notification relating to minimum wages for workers in the oil milling industry would apply to them also.

7. Shri. Asok M. Cherian appearing for the petitioners in O.P. No. 8521 of 1987, who are also respondents 5 and 6 in O.P. No. 8 of 1987, contends that in 1971 there was only one item No. 5 in the schedule to cover both Kanita workers and oil mill workers. This is so because copra processing is also a part of oil milling industry. The 1971 notification is issued for oil milling industry. Similarly, the 1981 notification is also issued for oil milling industry. Shri. Cherian points out that the notifications refer to "oil milling industry", but the notifications do not refer to "workers in oil mills" or "employees in oil mills". Shri. Cherian points out that the emphasis is on the industry and not on the factory. The notifications cover the entire gamut of oil milling industry process, and hence the 1981 notification cover the scheduled employment covered by item 5 as well as item 37. Shri. Cherian further contends that it is always open to Government to issue one notification prescribing minimum wages to cover two scheduled employments. According to him, the legal position Will change only when separate notification is issued fixing minimum wages for employees covered by item 37, namely, Kanitta workers Until that is done, the notification issued for oil milling industry would be applicable to both the scheduled employments, item 5 and item 37. Shri. Cherian further argues that Tribunal did not refer to the provisions of the Minimum Wages Act, nor did it make any effort to understand the significance of the various definitions in the Act in coming to the conclusions recorded by it in Ext. P2 award. Assuming for a moment that the notification is not applicable, even then the Tribunal has not gone beyond the terms of reference. It only moulded the relief on the basis of the past history and the question whether minimum wages should be paid according to the notification of 1981 is a matter incidental to or ancillary to the dispute referred for adjudication. The Tribunal has not travelled beyond the terms of reference. Shri. Abraham as well as Shri. Cherian contend that the finding of the Tribunal that the notification dated 26-9-1981 is not applicable to Kanitta Workers is not correct, and that finding of the Tribunal should be quashed.

8. Shri. Radhakrishnan replying to the arguments of Shri. Abraham and Shri. Cherian contends that the addition of item 37 in the Schedule itself is an indication of the Legislature's intention to treat kanitta workers as a distinct scheduled employment. Hence the kanitta workers are outside the plea of the notification issued for oil milling industry. He also points out that in another unreported judgment of Bhat, J. His Lordship recorded a finding to indicate that this 1981 notification is not applicable to the Kanitta workers He relies upon the judgment dated 19-8-1982 in O.P. Nos. 5280 and 6734 of 1981.

9. The points for consideration in these O.Ps. are:

(1) Whether the Kanitta workers are outside the pale of the notification dated 26-9-1981, which notifies the minimum wages for employment in oil milling

industry.

(2) What is the legal position of the workers in the Kanittas till a separate notification is issued prescribing minimum wages for them in pursuance of Ext. M3 report?

(3) Whether the finding of the Tribunal that the notification is not applicable to the workers in the Kanittas is correct and in accordance with law, or whether it is liable to be set aside.

(4) Whether Exts. P1 and P2 are liable to be quashed.

10. Point Nos 1 to 4: A reading of the award, Ext. P2, indicates that the entire award is pronounced without even referring to the necessary provisions and notifications under the Minimum Wages Act. If the Tribunal had referred to the provisions and the Scheme of the Act, and bestowed thought regarding the definitions, there would not have been much difficulty. Under the Minimum Wages Act, Section 2(g) defines "scheduled employment" as follows:

scheduled employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment

(emphasis supplied)

