National Iron And Steel Co. Ltd. & Ors vs The State Of West Bengal & Anr on 17 January, 1967

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Author: G.K. Mitter

Bench: G.K. Mitter, M. Hidayatullah, Vishishtha Bhargava

PETITIONER:
NATIONAL IRON AND STEEL CO. LTD. & ORS.

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL & ANR.

DATE OF JUDGMENT:
17/01/1967

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 1206 1967 SCR (2) 391
CITATOR INFO :
R 1968 SC1076 (8)
F 1972 SC1942 (25)

ACT:
Industrial disputes--One reference--when can be made in respect to, several concerns--Gratuity, comprehensive order, if can be made--Contract labour, abolition, if Tribunal can order--Industrial Disputes Act(14 of 1947) S. 25F--Notice--Requirements.

HEADNOTE:
The appellants are four public limited companies, all separately registered under the Indian Companies Act, and all producing iron and steel goods though of different type.

They had a common General Manager who later became their Works Manager; they had a common time office, a common canteen and a common Labour officer. By one order of reference, certain industrial disputes between the appellants (described in the reference as first appellant and "their allied conerns) and their workmen, were referred for adjudication. All the companies were not interested in all the disputes. The Industrial Tribunal gave an award against the appellants. In appeal to this Court, the appellants contended that (i) as all,companies were not concerned in all items of dispute, one order of reference embracing all of them, should not have been made; (ii) the comprehensive order of gratuity binding on all the companies was bad as the Tribunal considered only balance sheets, and profit and loss accounts and other documents of the first appellant and did not have before it those of the other companies; (iii) Tribunal was wrong in holding that the retrenchment of a workman was illegal as s. 25F of the Act had not been complied with; and (iv) the award abolishing contract labour employed by one of the companies was wrong as it would place the said concern in a very disadvantageous position compared to other which did similar-kind of work.

HELD: (i) In order to find out whether there was sufficient functional integrality between the employers and whether it was proper to have one reference in respect of the four concerns which were separate entities in the eye of law, it was necessary to take an overall picture of their activities and the interest, if any, which they had in common. [395 G]

The things the appellants had in common were sufficient to show a community of interest so far as industrial disputes were concerned. If then wages, the dearness allowance or benefit of gratuity or leave rules were altered in one without affecting the others, the industrial peace and harmony in the other establishments were bound to be disturbed. All the four concerns filed written statements which appear to have been drafted by the same draftsman, and same set of lawyers represented them. At no point of time was it ever shown to the Tribunal that there was any possi-bility of conflict of interest between them. Making separate orders of reference in the cases of the four establishments would only have multiplied costs enormously without any corresponding benefit to anybody. It was also patent from the course of the proceedings that it was only the first appellant which played a major part in the adjudication before the Tribunal. The other three concerns were content to abide by what was done by the first appellant.. [395 H; 396 A-B, H; 397 B]

Wenger & Co. v. Their Workman, [1963] II L.J. 403 at 308 followed.

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Workman of Dimakuchi Tea Estate V. The Management of Dima-kuchi Tea Estate [1958] S.C.R. 1156, referred to.

(ii) The scheme of gratuity as framed was quite a reasonable one on the facts and figures presented by the first appellant. The three concerns were content to make the first appellant their mouthpiece in this respect or they must have felt that the facts and figures, if disclosed, would have been such as would go against them and they deliberately refrained from producing them. [3.99 A]
Burhanpur Tapti Mills Ltd. v. B. T. Mills Mazdoor Sangh, (1965) L.LJ. 453, followed.
(iii) When a workman is asked to leave forthwith he bar. to be paid at the time when he is asked to go and cannot be asked to collect his dues afterwards.
The notice, in this case, bore the date November 15, 1958, terminating services of the workman from November 17, and asking him to collect one month's wages in lieu of notice on November 20, 1958 or thereafter. So S. 25F had not been complied with [399 E]
Bombay Union of Journalists v. The State of Bombay [1964] 6 S.C.R. 22. followed.
(iv) There was no material before this Court to conclude that the direction for partial abolition of the employment of contract labour in one of the companies was wrong. The abolition of contract system of labour can be ordered by an Industrial 'Tribunal if the facts justify it. [400 D-E]
Standard Vacuum Refining Co. of India v. Its Workmen, [1960], 3 S.C.R 466, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 497 of 1965. Appeal by special leave from the award dated September 14 1963 of the Third Industrial Tribunal, West Bengal in Case No VIII-151 of 1959.

