INDIAN EXPRESS NEWSPAPERS (BOMBAY) (PVT.) LTD. & ANR. A

v.

INDIAN EXPRESS NEWSPAPERS (BOMBAY) EMPLOYEES UNION & ORS.

March 10, 1978 B

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

Constitution of India, 1950, *Art.* 136—*Interference by Supreme Court on the merits in an appeal against an industrial award—Construction of the language of a reference—Whether the reference in the instant case, included the pronouncement upon gratuity" to non-journalists* by the Tribunal.

The Central Government made a reference to the Industrial Tribunal in the following terms : C

> "Whether the recommendations of the Wage Board for non-journalist employees as accepted by Government by its Resolution No. WB-17(7)/67, dated the 18th November, 1967, are unfair or unreasonable and if so, what modifications are required therein to ensure a fair and just wage structure for the non-journalists, having due regard to the paying capacity of the respective newspaper establishment, the employer's agreement and the emoluments of employees engaged in comparable establishments." D

The National Tribunal gave an award covering many topics including gratuity. All the newspaper establishments, but one namely, the appellant, had fallen in line and left the award unchallenged. The appellant, however, challenged the very jurisdiction of the Tribunal to pronounce upon "gratuity", on the ground that it falls outside the reference itself.

Dismissing the appeal, the Court E

HELD : 1. Industrial jurisprudence is not static, rigid or textually cold, but dynamic, burgeoning and warm with life. It answers in emphatic negative the biblical interrogation; "what man is there of you, who if his son ask bread, will give him a stone ?" The Industrial Tribunal of India in areas unoccupied by precise black letter law, go by the Constitutional mandate of social justice in the claims of the 'little people'. [475 D-E]

2. It is not as if the Supreme Court of India shall not go back upon what was throughout understood by all before the Tribunal. The jurisdictional justification must be found in the Reference itself, not in the brooding, perhaps blundering, consciousness of litigants, liberality, not pendantry, guiding the construction of the language of the reference. [476 B-C] F

Management of Express Newspapers Ltd. v. *Workers and Staff* [1963] 3 SCR p. 540@ 555 followed.

3. This Court lends no countenance to submission on the merits in the absence o fflagrant violation of principles, gross travesty of justice and like extreme grounds, especially when the appeal is against an Award by an Industrial Tribunal. [481 B-C] G

4. 'Gratuity' and its quantum, like other retirement benefits, has a bearing on the wage structure and vice versa. It is true that the wage structure relates to the emoluments during service, while gratuity is a terminal benefit or, rather, a retirement benefit. Although these two fall into different compartments they are inter-connected. A heavy wage scale may have same impact on the gratuity rate and a large provision for gratuity may have its retroactive effect upon the wage structure. It is composite equity writ on the economic life of the worker. [477 G-H, 478 A] H

A In the instant case :—

5. (a) It is proved beyond reasonable doubt that the parties on both sides, at the level of pleadings, at the stage of arguments and in the rival process of contest, desiderated a decision on a gratuity scheme for non-journalists. Item 1 of the Schedule of the Reference, the proceedings before the Tribunal and the reasoning in the Award converge to the only conclusion reasonably available that the gratuity scheme for non-journalist workmen was covered by the
B reference. [478 H, 480 E-F, 481 A]

(b) The Tribunal was well within its jurisdiction in deciding on 'gratuity'. The Wage Board has made recommendations on gratuity (paragraph 4.28). Indeed, item 2 of the reference to the Wage Board which covers non-journalist employees involves gratuity. The management in its written statement before the Tribunal has contended that there was no justification for the Wage Board to apply the gratuity scheme as applicable to working journalists, to all the non-journalist employees. All these lead to the only conclusion that the scheme of
C gratuity recommended by the Wage Board was before the Tribunal for revision or modification. [478 B-C-G]

(d) The Tribunal's duty to decide a matter referred to it, could not be repelled merely because there was no separate plea by one of the many workmen's groups about gratuity; and [478 G]

(e) The recommendations made by the Wage Board and accepted by the
D Government admittedly include gratuity. The Tribunal has, *ex-necessitate*, to decide whether this recommendation on gratuity is unjust and unreasonable. This is what it has done. Secondly, it has to examine what modifications, *if any*, are justly necessary *therein*, i.e., in the Wage Board gratuity. This, again, is what has been undertaken by the Tribunal. [477 C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 530-32/71

