Supreme Court of India
Calcutta Port Sharmik Union vs Calcutta River Transport ... on 13 September, 1988
Equivalent citations: 1988 AIR 2168, 1988 SCR Supl. (2)1034
Author: E Venkataramiah
Bench: Venkataramiah, E.S. (J)

PETITIONER:
CALCUTTA PORT SHARMIK UNION

Vs.

RESPONDENT:
CALCUTTA RIVER TRANSPORT ASSOCIATION & ORS.

DATE OF JUDGMENT13/09/1988

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
OJHA, N.D. (J)

CITATION:
1988 AIR 2168 1988 SCR Supl. (2)1034
1988 SCC Supl. 768 JT 1988 (3) 670
1988 SCALE (2)955

ACT:
Dock Workers (Regulation of Employment) Act , 1948: Section 2(b)--'Dock worker'--Whether includes bargeman--'Dandees' and 'Majhis'--Whether bargeman entitled to receive wages and allowances recommended by Wage Board.
%
Industrial Disputes Act, 1947: Sections 7B and 10 (IA)--Tribunal--Reference to presumption that there is a dispute between parties--Courts exercising judicial review should sustain as Jar as possible the awards of tribunals--Whether bargeman entitled to wages recommended by Wage Board--Tribunal examining decision of Wage Board whether bargemen are 'workmen'--Whether valid.

HEADNOTE:
The Government of India set up a Wage Board for the port and dock workers at major ports on November 13, 1964(1) to determine the categories of employees who should be brought within the scope of proposed wage fixation, and (2) to work out a wage structure for those employees on the basis of the guidelines laid down by the Government. The Wage Board submitted its final report on November 29, 1969. The Wage Board did not choose to make any recommendation in respect

of bargemen, i.e., Dandees and Majhis at the Port of Calcutta. According to the Wage Board, the bargemen were engaged more in the transport of cargo rather than its handling and they therefore did not fit in with the definition of 'dock worker'. Thereupon, the bargemen raised an industrial dispute claiming the benefit of the Wage Board recommendations. Accordingly, the Central Government on August 22, 197o constituted a National Tribunal at Calcutta for adjudication whether the recommendations of the Wage Board were applicable. to the bargemen, and if not, to what relief with regard to wages and allowances were they entitled.

The National Tribunal held that the bargemen were entitled to be paid wages and allowance at the rates of wages recommended by the Wage Board on the ground that the bargemen came within the meaning of the definition of 'dock worker' and thus the recommendations of the Wage Board were applicable to them, and alternatively, on the ground that

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they were entitled to the same rates of wages and allowances even independently~ having regard to the financial capacity of the management and all other relevant considerations governing the determination of the wages.

Aggrieved by the award of the National Tribunal, the managements filed two writ petitions before the High Court at Calcutta questioning its validity on the ground that it was beyond the scope of the reference.

The learned Single Judge observed: (1) that the scope of the reference was to find out from the report of the Central Wage Board itself whether the recommendations were applicable to the bargemen or not, and it was not for the National Tribunal to criticise the report of the Central Wage Board and to establish that the bargemen were dock workers within the meaning of the Act; (2) the National Tribunal, in a round about way, made the recommendations of the Central Wage Board applicable to the bargemen although apparently the recommendations were not applicable to them, and (3) the National Tribunal having held that the recommendations of the Central Wage Board were applicable to the bargemen, there was no scope for it to decide independently the pay structure of the bargemen. The learned Single Judge accordingly quashed the award as beyond the jurisdiction of the National Tribunal.

The Division Bench, on appeal, agreed with the Single Judge and further held that the National Tribunal had failed to fix the wages in accordance with the settled principles.

