भारत सरकार / Government of India

सरकारी राजपत्र
OFFICIAL GAZETTE

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन
U.T. ADMINISTRATION OF DADRA AND NAGAR HAVELI AND DAMAN AND DIU

श्रेणी - २
SERIES - II

प्राधिकरण द्वारा प्रकाशित / PUBLISHED BY AUHTORITY

Daman 23rd December, 2022 2 Pausa, 1944 (Saka) No. : 43

UT Administration of Dadra & Nagar Haveli and Daman & Diu
Department of Labour & Employment
Daman

No. LE/LI/DMM/Fact—7/2013-14/2022/883 **Dated: 19/12/2022**

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, an Award dated 12-11-2022 issued by the Hon'ble Presiding Officer, Industrial Tribunal, Daman in IDR No. 14/2014 in the matter of - (1) M/s. Suzlon Energy Ltd and (2) Shri Nilesh D. Patel & Ors is hereby published in the Official Gazette of this U.T. Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Mohit Mishra)
Joint Commissioner (Labour)
Daman

Contd….

Before the Lok Adalat, Daman

Case No. DC-IDR No. 14/2014 **Exh. 52**

Pending in the Court of Industrial Tribunal, Daman

Suzlon Energy Ltd. .....First Party

Versus

Nilesh D. Patel & Ors. .... Second Party

A W A R D

The matter is amicably settled before National Lok Adalat held on 12/11/2022 at Daman before panel consisting of Shri. Pavan H. Bansod, Civil Judge S.D. & CJM & Panel Head, Panel Members Advocate Shri A.R. Damania and Smt. Annapurna Chatse and award is passed as follow:

The statement of claim is filed by five elected representatives of employees of Suzlon Energy Limited. Four elected representatives are present and have signed compromise pursis. One elected representative namely, Dakshesh Mitna is not present and stated to be in London. His original affidavit Exh. 48 is filed wherein he has deposed to have compromised the matter regarding him with party No. 1 and has also stated that he is not concerned with the reference now. Hence, his presence is not required for compromise. The representative of party No. 1 is present and signed the compromise pursis Exh. 44. It is stated that the company has paid amounts to the workmen covered by this reference in lumpsum as one time settlement as mentioned in the list Exh. 49 (annexed herewith). The company has undertaken to pay the dues of other workmen as per the undertaking Exh. 45. It has undertaken to deposit that amount within one month in the Court. Verified from both parties that compromise is voluntarily arrived at. Hence, the compromise is recorded. Reference disposed of in above terms.

Award be sent to the Labour Commissioner for publication along with the annexures.

Date : 12/11/2022
Place : Daman

Signatures of Panel Member

1. Sd/–
P. H. Baned
Penal Judge

2. Sd/–
Damania Alpesh
Penal Member

3. Sd/–
Annapurna Shriram Chatse

Sr. No.	Employee Name	Total amount Paid as settlement
1	Balu Solanki	618773
2	Prakash Balavi	506743
3	Roopchand Chikane	694516
4	Ravindra Vendait	453949
5	Yogendra Vishwakarma	465509
6	Kiran Sankhat	439897
7	Surendra Ram	342516
8	Mukesh Chauhan	385940
9	Kamlesh Chavda	364543
10	Kamlesh Bambhania	388151
11	Dinesh Kushwaha	328001
12	Vijay Singh	439171
13	Nileshkumar K. Gadhavi	356969
14	Sahoo Khageswar	332490
15	Bindesh Pandya	330362
16	Mukesh Kumar	330635
17	Jitendra Kumar	319877
18	Koleshwar P. Chaudhari	286814
19	Amit G. Singh	297805
20	Saukatali R. Khan	316115
21	Daxesh U. Mitna	410254
22	Alpeshkumar I. Parmar	307334
23	Yashpal Verma	327178
24	Piyushkumar D. Bhandari	364669
25	Sunil D. Patel	292259
26	Pragnesh T. Patel	286376
27	Girish K. Patel	286008
28	Pareshkumar N. Tandel	297751
29	Dhanshyambhai N. Tandel	300090
30	Naynesh A. Lad	293431
31	Sushil K. Patel	295515
32	Bidhu B. Barik	289725
33	Manojkumar R. Lad	308229
34	Hitesh J. Patel	300159
35	Jayesh V. Patel	296160
36	Rakesh Bhai J. Patel	255648
37	Umesh Kumar R. Patel	296209
38	Sunilkumar B. Saini	285275
39	Bhaveshkumar T. Patel	268563
40	Bipinbhai K. Patel	267986
41	Girishkumar S. Rathod	281348
42	Ashvinkumar B. Chavda	261789
43	Bhaveshkumar B. Patel	276478
44	Shaileshbhai R. Patel	269587
45	Jagdish Prasad	411847
46	Ranjitsinh B. Zala	366546

