

The Company They Keep

A Report on Workers of Jhalani Tools Ltd., Faridabad

Peoples Union for Democratic Rights

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JHALANI TOOLS LTD. is a well known company which makes hand tools such as spanners, wrenches, pliers, screwdrivers, etc. It is a reputed exporter and has six plants in India 2 in Aurangabad (Maharashtra), 1 in Sonapat and 3 in Faridabad (Haryana). The company started its Faridabad operations in 1960 as a German collaboration project called Gedore Hand Tools. When Gedore withdrew from the company in 1985, it came to be known as Jhalani Tools. In 1986 Jhalani Tools had been declared a sick company but its process of recovery started by 1992 and currently it is no longer considered sick.

Today, at New Industrial Town, Faridabad only 2 plants are functioning. The third plant was shut down in 1984 but the workforce was absorbed in the other two. Through the decades of the sixties and the seventies the workforce had built upto about 4000. However, following mass retrenchment in 1984 this number today stands at 2183. All these workers are registered, permanent workers of the company. There has been no new recruitment since 1978, which means that almost all of these 2183 workers have served the company for at least 19 years. This report concerns such workers who have not been paid any wages for the last 19 months; who have been reduced to pulling rickshaws, setting up *thelas* of petty merchandise, or depending insecurely for survival on other family members.

Jhalani Tools has not paid its workers wages due for the period March of 1996 to September 1997. The company also owes its workers many other dues. For the last two years no bonus has been given, for three years no Leave Transport Allowance; and no dues for uniforms, shoes, soap or *saafi* (protective head gear) for a similar period. Further, the company has not paid its Employees State Insurance (ESI) dues for more than three years, and Provident Fund amounts have not been deposited since May 1994 (*see Box-1*).

However, it is the issue of non-payment of wages that is central to the current deadlock prevailing in the Faridabad plants. It is also the issue that brings out the complex role played by various mechanisms of governance and justice, including even trade unions, in helping the company to extract the maximum possible from its workers. And what's more, to justify that extraction. In its investigation, PUDR team spoke to many company workers, the current workers union, the senior management of Jhalani Tools, the Deputy Commissioner (Faridabad), the Deputy Labour Commissioner (Faridabad), and other functionaries of the Labour Department.

Background

The history of the relationships between workers and management, workers and their unions, since the early eighties, seems to have been problematic. The company has played a visible role furthering, manipulating and gaining from this.

Over the years the unions in Jhalani Tools have not been chosen through election. Instead, barring the odd exception, groups have staked their claim to leadership by collecting in their favour signatures of a simple majority of workers, and sometimes by sheer muscle power. The groups that thus come to power are called "ad hoc committees". It is such groups that negotiate with the management on behalf of workers and formalise labour-management agreements. The Gedore/Jhalani ad hoc committees have mostly been affiliated with CITU (Centre of Indian Trade Unions) and sometimes with INTUC (Indian National Trade Union Congress). An example of the manipulative role that Jhalani Tools management has played in the functioning of these ad hoc committees is in the matter of union *chanda* (contribution). The management deducts the *chanda* directly out of the workers salaries and hands over a lumpsum to the committee in charge.

The most controversial year in the company's history was probably 1984. In its drive towards automation the management decided on massive retrenchment. In Faridabad as many as 1500 workers were retrenched in one year. According to the company these workers had opted for the Voluntary Retirement Scheme (VRS). But according to the workers and the press, the company used brute force, the complicity of the then CITU union and the help of armed police to terrorise the workers into resigning. The presence of a police chowki within factory gates in 1984 speaks for itself. Union leaders are alleged to have been directly involved in drawing up lists of workers to be targeted and in aggressive tactics used against the workers. (The President and General Secretary of this union were eventually expelled by CITU's Delhi Committee in 1985.) Notably, the company, having gained its ends in 1984, today in all its statements and letters to authorities, glosses over that year as the year of "Voluntary Retirement".

Another instance of management-union leaders collusion appears to be the 1989 long term agreement which workers today describe as a "terrible agreement". At that time they were given no idea as to the specific clauses it contained. After the agreement had been signed, at a gate meeting, the leaders read out a certain version of the agreement. The very next day they confessed to individual workers that they had withheld information about three crucial clauses so as to avoid the eruption of workers protest. These 1989 clauses set the precedent for all later settlements. The main point was the linkage of wages to production targets. In 1989 it was agreed that the workers would be given wages only after they produced 200 tons of goods. Secondly, the company refused to take responsibility if there was shortfall in production due to shortage of raw materials and electricity. Thirdly, the company could switch around workers from one job to another, irrespective of their skills.

The impact of the first and second clauses proved to be lethal to workers interests. For example, in May 1992 wages were reduced for non-achievement of targeted production, even though this was due to erratic electric supply. Electricity shortage in effect thus became workers responsibility! The electricity problem grew to such an extent that, according to the management [letter to Deputy Commissioner, 17 October 1986], "there had been long periods of 100% power

cuts from 1993 onwards". Yet in the agreement signed in 1993, there was no attempt to take into account the electricity problem. At the same time the production targets were extended by 25%.