Niren De, Additional Solicitor-General, Arun Bahadur and Sardar Bahadur, for the appellants Janardan Sharma and P. K. Ghosh, for" respondent No. 2(1). The Judgment of the Court was delivered by Mitter, J. This is an appeal by special leave from an award of the Third Industrial Tribunal, West Bengal dated September 14, G 1963. The appellants are four public limited companies all separately registered under the Indian Companies Act and all carrying on business in the same premises at Belur in the district of Howrah, the respondents being two unions, viz., NISCO Karmachari Sangha, Belur and Howrah and Belur Iron and Steel Workers' Union,Howrah. National Iron and Steel Co. Ltd was engaged in the H business of steel rolling and steel casting. Britannia Building & Iron Co. Ltd. was, engaged in steel fabrication work while National Screw and Wire Products was engaged in the manufacture of wires and nails. Tatanagar Foundry Co. Ltd. carried on the business of manufacturing cast-iron sleepers for railways. By an order dated August 25, 1959, the Government of West Bengal made a reference under s. 10 of the Industrial Disputes Act, 1947-of what was described as an industrial dispute between "Messrs National Iron & Steel Co. Ltd., and their allied concerns, viz., Tatanagar Foundry Co. Ltd., Britannia Building & Iron Co. Ltd., and

National Screw and Wire Products Ltd., all of P.O. Belur, District Howrah", on the one part and their workmen represented by the two unions on the other regarding the matters specified in the schedule for adjudication. Nine issues were set forth in the schedule. Issue No. 9 was abandoned at the hearing before the Tribunal and need not be considered at all. The other issues were as follows

1. Gratuity.

2 . Sickness benefit.

3. Leave Rules.

4. Abolition of contract labour.

5. Whether termination of service of Shri Bhadreswar Ghose is justified ?

6. Whether the durwans and other members of the Watch & Ward staff are entitled to weekly rest ?

7. Whether retirement of Shri Gopal Das and Shri Ramjatin Pandit at the age 55 years is justified ? To what relief, if any, are they entitled ?

8. Whether the action of the Company in retrenching the following masons is justified ? To what relief, if any, are they entitled ?

(i) Shri Sushil, (ii) Shri Sarojit, (iii) Shri Sukdeo, (iv) Shri Khalil.

Issue No. 8 referred to the retrenchment of four workmen. Of the four, the case of the first workman, viz., Sushil, alone was pressed at the hearing before the Tribunal. There is no dispute that all the four companies were not concerned with all the issues. Messrs National Iron and Steel Co., Ltd. was primarily concerned with almost all of them. Britannia Building & Iron Co., Ltd. was not concerned with issues 7 and 8 while National Screw & Wire Products Ltd., was not interested in issues 4, 5, 7 and 8. Tatangar Foundry Co. Ltd. was not interested in issues 5, 7 and 8. All the the companies were interested in the first three issues. The award went against the companies and they have come up in appeal. Appearing on behalf of the appellants, the learned Additional Solicitor-General raised four points. First, he challenged the validity of the order of reference and contended that as all the companies were not concerned in all the items of dispute, one order of reference embracing all of them in some of which some of the appellants were interested while in others they were not, should not have been made. His next contention was that the award a,; regards gratuity was bad inasmuch as the Tribunal considered only the balance sheets and profit and loss accounts and other documents of National Iron and Steel Co. Ltd. The Tribunal did not have before it similar accounts of the other companies and therefore a comprehensive order of gratuity purporting to be binding on all the companies was bad. The third point raised by the learned counsel was that the award on the question of retrenchment of the workman Sushil was not justified for grounds which will be discussed hereafter. His last contention was that the abolition of contract labour employed by Tatanagar Foundry Co. Ltd. ordered by the Tribunal was wrong inasmuch as it

would place the said concern in a very disadvantageous position compared to other concerns which did similar kind of work, namely, producing iron sleepers for use in railways.