47	Ranjitsinh O. Gohil	274553
48	Anil Kumar Shukla	261215
49	Murli Singh	325927
50	Ritesh V. Darji	286003
51	Bipin Chandra C. Tandel	294717
52	Pramod Dhumal	361642
53	Mali B. Daulat	328829
54	Jignesh P. Patel	319348
55	Ranjitsinh B. Jadhav	327258
56	Mahendrakumar S. Mali	321790
57	Kiritkumar N. Tandel	324548
58	Hasmukh M. Gohil	308853
59	Viralkumar A. Patel	307425
60	Kamlesh T. Mistry	309683
61	Umesh T. Tandel	289663
62	Anil R. Patel	316785
63	Nilesh M. Patel	295465
64	Kalpeshkumar B. Patel	281019
65	Dineshkumar S. Patel	306385
66	Kalpesh A. Lad	301424
67	Hiteshkumar J. Patel	304792
68	Hemantkumar B. Patel	281808
69	Valmik H. Dhimmar	296835
70	Mitesh B. Lad	299588
71	Hiren D. Patel	286753
72	Himansu H. Untekar	297481
73	Amar S. Marathe	293360
74	Divyeshkumar B. Patel	310533
75	Mahendra R. Patel	346380
76	Jigneshkumar J. Mistry	310653
77	Vikasbhai D. Patel	339369
78	Tejas R. Patel	283224
79	Jagadeesh K. Barudia	306636
80	Kamal N. Mahyavanshi	289161
81	Umesh M. Sarvaiya	281772
82	Mitesh V. Patel	304988
83	Pankaj D. Prajapati	306916
84	Sanjay Kumar R. Patel	280059
85	Pinalkumar T. Patel	273726
86	Nileshbhai B. Patel	274904
87	Manojkumar A. Nayak	270806
88	Sureshkumar B. Rana	276209
89	Shardaprasad C. Mishra	281293
90	Kamlesh P. Mishra	279280
91	Jignesh V. Patel	255255
92	Sanjaykumar B. Patel	262886
93	Ashishkumar T. Rathod	267576
94	Jayeshkumar B. Patel	275362

95	Pratikbhai S. Bhandari	273959
96	Prakash M Tiwari	264013
97	Nileshkumar M. Khalasi	293998
98	Divyeshkumar A. Patel	270072
99	Pankajbhai R. Patel	235511
100	Bharatkumar M. Patel	270838
101	Nileshkumar D. Patel	268250
102	Sujitkumar M. Patel	264380
103	Jayeshkumar A. Kukna	294631
104	Hiteshkumar D. Patel	344182
	Grand Total	**3,29,55,156**

***

UT Administration of Dadra & Nagar Haveli and Daman & Diu
Department of Labour & Employment
Daman

No. LE/LI/DMM/Fact-4(7)/2008/2022/884 **Dated: 19/12/2022**

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, an Award dated 10-11-2022 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 01 of 2008 (A) in the matter of - (1) The Director of Hindustan Level Limited, Survey No. 34, Village Bhimpore and (2) M/s. Hindustan Level Employees union, Daman is hereby published in the Official Gazette of this U.T. Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Mohit Mishra)
Joint Commissioner (Labour)
Daman

Contd….

Ref.(IDA) No.01 of 2008 (A)

UTDD010000242008

Filed on : 11.01.2008
Decided on : 10.11.2022
Period : Y M D
14 09 30

Exhibit No: 181

BEFORE THE INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by P. K. Sharma)

Reference (IDA) No. 01 of 2008

Party No. 1

The Director of Hindustan Lever Limited, Daman.
Survey No. 34, Village Bhimpore,
Nani Daman, Daman.

AND

Party No. 2

M/s. Hindustan Lever Employees Union, Daman.

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947

Appearances: Shri. R.N. Shah, Adv. for Party No.1.
Shri. Nair, Representative for Party No.2

A W A R D

(Passed on 10/11/2022)

1) This reference is received from Assistant Secretary (Lab & Emp), Daman. Vide the reference, dispute between the employer and employee is referred for the decision of this tribunal. Earlier, the same dispute was referred to the Labour Court, Daman and was registered as 1.D.R. No.07/2004. The Labour Court, vide order dated 20/08/2007, held that, as more than 100 workers are being affected, it has no jurisdiction. Hence the Labour Court directed the Government to refer the matter to this tribunal. The Party No.2 had challenged that order before the Hon'ble High Court in W.P. No.7179/2007. In the meantime, the government referred the dispute to this tribunal. The Hon'ble High Court disposed of the Writ Petition directing this tribunal to decide it expeditiously. The Hon'ble High Court also stated that the pleadings filed by the parties before Labour Court would be relied upon by this tribunal. Thereafter, the R & P of IDR No.07/2004 is sent to this Court by the Labour Court.

