Supreme Court of India
Airlines Hotel (Private) Ltd. vs Its Workmen on 13 January, 1961
Equivalent citations: AIR 1962 SC 676, 1961 (3) FLR 85, (1961) ILLJ 663 SC
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Bench: P Gajendragadkar, K Wanchoo, K Dasgupta
JUDGMENT K.C. Das Gupta, J.

1. This appeal by special leave arises out of an industrial dispute between the appellant company, the Airlines Hotel Private Limited, Bombay, which runs hotel business in the city of Bombay and its workmen. The workmen had raised demands in regard to a number of matters including, wages, service charges and provident fund. The demand in the matter of service charges was divided into five heads, one of which was inspection of the company's accounts books, bills and receipt books etc., "to ascertain the correct amount collected by the management and due to the workers." The Government made a reference for adjudication by an industrial tribunal under Section 10 of the Act as regards all the demands, excepting one, viz., the demand for inspection of accounts in connection with the amount of service charges. The Tribunal made as award in favour of the workers as regards the demand on the question of wages and the demand for provident fund. The demand as regards service charges was rejected except that the Tribunal directed all outstanding arrears in respect of what the company admitted to be payable to workers to be paid within one month and that a direction was given for giving access to the workers to the books of account for the purpose of ascertaining the amount collected. The special leave granted by this Court was limited to three points, viz., (1) the matter of inspection of accounts ; (2) the wages ; and (3) the provident fund. With the other portions of the award we are not concerned in this appeal.

2. The appellant's main contention on the first question is that the Tribunal had no jurisdiction to give any direction to the appellant to give access to the workers to the account books in view of the fact that the Government had in terms refused to refer the dispute as regards the inspection of accounts. In our opinion, this contention should prevail.

3. On behalf of the workmen it was urged that the only result of the refusal of the Government to refer for adjudication the demand for inspection of accounts was that the Tribunal would have no jurisdiction to deal with this matter directly ; but that would not stand in the way of giving such directions as the Tribunal might think necessary as ancillary to its award on any other point in dispute. It is urged that the Tribunal has given this direction not as a decision on a matter which was not referred to it but only as incidental to the dispute as regards service charges that was in fact referred. If the question of inspection of accounts had not at all been raised so that there was no question of refusal to refer the question, there might perhaps be some scope for an argument that the question might have been considered as involved in and incidental to the question of service charges that was referred. That however is not the position here. As has already been pointed out, the workmen had mentioned five different heads of the demand for service charges, one of the heads being for inspection of accounts, in these words: -

"The management should place all the account books, bills and receipt books etc., from 1-1-57 onwards and relevant documents of the Airlines Hotel Private Ltd., before the representatives of

Bombay Hotels Kamgar Union for inspection to ascertain the correct amount collected by the management and due to the workers."

It was this demand which the government refused to refer because "the government was satisfied that there was no case for reference thereof to a tribunal for the reason that this demand was not reasonable." In these circumstances, there can be no justification for the view that what could not be done directly because of this refusal could be done indirectly on the plea that it was incidental. In our opinion, the Tribunal had no jurisdiction to give the direction as regards inspection of accounts. That direction must accordingly be set aside.

4. On the question of wages the demand which the Workmen's Union made in its letter dated May 25, 1957, was for the fixation of wage scales for different categories of workmen at the rates mentioned therein. It was the dispute arising out of this demand that was referred to the Tribunal in the very terms made in the letter of demand. The Tribunal has not, however, fixed wage scales but has directed increases to be made in the wages of different categories of workmen on an ad hoc basis -- one increment from January, 1959, another from January 1, 1960, and the third from January 1, 1961. As regards some of the categories he has also given a fixed minimum at which anybody should be recruited to that category in future.

5. Of the several criticisms made against these directions, on behalf of the appellant, we need consider for the present, only two. The first is that as the dispute referred was on the question of fixation of wage scale the Tribunal acted wrongly in refusing to fix the wage scale but giving ad hoc increases for three years.

6. The second criticism is that in any case the Tribunal was wrong in giving any increases in the wages of the workmen without giving a definite finding that the company had financial capacity to meet such increases. There is considerable force in both these criticisms. Assuming for the moment that there was nothing wrong in ad hoc increases being directed even though the demand was for a wage scale & the dispute referred was also on the question whether such wage scale as demanded should be allowed, there can be no question that before any increases could be ordered by any industrial adjudication the adjudicator had to be satisfied positively that the financial condition of the employer is such as will enable it to bear the additional burden imposed. The company in its written statement has made a definite case that "it is not in a position to advance the, existing wage structure of the company which itself is onerous." It then stated that the company's financial position was precarious, that it is struggling for its existence, that the share-holders had not been paid any dividend except for one year out of all these years. It stated also that since its inception the company had not been able to put back any amount by way of reserves or to create any fund to enable it to tide over difficult periods. The workman on the other hand contended that company was prosperous and was well able to shoulder the additional burden in the shape of increased wages. In view of this controversy it was the bounden duty of the Tribunal to come to a definite finding whether the company was so capable and only if it was satisfied that it was financially capable of bearing such an additional burden could there be any justification for increased wages. The Tribunal appears to have been conscious of the necessity of considering this question. But after stating that he could not deal with the balance-sheets and profits and loss statements submitted by the company as