Allowing the appeal, it was,

HELD: (l) The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that

there is a genuine industrial dispute between the parties which requires to be resolved by adjudication In all such cases an attempt should be made by Courts exercising power of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds.[1042B-C]

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(2) In order to decide the question whether the bargemen were dock workers or not the National Tribunal had to examine incidentally the correctness of the decision of the Wage Board on the question, and after taking into consideration all the material before it the National Tribunal had come to the conclusion that the bargemen were also dock workers and there was no justification for denying them the benefit of the recommendations of the Wage Board. This part of the Award could, therefore, be considered to be outside the scope of the reference made to the National Tribunal. The finding recorded by the National Tribunal may be right or wrong but it could not be considered as one recorded without jurisdiction. [1048B-D]

(3) The National Tribunal while holding that even independently of the recommendations of the Wage Board, the bargemen were entitled to the same wages and allowances which had been recommended by the Wage Board had observed that it would not be beyond the capacity of the employers to pay. The criticism of the award in this regard by the High Court was wholly unjustified. [1048E-F; 1049A]

(4) The wages and allowances fixed by the National Tribunal were just and not at all excessive. [1049E]

Express Newspapers (Private) Ltd. and Anr. v. The Union of India and Others, [1959] S.C.R. 12 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3564-65 of 1979.

From the Judgment and Order dated 6.3.1979 of the Calcutta High Court in F.M. Appeal Nos. 446 & 447 of 1978. S.K. Nany for the Appellant.

G.L. Sanghi, D.P. Mukharjee, Praveen Kumar and G.S. Chatterjee for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. It is unfortunate that nearly 15,000 bargemen, i.e., Majhis the Dandees working at the Calcutta Port have been denied their right to receive reasonable wages and allowances for nearly 12 years on account of a very narrow view taken by the Calcutta High Court in the decision under appeal.

PG NO 1037 The Government of India set up a Wage Board for the port and dock workers at major ports on November 13, 1964 and made a reference to the said Board of the following terms, namely--

(a) to determine the categories of employees (manual, clerical, supervisor, etc.) who should be brought within the scope of proposed wage fixation (excluding, however, the Class I and Class II Officers); and

(b) to work out a wage structure based on the principle of fair wages as set forth in the report of the Committee of Fair Wages.

In making the reference the Central Government laid down guidelines as to how the fair wages were to be determined and further directed the Board to submit its recommendations in respect of interim relief pending submission of the final report. The Wage Board submitted its recommendations regarding the interim relief on April 9, 1965 and in the course of the said recommendations it observed that they would be applicable to certain categories of employees and port and dock workers at major ports.

The Wage Board submitted its final report on November 29,1969. Since the Wage Board had been authorised under the terms of reference to determine the specific categories of dock workers and employees who in the opinion of the Board should be brought under the scope of the principles of wage fixation, the Wage Board had specified the categories of workers who were entitled to relief at its hands even at the stage of making of the interim recommendations, referred to above. At this stage it is necessary to refer to the definition of the expression 'dock worker' in the Dock Workers (Regulation of Employment) Act, 1948 (hereinafter referred to as 'the Act'). Clause (b) of section 2 of the Act defines the expression 'dock worker' thus:

"2(b). 'dock worker' means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port. "

The above definition of 'dock worker' is of wide import and it includes all categories of workers working in a port or in the vicinity, if they are handling cargoes. But the Wage Board, however, did not choose to make any PG NO 1038 recommendation in respect of bargemen, i.e., Dandees and Majhis at the Port of Calcutta, who were more than 15,000 in number. As a matter of fact there was an earlier reference by the State Government of a dispute regarding the wages payable to bargemen, i.e., Dandees and Majhis at the Port of Calcutta and the Industrial Tribunal had by an award dated March 9, 1966 fixed their basic wages at Rs.110 and Rs.130 per month respectively. There were also certain ad hoc increments of such wages by different interim agreements. When these categories of workmen found that the Wage Board had not made any recommendation regarding the wages payable to them, they raised an industrial dispute claiming the benefit of the Wage Board recommendations. Accordingly, the Central Government on August 22, 1970 constituted a National Tribunal at Calcutta and referred to it under section 7-B and section 10(1A) of the Industrial Disputes Act, 1947 the following issue for adjudication, namely,--

