The Indian Oxygen Limited vs Workmen And Others on 6 December, 1962

Bench: B.P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta, J.C. Shah

PETITIONER:
THE INDIAN OXYGEN LIMITED

Vs.

RESPONDENT:
WORKMEN AND OTHERS

DATE OF JUDGMENT:
06/12/1962

BENCH:

ACT:
Industrial Dispute-Wage scales-Classification.

HEADNOTE:
The appellant contended that though the wage scales were fixed in 1949, as in 1957, the question of revision of wage scales had been brought before another Tribunal which refused revision except in the case of Mazdoors 1 and 2, revision ought not to have been allowed and that the Tribunal had compared the wage scales of the appellant with those-with which they were not comparable and further that the Tribunal
737
had itself made some obvious mistakes which were later corrected, and that therefore the wage scales fixed by the Tribunal required review. As to classification it was contended that the Tribunal should have itself classified the workmen and not left this question to the appellant as it would lead to further disputes.
Held, that on the facts of the case there was need for revision of wage scales and that substantially the comparison made was with engineering concerns, on which the appellant itself bad relied. Though in some cases higher scales had been given to the workmen, the wage scales fixed by the Tribunal were justified.
Held, further, that though there were some slips in matters of detail in the award of the tribunal which had been rectified by it except for correcting one obvious slip which it had failed to correct the Award of the Tribunal could not

be said to be vitiated.
Held, also, that classification is of two kinds (1) classification of jobs and (2) fitting of existing staff into the various classified jobs. The first classification is a matter for the Tribunal whereas the second kind generally speaking may appropriately be left to the employer to be done in consultation with the Union, and it is only a disputed case which may be referred, it necessary, to the Tribunal.
Novex Dry Cleaners v. Its Workmen, [1962] 1 L.L.J. 271 and French Motor Car Co. Ltd. v. Workmen, [1963] Supp. 2 S.C.R. 16, referred to.
As the Tribunal had directed only the second type of classification to be done by the appellant in consultation with the Union, the direction Was not erroneous.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 528 of 1962. Appeal by special leave from the Award dated March 10, 1962, of the Industrial Tribunal, Maharashtra in Reference No. (IT) 114 of 1961.

M.C. Setalvad, Attorney-General of India, Purushottam Tricumdas, J.B. Dadachanji, O.C. Mathur and Ravinder Narain, for the appellant.

C L. Dudhia, Yatik Rehman and K. L. Hathi, for respondents Nos. 1 and 2.

1962. December 6. The judgment of the Court was delivered by WANCHOO, J.-This is an appeal by special leave from theaward of the Industrial Tribunal, Maharashtra ina dispute between the appellant company and its workmen. The reference was on six matters, namely, (i) wage scales, (ii) adjustments, (iii) increments,: (iv) classification, (v) designation of certain workmen, 'and (vi) merger of dearness allowance. The tribunal rejected the demands relating to increments and merger of dearness allowance. With respect to the other four matters referred to it, the tribunal fixed revised scales of wages and provided for the manner in which adjustments would be made. As to classification, the tribunal ordered that the employees would be classified by the appellant after consulting both the unions in an advisory capacity. It also changed the designation of plant-attendants to plant-operators.

The present appeal by the appellant-company is directed against two matters dealt with in the award, namely, (i) wage scales and (ii) classfication. The appellant contends that the tribunal made a mistake' when it held that wage- scales required reconsideration, particularly as this matter had been considered by another tribunal in 1957 and that tribunal had decided to keep the previously existing scales which were in force since 1949 except in the case of Mazdoor I and' Mazdoor II. It is further contended that the tribunal was not Justified in comparing wage-scales in concerns which were clearly not comparable with the appellant-company. Further it is' pointed out that the tribunal

made obvious mistakes in the award some of which it later corrected and this clearly shows that the matter was not given that consideration by the tribunal which it deserved. As to classification, it has been urged that the. tribunal should not have left the question of classification to the appellant-company as that would lead to endless disputes between the appellant and its workmen.

