Management Of All Tea Estates In Assam vs Indian National Trade Union Congress ... on 21 September, 1956

Equivalent citations: AIR1957SC206, (1956)IILLJ291SC, AIR 1957 SUPREME COURT 206, 1956 2 LABLJ 291 1956-57 11 FJR 242, 1956-57 11 FJR 242

JUDGMENT

Bhagwati, J.

1. The facts and circumstances which led to the present Appeal may be shortly stated as under.

2. The appellant, the management of the Tea Estates in Assam represented by the Indian Tea Association, Calcutta, used to supply certain quantities of rice and other articles of food at concession rates to their workmen. Before February 1950, the supply of rice at such concession rates to an adult male worker was 5 seers per week. From February 1950, the rice quota was reduced by half-a-seer per week and for the said cut the employers agreed to pay cash compensation at the rate of 6 pies per working day. Due to shortage of cereals, the Government of India notified on the 18th November 1950, "an All-India Cereal Ration Scale which laid down that no adult male worker was entitled to get more than 3 1/2 seers of rice per week". The result was a further cut of another seer of rice per week in the supply of rice at concession rates. The workmen claimed compensation in cash for this cut in the rice quota. This led to a dispute between the employers and the workmen and that dispute was referred for adjudication by the Government of Assam by its notification dated the 30th October 1950. In that adjudication proceeding which was numbered as reference No. 14 of 1950, the workmen claimed cash compensation at a certain rate. The employers on the other hand contended that whatever concessions had been given to their workmen in respect of the sale price of rice were ex gratia and therefore the workmen had no legal claim for compensation in respect of the quantity of the cut in rice ration so imposed. The employers contended in the alternative that even if they were under an obligation to pay cash compensation, the amount would be far less than the amount claimed by the workmen.

3. The Tribunal gave its award on the 11th December, 1951, which was published in the Assam Gazette on the 2nd February, 1952. It held that the system of rice benefit at concession rate was a part of the workers' wage and the employers were under a legal obligation to pay cash compensation to the workmen for the said cut in the supply of rice. It also fixed the rate of compensation for the rice cut. The employers filed an appeal being Appeal No. Cal. 27 of 1952 before the Labour Appellate Tribunal. At the hearing of that appeal, the employers did not reiterate their contention that they were under no legal obligation to pay cash compensation for the rice cut. They only questioned the rate of compensation which had been awarded. The contention of the employers was accepted and the rate of compensation for the rice cut was reduced. This award was pronounced by the Labour Appellate Tribunal on the 2nd April 1954.

4. In the meanwhile, on the 11th March 1952, the Government of Assam issued a notification in exercise of the powers conferred on it by the Minimum Wages Act and fixed the minimum wages of workmen employed in the Tea Gardens of Assam at certain cash rates. Under the terms of that notification, the Government of Assam fixed the minimum wages which were to come into force with effect from the 30th March 1952, consisting of basic wages and dearness allowance at the rates specified in the Schedule annexed thereto. Paragraph 2 of the said notification is important and it runs as follows:--

> "2. The rates are exclusive of concessions enjoyed by the workers in respect of supplies of foodstuffs and other essential commodities and other amenities which will continue unaffected. The existing tasks and ours of work may continue until further orders".

5. It appears that the minimum wages so fixed exceeded the total of the cash wages which the employers were paying to their workmen and the value of the concession at which rice was being supplied as also the amount of compensation for the cut which they were directed to pay by the award made in Reference No. 14 of 1950. The employers therefore contended that the Government's minimum wage notification had the effect of absorbing their cash compensation in the cash minimum wage that had been determined and that they were under no obligation to pay after the date of this notification the compensation for the rice cut over and above the minimum wages fixed by the Government. The workmen on the other hand claimed that they should continue to get the cash compensation that was hitherto paid to them for the reduction in rice ration consequent on the introduction of All-India Ration Scale over and above the minimum wages (basic wages and dearness allowance) that had been determined and notified by the Government. A dispute thus arose between the employers and the workmen and the Government of Assam referred the said dispute in the following terms for adjudication by the Industrial Tribunal, Assam, viz., "Whether on account of the reduction in cereal ration consequent on the introduction of All-India Ration Scale the workmen employed in the Tea plantations in Assam are entitled to cash compensation as a Part of the existing concessions over and above the minimum wages-notified in Government Notification No. GLR. 352/51/56 dated the 11th March 1952".