"Whether recommendations of the Central Wage Board for the Port and Dock workers as accepted by the Central Government in their resolution No. WB-21(7)/69 dated the 26th March, 1970 are applicable to the bargemen in the matter of wages and allowances? If not to what other relief with regard to wages and allowances are they entitled?" In the statement of claims filed by the trade union representing bargemen it was contended that barges, lighters and boats performed the combined functions of transit sheds, warehouses, jetties, quays, wharfs on a miniature scale and enabled loading and unloading of cargoes into and from ships, and that they carried almost all the cargoes from mills, factories and establishments located at the back of the river as it was found to be advantageous and economical to use barges, lighters and boats for loading and unloading of cargoes into and from ships because of all round lower costs. Accordingly, the trade union claimed that barges, lighters and boats were engaged in dock works and the workmen concerned fully conformed to the definition of 'dock workers' as given in the Act. It, therefore, claimed that the bargemen were also entitled to the scale fixed by the Wage Board in Paragraph 7.2.108 of its final report. Alternatively, the union claimed that if their wages were to be assessed independently then they were entitled to d minimum wage of Rs.206.40 paise on the very same considerations which led the Wage Board in its recommendations to fix the minimum wage figure as incorporated in Paragraphs 7.1.19 to 7.1.70. The employers on the other hand and mainly the two Yassociations PG NO 1039 representing the employers in their counter statement made out a case that bargemen did not come within the definition of 'dock workers' and were not covered by the Wage Board recommendations since they were employed mainly in the transportation of goods. According to them the bargemen were employed in carrying jute and jute goods from jute mills to ships berthed in and around the docks from mills to mills, jetties and ghats and also cargoes from ships to various places in the State of West Bengal. The managements claimed that the bargemen were neither wholly engaged in docks and streams nor were they involved in the process of unloading and loading. In support of this claim the managements depended upon the findings of an Expert Committee appointed by the Central Government to the effect that bargemen were engaged more in the transport of cargo rather than its handling and they therefore did not fit in with the definition of 'dock worker.,'. In that view the employers contended that the first part of the reference was totally misconceived inasmuch as on the recommendations of the Wage Board itself the bargemen did not come within its purview. Secondly, the employers disputed the correctness of the wage fixation as made by the Wage Board with reference to certain alleged infirmities pointed out by them including the infirmity of the Board not considering the capacity of the industry to pay as laid down by the Courts. So far as the second part of the reference was concerned, the employers urged that the wages of the bargemen had been fixed by the Industrial tribunal on a reference by the Government of West Bengal made on 4. l.1965 and that the wages so fixed had been revised from time to time by agreement between the parties and there being no change in the circumstances justifying any further revision thereof, there should be no upward revision of the existing wage structure. They also pleaded that the financial capacity of the employers did not permit any further enhancement in the wages. The National Tribunal after overcoming certain preliminary obstacles placed before it by the institution of a writ petition in the High Court of Calcutta by the management questioning the validity of the reference itself, was able to pass an award on 20.7.1976. The National Tribunal held that since the bargemen, i.e., Dandees and Majhis were dock workers they were entitled to get wages and allowances in accordance with the Wage Board recommendations. After taking into consideration the relevant circumstances, the National Tribunal also held that the Dandees and Majhis working under the members of the

Calcutta River Transport Association, and of the Bengal River Transport Association and under the Port Shipping Co. Ltd. were entitled to payment of higher wages and allowances PG NO 1040 w.e.f. 1.1.1976 even independently of the recommendations of the Wage Board but at the same rates which had been recommended by the Wage Board, which were considered by the National Tribunal reasonable in the circumstances of the case. This part of the award was made pursuant to the second part of the reference made to the National Tribunal. Aggrieved by the award of the National Tribunal, the managements filed two writ petitions before the High Court of Calcutta questioning the validity of the award. The learned Single Judge, who heard the writ petitions, was of the view that the award was liable to be set aside as it was beyond the scope of the reference. The learned Single Judge observed in the course of his order dated 4.4.1978 thus:

"The reference has two parts. One part relates to the applicability of the recommendation of the Central Wage Board for Port and dock workers to the Bargemen in the matter of wages and allowances, the other part relates to the wages and allowances the Bargemen are entitled to if the recommendations of the Central Wage Board are not applicable to the said Bargemen As regards the first part, the scope of reference is, to find out from the report of the Central Wage Board itself whether the recommendations are applicable to the Bargemen or not The tribunal in exercising its jurisdiction is only bound by the terms of reference. The Jurisdiction is confined to the actual points of disputes referred to. In the instant case, the reference was whether the recommendation of the Central Wage Board was applicable to the Bargemen or not. It is not for the tribunal to criticise the report of the Central Wage Board and to establish upon oral and documentary evidence that the Bargemen are dock workers within the meaning of the Act, and as such they are entitled to the wage recommended by the Central Wage Board lo the Bargemen of the Calcutta Port.

