# The Akola Electric Supply Co- vs J. N. Jarare & Ors on 25 March, 1963

## Equivalent citations: 1963 AIR 1721, 1964 SCR (2) 513, AIR 1963 SUPREME COURT 1721, 1963 MAH LJ 438, 1963-64 24 FJR 505, 1963 MPLJ 406, 1963 2 LABLJ 426, 1963 7 FACLR 103, 1964 (1) SCJ 60

## Author: K.C. Das Gupta

## Bench: K.C. Das Gupta, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
THE AKOLA ELECTRIC SUPPLY CO-

Vs.

RESPONDENT:
J. N. JARARE & ORS.

DATE OF JUDGMENT:
25/03/1963

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1963 AIR 1721 1964 SCR (2) 513

ACT:
Industrial Dispute-State Electricity Board taking over from appellant company on the expiry of license-Award framing scheme for payment of gratuity to employees-If justified-Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (C. P. and Berar Act XXIII of 1947), ss. 38 (a).

HEADNOTE:
The appellant company was a licensee for supplying elec. tricity. The State Electricity Board had by a notice intimated its intention to purchase the appellant's undertaking on the expiry of its license. Two days prior to the expiry of the licence the Industrial Court at Nagpur framed a scheme for payment of gratuity to the employees of

the appellant company with effect from the date of the order. On application by the appellant company under Art. 227 of the Constitution the High Court of Nagpur set aside the Industrial Court's order and remanded the matter for the reconsideration. After remand the Industrial Court came to the conclusion that the appellant company was in a position to pay gratuity and made a fresh award framing a scheme for payment of gratuity to its employees at the rate of 1 month's average wage. This award was made more than a year after the company had closed its business. The present appeal is by way of special leave granted by this Court.

The main contention in the appeal was that the Tribunal was not justified in imposing on the company a gratuity scheme at a time when it had already ceased to carry on its business.

Held that the gratuity schemes are always made in the expectation of the industry continuing to function for a long time to come and hence the Industrial Court acted wrongly in framing any gratuity scheme for payment of gratuity by the company to its employees,

Indian Hume Pipe Co. v. Its Workmen, [1960], 2 S. C. R. 32 and Bharatkhand Textile Mfg., Co., Ltd. v. Textile Labour Association, [1960] 3 S.C.R. 329, distinguished.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 637 of 1962. Appeal by special leave from the award dated April 29, 1961 of the State Industrial Court at Nagpur in Industrial Reference No. 13 of 1959.

M. C, Setalvad, Vallbhdas Mehta and Sardar Bahadur, for the appellant.

S.A. Sohni, Swarup Khanduja Lalit Kumar adn Ganpat Rai, for the respondents.

1963. March 25. The judgment of the Court was delivered by DAS GUPTA J.-This appeal by,special leave is against an award of the Industrial Court at Nagpur tinder s. 38 (a) of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 dated April 29, 1961. By an earlier award dated December 4, 1959, the Industrial Court ordered the payment of gratuity to the employees of the appellant Company on certain rates. The award was to come into force from December 4, 1959. OD an application by the Company under Art. 227 of the Constitution, the Nagpur High Court set aside the industrial Court's order and remanded the matter for reconsideration of the question after examining the financial condition of the Company. After remand the Industrial Court took evidence of both parties as regards the financial condition of the Company and came to the conclusion that the Company was in a very sound financial position and could easily bear the burden of payment of gratuity to the extent of Rs. 50,000/- or even more. Accordinglyv, the Industrial Court made a fresh award directing the payment of gratuity to the Company's employees at the rate of 1 month's average

wage the average wage to be calculated for the period December 1, 1-958 to November 30, 1959 to every employee who had to his credit uninterrupted continuous service of not less than five years on termination of his service, except by dismissal on account of misconduct. The award was directed to come into force from April 29,1961. The Appellant Company was a licensce for supplying electric energy to the public within the area approximating to the Municipal limits of Akola. The license expired on December 6, 1959. Prior,to this the State Electricity Board had by a notice dated November 27, 1957, intimated its intention to exercise its option to purchase the undertaking on the expiry of the license. It was after this notice had been served and it was known that the Company would be closing its business on December 6, 1959, that the claim for gratuity in respect of which the Industrial Court has made its award, was first made. -Indeed, the very application for referring this and other disputes for arbitration contained the frank statement that it was in view of the impending closure of business that the claim for gratuity was being made. It is interesting to notice that the earlier award by tile Industrial Court was made only two days before the Company's license expired and the business was taken over by the Bombay Electricity Board. The award now under appeal was made more than a year after the Company had closed its business.