Ref.(IDA) No.01 of 2008(A)

2) Brief facts of the case are as under:

Admittedly, the Party No.1 has detergent factory/plant at Survey No.34, Bhimpore, Daman. The Party No.1 has factories in different parts of the country. It has head office at Backbay Reclamation, Mumbai. The Party No.2 Union is a registered trade union having employees of Party No.1 as its members. The Party No.2 has filed statement of claim Exh.2 before the Labour Court in IDR No.07/2004. The Party No.2 contended that the Party No.1 is engaged in unfair labour practice. It pressurized workers not to be the members of Party No.2. The last settlement was signed on 16/06/2001. That settlement was terminated by the Party No.2 and it gave a charter of demands dated 03/05/2003 to the Party No.1. However, the Party No.1 did not negotiate with the Party No.2. Rather, the Party No.1 instigated some members of the Party No.2 and they were pressurized to leave it and join Association of Chemical Workers, which was an Employee Sponsored Union.

3) The Party No.2 further contends that the Party No.1 refused to negotiate the charter of demands with the Party No.2. Thereafter the dispute was taken in conciliation and the conciliation failed. In the mean time, the Party No.1 negotiated with the Association of Chemical Workers and signed a settlement on 24/08/2003. The members of Party No.2 did not accept that settlement. The dispute pertaining to charter of demands dated 03/05/2003 is referred for decision of this tribunal. It is submitted that the charter of demands contains 41 demands and those are also mentioned in the statement of claim. However, at the stage of argument, the representative of the employees submitted that except 4 demands at Sr. Nos. 8,10,29 and 39, other demands are not being pressed by the Party No.2. Hence, I am mentioning the demand at Sr. No's. 8,10, 29 and 39. They are as follows:

a) Demand No.8: **Social Security Allowance-** The Party No.2 has claimed Social Security Allowance at the rate of Rs.1,200/- per month for Technician Grade and Rs.1,000/- per month for Assistant Grade. It is contended that such allowance is granted to the Bombay Factory, Head Office and Research Centre of Party No.1.

b) Demand No.10 **Self Development Allowance-** The Party No.2 has claimed Self Development Allowance at the rate of Rs.1,200/- per month for Technician Grade and Rs.1,000/- per month for Assistant Grade. It is contended that such allowance is granted to the Bombay Factory, Head Office and Research Centre of Party No.1. It is contended that the workmen of Daman Factory are interested in educating themselves and incur costs of periodicals and educational materials. In 2003, the Party No.1 had accepted that the workmen, whether they are factory workers or service staff, are justified in having self development allowance. Now the question is only of quantum. The Party No.1 has agreed for the Bombay Factory Research Center and Head Office service Staff, a Self Development Allowance equivalent to Rs.925/- to Rs.1150/- per month. Hence this demand is justified.

c) Demand No.29: **Washing Allowance-** The Party No.2 has prayed for washing allowance of Rs.500/- per month. It is contended that as per the settlement of 2001, the workmen were getting washing allowance of Rs.150/- per month. The increase in washing allowance is justified in view of

increase in the cost of living index. It is further contended that Reliance Company pays their employees Rs.500/- per month as a washing allowance.

d) Demand No.39 : **Shares of the Company-** The Party No.2 has demanded that the company shall grant 5 shares of the company every month to each employee of the company. The Party No.2 contends that this is the policy of the company and it has been done in many settlements between the Party No.1 and other units. The company itself is giving that benefit in other settlements in many of the units. The Party No.2 contends that looking to the practice of the company, this demand is justified.

4) Exh.6 in IDR No.07/2004 is the written statement of Party No. 1. It has contended that it has signed settlement dated 24/08/2003 with Association of Chemical Workers representing majority of the workers of the Party No.1. It has contended that the Party No.2 is representing minority of the workers and it is not the sole bargaining agent. The Party No.1 further contended that the demands of Party No.2 are not in accordance with legal principles of wage determination i.e. Industry-cum-Region principle. The Party No.1 submitted that it is a well established principle of wage adjudication that the financial capacity of the company is not the sufficient criteria for granting increase in wages which are to be decided inter alia in the light of the region cum industrial principle. It is contended that apart from references to four undertakings viz. Reliance, Narmada Chematur Petrochemical, Gujarat Narmada and IPCL, the Party No.2 has not furnished data for comparison in support of its claims. The aforesaid companies are not in the same region and hence they are not comparable.

5) The Party No.1 has denied that it is engaged in unfair labour practice. It is contended that the Party No.2 was not in existence at the time of settlement of 2001. Hence there was no question of negotiating with it. It is further contended that at the time of settlement dated 24/08/2003, the Party No.2 did not have representative character in respect of unit at Daman. Hence the Party No.1 did not negotiate with it.

6) As regards demand of Social Security Allowance, the Party No.1 contended that it has covered employees along with their family through medi-claim policy and it also takes care of needs of employees and their family members by extending emergency medical advance. Hence the demand for additional Social Security Allowance, only on the ground that this allowance is granted to Bombay Factory, Head Office and Research Center of Party No.1, is unjustified. It is further contended that the Party No.1 conducts training programmes for its employees. It has also provided technical training center with well equipped training aids. It also provides library furnished with news papers and periodicals for development of employees and as such, it is spending huge amount of money on the development of its employees. Hence the demand for Self Development Allowance is also not justified. As regards the demand of washing allowance, it is contended that the Party No.2 has not furnished any particulars in support of that demand. Hence it is to be rejected. As regards the demand

for allotting shares of the company, it is contended that granting of shares to workmen at Rajpura and Aurangabad were as part and parcel of the long term settlements signed in the factories at those locations. The Party No.1 has denied that it has adopted the policy of grant of five shares every month to its workmen.