Rightly or wrongly the Central Wage Board arrived at a particular conclusion. The National Tribunal. it seems, acted as a Court of Appeal. found fault with the recommendations arrived at by the Central Wage Board and criticised its recommendation in saying that the word PG NO 1041 "wholly engaged" did not find place in the definition of dock workers in Sec. 2(b) of the Act of 1948 and the Wage Board came to a wrong conclusion which was inconsistent with the definition of the dock workers in the Act. In a round about way, the National Tribunal made the recommendations of the Central Wage Board applicable to the Bargemen although apparently the recommendations are not applicable to them. In my view, in doing so and in making such an award the Tribunal has exceeded its jurisdiction.

In making the reference, the Central Government was conscious that the recommendation of the Central Wage Board might not be applicable to the Bargemen although the Bargemen made demand for implementation of the said recommendation and raised a dispute. That is why, the second part of the reference was there. The National Tribunal could have come to an independent conclusion that the Bargemen are dock workers and they should be paid similar wages as recommended by the Central Wage Board with respect to the Bargemen of Calcutta port. The Tribunal answered the first part of the reference and held that the recommendation of the Central Wage Board would be applicable to the Bargemen, as such there was no scope for deciding the second part of the reference although the Tribunal dealt within its Award the pay Structure of Dandees and Majhis, which should not have been done.

On the basis of the above findings the learned Single Judge quashed the award passed by the National Tribunal. Aggrieved by the decision of the learned Single Judge, the trade union filed an appeal before the Division Bench of the High Court. The Division Bench by its judgment dated 6.3.1979 affirmed the judgment of the learned Single Judge. The Division Bench was of the view that there was a serious doubt as to whether all dock workers answering the definition of 'dock workers' in the Act were entitled to be brought within the scope of the proposed wage fixation by the Wage Board. So far as the second issue was concerned, the Division Bench held that the National Tribunal had failed to fix the wages in accordance with the settled principles. It also agreed with the finding of the learned Single Judge that the decision of the National Tribunal was beyond its jurisdiction. which was controlled by the questions referred to it for adjudication. Aggrieved by the PG NO 1042 decision of the Division Bench, the trade union has filed these appeals by special leave under Article 136 of the Constitution of India.

The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to being about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial re,view to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis. In the present case the National Tribunal has held in Paragraph 27 of its award that the reference related to the determination of the wage structure in respect of bargemen, i.e., Dandees and Majhis working in or about the Calcutta Port and to none other. There is no dispute on this question before us. We shall proceed on that basis.

The reference on made on 22.8.1970, The validity of the reference itself was questioned by some of the managements in a writ petition filed in the High Court. That writ petition was dismissed on 24.1.1972. Against the dismissal of the writ petition a writ appeal was filed before the Division Bench of the High Court which was unconditionally withdrawn on 11.7.1974. During this interval there were atleast two strikes and some attempts at settlement between the parties. The settlements did not conclusively put an end to the dispute. In the aforementioned settlements which were only of interim character it was made certain that the demands of the workmen concerned for the enhancement of wages and allowances to be paid to the barge men, both on the basis of the recommendation of the Wage Board as well as on the basis of their alleged legitimate claim for enhancement in spite of the Wage Board award, were to be decided by the National Tribunal. During the period of four years between the date of the reference and the date on which the writ appeal was withdrawn from the High Court there were changes in the Presiding Officers of the National Tribunal- Shri B.N. Banerjee was the Presiding Officer of PG NO 1043 the National Tribunal at the time when the reference was made. On his retirement on 24.6.1971 Shri S.N. Bagchi was appointed as Presiding Officer. On the retirement of Shri S.N. Bagchi on 31.1.1974 Justice E.K. Moidu was appointed as the Presiding Officer on 18.7.1974. The reference was finally heard and decided by Justice E.K. Moidu. When the hearing of the reference was resumed by the National