6. The Tribunal made its award on the 26th July 1952, which was published in the Assam Gazette on the 6th August 1952. It upheld the contention of the employers that the compensation for the rice cut had been merged in the minimum wages as fixed by the Government. It accordingly held that after the 30th March 1952, when the minimum wages as fixed by that notification came into effect, the employers were not under an obligation to pay compensation for the rice cut as awarded by it in its previous award made in Reference No. 14 of 1950, which was the subject-matter of Appeal No. Cal. 27 of 1952. The workmen preferred an appeal against this award before the Labour Appellate Tribunal.

7. The labour Appellate Tribunal by its award dated the 2nd April 1954, which was published simultaneously with its award in Appeal No. Cal. 27 of 1952, held that the compensation for the rice cut had, at the time of the notification dated the 11th March, 1952, become an amenity, that the Government not only fixed the basic wages and dearness allowance but by paragraph 2 of the said

notification also preserved all the amenities which the workmen were enjoying or to which they were entitled and that the workmen of the Tea Gardens of Assam would be entitled to cash compensation for the rice cut as long as the cut remained in force but at the rate which was fixed by them in their award made in Appeal No. Cal. 27 of 1952 in addition to the minimum wages fixed in the Government notification dated the 11th March, 1952. The appeal of the workmen was thus allowed with costs and the award of the Tribunal was set aside. On the 27th May, 1954, the employers who are the appellants before us obtained from this Court Special Leave to Appeal against the award of the Labour Appellate Tribunal.

8. The only question which arises for consideration before us is whether the cash compensation for the rice cut which was being paid by the employers to the workmen before the 11th March, 1952, was merged in the minimum wages fixed by the Government as per notification of the said date or was saved by paragraph 2 of the same notification being a concession enjoyed by workers in respect of supply of foodstuffs and other essential commodities or an amenity. There is no doubt that the employers used to provide 5 seers of rice to an adult male worker at concession rates before February, 1950. When that quantum of 5 seers of rice was reduced after February, 1950, by half-a-seer per week, the employers paid to their workmen cash compensation for that cut in the rice ration at the rate of 6 pies per working day. When later on the 18th November, 1950, the Government, by the notification issued the Food Control Order, fixed the rice quota of the workmen on an All-India Ration Scale at 3 1/2 seers of rice per week, there was a further cut of another seer of rice per week and the cash compensation payable by the employers to the workmen was increased and fixed at 8 as. by the award of the Industrial Tribunal dated the 11th December, 1951. Even though the employers had contended before the Industrial Tribunal that the concession which had been given to the workmen in respect of the sale price of rice was ex gratia and the workmen had no legal claim thereto, that contention was negatived by the Industrial Tribunal and it was held that the employers were under a legal obligation to pay cash compensation to the workmen for the said cut in the supply of rice. When Appeal No. Cal.-27/52 taken by the employers before the Labour Appellate Tribunal was heard, the employers did not reiterate their contention that they were under no legal obligation to pay cash compensation for the rice cut and the finding of the Industrial Tribunal that the workmen had a legal right to get cash compensation for the reduction in the rice quota remained unchallenged. It is clear, therefore, that the employers were, before the 11th March, 1952, when the minimum wages were fixed by the Government of Assam, under a legal obligation to pay cash compensation to the workmen for the reduction in the rice quota.

9. This was the concession which was being enjoyed by the workmen in respect of the supply of foodstuffs when the minimum wages were fixed by the notification dated the 11th March, 1952. The Industrial Tribunal had already made its award in regard thereto on the 11th December, 1951, which was published in the Assam Gazette on the 2nd February, 1952, and this position was well within the knowledge of the Government of Assam when it published its notification dated the 11th March, 1952, after considering the Report of the Minimum Wages Committee. Whether this cash compensation was a concession enjoyed by the workmen in respect of the supply of foodstuffs or had been translated into an amenity as held by the Labour Appellate Tribunal in its award under appeal before us, it was saved by paragraph 2 of the notification and if the matters had stood thus, there could be no justification for the argument which was strenuously urged before us that the cash

compensation had merged in the minimum wages fixed by the Government.