7) As stated earlier, the Party No.2 has pressed only four demands and hence I have restricted the narration of pleadings regarding those demands only. Following issues are framed at Exh.23 by my Ld. Predecessor, to which, my findings are as follows for the reasons next following:

Sr. No.	Point	Findings
1.	Whether the employees' union of M/s Hindustan Lever Limited, Daman is justified in making the charter of various demand/settlement benefit?	**No. They are entitled for benefits as per settlement dt. 24/08/2003.**
2.	What order	**As per final order.**

R E A S O N S

AS TO POINT NO.1

8) As the Party No.2 has pressed only demand Nos. 8, 10, 29 and 39 of charter of demands, the discussion is restricted to those demands only. The Parties have filed written notes of argument and also advanced oral arguments. Before the Labour Court, the party no.2 examined five witnesses namely, PW-1 Sunil Madhukar Kadam Exh.33, PW-2 Franklyn D'Souza Exh.52, PW-3 Naresh Raman Patel Exh.57, PW-4 Patel Natubhai Mohanbhai and PW-5 Nalin Vadilal Parekh Exh.66 and party no.1 examined only one witness DW-1 Amitab Gautam Exh.75. Before this Tribunal the party no.2 examined only one witness namely, PW-1 Arvind Keshav Nair Exh.25 and party no.1 examined five witnesses namely DW-1 J.P. Pachauri Exh.50, DW-2 Abhishek Saini Exh.75, DW-3 Hemang Vora Exh.118, DW-4 Sachin Kulkarni Exh.123 and DW-5 Ashish Jha Exh.127.

9) As regards demand No.8 i.e. Social Security Allowance, Shri Arvind Nair, representative of Party No.2, has submitted that it was not being paid earlier. It is claimed for the first time in charter of demand. In the written notes of argument, this demand is explained at Page No.128. It is contended that Social Security Allowance ranging from Rs.1,200/- to Rs.1,000/- is claimed with a view to see that the amount is sufficient to represent viz. Insurance for the protection of the workers and members of their families including their parents. According to Party No.2, it was subsequently enhanced by way of award for the Research Center and Development Department of Party No.1 with effect from 01/03/2006 and as on November,2010, the workers are paid this allowance ranging from Rs.1,159/- to Rs.1,943/- per month. It is contended that witness Arvind Nair i.e. the representative, has justified this demand in his evidence Exh.25 and there is no cross-examination by the Party No.1 on this demand. In the evidence Exh.25 before the Labour Court, Shri Arvind Nair has deposed that the Party No.2 was paying Social Security Allowance for Rs.785/- per month to workmen in Research and

Development Department and fresh charter of demand by those workers for enhancement was pending adjudication. It is argued that the Party No.2 is claiming the amount of Rs.1,200/- and Rs.1,000/- towards that amount on the basis of award (Exh.37) of Industrial Court dated 31/12/2003.

10) As regards demand of Self Development Allowance, it is contended by Party No.2 that the award of Industrial Court, Mumbai (Exh.37) has granted Self Development Allowance as per the settlement (Exh.38) to the employees of Research Department and Factory workers of Mumbai. Shri Arvind Nair argued that Reliance Company also pays this allowance to its employees.

11) As regards demand No.29 for Washing Allowance, it is contended that at present, the Party No.1 is not paying any washing allowance. It is contended that Reliance Company and Narmada Valley Fertilizer are paying such allowance to its employees. Reliance in this respect is also placed on Exh.34 which are the settlements of Reliance Industries Limited and Narmada Valley Fertilizer.

12) As regards demand of shares (demand No.39), it is contended that the Party No.1, as per the settlement of 24/08/2003, signed with minority union, has introduced stock participation scheme and hence granted shares worth Rs.9,600/- during the four years terms of settlement. It was the policy decision of the head office of the Party No.1 and all the workers across the factories in India are granted benefits of this policy. It is argued that Shri Ashish Jha has deposed that the company has granted 53 shares to the workers as per the settlement of 2003 who have accepted the settlement. He has admitted that the workers covered by this reference are not granted shares. It is argued that the workers covered by this reference are not granted shares though the benefits of the settlement of 2003 were extended to the workers covered by this reference by the Hon'ble High Court of Bombay. Hence each worker has claimed 53 shares.