E (Appeals from the Award dt. the 15th of July, 1970 of the National Tribunal Calcutta in References Nos. NIT-1 of 1968, NIT-2 of 1968 and NIT-1 of 1969 published in the Gazette of India Extraordinary dt. the 3-8-70)

G. B. Pai, O. C. Mathur & D. N. Mishra
For the Appellant

F *M. K. Ramamurthi, J. Ramamurthi & R. Vaigai*
For Respondent No. 1(a) in both the Appeals.

O. P. Rana : For Respondent No. 1 in CA No. 530/71.

The Judgment of the Court was delivered by

G KRISHNA IYER, J.—A free press can summon its flaming vigour only if its journalistic and non-journalistic wings go into full swing with courage and contentment to make the printed end product that issues daily from the machine, so that the office of education and information the Fourth Estate must perform does not suffer. The community itself has vital concern in the working conditions of the dual human groups whose invisible work is crystallised daily and moved
H into mass circulation. In a democracy, news media and the men behind have a special value. Therefore, a few legislative and non-legislative measures have taken care of the working conditions of the

journalists and the non-journalists. We are concerned here with non-journalists and that portion of an award which has conferred standardised gratuity benefit on them. A

The importance of the enthusiasm, integrity and thoroughness of the silent army, which speaks daily in every issue of a newspaper, once underscored, the necessity for a square economic deal to these hands argues itself. A Free Press serves the nation successfully when it serves its family fairly. Even an army marches on its stomach. And retirement benefits bear upon anxiety for the aging future in this mortal world and impact upon contentment in the working life. Such is the law of the tenses and the human lot. Pressmen are no exception. B

This national concern quickened the Government to make a reference to the Industrial Tribunal of certain questions of economic justice concerning non-journalist employees. The issues between leading members of the Press Proprietariat and the non-journalist Proletariat were spelt out for adjudication in a Reference and lack of clarity in its drafting has led to the bone of contention in this appeal. Perfunctory draftsmanship has a great potential for creating disputes even where there are none! This is Government's unwitting contribution to the present litigation! The National Tribunal assisted by considerable submissions from learned counsel, produced a massive award covering many topics, including gratuity, and all but one establishment viz., the appellant, have fallen in line and left the award unchallenged. The broad approach of the Tribunal vis-a-vis gratuity is coloured by social justice and informed by indicia gathered from this Court's dicta. Industrial jurisprudence is not static, rigid or textually cold but dynamic, burgeoning and warm with life. It answers in emphatic negative the biblical interrogation: "What man is there of you who if his son ask bread, will give him a stone?" The Industrial Tribunals of India, in areas unoccupied by precise black letter law, go by the constitutional mandate of social justice in the claims of the 'little people'. That touchstone led to the award which inter alia, granted gratuity to non-journalists altho' the positive evidence was little and the guidelines faint. The compass of the acute dispute in this appeal is the very jurisdiction of the tribunal to pronounce upon 'gratuity', the ground urged being that it falls outside the reference itself. C D E F

We may now set out the relevant reference to the National Tribunal: G

> "Whether the recommendations of the Wage Board for non-journalist employees as accepted by Government by its Resolution No. WB-17(7)/67, dated the 18th November, 1967, are unfair or unreasonable and if so, what modifications are required therein to ensure a fair and just wage structure for the non-journalists, having due regard to the paying capacity of the respective newspaper establishments, the employer's agreement and the emoluments of employees engaged in comparable establishments." H

A Mr. G. B. Pai in his very persuasive and pointed submission, rightly stressed that the Tribunal had only a limited jurisdiction, trammelled by the terms of reference—not beyond, and in his view the question of gratuity was outside the reference altogether. Were it so, that part of the award was an exercise in gratuitous futility, being an ultra-jurisdictional generosity. Notwithstanding Sri M. K. Ramamurthy's assertion that this Court shall not go back upon what was B throughout understood by all before the Tribunal, we have to find jurisdictional justification in the Reference itself, not in the brooding, perhaps blundering, consciousness of litigants. But we agree with Sri Ramamurthy that liberality, not pedantry, must guide the construction of the language of the reference (vide *Management of Express News Papers* v. *Workers & Staff*(1) Once the real controversy is clear, the verbal walls cannot narrow the natural ambit of the subject-matter; C especially in an equitable jurisdiction unbound by processual blinkers and niceties of pleading.

