
(1958) 12 KL CK 0016
In the High Court Of Kerala

Travancore Ogale Glass Manufacturing Company, Ltd.	APPELLANT
Vs	
Their workmen and Others	RESPONDENT

Date of Decision : 01-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 3 KLJ 147 : (1959) 2 LLJ 47

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Judgement

N. Varadaraja Ayyangar, J.—These four petitions are under Article 226 of the Constitution. Of these, O.P. Nos. 509 and 510 are by the Travancore Ogale Glass Manufacturing Company, Ltd., Alwaye. Their workmen (daily rated) represented by the Ogale Glass Factory Thozhilali Union is the petitioner in O.P. No. 6. Their monthly paid employees represented by the secretary, Ogale Glass Factory Staff Association, is the petitioner in O.P. No. 7. Original Petitions Nos. 509 and 6 are directed against the award of the Industrial Tribunal No. II, Ernakulam, in I.D. No. 85 of 1956 and published in the Kerala Gazette, dated 5 November 1957. That award dealt with the following four of the five matters referred to the tribunal :-

1. Should the present wage rates of the workers be revised; and if so, to what extent?
2. Should the dearness allowance be " enhanced and if so, to what extent ?
3. To what quantum of bonus are the workmen entitled for the year 1954-55 ?

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5. Are the workmen entitled to any production bonus on the basis of the percentage of the first-quality articles produced in the factory and if so, at what rate ?

Original Petition No. 510 of 1957 and O.P. No. 7 of 1958 are directed against the

award of the same industrial tribunal and published in the Kerala Gazette also on 5 November 1957 in I.D. Nos. 74 and 89 of 1956. This award dealt with the following three of the six matters referred to it:-

1. Should the grades of pay of the different categories of staff of the Ogale Glass Manufacturing Company, Ltd., Alwaye, need any revision ?
2. Should the past services of the staff be considered for weightage in fixing the pay in the revised scale ?
3. What should be the rate of dearness allowance payable to the staff members ? Should dearness allowance be fixed at three annas or at a lesser rate per point of increase above 100 of the cost of living index as published in the Travancore-Cochin Government Gazette.

It should be added that the reference in I.D. No. 89 of 1956 was only a duplication of that in I.D. No. 74 of 1953, apparently due to oversight in the office of the Secretariat. Detailed statements were filed by the management and the employees in both the references-the former contending for the status quo and the latter for revision. Evidence was later adduced on both the disputes separately. The parties however consented to treat the evidence adduced in one enquiry as evidence in the other and the two disputes were thereupon heard and disposed of together on practically identical grounds.

2. In the result the tribunal passed award in I.D. No. 85 of 1956 grouping the labour into five grades and fixing the grades and incremental scales in each group and also the category of workers who will come under each group. It was provided that the new grades and increments will be started from 1 January 1958. As regards dearness allowance the minimum was fixed at Rs. 15. Those who were getting dearness allowance below the minimum were to be given Rs. 15 from 1 November 1957. The few workers who were getting dearness allowance above Rs. 15 had the excess added to their basic wages or salaries. The production bonus on the basis of the percentage of the first-quality articles produced in the factory was also increased to some extent. The award in I.D. Nos. 74 and 89 of 1956 as regards staff members similarly provided for the introduction of a grade and incremental scales of pay. For the purpose of introducing the grades certain slight modifications (sic) in the existing salaries of a few persons were raised by two or three rupees. A uniform dearness allowance of Rs. 25 was fixed for all the staff members. Those who were getting more than Rs. 25 had the excess dearness allowance added to their basic salaries and new grades were fixed. The grades were fixed as at date previous to the award so that the first increment was to be given from 1 January 1958. The two awards were directed to come into force after 30 days in the publication of the gazette. The management and their employees-workmen on the one side and the staff members on the other-are now dissatisfied and for contradictory reasons. For, while the former complains that the burden imposed is too heavy, the complaint of the latter is that the awards have not gone far enough. Hence these petitions

by both sets of parties, for quashing the respective awards. As they involved a common question, they were heard together and are being disposed of by this single order.

3. Now the principle of incremental scales of wages has been commended on the basis that due to experience gained during the years in service the work would be carried on more efficiently and there would be better productivity of labour. But as observed in *Britannia Building and Iron Company, Ltd.* 1954 I L.L.J. 651 at 654:

As time-scales increase the wage bill year after year which is reflected in the cost of production, such scales should not, in our opinion, be forced upon the employer of industrial labour unless it is established that the employer has the present capacity to pay and his financial capacity can be counted upon in future. Thus, both financial ability and stability are requisite conditions.

And similarly in *Union Drug Company, Ltd.* 1954-I L.L.J. 766 at 767:

No ad hoc increment should be given when there are no fixed grades and incremental scales in existence or without fixing by adjudication settle incremental scales when such scales are already in existence vide 1953 I L.L.J. 247 at 249.

* * *

Before incremental scales can be imposed by adjudication, it is essential to see whether employer will be able to bear its burden. The financial condition of the company must be such as to lead to the conclusion that it would be able to pay the increments year by year for an appreciable number of years, for wage-scales when settled are intended to be long-term schemes.

4. In my judgment the awards herein have failed to take into consideration the above tests and on this sole ground are wanting in jurisdiction and have to go. The tribunal has itself noticed that the company started in 1942 and commenced regular functioning in 1945 but from 1952 till 1955 the company was running at a loss totally estimated at Rs. 2,30,092. The boast had no doubt been made in the director's report for 1956 and accepted by the tribunal that the company had turned the corner and gone into profit, the net profits for 1955 being Rs. 32,104 and that for the first seven months of 1957 being Rs. 5,107. But the tribunal did not stop to ascertain whether as always claimed by the company income tax had been deducted from these figures for those years and provision had not also been made for some return on the paid-up capital of Rs. 10 lakhs for the years concerned. The affidavit filed by the works superintendent of the company would claim that the introduction of the grades and scales now awarded will involve during the year 1958 an additional expenditure of Rs. 15,000 and in every subsequent year a cumulative addition of about Rs. 12,000. Further that these additional costs are only with reference to basic wages and dearness allowance and payments towards production bonus and other allowance, amenities and

labour welfare to the workmen will involve expenses according to the existing practices of over Rs. 70,000 in a year. The counter-affidavit filed on behalf of the workmen and the staff members does not attempt a contradiction of the above statement but content themselves with vague generalities in denial. It was for the tribunal in the circumstances to have worked out the financial implications of its proposals at least approximately and satisfied itself that burdens freshly imposed could be borne presently and in the future without difficulty.

5. Learned Counsel for the workmen and staff members invited my attention to the passage in the award where the tribunal has claimed that it has already dealt with the financial capacity of the management concern.

But it would appear that this referred only to the company's "survival of the crisis" and "turning the corner" and "just beginning to make profit." This is not certainly applying to the company the test of financial ability and stability as above understood. Nor can the fact that the company wanted to defer consideration of the workers' demands for six months but more than a year has expired thereafter foreclose the company in their present objection, as the tribunal thought.

6. In the view I have taken above, it has become unnecessary for me to deal with various other contentions raised by the company. The result is that the awards impugned herein will stand quashed. The O.P. Nos. 509 and 510 of 1957 will thus stand allowed with costs as against respondent 1 in each. Counsel's fees Rs. 100. Original Petitions Nos. 6 and 7 of 1957 are dismissed but without costs.