they had been marked confidential it merely contented itself with saying that "from the balance-sheets of the last few years it does appear that the concern has been making a certain amount of profits from the Bombay Branch. It does appear however that it landed itself in difficulties by starting a Branch in London which resulted in a fairly heavy loss for about two years and that the concern has now closed the said Branch."

There is not only no indication as regards the extent of the loss except that it was fairly heavy nor the extent of "certain amount of profit"; if the profits are such as to put the company in sound financial position after recouping the loss there could be no objection to the imposition of additional burden if otherwise justified. But to impose an additional burden in the shape of increased wages without giving a definite finding as to the financial position is wholly improper.

7. Nor can we see any reason in the circumstances of the present case for ad hoc increase of wages for a limited number of years in lieu of the wage scales that were demanded by the workmen themselves. Explaining why that has been done the Tribunal states in para 31 of its award thus: -

"I may however add that in the hotel industry there are wage-scales prevailing in a large number of concerns. But I have not fixed wage-scales at the present juncture for two reasons, as it is not possible for me to fully anticipate whether the concern would be in a position to bear the progressive burden of incremental scales now cast and the wages awarded by me for several of the categories in fact exceed the maximum of the scales prevailing in a large number of units of this industry. I would not like that there should be too great a disparity between the scales awarded and those at present prevailing in other concerns."

8. This argument is entirely fallacious. If in fact the Tribunal is in doubt whether the additional burden can be borne that might be a reason for not increasing the wages at all. But there can be no half-way-house for increasing the wages for a short time only. Again, if the Tribunal thinks it improper that there should not be "too great a disparity" between the wages of the appellant company and those at present prevailing in other concerns, that is a matter to be taken into consideration in fixing the extent of the increase, but could not justify giving the increase for a short period.

9. While we think it undesirable to lay it down as an inviolable rule that if the dispute referred is on the question of wage scale ad hoc increases could never be given, there can be no doubt that ordinarily that should be so. On the facts of the present case there are no circumstances which would justify a departure from this ordinary rule. Demands which raised the dispute being for a wage scale and that being the dispute referred in terms the Tribunal could either grant the wage scale demanded in part or in whole or refuse the demand altogether. It was not justified in giving ad hoc increases in the manner as has been done here.

10. As the matter has not been considered properly by the Tribunal we think it desirable to remand the case for disposal on merits. We, therefore, set aside the order made by the Industrial Tribunal on the question of wages but remand the case to the Tribunal for disposal in accordance with law and in the light of the observations made above, on the evidence already adduced and on such further

evidence as either party may adduce. For this purpose proper opportunity should be given by the Tribunal to both the parties.

11. In allowing the demand for the introduction of a provident fund scheme the Tribunal has stated that there could hardly be any doubt that the workmen should have two retiring benefits wherever possible but in any event at least one retiring benefit as far as possible. While there can be no reasonable objection to this proposition the industrial adjudication has in deciding what retiring benefit should be granted to consider first and foremost the financial capacity of the employer to bear the additional burden imposed. Some regard has to be paid also to the practice prevailing in other units of the same industry in that region. Future prospects have also to be taken into consideration. None of these considerations have been taken into account by the Tribunal in the present case. It has contented itself with saying that "I am also not satisfied that it would be beyond the capacity of this concern to introduce a provident fund scheme on a reasonable basis", and it proceeded to frame a scheme. As we have already pointed out in connection with the question of increased wages the company made a definite case that it was in a precarious condition financially. That being the case it is rightly submitted that excepting the industries in which it is compulsorily introduced under the Provident Funds Act, 1925, a consideration of a demand for Provident Fund in any other concern, would only arise, if such concern have the capacity to bear the burden. In this state of the pleadings the negative finding of the Tribunal that it is not satisfied that it would be beyond the capacity of this concern to introduce a provident fund scheme on a reasonable basis can form no basis for the grant of a provident fund benefit.

12. Accordingly we set aside the Tribunal's award on the matter of provident fund. But here also we think it proper and reasonable that the matter should be disposed of on a proper consideration by the Tribunal of the financial capacity of the company and other relevant factors. Accordingly we remand this matter also to the Tribunal for disposal according to law and in the light of above observations, and on the evidence already adduced and on such further evidence as may be adduced by the parties.

13. The appeal is allowed in part. There will be no order as to costs.