It is crystal clear from this definition that the emphasis is not on the description of the scheduled employment in the schedule entry, but it is on the whole integral process relating to the scheduled employment. Item 5 of part I of the Schedule reads as "employment in any oil mill". If the definition and item No. 5 are read together it is quite clear that the scheduled employment covers both the actual employment in the oil mill as well as in any process or branch of work forming part of that scheduled employment. It is common ground that in 1971 Notification No. 36171 dated 24-8-1971 was governing both workers in Kanittas as well as in the oil mills. If we look at the notification published at page 113 of the book "Law of Wages by N. Sugathan, 1978 Edn," we find that the notification reads as "employment in oil milling industry". The notification itself specifies that the minimum rates of wages payable to the employees mentioned in the Schedule hereto annexed shall be payable to the class of employees employed in the oil milling industry in the State of Kerala. The 1981 notification is almost a reproduction of the same notification, excepting the fact that in between on 28-12-1978 item 37 "canita workers" is introduced in the schedule. It is the admitted case of both parties that except appointing a committee u/s 5 (1) (a) and obtaining a report Ext. M3, the Government so far has not issued any separate notification prescribing minimum wages for Kanitta workers.

11. u/s 3 there is a mandatory duty cast on the Government to fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification u/s 27. The crucial question is by introducing a new entry in the Schedule by bifurcating one entry in the Schedule, can the workers who come

under the new entry be left in a vacuum without any prescribed minimum wages. It should be remembered that according to well settled principles, there cannot be a vacuum in law. By merely introducing item 37 in the Schedule the minimum wages applicable to workers in the Kanittas, who were earlier governed by the notifications issued for employment in oil milling industry cannot be thrown to the winds. It is clear that the Government has taken steps towards prescribing minimum wages for the workers covered by item 37 and it has appointed a committee u/s 5 (1) (a) and obtained a report. It is for the Government to follow the other formalities, namely, consultation with the Advisory Board, etc.; and then notify the minimum rates of wages. Only after the minimum rates of wages are notified, the previous legal position would change. Until then, the notifications issued for the oil milling industry would continue to govern the workers in the Kanittas as well as workers in the oil mills. As the work in the Kanittas is an integral part or process or branch of work in the scheduled employment, the oil milling industry. In this case the Industrial Tribunal took into consideration the past history and observed that whatever be the increase in wages effected pursuant to the minimum wages notification In the case of workers in the oil milling industry, the same rate of increase shall be given to the workers of Kanittas also, basing on the party in wages, they had, before the minimum wages notification. The Tribunal categorically stated that this kind of wage revision in the case of workers of kanittas will be in force till a minimum wage notification is issued by the Government basing on Ext. M3 report.

12. Shri. Radhakrishnan argued that the Tribunal went beyond the scope of reference and hence the award is liable to be quashed. The source of inspiration for this argument is the finding recorded at the end of paragraph 7 of the award. The finding recorded by the Tribunal is in the following words:

The -very constitution of the Committee by the Government shows that the minimum wages notified by the Government are intended to those workers who are working in the oil mill industry. If it was equally applicable in the case of Kanittas also, there was no need at all to appoint the committee for the fixing of minimum wages in respect of employees working in the copra processing units. Therefore, according to me, the notification as such is not applicable to the employees of the Kanittas.

This conclusion is recorded by the Tribunal without giving any significance to the definition of "scheduled employment" given in Section 2(g) and without looking into the fact that the notifications relate to "oil milling industry" and they do not deal with "employees in the oil mill". The emphasis is on the process and the industry, and all integral parts and processes are covered by virtue of the definition. The mere introduction of item 37 in part 1 of the Schedule has not in any way altered the legal position regarding the minimum wages. The Tribunal should have recorded a finding to the effect that the 1981 notification is applicable to the Kanitta workers because the work in the Kanittas is part and parcel of the process of oil milling industry.

13. Ext. P1 is the Government Order under which the dispute is referred to the Industrial Tribunal for adjudication. The Annexure to the G.O. reads as follows :

Whether the minimum wages declared by Government on 26-9-1981 to the workers employed in the oil mills will be applicable to the workers employed in copra processing at Kanittas of Alleppey District