Tribunal after the disposal of the Writ Appeal before the High Court some of the managements raised several preliminary objections before the National Tribunal. They were all rejected by the National Tribunal for the reasons given in the course of its award (vide Paragraphs 10 to 15 of the award). The National Tribunal rightly observed that the reference in question consisted of two distinct parts viz. one part relating to wages and allowances to be paid to the bargemen on the basis of the recommendations of the Wage Board and the other part relating to the wages and allowances to be fixed in favour of the bargemen on the basis of the demands made by the bargemen independently of the recommendations of the Wage Board. The National Tribunal rejected the contention of the managements that the second part of the reference could not be considered by it as under the settlement dated 25.7.1970 what was sought to be referred to it was only the dispute relating to the implementation of the recommendation of the Wage Board and not the general claim made by the bargemen for enhancement of their wages and allowances by fixing a wage structure. The National Tribunal pointed out that both parties had agreed in Exhibit M-5(a), which was a settlement, that the Government should refer the dispute to an appropriate tribunal and that right was left to be decided by the Central Government. The Central Government thereafter had referred the matter to the National Tribunal for its decision and hence, it could not be held that the second part of the reference was without any basis. The National Tribunal then proceeded to consider the two points referred to it independently. The first part of the reference, as already stated, related to the application of the Wage Board award to the bargemen, i.e., Dandees and Majhis. In order to decide the said question the National Tribunal had to take into consideration the recommendations made by the Wage Board. While the Wage Board had accepted that the definition of the expression 'dock worker' found in the Act was relevant for purposes of determining the scope of the reference made to it, it however declined to make any recommendation in respect of the bargemen working in the Port of Calcutta. even though it felt that the conditions of service and emoluments of the bargemen at Calcutta were unsatisfactory. The Wage Board observed in the course of its recommendation thus:

PG NO 1044 "Bargemen are engaged more in the transport of Cargo rather than in its handling and they therefore do not fit in with definition of dock workers. They are also workers who have to be attached to or employed at particular barges (sic). We recommend that the Government should make an early investigation into their conditions of services, emoluments, etc. which are stated to be highly unsatisfactory (unanimous)."

After the recommendations of the Wage Board were received by the Government of India, the Government of India by its order dated 26.5.1970 requested the Calcutta Dock Labour Board and the Commissioners for the Port of the Calcutta and concerned employers to implement expeditiously the recommendations of the Tripartite Expert Committee in the light of the observation made by the Government. The Government of India by a letter written by the Joint Secretary, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) dated 15.6.1970 to the Secretary, Government of West Bengal drew the attention of the Government of West Bengal to the terms of reference under the Tripartite Expert Committee for Calcutta Dock and the recommendations of the Committee pertaining to bargemen and pointed out inter alia that the barge crew did not come under the term 'dock worker' as alleged by both the Central Wage Board as well as by the Tripartite Expert Committee. It, however, requested the State

Government to consider the question of setting up a committee for bargemen of Calcutta Port and to keep the Central Government informed of the developments. No action was taken on the basis of the above letter. It was the case of the bargemen that they were dock workers as defined in the Act and the denial of the benefits under the recommendations of the Wage Board was wrong. It appears that at some stage even the Central Government was not quite sure of the position whether bargemen, i.e., the Majhis and Dandees could be classified as dock workers. The bargemen, therefore, thought that it was proper to approach the Central Government to refer the dispute in question to a tribunal.

The National Tribunal after taking into account the above events and the evidence recorded by it and the submissions made by the parties held that the definition of 'dock worker' did include within its scope bargemen too but the Wage Board had erroneously failed to make any recommendation with regard to the wages and allowances payable to the bargemen. The National Tribunal held that "they (bargemen) live in the barges, cook food and sleep PG NO 1045 there and stay in the barges for 24 hours of the day. So, they form part and parcel of the dock workers." In paragraphs 24 and 25 of the award the National Tribunal observed thus:

"The above evidence both on the union's side as well as on the management's side establishes that Majhis and Dandees have been doing similar work of other Dock Workers employed by the Calcutta Dock Labour Board in the matter of loading and unloading of Cargo in and out of the barges. The Wage Board, however, restricted the scope of the word "Dock Worker" with a view to exclude the bargemen out of the definition of dock worker as defined in Act 9 of 1948. In paragraph 4 of the Wage Board report the Board stated that the definition of dock workers in Act 9 of the 1948 was very wide and may be construed to mean all categories of workers working in a port or in the vicinity, if they are handling cargo. But once the bargemen come into the purview of the definition of dock workers as defined in Act 9 of 1948, there was no ground for excluding bargemen from the definition. They had to admit that bargemen are also working in the Ports. The most prominent activity in a port is cargo handling and it is in this work that a lot of labour is employed. In most of the ports a fairly large quantity of cargo is handled overside in the docks or in the stream by lightermen. This aspect of the case had been understood by the members of the Board. They had given a restricted meaning to the definition of dock worker . . . The definition of the dock workers has to be under-stood in the light of not only their work in the port but also consistent with the definitions of cargo, vessel, employer and the port in the Acts referred to above. The terms, loading, unloading and movement of persons employed in any port in connection with the preparation of Ships or Vessels for the receipt or discharge of cargo would indicate that the work of the bargemen came rightly within the definition of dock workers as defined in Act 9 of 1948. There is plenty of evidence in the case that their main work and activity is within the Port. The fact that one of the companies had made use of them to go beyond the port by itself does not in any manner bring down their description to make them less as dock workers. The Shipping Company has caused to be produced PG NO 1046 Ext. M-44. They are printed copies of bills. Most of these bills came into existence after the controversy had set in. It is true that there are some bills of the years, 1964 and 1965. But it is not possible from those bills to make out whether the Shipping Company used barges or other crafts for the purpose of carrying goods to distant places. The inner foils of these printed slips had also not been produced. There is nothing to show that they are genuine slips maintained by the persons who issued the same. In the absence of correct material it is difficult to hold that the

Shipping Company had taken its barges outside the Port limits. Any way, even assuming that they had taken the barges outside the Port limits that circumstance alone will not make the bargemen less Dock Workers in the facts and circumstances of this case. l have gone through the evidence in its entirety and I am satisfied from the available evidence and records that the Wage Board as well as Chatterjee Committee deviated from the definition of the Dock Workers as defined in Act 9 of 1948 and came to a wrong conclusion which is inconsistent with the definition of the dock worker in that Act with the result that the bargemen were deprived of their due share of wages to be paid to them on the basis of the recommendation they made in the report of the Wage Board. I am satisfied that the evidence in the case leads to the only conclusion that the bargemen are dock workers within the meaning ot dock workers as defined in Act 9 of 1948. It follows therefore that the bargemen would be entitled to all the benefits by way of wages and allowances which the Wage Board recommended in their report." Having held that the bargemen, i.e., Majhis and Dandees were also dock workers, the National Tribunal observed that the recommendations made by the Wage Board were applicable to the bargemen also and they were entitled to be paid the wages and allowances in accordance with the said recommendation.

Alternatively the National Tribunal took up for consideration the second question referred to it, namely. that if for any reason the bargemen were not entitled to the benefits under the recommendations made by the Wage Board to what other relief with regard to the wages and allowances they were entitled? In that connection the National Tribunal observed at paragraph 37 of its award thus:

PG NO 1047 "37. The next question for consideration is the second part of the reference. i.e., whether the Dandees and Majhis would be entitled to enhanced wages, and allowances and if so what would be the rate of their monthly wages and allowances. This has to be decided independently of the recommendations of the Wage Board on the materials available on record. The rates of wages and allowances under the 2nd part of the Award has to be determined as if the rate under the Wage Board is fair wage and not minimum wage. Taking into consideration the evidence and all other facts and circumstances borne out from the records of this case there is justification for fix-ing the rate recommended by the Wage Board as the fair wage due to be paid to the Dandees and Majhis with effect from 1-1-1976. "

In deciding the second question the National Tribunal placed before itself the principles laid down by this Court in Express Newspapers (Private) Ltd. and Anr. v. The Union of India and Ors., [1959] S.C.R. 12 which had laid down the relevant criteria for the fixation of rates of wages for workmen and considered the evidence placed before it in the light of the said principles. It took into consideration the financial capacity of the various managements who were involved in the case, the prevailing conditions of service in Calcutta and other questions governing the determination of the fair wages. It also took into consideration the observations made by the Wage Board which for purposes of fixing wage rates had taken into consideration the relevant matters while making its recommendations with regard to certain categories of workmen working in the Calcutta Port. It found that almost all the managements who had given evidence before it were capable of bearing the financial burden which would have to be borne by them on account of the payment of fair wages to be fixed by it. It found that having regard to all the circumstances of the case that the fair wages and

allowances payable to the bargemen with effect from 1- 1- 1976 should be the same as the fair wages payable pursuant to the recommendations made by the Wage Board.