13) To justify comparison with Reliance Industries Limited and Narmada Valley Fertilizers, Shri Arvind Nair has relied on the decision in **French Motor Cars Company Limited V/s. The Workmen, AIR 1963, SC 1327.** In this case it was held that, "It is now well-settled that the principle of industry-cum-region has to be applied by an industrial Court, when it proceeds to consider questions like wage structure, dearness allowance and similar conditions of service. In applying that principle, industrial Courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing, and generally speaking. similar concerns would be those in the same line of business as the concern with respect to which the dispute is under consideration. Further, even in the same line of business, it would not be proper to compare (for example) a small struggling concern with a large flourishing concern. Thus, where there is large disparity between the two concerns in the same business, it would not be safe to fix the same wage structure as in the large concern without any other consideration. The question whether there is large disparity between two concerns is, however, always a question of fact and it is not necessary for the purposes of comparison that the two concern must be exactly equal in all respects. All that the tribunal has to see is that the disparity is not so large as to

make the comparison unreal". Party no 2 has contended that there are no comparable companies in the region and hence comparison is being made with Reliance Industries and Narmada Valley Fertilizer.

14) Shri Arvind Nair has argued that the union i.e. Party No.2 is a majority union. He also submitted that benefits of subsequent settlements shall also be given. He also submitted interim relief be ordered to be continued.

15) On the other hand, Adv. R. N. Shah for the Party No.1 has submitted that benefits of all the subsequent settlements are extended to all the employees. He argued that the principle of Industry-cum-region is to be considered for deciding the demands. Earlier, the Party No.1 was working in the Daman and hence the facilities of other companies in Daman, engaged in similar business, are to be considered. He further argued that the settlements are package deals. It cannot be taken in bits and pieces. Once the workers accept a settlement, they cannot demand more. He argued that the benefits of the settlement of 24/08/2003 are extended to the employees covered by this reference. As such, as the settlement is a package deal, they cannot seek more. He explained that the employees cannot seek something from the settlement and something otherwise than settlement.

16) Advocate Shri R. N. Shah further argued that 109 workers were the members of Chemical Workers' Union, with whom the settlement dated 24/08/2003 was arrived at. He submitted that 67 workers had not accepted the settlement. He argued that when the settlement is accepted by majority workmen, small number of workmen cannot challenge it. On this point, he relied on the decision in **TATA Engineering V/s. Workmen (AIR 1981 SC 2163).**

17) Adv. Shri R. N. Shah further argued that the charter of demand is based on profit sharing but the profit sharing cannot be the basis for wage fixation. He further argued that other companies may be giving more benefits in different circumstances. He further argued that none of the companies, with whom the Party No.1 is compared, is situated in the region. Further more, they are not doing the same business. As such, the Party No.1 cannot be compared with those companies. To justify that the principle of industry-cum-region is to be adhered to, the Party No.1 has also relied on **French Motor Cars Company Limited V/s. The Workmen, AIR 1963, SC 1327.** Adv. Shri R.N.Shah further argued that the Party No.1 has five factories in the region but no comparison with them is made. In this connection, the evidence of witness Nalin Parekh for Party No.2 is relied wherein he has admitted that the Party No.1 has five factories in Daman and Silvassa region. He also admitted that he has gone through the settlements signed by the workmen in those five units. He admitted that the distance between Daman and Silvassa is just 25 kilometers. Reliance is also placed on following judgments by shri R.N.Shah:

i) **Ahmedabad Mill Owners' Association V/s. Textile Labour Association, 1966 I LLJ Page No.1.** In this case, it was held that in dealing with the problem of the financial capacity of the employers to

bear the burden, it would be inappropriate to rely solely upon the approach which an investors would adopt in such a case. Industrial adjudication cannot lean too heavily on single purpose statements or adopt any one of the tests evolved from such statements, whilst it is attempting the task of deciding financial capacity of the employer in the contact of wage problem.

ii) **Mukund V/s. Mukund, (2000 I CLR 694).** In this case, it was held that while examining financial capacity in detail, we must ultimately base our decision on a broad view which emerges from consideration of all relevant factors, such as progress of the industry in question, prospects of the industry in future, extent of profit made by the industry, nature of the demand which the industry excepts to secure and the extent of the burden which the employer has to face. It was further held that the principles followed in arriving at the profits and loss account for the income tax and other purposes may not be conclusive. In this case, the Tribunal had decided the question of wage fixation exclusively on the basis that the employer had financial capacity to stand the burden of the revised wage structure. It was held that the total wage packet in comparable concerns is required to be taken into account.

iii) **Petlad Turkey Red Dye Works Co. Ltd. V/s. Dyes and Chemical Workers' Union (LAWS-SC-1960-2-1).** This case is also cited to impress upon the Court that the balance sheets of a company should not be the criteria for wage fixation. In this case, it was observed that is no reason why an exception should be made in the case of balance sheet prepared by companies for themselves. It has to be born in mind that in many cases, the directors of the company may feel inclined to make incorrect statements in these balance sheets for ulterior purposes and it cannot be presumed that the statements made therein are always correct. The burden is on the party who asserts a statement to be correct to prove the same by relevant and acceptable evidence.