10. Reliance was, however, placed upon the Report of the Minimum Wages Committee and it was contended that the Committee provided for a diet of 3,000 calories for an adult male worker instead of a diet of 2,746 calories which was being enjoyed by him hithertofore. It was further contended that the diet of 2,746 calories included 5 seers of rice and if that diet of 2,746 calories was thus taken into account while fixing the minimum wage, the minimum wage included the calory value of 5 seers of rice and whatever cash compensation was being paid by the employers before that date for the cut in the rice ration from 5 seers to 3 1/2 seers was therefore included in the minimum wage which was recommended by the Minimum Wages Committee and accepted by the Government. It was also contended that the cut in the rice ration from 5 seers to 3 1/2 seers was offset by the provision made for the workmen in the shape of other non cereal foodstuffs which went to make up the revised diet of 3,000 calories and, therefore, the minimum wage recommended by the Committee and fixed by the Government was inclusive of the cash compensation which was being paid by the employers to the workmen for this cut in the rice ration and such compensation therefore merged in the minimum wage which was fixed by the Government.

11. There are, however, two fallacies in this argument which was advanced by the learned counsel for the appellant before us. The one is that the very basis of the submission, viz., that the diet of 2,746 calories included the calory value of 5 seers of rice appears to be factually wrong. We were not supplied any figures which would go to show that the diet of 2,746 calories which was consumed by an adult male worker included 5 seers of rice and not 3 1/2 seers of rice which was the only ration purveyed to the worker on the basis of the All-India Ration Scale. In the absence of any such figures it is impossible for us to come to the conclusion that the diet of 2,746 calories which was being consumed by an adult male worker included 5 seers of rice. If 2,746 calories had to be made up it would necessarily include, besides the calory value of 3 1/2 seers of rice which was the only ration obtainable by the worker, the equivalent calory value of other non-cereal foodstuffs which would go to make up the requirements of his normal diet. All this was taken into account when the Minimum Wages Committee fixed in paragraph 14-A of its Report the quantities of foodstuffs, cereal as well as non-cereal, which would go to make up a total dietary value of 2,600 calories mentioned therein. These calculations go to show that instead of 5 seers of rice having been taken into account in fixing the minimum wages it was only 3 1/2 seers of rice that were taken into account and there is no basis for the submission which was made by the learned counsel for the appellant that the Committee took into consideration the 5 seers of rice which were being supplied by the employers to the workmen and thus merged the cash compensation which was being given to the workmen for the cut in the rice ration in the minimum wage which it recommended.

12. The other fallacy lies in this that the Report of the Minimum Wages Committee was considered by the learned counsel for the appellant as the final word on the subject. The Minimum Wages Committee was merely an advisory body and under Section 5 of the Minimum Wages Act the function of the Committee was to collect materials, make enquiries and advise the Government in the matter of the fixation or revision of the minimum wages. The Government was not bound to adopt that report. It could accept it either wholly or in part or it could also modify it and in this particular case, be it noted, the notification dated the 11th March, 1952, expressly stated that the

minimum wages as fixed by the Government consisted of basic wages and dearness allowance in terms of Section 4(1)(i) but as the workmen were getting essential commodities which included rice at concessional rates, such rights as also other amenities were preserved by paragraph 2 of the notification. If it was thus competent to the Government to accept only a part of the Report and substitute its own decision for such part of it as did not meet with its approval it could not be urged that the report of the Minimum Wages Committee governed the situation. Assuming without admitting that the Minimum Wages Committee included within its calculation of minimum wage the cash compensation which was being paid by the employers to the workmen for the cut in rice ration, it was open to the Government nevertheless to give the go-bye to it and recommend that the cash compensation be paid by the employers to the workmen as hitherto fore in addition to the minimum wage which was fixed by the Committee. The terms of paragraph 2 of the notification make it abundantly clear that whatever may have been at the back of the Committee's mind in fixing the minimum wage the Government thought it proper that the employers should make available to the workmen, in addition to the minimum wage, all concessions enjoyed by them in respect of the supply of foodstuffs and other essential commodities and the other amenities which they used to enjoy. The concession enjoyed by the workmen in respect of the supply of foodstuffs included the supply of 3 1/2 seers of rice at concession rates as also cash compensation for the non-supply of 1 1/2 seers of rice by reason of the All-India Ration Scale. This was the concession which was being enjoyed by the workmen and that was the concession which, was preserved to the workmen under paragraph 2 of the notification.

13. We are, therefore, of the opinion that the conclusion reached by the Labour Appellate Tribunal in the award under appeal was correct and we accordingly order that the appeal shall be dismissed. The appellant will pay the respondents costs of this appeal.