Obviously a clerical mischief is introduced in drafting the annexure to the G.O., because the words used in the annexure are "employed in the oil mills", while in fact the notification of 1971 as well as 1981 reads as

employment in oil milling industry". Obviously the Kanitta traders lobby which has been responsible for getting item 37 separately included in the Schedule and which has earlier tried to deny revised wages to the Kanitta workers, has managed to get this mischief played. When the notification refers to "oil milling industry" the annexure to the G.O. is deliberately wrongly worded so as to include "employees in oil mills". It should be remembered that from the beginning the workers had to fight against a powerful management which, to avoid the 1971 notification, has separated the Kanittas from oil mills. Some Kanittas were shifted from the premises of the oil mills so as to claim that they are separate establishments. Considering the definition given in the Act and the language used in the notifications, the annexure should have read as "workers employed in oil milling industry"

14. I shall now refer to the two unreported judgments of my learned Brother, Bhat, J. rendered on 19-8-1982. In O. P No. 5820 of 1981 and 6734 of 1981, the petitioners are managements of the Kanittas in Alleppey District. On the basis that item 37 in part I of the Schedule was included, they claimed that the notification issued on 26-9-1981 for oil milling industry should not be made applicable to the Kanitta worker. They filed the O. Ps, on the basis of certain notices issued by trade unions claiming the benefits of the notification, which was marked as Ext. P2 in that judgment. The learned Judge remarked that there is no case for the petitioners that the State Government or any other statutory authority is compelling them to pay the minimum rates of wages to their employees as prescribed under Ext. P2 notification, and held that anticipatory relief cannot be granted If and when appropriate statutory authority requires the petitioners to implement Ext. P2 notification, it is open to them to raise their objections regarding the implementation of Ext. P2, In effect, the learned Judge dismissed the O. Ps. on the ground that they are premature. The learned Judge did not pronounce one way or the other as to whether the notification dated 26-9-1981 would be applicable to the Kanitta workers or not. In another judgment pronounced on the same day, 19.8.1982, in a batch of O. Ps., O. P. Nos. 5711, 5712, 5713 6112 and 6680 of 1981 the learned Judge dealt with various aspects raised by different oil mill owners and then dealing with notification dated 26.9.81 and the effect of including Kanitta workers under item 37 of part I of the schedule, the Court observed as follows:

Employment in drying of coconuts and making them copra has been added as item 37 in part I of the schedule to the Act by the State Government and under Ext. P6 notification dated 28.10-1980 a committee has been appointed to enquire and advise the Government in the matter of fixation of minimum rates of wages for that employment. The committee is yet to submit its report, and the Government is yet to act on the same. According to the petitioners, a large number of items of employment will be common to both employments, Assuming that this is so, at present the petitioners will have to pay minimum rates of wages as stipulated in Ext. P4 in regard to employees who will come under description given in Ext P4. If minimum rates of wages are prescribed with regard to employees coming under item 37, it is open to the petitioners to urge their contention with reference to same at that stage, at this Ext. P4 notification dated 26.9.1981 will have to be implemented with reference to all the petitioners. There are no grounds made out to quash Ext. P4, and therefore these O.Ps. are dismissed.

This judgment is a clear instance of this Court holding that till minimum wages are separately notified for the Kanitta workers, the notification issued for oil milling industry would continue to apply to them. In fact the award Ext. P2 is in accordance with the rationale of the judgment of Bhat, J.

15. It was feebly argued by Shri. Radhakrishnan appearing for the representatives of the management that there is no industrial dispute between the petitioners and the workers. He claims that the Kanitta traders association does not employ any workmen. It should be remembered that the two petitioners are the office-bearers of the association and they represent the kanitta traders. This particular aspect has been dealt with in paragraph 9 of the award. I see no ground to take a different view from the one taken by the Tribunal on this aspect. The two petitioners effectively represent employers as the office bearers of their association. The order of reference Ext. P1 clearly mentions that the dispute exists between the copra trading establishments at Alleppey represented by the Honorary Secretary and President, who now figured as petitioners in O P.8/87. It is wrong to say that no industrial dispute exists between the petitioners and the workers Unions/ arrayed as respondents 3 to 6.