iv) **Polycham Ltd. V/s. R. D. Tulpule, Industrial Tribunal, Bombay.** In this case also, the Tribunal had decided the question exclusively on the basis of financial capacity of the employer.

v) In **French Motor Cars Company Limited V/s. The Workmen, AIR 1963, SC 1327,** it was observed that it is now well settled that the industry-cum-region principle has to be applied by an industrial Court when it proceeds to consider question like wage structure, dearness allowance and similar conditions of service. In applying that principle, industrial Courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing and generally speaking similar concerns would be those in the same line of business as the concern with respect to which the is under consideration. Further, even in the same line of business, it would not be proper to compare (for example) a small struggling concern with a large flourishing concern. In Williamsons (India) Private Ltd. vs. The Workmen, 1962-1- Lab LJ 302 (SC) this Court had to consider this aspect of the matter where Williamsons Private Limited was compared by the tribunal with Messers Gilanders Arbuthnot and Company for purposes of wage fixation and it was observed that the extent of the business carried on by the concerns, the capital invested by them, the profits made by them, the nature

of the business carried on by them, their standing, the strength of their labour force, the presence or absence and the extent of reserves, the dividends declared by them and the prospects about the future of their business and other relevant factors have to be borne in mind for the purposes of comparison.

vi) **Hindustan Lever Limited V/s. Hindustan Lever Employees Union, 2007 (2) CR 102.** This is also on the principle of industry-cum-region for deciding wage structure. It was held that in practical application of that principle, the industrial ad-judicature has to consider wage scales which prevail in similar concerns in the region with which it is dealing. Similar concerns are those in the same line of business as the concern in respect to which the dispute is being adjudicated. Moreover, in the same line of business, it is not appropriate to consider a small struggling concern with a large flourishing concern.

18) Advocate Shri R. N. Shah further argued that the witness Nalin Parekh has also admitted that Daman factory conducts training programmes for the development of its employees and has provided a Technical Training Center. Thus, according to Shri R.N. Shah, there is no need for separately providing Self Development Allowance.

19) Regarding demand of shares (demand No.39) Advocate Shri R.N. Shah admitted that each worker was given shares worth Rs.9,600/-. He contended that the settlement recites that it will be given to those workers who will sign the settlement in toto as on effective date of settlement. The present workmen covered by the reference had not signed the settlement and as such, they are not entitled for shares.

20) In reply, the representative of workmen Shri Arvind Nair submitted that in other five units of the Party No.1 in the region, workers are not being paid good wages and there is no collective bargaining in those units. He further argued that the settlement is not challenged. The dispute pertains to charter of demands. He further submitted that when dispute was raised, the Party No.2 had 113 workers as its members out of total 180 workers and as such, it was a majority union. He further argued that judgment in **Mukunda V/s. Mukunda** is overruled by the division bench. He finally submitted that totality of circumstances is to be seen while deciding wage structure and other benefits.

21) The party no. 1 is contending that when the settlement was accepted by the majority of workmen, small number of workmen cannot challenge it. On the other hand, the party no. 2 denies that it was minority union. In **TATA Engineering V/s. Workmen (AIR 1981 SC 2163),** relied by the party no. 1, out of total 635 workers, 564 had signed the settlement. Only 71 workers were not parties to the settlement. It is to be noted that in the case in hand, the workers who are not parties to the settlement form substantial portion of the work force of the Party No.1.

22) Shri R. N. Shah for party no.1 argued that a separate dispute is to be raised for challenging the settlement. However, in this case, settlement is not challenged. He has placed reliance on the judgment in **Jaihind Roadways Vs. Maharashtra Rajya Mathadi Hamal and General Kamgar**

Union, 2005 (8) SCC 51. However, the facts of this case are different than those in the case in hand. Firstly, in the case in hand, the workers covered by the reference were not the parties to the settlement. They raised the dispute even before the settlement of 24/8/2003. Further, in Jaihind Roadways Vs. Maharashtra Rajya Mathadi Hamal and General Kamgar Union **(supra)**, a settlement was arrived at during the pendancy of the reference. The parties had asked the tribunal to pass award accordingly. However, the tribunal decided the dispute on merits and held that the settlement was not fair. In that situation, the Hon'ble Supreme Court held that there was no challenge to the fairness of settlement and as such, the settlement cannot be held as unfair. Hence the ratio of this judgment is not applicable to the facts of the case in hand.

23) On the other hand, Shri Arvind Nair for Party No. 2 has relied on Tata Chemicals Ltd vs. Its Workmen, MANU/SC/0276/1978. In this case, it was held that, "whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in course of conciliation proceeding is binding on the parties to the agreement, a settlement arrived at in conciliation proceedings under the ID Act is binding not only on the parties to the dispute but also on other persons specified in Cls (b), (c), (d) of subsection (3) of section 18 of the Act. It was further held in the same case that, "even if a settlement than regarding certain demand is arrived at otherwise than in conciliation proceeding between the employer and majority union, same are not binding on other union who represent minority workmen and who was not a party to that settlement. The other union can therefore raise the dispute in respect of demands covered by the settlement and the same can be adjudicated. It was further held that if settlement is outside conciliation proceeding between employer and majority union, acceptance of benefit flowing from the settlement even by workmen who were not party to it does not operate as estoppel against minority union raising same demands. Theory of implied agreement by acquiescence is not attracted.