We are of opinion that there is no force in- any of these contentions. There is no doubt that wage scales which were revised by the tribunal were fixed as far back as- 1949. Obviously, therefore, there would be a clear case :for, revision of wage-scales in 1962, for it is not, and cannot be, disputed that there has been considerable change in circumstances between 1949 and 1962. But it is urged on behalf of the appellant-company that though wage scales, which have been revised, under the present award, were fixed in 1949, they came up for revision before another tribunal in 1957. The then tribunal was of opinion that the scales of pay of most of the categories of workmen were quite satisfactory and proceeded only to revise the scales of pay of Mazdoor I and Mazdoor II. It is therefore. urged that the fact that ,the existing scales which have been revised under the award were fixed in 1949 loses all importance because they came up for reconsideration in 1957, and the then tribunal thought that no case had been made out,for their revision. Therefore, the argument is that unless there is a change in circumstances after 1957, there would be no reason to revise the wage-scales as has been done by the tribunal. But as the tribunal has pointed out, there has been an increase in the cost of living even since 1957. It has further pointed that dearness allowance at the best, may neutralise the increase in the cost of living fully in the, case of workmen drawing a basic wage of Rs.30/-; it does not neutralise the increase in the cost. of living in the case of those drawing above the minimum wage, and as the wage increases the neutralisation affected by dearness allowance becomes,less and less. Therefore, when cost of living has gone up since 1957, a case has been made out for revising wage scales in 1962. The tribunal; has further pointed out that there have been since 1949 a large number of awards and agreements in prosperous concerns like the appellant-company wherein higher wages have been fixed. It may be that the wage-scales fixed in the appellant-company in 1949 were on the high side as compared to other concerns of the same standing in that region. But if, as pointed out by the tribunal, the other concerns are now giving higher wages than they were giving in 1949 due either to agreements or to awards, wage-scales fixed in the appellant-company should also be revised in order to maintain' it in the same leading position as it apparently held in 1949. In this connection our attention was drawn to a number of charts filed on behalf of the appellant comparing the total wage packet of the appellant-company as it stands after revision with such' other concerns as the appellant considered comparable. These charts in our opinion as prepared do not depict the correct position because the dearness allowance payable by the appellant-company is on a different basis from the dearness allowance payable in the concerns, which appear in these charts. The appellant-company apparently pays dearness allowance at the old textile scale but for all days in the month while the other companies which have been taken for comparison pay the revised textile scale which is apparently higher than the old textile scale for all days in the month which the appellant is paying. So, the comparison made in these charts is not very helpful in showing that the revised wage scales have made such changes in the wage structure in the appellant company as to put it completely out of line with comparable concerns. It appears to us that with the changes made in the wage scales all that has happened is that the appellant-company still maintains a lead in the matter of total wage packet as against the comparable concerns in the same way as it did: in, 1949. In the circumstances, we agree with the tribunal that a case had been made

out for revising the wage scales even though in 1957 the then tribunal did not think it necessary to make any change in the wage-scales prevailing, in' this company except in the case of Mazdoor I and Mazdoor II.

As, to the contention that the tribunal compared the appellant-company with concerns which were really not comparable, it may be mentioned that at present the appellant is the only company of its kind carrying on business in Bombay. There was thus no comparable concern in its own line of business in that region. Therefore, the tribunal would be justified in looking for comparison at concerns nearly similar to the appellant. The appellant also conceded, and we think rightly, that the nearest industry for purposes of comparison with the appellant- company was the engineering industry. The workmen on the other hand wanted that the appellant-company should be compared with the oil refineries-and Greaves Cotton and Company Limited, Imperial Tobacco Limited, Associated Cement Companies Limited and some other concerns. The tribunal held that the oil refineries stood in a class by themselves. It also held that Greaves Cotton and Company Limited was a managing agency concern and was therefore not comparable. It also refused to compare the appellant-company with the Associated Cement Companies on the ground that it had no factory in Bombay but only its head office. The tribunal also was not prepared to compare the appeliant company with the Imperial Tobacco Company which was in an altogether different line of business. The tribunal was prepared to compare the appellant with the engineering firms which the appellant itself relied on except one concern which was considered by the tribunal to be too small. It seems to us therefore that for the purpose of comparison the tribunal rightly took into account practically the companies suggested by the appellant. The tribunal also mentioned some other companies which were indicated on behalf of the workmen, for example, the Indian Cable Company Limited, and the Automobile Products. These also cannot be said,, to be non-comparable though the are not quite as near the appellant-company as they engineering concerns which the appellant-,company relied on. In the main, however, it appears that the tribunal relied on the engineering concerns on which the appellant-company relied, though, as already indicated, it has given a slightly higher scale in some cases to the workmen of the apppellant company apparently in view of the fact that the appellant company was always a leading employer in the matter of wage-scales. We are therefore of opinion that the tribunal cannot be said to have made any mistake in the matter of taking into account comparable concerns.