Let us therefore face the only issue in the appeal—no other argument was urged—whether the reference embraces gratuity. If it does not, no more arguments can salvage; If it does, no more submission can scuttle. So the forensic focus must turn on the first term of D reference which, on a closer look, calls into three parts. This trichotomy once grasped, the riddle of the case stands resolved.

The pre-amble to the reference sets the tone and lends the key and so a relevant excerpt may lead kindly light :

> "Whereas the Central Government is of the opinion that E an industrial dispute exist between the employers and workmen in the newspaper establishments mentioned in the Annexure, *in respect of the implementation of the recommendations of the Wage Board* for non-journalist employees, as accepted by the Central Government by the Resolution No. WR-17(7)/67, dated the 18th November, 1967, *in regard to the matter mentioned in the Schedule.*"

F It is plain that the Central Government was anxious to have the industrial dispute between the employers and non-journalist employees settled. What the industrial dispute that existed and needed solution was, could be dimly gathered from the 'Whereas' clause extracted above. The dispute was 'in respect of the implementation of the *recommendations of the Wage Board* for non-journalist employees' as accepted G by the Central Government by its resolution of November 18, 1967, 'in regard to *matters mentioned in the Schedule*'. So, the area of the dispute is prima facie, co-extensive with the recommendations of the Wage Board for non-journalist employees and the topics covered thereby, particularised in the Schedule to the Reference. It is common ground that the recommendations of the Wage Board for non-journalist employees did cover gratuity. Of course, the 'Whereas' clause is H not conclusive but suggestive. We have actually to go to the Schedule which specificates the actual dispute referred for adjudication. The

(1) [1963] 3 S.C.R. 540 @ 555.

anatomy of item 1 of the Schedule has now to be X-rayed. We have earlier quoted it, and its triple components may now be separated. The first and the second parts are substantive and read thus : A

(a) Whether the *recommendations of the Wage Board for* non-journalist employees *as accepted by Government* by its Resolution .....are unfair or unreasonable; and B

(b) *If so,* what modifications are required *therein* ?

The third part is not a point for adjudication but a goal-setter, a delineation of the overall objective or rather the parameter which must be kept in view. That is to say, the Tribunal must first adjudicate on the unfairness or unreasonableness of the recommendations of the Wage Board, as accepted by the Government. It must further adjudicate on what modifications are required in these recommendations, if it holds them unfair or unreasonable. To sum up the essentials of the first term of reference and its scope, we think that the jurisdictional sweep of the Tribunal is governed by the two parts we have set out. The recommendations made by the Wage Board and accepted by the Government admittedly include gratuity. The Tribunal has, *ex necessitate,* to decide whether this recommendation on gratuity is unjust or unreasonable. This is what it has done. Secondly, it has to examine what modifications, *if any,* are justly necessary *therein, i.e.,* in the Wage Board gratuity. This, again, is what has been undertaken by the Tribunal. In this view the next question is, what the purpose of the third limb of the reference can be. This is the bone of contention, in one sense, between the two advocates. Certainly, it is not otiose and has a role. In our view, it merely supplies the social objective of the adjudication on parts 1 & 2. It surely obligates the Tribunal, while deciding points 1 & 2, to have a specific perspective. That perspective is that the non-journalist employees must be ensured a fair and just wage structure, having due regard to the paying capacity of the establishment, the emoluments of employees in comparable concerns etc. "A fair and just wage structure" is not what the Tribunal is asked to decide *under the first term of reference.* Under this head it is called upon to decide only two matters, namely, the fairness/reasonableness or otherwise of the Wage Board's recommendations regarding gratuity, and, in the event of those recommendations being found to be unfair or unreasonable, to decide what modifications are required *'therein'* ? These modifications are geared to a certain goal, are calculated to subserve certain purpose, are intended to be oriented on a certain welfare ground norm. What is that goal, that objective, that perspective ? This is supplied by the last part of reference No. 1. That is to say, the Tribunal will adjudicate on the first two items, remembering that the end is the securing of a fair and just wage structure. Indeed, gratuity and its quantum, like other retirement benefits, has a bearing on the wage structure and *vice versa.* It is true that the wage structure relates to the emoluments during service, while gratuity is a terminal benefit or, rather, a retirement benefit. Although these two fall into different compartments, C D E F G H