24) It is worth to note that the party no. 2 has not challenged the settlement but has raised dispute separately. It was not a party to the settlement of 24/8/2003. It is not the case of party no. 1 that it had called party no. 2 for the discussion. Hence, I hold that the party no.2 has locus to raise the present industrial dispute.

25) The party no.1 is disputing its comparison with Reliance Industry Ltd., Gujarat Narmada Valley, Fertilizer Industry Ltd. Bharuch and Indian Petrochemical Corporation Ltd., Vadodara. In **Tata Chemicals Ltd vs. Its Workmen, MANu/SC/0276/1978,** it was held that where there are no comparable concerns engaged in similar industry in the region, it is permissible for the industrial tribunal or court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the state having similar economic conditions.

26) The witness Arvind Nair, examined by the party no.2, has admitted that none of the companies, with which comparison of party no.1 is made, is manufacturing detergent. He admitted that there are five other units of Hindustan Lever Company within the Union Territory of Dadra & Nagar Haveli

and Daman & Diu and there were settlement in those companies. In chief examination, he has deposed that the party no.1 has factories in Daman and Silvassa like Sayali, Athal, Amli and Dapada. He deposed that the company has not allowed formation of union there and has signed the settlement with the workers of those factories but those settlements are not the outcome of collective bargaining.

27) It is well established that the principle of region- cum-industry is to be followed in the first instance for deciding wage structure. It is only where there are no comparable concerns engaged in similar industry in the region, it is permissible for the industrial tribunal or court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the state having similar economic conditions. Though there were other units of the party no.1 in the region working on the same line, the party no.2 has not made comparison with them. The reason for not comparing party no.1 with its other units in the region is given that there is no collective bargaining in those units. However, no evidence is adduced by the party no.2 that there is no collective bargaining in those units and that the party no.1 is discouraging the formation of union in those units. None from those units is examined to prove lack of collective bargaining. Further, it is not proved that the wages in those units are not fair. Instead of comparing the party no.1 with the similar industries in the region, the comparison is made with industries in other region and those industries are not engaged in similar business as that of the party no.1. As such, in my opinion, those companies are not the comparable companies looking to the principle of region- cum-industry.

28) Another principle relied by the party no.2 is the principle of, *"parity"*. The reliance is placed on the allowances being paid to the employees of head office of the party no.1 in Mumbai and the employees of research and development department of party no.1 in Mumbai. It is contended that the social security allowance, self development allowance and washing allowance is being paid there. Reliance is also placed on the award of Industrial Court Mumbai (Presided over by Shri. Vidyasagar Kamble) dated 07/02/2014. Vide that award, social security allowance and self development allowance were directed to be paid. The party no.2 has also filed settlements entered into between party no.1 and its workmen in the factories at Khamgaon, Manglore and Vadamangalam, Pondichery factory (Exh.39, 40 and 41). The party no.1 has also filed settlements of its Saily factory, Dadra factory, Amli factory, Dapada factory and Daman units - II (below the list Ex. 32)

29) For claiming benefits which are being granted to the employees of head office Mumbai and Research and development department of party no 1 on the principle of parity, the party no. 2 has relied on the judgment in **FCI Workers' Union V/s. FCI and others, AIR 1990 SC 2178.** In that case, wage revision in respect of Bihar, Orrisa Assam, UP depots was directed when the wages of Kolkata Port Employees were revised. The party no 2 is also relying on the awards of the Industrial Court Mumbai by which, principle of parity in party no. 1's units in Mumbai is recognized. Vide those awards, social security allowance and self development allowance are directed to be paid. The award of Shri A. Shivankar is based on the settlement dt. 20/3/2003 of Sewree Unit.

30) In the case in hand, the party no.1 is not seeking parity in every respect. In respect of basic wages, DA, HRA and other reliefs, it is satisfied with the settlement of 24/08/2003. It is not pressing 36 demands raised in the charter of demand and now pressing those demands only. which are not there in that settlement. However the party no.2 cannot choose one relief from one settlement of one company, other relief from settlement of another company. It may be that in one unit, one relief is not being given which is in the settlement of another unit but that unit is giving some other relief which is not in the settlement of another unit. In the settlement dt. 20/02/2003 of Mumbai headquarter, on which awards of Mumbai Industrial Court are based, there is no scheme of stock participation but it is there in the settlement dt. 24/08/2003 of Daman unit.