16. The last argument is that on the basis of the finding recorded in paragraph 7 of the award, the Tribunal went beyond the terms of reference, while giving its direction in paragraph 8 of the award. This argument is not justified because the Industrial Tribunal has the power to mould the relief and the Industrial Tribunal in this case has only moulded the relief and filled up the vacuum, that is supposed to have been created according to the petitioners contention. The various decisions relied on by Shri. O.V. Radhakrishnan are not strictly applicable to the facts of our case, Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, is a decision which lays down in paragraphs 18 and 19 that the Tribunal has to examine the pleadings of the parties to find out the real situation, because in most cases the order of reference is so cryptic that it is impossible to

cull out there from the various points about which the parties were at variance leading to the trouble. On the facts of that particular case, the Court found that the Tribunal had enlarged the scope of its jurisdiction. The Management of National Projects Construction Corporation Ltd. Vs. Their Workmen and Others, is a case where the Industrial Tribunal was acting beyond its jurisdiction. While dealing with the case of various types of workmen though earlier by way of settlement 25% increase in wages given to the muster roll workmen the Tribunal gave another increase of 25% for the muster roll workmen. The Court held that the award of the Tribunal is set aside in so far as it granted 25% wage increase to the muster roll workmen. *Pottery Mazdoor Panchayat v. Perfect Potteries Co.*, AIR 979 SC 1356 lays down that the Tribunal cannot go beyond the terms of the reference. There the Supreme Court and the High Court found that the two Tribunals had no jurisdiction to go behind the reference and enquire into the question whether the closure of the business which was in fact effected was decided upon for reasons which were proper and justifiable. The propriety or justification for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts. In paragraph 11 the Supreme Court pointed out that by the references the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management. In our case we have no such situation which arose in that decision. The Tribunal did not travel beyond the scope of the reference made to it for adjudication.

17. For the various reasons given above, I hold on Point NO. 1 that the Kanitta workers are not outside the pale of notification dated 26-9-1981 issued for the oil milling industry. I hold on Point No. 2 that until a separate notification is issued prescribing minimum wages for Kanitta workers on the basis of Ext. M 3 report, the Kanitta workers will continue to be governed by the minimum wages notifications issued for employment in Oil milling industry, as Kanitta work is a part and parcel of the process of oil milling industry. I hold on Point No. 3 that Tribunal committed a mistake in coming to the conclusion that the notification dated 29-9-1981 is not applicable to workers in Kanittas. That finding of the Tribunal is not in accordance with law. That finding has been arrived at ignoring the wording of section 2(g), and the wording of the notification dated 26-9-1981. That finding of the Tribunal is liable to be set aside. I hold on Point No. 4 that Ext. P1 is not liable to be quashed. It is perfectly in accordance with law. I also hold that Ext. P2 award is liable to be modified and the award is not liable to be quashed. It should be modified as follows. The last portion of paragraph 7 of the award beginning with the words "the very constitution of the committee by the Government" and ending with the words "to the employees of the Kanittas" shall

be deleted and in its place the following shall be substituted. "The constitution of the committee by the Government, and the Government obtaining Ext. M3 report only shows that the Government is in the process of prescribing and notifying minimum wages separately for Kanitta workers covered by item 37 of Part I of the Schedule, and till such a notification is issued in accordance with the provisions of the Act, the notification dated 26-9-1981 issued for the oil milling industry, item 5 of Part I of the Schedule, shall continue to apply for employees working in the copra processing units. There will not be a vacuum regarding the employees working in the copra processing units simply because they are described separately as item 37 without a separate notification issued for them prescribing minimum wages.

18. In the result O.P. No. 8 of 1987 is disposed of as follows. Ext. P1 is not liable to be quashed. Paragraph 7 of Ext. P2 award is modified as indicated paragraph 18. Each party shall bear its own costs.

19. O.P. No. 3127 of 1987 is allowed, and the last portion of paragraph 7 of the award is quashed and Ext. P2 award stands modified as indicated in paragraph 18. Each party shall bear its own costs. O.P. No. 8521 of 1987 is allowed, and the last portion of paragraph 7 of Ext. P2 award is quashed, and it is modified as indicated in paragraph 18. Each party to bear its own costs.