A they are inter-connected. A heavy wage scale may have some impact on the gratuity rate and a large provision for gratuity may have its retroactive effect upon the wage structure. It is composite equity writ on the economic life of the worker. We have said enough to indicate that the Tribunal was well within its jurisdiction in deciding on 'gratunity', the function of the last limb, 'a fair and just wage structure', being to shape the size of the gratuity, not to exclude gratuity
B from adjudication, to tailor it, not to throw it out.

This construction receives considerable comfirmation from certain other aspects of the case. For instance, the wage Board has made recommendations on gratuity (paragraph 4.28). Indeed, item 2 of the reference to the Wage Board which covers non-journalist em-
C ployees involves gratuity. The vital documents which impregnate the reference with content and meaning are the reference to the Wage Board and the recommendations that followed, and both of them deal with gratuity. We have more internal evidence to substantiate the soundness of our conclusion. The management, in its Written Statement before the Tribunal, has contended that "*there was no justification for the Wage Board to apply the gratuity scheme* as applicable to working journalists, *to all the non-journalist employees.* The
D special benefits conferred upon the Working Journalists under Act 45 of 1955 are highly excessive and unreasonable and in fact, the Working Journalists have been treated as a favoured class. There is no other class of employees in the country for whom such a legislation has been enacted. It should have been left to each newspaper establishment to evolve its own Scheme of gratuity, if the circumstances so permit and in accordance with its financial position *and a*
E *scheme of gratuity applicable to a particular highly paid class of employees should not have been extended to all non-journalist employees.*" Why did the management contend before the Tribunal that the Wage Board recommendation of gratuity scheme for non-journalist employees was unjustified? Why did they plead that those special benefits were excessive and unreasonable? Why should they have urged that it should have been left to each newspaper establishment to evolve its
F own scheme of gratuity and that such a scheme should not have been extended to non-journalist employees since they were highly paid? There is no explanation for this stance except that the management was trying to convince the Tribunal that the Wage Board recommendation of gratuity was 'unjust' and 'unreasonable', which means that they also understood that the scheme of gratuity recommended by
G the Wage Board was before the Tribunal for revision or modification.

Shri G. B. Pai urged that the workmen's statement contained no reference to gratuity. Maybe, they did not separately set up such a plea because others of their ilk in other newspaper establishment had pleaded it. The Tribunal's duty to decide a matter referred to it could not be repelled merely because there was no separate plea by one of the many workmen's groups about gratuity.

H There is other telling testimony that all the parties had proceeded on the clear footing that gratuity was covered by the terms of reference. Shri M. K. Ramamurthy took us meticulously through the

bulky award which covered six leading Newspaper establishments of India and the workmen under them. Paragraph 16, for example, while quoting the Wage Board recommendations, refers to gratuity to non-journalist employees. Similarly we find in paragraph 95, a specific plea by the workmen, represented by The Hindustan Times Employees Union, having a bearing on the gratuity scheme. Again in paragraph 114 the Tribunal refers to the contention of Mr. Sen, representing one of the newspaper establishment, criticising the gratuity recommendation of the Wage Board as unfair and Mr. Ramamurthy's contrary stand that the gratuity scheme should apply to journalists and non-journalists alike. Many other such references to arguments by counsel before the Tribunal, with pointed reference to the application of gratuity scheme to non-journalist employees were spotlighted. We may mention a few illustratively. Paragraph 121 refers to the Written Statement of certain newspaper establishment giving reasons why payment of gratuity should not be made applicable to non-journalist employees. Kindly look likewise at paragraph 140. It is interesting that on behalf of the workmen *i.e.*, (Indian Express Employees Union) : it is stated : "Moreover, no fringe benefits are also available to the workmen of the Indian Express in Delhi. Even *gratuity* which has been unanimously recommendable by the Wage Board and was never a point of dispute, is being denied to the workmen." The award in paragraph 163 and in paragraph 170, proceeds on the footing that the management also made common cause against the gratuity scheme for non-journalist employees.