After giving our anxious consideration to the entire Award and to the judgments of the learned Single Judge and the Division Bench of the Calcutta High Court we feel that both the learned Single Judge and the Division Bench of the High Court erred on the facts and in the circumstances of the case in setting aside the Award passed by the National Tribunal. As observed by the learned Single Judge himself' PG NO 1048 that the first question, namely, whether the recommendations of the Central Wage Board for the Port and Dock workers as accepted by the Central Government were applicable to the bargemen in the matter of wages and allowances was referred to the National Tribunal by the Central Government as there were doubts regarding the question whether the bargeman came with in the meaning of the definition of 'dock worker' in the Act or not. Naturally in order of decide the said question the National Tribunal had to examine incidentally the correctness of the decision of the Wage Board on the question whether the bargemen were dock workers or not and after taking into consideration all the material before it the National Tribunal had come to the conclusion that the bargemen were also dock workers and there was no justification for denying them the benefit of the recommendations of the Wage Board. This part of the Award cannot, therefore. be considered to be outside the scope of the reference made to the National Tribunal. The learned Single Judge and the Division Bench of the High Court were therefore in error in finding that the National Tribunal had exceeded its jurisdiction while recording its findings on the above question. The finding on the said question recorded by the National Tribunal may be right or wrong but it cannot be considered as one recorded without jurisdiction. We are of the view that the said question clearly fell within the first part of the reference made to the National Tribunal. Having held that the finding that the bargemen were also dock workers had been recorded by the National Tribunal without jurisdiction the learned Single Judge proceeded to quash the finding recorded by the National Tribunal on the second question also by which the National Tribunal had held that even independently of the recommendations of the Wage Board, the bargemen were entitled to the same wages and allowances which had been recommended by the Wage Board having regard to the financial capacity of the managements and all other relevant factors governing the question of wages payable to them. The Division Bench also erred in observing that the National Tribunal had not applied the relevant principles governing the determination of fair wages. It erred in observing that the National Tribunal had taken into consideration the financial capacity of the port authorities to pay wages and allowances and not of the private employers like those who had challenged the Award in the High Court. The Division Bench, however, has observed in the course of its order that no doubt in the Award some reference was made to the financial capacity of some of the employers but that had been done only to support the conclusion that the minimum wage as fixed by the Wage Board should be admissible to these workmen and that it would not be beyond the capacity of the employers to pay the same. On going through the Award PG NO 1049 we feel that the above criticism of the Award made by the National Tribunal is wholly unjustified. It has dealt with the second part of the reference in paragraphs 37 to 44 of the Award which are found in pages 146 to 157 of the Paper Book placed before us. The National Tribunal has given reasons as to why it has adopted, while answering the second part of the reference to it, the recommendations of the Wage Board.

The learned Single Judge and the Division Bench of the High Court should have seen that the National Tribunal was of the opinion that the bargemen were entitled to be paid wages and allowances at the rates of wages recommended by the Wage Board on the ground that the Bargemen came within the meaning of definition dock workers under the Act and thus the recommendations of the Wage Board were applicable to them and alternatively on the ground that they were entitled to the same rates of wages and allowances even independently of the recommendations of the wage Board as according to the National Tribunal they were entitled to be paid at those rates having regard to the financial capacity of the managements and all other relevant considerations governing the determination of the wages. In these circumstances we feel that the reasons given by the learned Single Judge and by Division Bench of the High Court to set aside the Award passed by the National Tribunal are wholly unsustainable. The wages and allowances fixed by the National Tribunal were just and not at all excessive. We, therefore, set aside the judgment of the Division Bench of the High Court and also the judgment of the learned Single Judge of the High Court and restore the award passed by the National Tribunal. The award passed by the National Tribunal should now be enforced by the authorities concerned in accordance with law. These appeals are accordingly allowed. The appellant is entitled to costs which we quantify at Rs. 5,000.

R.S.S . Appeals allowed .