Before considering the points separately, it will be necessary to refer to certain general aspects and the position of the four appellants vis-a-vis their workmen. The finding of the Tribunal is to the effect that there was sufficient functional integrality between the four concerns which would justify one order of reference. According to the Tribunal, there was sufficient evidence to show that the last three named concerns were allied concerns of the first (National Iron & Steel Co. Ltd.) having common administrative heads and being located in the same premises at Belur. They had one General Manager, one common Labour Officer and common Time Office. They also had a common cash office, a common shipping department and a common canteen for all the workmen. The workmen of all the concerns were guided by common Standing Orders. The Tribunal relied on Ex. 14 being an office order dated March 19,1957 issued under the signature of the Works Manager of the National Iron and Steel Co. Ltd. which shows that the workmen of all the four concerns had consecutive check numbers. By this office order, check numbers of different departments were revised in the table contained therein. Reference was also made to Ex. F. which contains a list of masons on roll on November 16, 1958. According to the evidence of the Companies' witness, Milan Kumar Dey, Ex. F. contained a list of masons on the rolls of the four concerns. We may here refer, in brief, to the evidence of two witnesses who were examined by the employers. The evidence of Tarini Prosad Jha, the Labour Officer of the National Iron and Steel Co. Ltd. at the time of adjudication before the Tribunal went to show that there was one common General Manager for all the four concerns which had one common canteen, that one Mr. E. C. Watson was the General Manager of all the concerns and that the witness himself was the common Labour Welfare Officer of all the fourconcerns. According to Bireshwar Banerjee, the head time keeper in the National Iron and Steel Co. Ltd., in 1962, E. C, Watson was at first the General Mahager of all the four concerns and he later became the Works Manager of all of them. The witness had been in charge of the common time office of all the four concerns. The learned Additional Solicitor General did not seek to show that the Tribunal had gone wrong in appreciating the evidence placed before it. But according to him, the evidence did not justify coming to the conclusion that there was sufficient functional integrality between the different concerns to make their disputes with their workmen the subject matter of one reference but that there should have been four separate references. According to him, although the four concerns were located in the same premises nevertheless they were separate and independent entities and could not be described as one establishment. All the four concerns could not give relief in respect of all the issues. If, for instance, a dispute arose in one of the concerns as to retrenchment of a particular worker in which the other concerns were not interested, the dispute could not be made the subject matter of a reference to which all the four concerns were parties. He referred us to several sections. of the Industrial Disputes Act including ss. IS (1), 18(3) and 33. According to him, s. 18(1) went to show that it was possible for the workmen of one concern to arrive at a settlement between themselves and their employer and if such a settlement was arrived it, would not necessarily bind the other establishments. Further, s. 33 went to show that if there was a dispute in one concern, it would not have any application to the case of workmen in another establishment. He also relied on the case of Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate(1) and to certain observations therein in support of his contention that the dispute must be one in respect of which the employer was in a position to give relief. In order to find out whether

there was sufficient functional integrality between the employers and whether it would be proper to have one reference in respect of the four concerns which are separate entities in the eye of law, it is necessary to take an overall picture of their activities and the interest, if any, which they had in common. In this case, we find that all the four establishments were engineering concerns producing iron and steel goods though of different types. They had a common General Manager who later on became their Works Manager; they had a common time office, a common canteen and a common Labour Officer' That their Standing Orders were the same may be due to the fact that they were all members of the Engineering Association. But the things they had in common are sufficient to show a community (1) [1958] S.C.R. 1156.

of interest so far as industrial disputes are concerned. If the wages, the dearness allowance or benefit of gratuity or leave rules were altered in one without affecting the others, the industrial peace and harmony in the other establishments were bound to be disturbed.The workmen of all the four concerns were so closely associated that it would be asking for trouble if the conditions of employment in one concern were varied to the benefit of the workmen of that particular establishment, leaving the conditions of service in the other three concerns undisturbed. In our opinion, the observations of this Court in Wenger and Co. v. Their Workmen apply with equal force to the facts of the case before us. In that case, there were two orders of reference of industrial dispute in regard to service conditions of the employees in a number of hotels and restaurants in the city of New Delhi. The Tribunal heard both the references together and did not make any classification between restaurants and hotels for the purpose of fixing the service conditions. Negativing the contention of the employers, it was observed by this Court "Thus, the situation of the restaurants and the hotels which have been included in the present reference shows that they are carrying on the same business in about the same locality and it is desirable that the terms and conditions of service of the employees working in them should, as far as possible, be uniform. Such uniformity is not only conducive to peace and harmony amongst the employees and their employers, but would be helpful to the managements themselves because it would tend to avoid migration of labour from one establishment to another."