Such doubts as may exist on this question are cleared by the Tribunal in paragraph 186, which reads thus :

> "Having thus cleared the grounds of the preliminary objections, I now proceed to *deliver my award on merits.* I first take up for consideration the first item of dispute in the reference, dated September 17, 1968, which again is the first item of dispute in the schedule of the Reference, dated October 7, 1968, and also the first item of dispute in the schedule to the order of reference dated March 7, 1969. The following may be taken to be the *broad lines of criticism by the management against the recommendations of Wage Board* :
>
> (i) .....
> (ii) .....
> (iii) .....
> (iv) .....
> (v) .....
> (vi) .....
>
> (vii) *Gratuity* should not have been left to the decision of the Supreme Court in the pending appeal regarding gratuity scheme applicable to Working Journalists,

A as per the provisions contained in the Working Journalists (Condition of Service) and Miscellaneous Provisions Act,1955, because in that appeal the present disputants are not parties.

(viii) .....

(ix) .....

B So no remonstrance against consideration of the issue of gratuity as a jurisdictional issue is raised there.

Having discussed the arguments of counsel on both sides and having dealt with various points of reference, the learned Presiding Officer went on to consider the scheme of gratuity. Of course, he mentioned the lack of evidence for a precise judgment and the C absence of help from either side to reach a reasoned conclusion :

> "My task is made more difficult because little evidence was led as to what should be the gratuity scheme for non-journalist workmen. It was not to the interest of the management to lead evidence because they would like very much to await the final decision of the Supreme Court on D the point. The workmen had no concrete suggestion to offer. I have, therefore, to essay into unsurveyed expanse with neither a compass nor a guide. All that I can do is to bear in mind the observations by the Supreme Court, on this topic, from time to time made and to attempt a gratuity scheme within the framework of those observations."

E Naturally, and, if we may say so rightly, the Tribunal sought guidance from the principles laid down by this Court on a blue-print for gratuity.

This longish discussion on gratuity could not have been a fruitless excursion and proves beyond reasonable doubt that the parties on both sides, at the level of pleadings, at the stage of argument and in F the rival processes of contest, desiderated a decision on a gratuity scheme for non-journalists. This bone of contention was included in the terms of reference (item 1). The long submissions by many counsel on behalf of the employers and employees were not idle debate. The plea for a full scheme of gratuity by the advocate for the workmen under the various other newspaper establishments was not submissions in supererogation. There is no hint in the Tribunal G proceedings that a scheme of gratuity was outside the pale of the Tribunal. No such objection was ever raised. Indeed, a tired Tribunal, confronted by enormous evidence and marathon arguments, would not have painstakingly sifted the grounds, sorted the evidence, cited the rulings and recorded the verdicts without being sure that all parties concerned and he himself understood the reference to include the matters contested before him, discussed by him and decided in H his award. The gratuity scheme for non-journalist workmen was one such and it is bafflement to accept the submission that the learned Tribunal, a retired judge of the High Court had ventured into an irrelevant terrain.

Thus, our understanding of item I in the Schedule of Reference, our study of the proceedings before the Tribunal and the reasoning in the Award converge to the only conclusion reasonably available that the gratuity scheme for non-journalist workmen was covered by the reference. No other point on the merits was argued although there was a feeble suggestion that the Award was more liberal than should reasonably have been. In fairness, we must state that barring a passing reference to this aspect, no serious contention was raised or, indeed, could be raised on the merits of the matter. This court lends no countenance to submissions on the merits in the absence of flagrant violation of principles, gross travesty of justice and like extreme grounds, especially when the appeal is against an Award by an Industrial Tribunal. In short, Sri G.B. Pai would not and could not convass the factual finding. The appeals are dismissed with costs of Respondent 1A. The order dated 30-3-1971 regarding payment of interest will be made part of this judgment.

A B C

S.R. *Appeals dismissed.*