Then our attention was drawn to a few mistakes in the tribunals award, and it is urged that. these mistakes show that the tribunal did not give such consideration to. the matter as was expected of it. It may be pointed out that three of these mistakes were corrected by the tribunal later. So far as two of these corrections are concerned, namely, (i) carpenters, and (ii) Assistant fore-man, there appears to have been a slip inasmuch as the tribunal reduced the maximum for these workmen which was already prevalent, which of course it could not do. The third mistake that the tribunal corrected was with respect to cylinder weighers. There undoubtedly the tribunal made mistake inasmuch as it fixed wages for cylinder weighers which 'were even lower than Mazdoor I, though cylinder weighers always used to get more than Mazdoor I. That mistake was also corrected by the tribunal. One more mistake has been pointed out to us with respect to masons. In the case of masons, the grade demanded was 60-5-110-7-1/2-140 while the existing scale was 60-4-100. The tribunal revised the scale to 64-4-100-5-110. The complaint is that the minimum awarded by the tribunal is more than

the minimum demanded by the workmen. It seems to us that this is due to a slip, and the learned counsel for the respondents conceded that the starting pay should be Rs.60/-. We' therefore correct this Mistake and fix the grade of masons at 60-4-100-5-110. It is clear therefore that there Were three slips by, the tribunal and there was only one mistake with respect to cylinder weighers. That however,does not mean that the tribunal did not bestow that attention to the matter before it which it was expected to do. The tribunal's award appears to be on the whole a careful one and it cannot be thrown over-board because of these,slips. We therefore see no force in the contention of the appellant with respect to wage scales and hold that the revised, grades introduced by the tribunal are fair. Turning now to classification, the contention is that the tribunal should have made the classification itself and should not have asked the appellant to make the classification after consulting the unions in an advisory capacity. Reliance in this connect on is placed on a decision of this Court in Novex Dry Cleaners v. Its Workmen (1). In that case alto there was a question of classification and this Court pointed out that it was not a satisfactory way of dealing with the matter to leave the question of classification to the management in consultation with the workmen. Classification, however, is of two kinds, namely, (i) Classification of jobs, and (ii) fitting of existing staff into the various classified jobs. Now the first matter, (namely, classification of jobs) if it is in dispute between there management and the workmen should be dealt with by tribunals themselves and the case relied on by the appellant is more of this nature, though it also involved the question of fitting each (1)[1962] 1 L L. J. 271.

workmen in the various classified jobs. In that case six categories were fixed, but apparently the functions of the categories concerned were not defined by the tribunal. Therefore, it was observed that the tribunal should have described the functions' of different categories and given indication in the award as to how different employees should be placed in what category. That case did not lay down that the, tribunal must fix each man into a particular classified job and that if it leaves this second kind of classification to be done by the management in consultation with the workmen, the award must be set aside. We may, in this connection refer to French Motor Car Co. Ltd. v. Workmen (1), where the tribunal had left the fixation of individual workman into particular classified jobs to the management in consultation with the workmen and that was upheld by this Court. Generally speaking, the fixing of individual workmen in particular classified, jobs can best be done by the management in consultation with the union and it is only the disputed cases which may be referred, if necessary, to the tribunal. In the present case also, the tribunal has left it to the appellant to fix individual workmen into the various classified jobs after consultation with the unions. It is true that the tribunal has remarked that some of the Mazdoor I and Mazdoor II appear to it to be doing work of higher category but that is merely a general remark and it will be for the appellant to classify the workmen in consultation with the unions i.e. to fix each workman in particular classified jobs which already exist in this company and about which there. is no dispute. In the circumstances, the tribunals direction in the present case with reference to the second type of classification does not suffer from any infirmity, We therefore dismiss the appeal except with the modification with respect to masons. In the circumstances we pass no order as to costs.

Appeal dismissed except for Slight modification. (1) [1963] Supp. 2 S.C.R. 16.