In that case, some of the hotels and restaurants were situated in Connaught Place while one restaurant was situated in Karolbagh and another hotel was situated in Aurangzeb Road at some distance from Connaught Place. In the case before us, all the concerns are housed in the same premises and the workmen of the different establishments have ample opportunity of getting together during the day and discussing things which are to their common interest. The contention that all the employers were not interested in all the reliefs claimed is not a matter of any moment in the circumstances of the case. All the four concerns filed written statements which appear to have been drafted by the same draftsman' They were represented by the same set of lawyers. At no point of time was it ever shown to the Tribunal that there was any possibility (1) [1963] II L. L.J. 403 at 498.

of conflict of interest between them. It is admitted that some of the issues were common to all the establishments. The fact that some of the establishments were not interested in some of the other issues did not cause any prejudice to any body. After all, when all the facts were placed before the Tribunal by the same set of lawyers, the Tribunal had no difficulty in appreciating the different

points of view and granting appropriate reliefs. In our opinion, making separate orders of reference in the cases of the four establishments would only have multiplied costs enormously without any corresponding benefit to anybody. It is also patent from the course of the proceedings that it was only National Iron and Steel Co. Ltd. which played a major part in the adjudication before the Tribunal. The other three concerns were content to abide by what was done by the first named concern.

In our opinion, there is no substance in the first point.. With regard to the second point, it was urged before us that' the Tribunal went wrong in laying down a scheme for gratuity which would bind all the four concerns without considering the. financial position and other factors which have to be considered before a scheme for gratuity could be formulated. Reference. was made by counsel for the appellants to the case of BurhanpurTapti Mills Ltd. v. B. T. Mills Mazdoor Sangh(1) and to the principles therein laid down for fixing the terms of gratuity scheme. It was there said (at p. 456) :

> .. .. there are two general methods of fixing the terms of a gratuity scheme. It may be fixed on the basis of industry-cum-region or on the basis of units.. Both systems are admissible but regard must be had to the surrounding circumstances to select the right basis.. Emphasis must always be laid upon the financial position, of the employer and his profit-making capacity whichever method is selected."
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> The Court went on to add ..... We have next to see whether the industrial court was right in appraising the financial condition and the profit-making capacity of the company. A scheme, for gratuity no doubt imposes a burden on the finances of the concern but the pressure is ex facie distributed over the years for it is limited to the number of retirements each year. The employer is not required to provide the whole amount at once. He maycre ate a fund, if he likes and pay from the interest which accrues on a capitalised sum determined actuarially. This is one way of providing the money. Ordinarily the payment is. made.
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> (1) [1965]1 L. L. J. 453.

each year to those who retire. To judge whether the financial position would bear the strain the average number of retirements per year must be found out. This is one part of the inquiry. The next part of the inquiry is to see whether the employer can be expected to bear the burden from year to year. The present condition of his finances, the past history and the future prospects all enter into the appraisal of his ability."

In the light of the above observations and on the materials placed before the Tribunal, it is not possible to hold that a wrong conclusion had been arrived at. The Tribunal scrutinised the balance sheets of the National Iron and Steel Co. Ltd., for the years 1953 to 1960 and found that excepting in the solitary case of the year 1960, the company had been making substantial amounts of profit every year. The company's balance sheets further show that it had substantial reserves. The Tribunal found that the number of workmen who retired during the 11 years under consideration was only 77, that is to say, 7 workmen per year. According to the scheme framed, the company's liability would be

only Rs. 7,500 per year and this amount could easily be provided out .of the funds of the company. The learned Additional Solictor ,General referred to a statement of th e number of wrokmen who would be due to retire during the years to come and according to this statement, the financial burden would be much heavier than that found by the Tribunal.