The main contention urged before us in support of the appeal is that the Tribunal was not justified in imposing on the Company a gratuity scheme at a time when it had already ceased to carry on its business. It is argued that gratuity schemes are planned on a long term basis, the ruling principle being to make the employer to pay retiral benefits to such of its employees as, retire from year to year. The framing of a gratuity scheme when an industry is on the verge of closure or after it has closed is, it is urged, wholly unjustified. In our opinion, tkere is considerable force in this contention.

It has been laid down by this Court that the statutory provision for payment of retrenchment compensation is no bar to the framing of a gratuity scheme. Thec question was fully considered by this Court in Indian Hume Pipe Co. v. Its Workmen (1), where this Court pointed out that while gratuity is intended to help workmen after retirement to whatever cause the retirement may be due to, retrenchment compensation is intended to give relief for the sudden and unexpected termination of employment by givinog partial protection to the retrenched person and his family to enable them to tide over the hard period of unemployment. It has also been held by this Court in the Bharatkhand Textile Mfg. Co. Ltd, v. Textile labour Asson. (2), that the existence of a Provident Fund Scheme is also no bar to the provision of further retiral benefit by way of gratuitv scheme. Learned Counsel for the respondent seems to think that these cases somehow supported his contention that the fact that an industry is going to close or has actually closed is no bar to a framing of gratuity scheme for its employees. We are unable to see however anything in these decisions of this Court to assist such a plea. In neither of these cases nor in any other case that we know of had this Court to consider the question of a gratuity scheme in an industry which 'is going to close in the near future or has already been closed. Indeed, we know of no case in which an Industrial Tribunal has ever framed a gratuity scheme for an industry which was not expected to carry on or has ceased to carry on its business. In all the cases that have come before Industrial Tribunal or this Court gratuity schemes asked for or allowed have been in industries which were expected to carry on fora

(1) [1960] 2 S.C.R. 32.

(2) [1960] 3 S.C.R. 329, fairly long time. One of the important factors which requires consideration in deciding on the propriety of a scheme of gratuity is the ability of the industry to bear the additional financial burden and in deciding this question it has been repeatedly pointed out, the burden from year to year has to be considered after taking into account the average number of retirements likely to take place in a year. Thus in the Bharatkhand Textile Mfg. case (1), this Court in discussing the considerations that arise in such matters, said:-

> "..... there can be no doubt that before framing a Scheme for gratuity industrial adjudication has to take into account several relevant facts; the financial condition of the employer, his profit-making capacity, the profits earned by him the past, the extent of his reserves and the chances of his replenishing them as well as the claims for capital invested by him, these and other material considerations may have to be borne in mind in determining the terms of the gratuity scheme ..... it appears also to be well recognised that though the grant of a claim for gratuity must depend upon the capacity of the employer to stand the burden on a long term basis it would not be permissible to place undue emphasis either on the temporary prosperity or the temporary adversity of the emyloyer. In evolving a long-term scheme a long-term view has to be taken of the employer's financial condition and it is on such a basis alone that the question as to whether a scheme should be framed or not must be decided....."

These observations emphasise the position that gratuity schemes are always made in the expectation of the- industry continuing to function for a long time to come. (1) [1960] 3 S.C.R, 329 It has to be noticed that the provision for gratuity scheme is not based on any statutory enactment, but has been evolved by industrial adjudication as a step to achieve social justice. In doing so, industrial adjudication has proceeded on the basis that only a small percentage of the workmen retire in any particular year and so the provision for paying gratuity to retiring workmen would ordinarily be not an unreasonable burden for the employer to be asked to bear.

The position is materially altered however when the industry is expected to close in the immediate future, or has actually closed. In such a case the entire body of workmen will "retiring" at one and the same time so that in substance, though not in name, the provision of gratuity would be equivalent to the grant of retrenchment compensa- tion, in addition to what is provided for in the statute. We can find no justification for this in the principles of social justice.

We have therefore come to the conclusion that the Industrial Court acted wrongly in directing any gratuity to be paid by the Company to its employees.

We accordingly allow the appeal, and set aside the award made by the Industrial- Court. There will be no order as to costs.

Appeal allowed.