31) The claim for social security allowance, self development allowance is based on award Exh.37 of Industrial Tribunal Mumbai passed on 31/12/2003 (filed before the labour court). In the statement of claim, it is mentioned that these allowances are being paid in the Bombay factory, head office and research centre of party no.1 in Mumbai. However, it is not proved that in Mumbai factory, head office and research centre, the stock participation scheme is in vogue. As stated earlier, the award Exh.37 of Mumbai Industrial Tribunal is based on the settlement (Exh.38). However, that settlement has not introduced any stock participation scheme. As stated earlier, there may be one facility in one unit. That facility may not be there in the other unit but the other unit might be providing some other facility which is not provided by the former unit. Thus, the employee of a unit cannot enjoy the facility which is provided to them as well as some other additional facility provided by the other unit which is not providing the facility provided by the employees of first mentioned unit. The comparison of each and every facility provided by comparable unit is sine qua non for deciding the wages structure. As stated earlier, Daman unit has introduced stock participation facility vide the disputed settlement of 24/08/2003, whereas there is no stock participation facility in contemporary settlement dated 20/02/2003 (Exh.38) between party no.1 and its workmen at head office at Mumbai. Nor any of the awards of Industrial Tribunal Mumbai has granted that facility. To conclude, the party no.2 is not justified in eating something from its own plate which is not in the plate of others and additionally claiming something which is there in the plate of others. Either it should discard its own plate completely and claim all that which is provided in the plate of others or accept its plate fully when it is accepting some item of it which is not provided in the plate of others. Even the washing allowance is also not there in the settlement Exh.38 Mumbai headquarter. Thus, I hold that the unit at Daman cannot be compared with the employees of headquarter of party no.1 and employees of legal and research department, Mumbai.

32) It is to be noted that the party no.2, vide the interim relief, had prayed for extension of benefits of settlement dated 24/08/2003 to the employees covered by the reference and the interim relief was granted. Thereafter, the party no.1 had applied for passing the award in terms of settlement contending that the party no.2 had accepted the settlement. That application was rejected. It is to be noted that now the party no.2 is not pressing demands regarding increase in basic wages, HRA and

other reliefs (36 demands in all) which were made in charter of demand. Now the party no.2 is satisfied by what is granted by the settlement dated 24/08/2003. It is claiming additional relief which are not in the settlement of 24/08/2003. Thus, in respect of other reliefs granted by that settlement, the party no.2 is ready to go by that settlement. It is rightly argued by the advocate for party no.1 that the settlement is a package deal and the party no.2 cannot claim anything beyond that settlement. I have already discussed that comparison with Mumbai headquarter and legal and research department of party no.1 cannot be made only for some benefits which are provided there as the above settlement of Daman unit gives benefit of stock participation which is not shown to be given in Mumbai. The comparison is not made with the five other units of party no.1 in Daman unit. Further, no other similar establishment, engaged in similar business in adjoining reason is compared. Thus, in the peculiar circumstances of this case, when all the benefits of settlement dated 24/08/2003 are accepted by party no.2 and accordingly other demands are not pressed, it is apt to hold that the settlement is justified. The additional demand, beyond that settlement, need not be granted on the lines of Mumbai headquarter because there is additional relief in the above settlement regarding stock participation.

33) I have held that the settlement dated 24/08/2003 is justified and no additional benefits need be granted to the employees covered by this reference. It is to be noted that the settlement directs purchase of share worth Rs.9600/- for each employee. Though by interim relief, the benefits of settlement were directed to be given to the employees covered by this reference, admittedly, the shares are not given to them. The advocate Shri. R. N. Shah for party no.1 has argued that in the settlement it is mentioned that the benefit would be given only to those employees who signed and accept the settlement in toto as on effective date of settlement i.e. 01/08/2003. However, when the Court had directed the giving of all the benefits, it included the benefit of stock participation also and the company, in all fairness, should have given the equal number of shares to the employee covered by this reference which were given to other employees. The party no.2 submitted that 53 shares were given to each employee and this fact is not disputed. Hence, I hold that the party no.1 shall give each employee covered by this reference 53 shares. It will maintain the **parity and harmony** in the establishment. One may argue that the price of shares in 2003-04 was much less and now the share price is sky rocketing. However, the increase in share price should not affect the relief. Uptill now, the employees covered by the reference are deprived of the dividends which they would have received had the shares been granted after the interim order of the Labour Court. The company has utilized the equivalent value of those shares. As such, irrespective of the increase in price of shares, I hold that each employee is entitled to 53 shares. Hence, I answer the issue No.1 accordingly and pass the following order.

Ref.(IDA) No.01 of 2008(A)

O R D E R

1) The second party/workmen are entitled to 53 shares of the party no.1. The other demands for social security allowance, self development allowance and washing allowance are rejected.

2) The first party shall give the shares as above to each employee covered by the reference within three months after publication of the award.

3) The copy of award be sent to the Labour Commissioner, Daman for publication.

Place : Daman
Date : 10/11/2022

Sd/–
[P. K. Sharma]
Presiding Officer,
Industrial Tribunal, Daman.

***