Unfortunately, we cannot take this statement into account which was not before the Tribunal. Again, we are not impressed by the argument of the learned counsel that if a scheme for gratuity could, on the materials before the Tribunal, be introduced in National Iron and Steel Co. Ltd., the Tribunal had no material whereby it could introduce the same scheme with regard to the other three companies. It was further argued that the Tribunal should have compelled the other three companies to produce the relevant documents in this connection. We are not impressed by this argument. No doubt it was open to the Tribunal to call upon a particular employer to produce any document which was within its possession or power. Balance sheets and profit and loss accounts have to be maintained by all the companies and it goes without saying that the other three concerns could, if they were so minded, have produced these documents before the Tribunal. They could also have prepared statements to show the number .of workmen who had retired during several years past and who were due to retire in the years to come. It seems to us that the the three concerns were content to make the National Iron and 'Steel Co. Ltd. their mouth- piece in this respect, or they must have felt that the facts and figures, if disclosed, would have been such ,as would go against them and they deliberately refrained from producing them. On the materials placed before us, we hold that the scheme of gratuity as framed is quite a reasonable one on the facts and figures presented by the National Iron and Steel Co., Ltd. We have no material to hold that the scheme would work hardship on the other companies and the findings of the Tribunal cannot therefore be disturbed. The third point raised by the Additional Solicitor General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as s. 25 F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from the 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, s. 25F had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That, is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with s. 25F we need not consider the other points raised by the learned counsel. This conclusion receives support from the observations of this Court in Bombay Union of Journalists v. The State of Bombay(1).

Incidentally it may. also be pointed out that the retrenchment of Sushil does not seem to be otherwise justified in that following the principle of 'last come first to go', Sushil could not be called upon to leave the company's service. Another employee by name Joy Kishen, junior to Sushil, was

retained in service. No doubt, the Labour Officer, Jha, tried to make out a case in his oral evidence that Joy Kishen was retained in service because he was doing a special job at the time while Sushil was not The Tribunal rejected this contention on the ground that this plea had not been put forward in the written statements of the company and we do not see any reason why we should take a different view.

The last point urged was that the Tribunal had gone wrong in ordering the abolition of contract labour employed by Tatanagar Foundry Co. Ltd. There is no doubt that the other three con-

(1) [1964] 6 S.C.R. 22 at 31-32.

cerns did not employ such labour. It was argued that railways gave contracts for supply of sleepers to a number of concerns including Tatanagar Foundry Co. Ltd. The employment of contract labour served to keep down' the costs as there would not. be sufficient work for all the workmen if permanent labour were employed. It was on this ground that Tatanagar Foundry Co. Ltd. had made an application at the early stages of the enquiry and pressed for a number of engineering concerns to be made parties to the dispute but the Tribunal had not acceded to this prayer. After dealing with the point in some detail, the Tribunal directed Tatanagar Foundry Co. Ltd. to abolish the system of contract labour excepting for the purpose of loading, unloading and for removing slags, ashes burnt sand etc. and waste products. It was not argued before us that the Tribunal's appraisal of the evidence. and the direction to abolish contract labour were fundamentally wrong. What was urged before us was that such a direction would be discriminatory as between concerns engaged in the manufacture of railway sleepers and the abolition of contract labour in Tatanagar Foundry Co. Ltd. would mean an increase in its working expenses while the other concerns similarly engaged would be free to employ contract labour and thus oust Tatanagar Foundry Co. Ltd. from competition. As we have not the material before us to come to such a conclusion, we do not feel competent to express any opinion on this point and can only add that abolition of contract system of labour can be ordered by an Industrial Tribunal if the facts justify it. Industrial adjudication should not encourage the employment of contract labour is a principle which was laid down by this Court as far back as 1960 in Standard Vacuum Refining Co. of India Ltd. v.Its Workmen(1).

In the result, the points urged by the learned Additional Solicitor General all fail and the appeal is dismissed with costs.

Y.P. Appeal dismissed.

(1) [1960] 3 S.C.R. 466 at 473.