The latest agreement signed on 6th June 1997 once again links wages to production but it nowhere takes into account the lack of raw materials. At the time of signing, the ad hoc committee showed the Deputy Labour Commissioner (DLC) authorising signatures from workers in what the DLC calls "an irregular format". Later he received complaint letters from as many as 1600 workers denying that they backed this agreement. The DLC formally declared it null and void (circular, 30 July 1997). The Jhalani Tools management, however, is still trying to uphold this officially invalidated agreement. In a notice signed Yogesh Jhalani 26 September 1997, workers are told "your agreement has taken place...under the care of CITU's national Joint Secretary who has the trust of 20-25 lakh workers". The invalidation of the agreement is explained away as the "pressurising" of the DLC by a few disruptive workers.

An important facet in the company's history has been its 'sickness'. In 1986 the company was declared sick under the Sick Industrial Companies Act, 1985. According to the management this was because a steep rise in the price of steel in 1981 made the company unviable in the international market. From 1989 remedial measures could be implemented as the government started providing steel at international prices. The management states that the next few years, till 1992-93, showed substantial improvement and the company started implementing a rehabilitation package approved by the Board for Industrial and Financial Reconstruction. The Annual Report for 1996 states that the company has been consistently earning profits for the last six years and that the net worth of the company is now positive.

Today whenever the Jhalani Tools management has to answer for its workers' problems this background of sickness is heavily invoked. The management admits that its problems have been mainly due to factors such as competitive international markets, the price of steel and, in the 1990s, massive power cuts, difficulties with creditors, postal and transporters' strikes etc. Nevertheless, in dealing with the current problem it insists that the workers are mainly responsible for the company's losses and cites go slows, stoppage of despatch and carelessness in handling material by workers as a cause of heavy damages.

The logic of the financial crisis is used to compel workers into agreements such as that of December 1995, in which the ad hoc committee agreed that workers would accept only 50% wages till conditions improved. And, as we shall now discuss, by explaining the present crisis in terms of workers 'non-co-operation' and misdeeds the management absolves itself of all responsibility for giving workers their dues.

The Current Problem

"Today the world is one of competition and no company can exist without productivity. Therefore every agreement is linked to production. In future too, any agreement, of any kind, at any time, will be linked to production."

Translation of a Hindi notice to workers, signed Y.C. Jhalani, 19 September 1997

The three agreements of 1989, 1993 and 1996 (and various interim mini agreements) established the linkage of payment of wages to specified production targets. Simultaneously, by 1996, lack of electricity or generated power, of raw material, and non-maintenance of old machinery were entrenched problems. So was the tradition of late wage payments. For example, wages given in March 1996 were for work done in November 1995. Similarly wages given in May 1996 were for work done in January 1996. The current problem relates to wages for the period March 1996 to September 1997 which, on various grounds, the company refuses to pay.

March 1996 and part of May 1996 were times of no production because of intermittent work stoppage due to workers' anger with the then ad hoc committees. There were resultant leadership changes. Workers did report for duty in April, part of May, and June to August. Lack of raw material remained a serious problem. In this period the management made statements that they had no cash to disburse. In July a date was announced, hopes were raised but no wages were paid.

According to the current ad hoc committee, in August 1996, production upto 200 tons was ready, with only 5 tons or so lacking. But the management contends that the shortfall was actually of 50 tons. With the management refusing to pay six month due wages, on the grounds of this shortage, the workers committee decided to stop despatch of goods at the beginning of September 1996. In retaliation, the management got the electricity connection cut so that no production could take place anyway. This stalemate lasted from September 1996 to January 1997.

Work was resumed in January 1997 after a settlement was reached between the ad hoc committee and the management via an interim memorandum of understanding. Instead of wages, this settlement announced "advance payment" for the next four months. About Rs.8000/- was given to each worker as advance. This was cold comfort to workers as the management announced that losses of the company from September to January would be 'recovered' from workers' back wages and that this 'recovery' would continue till the loss was compensated. The recovery was thus to be effected from wages that had not been paid in the first place and from allowances and benefits that had not been paid for years. For workers, it meant that there was no hope of subsequent wages either. For the management, the issue of wages seemed to be taken care of.

Thus, barring the advance, no wages were paid throughout 1997 even though the workers reported for duty. (In fact a management notice of 3 July 1997 takes cognisance of the good work being done by the workers). On 6th June 1997 another agreement was negotiated demanding a minimum 100 hours worth of production before wages would be paid. As noted above, this was invalidated by the DLC. Matters reached a stalemate as the management's proposals continued to revolve around this agreement. In August the company tried to give another Rs.1000/- as advance, but the workers refused and demanded their back wages.

Meanwhile from 24th July to end of August 1997, the management illegally terminated the jobs of about 100 workers. The mandatory enquiry into the charges against them was not conducted. The dismissal notices cite "serious misconduct" and state that "since the atmosphere in and around the factories is totally surcharged it is not possible to conduct any enquiry against

you...you are dismissed with immediate effect." Through this tactic it appears that the management has simultaneously got rid of the more vocal workers and created an atmosphere of insecurity to pressurise the rest of them.

The Management

"Management advises all workmen....to accord top most priority, over their own payments, to inputs and to outside commitments to suppliers and bankers... You are however free to continue your present stand and jeopardise your own jobs."

Notice to workers, signed by the entire top management, 28 October 1996

The nature of the agreements signed by the management and the unions, and unwillingly borne by the workers, lies at the centre of the problem for the past two years (*see Box-2*). It is clear that under the norm of wages linked to specific production targets, there is the potential situation of production shortfalls due to external factors. And the responsibility for external factors has been shifted onto the workers.

This has meant that the workers spend months without wages. It becomes possible for a permanent worker with 20 years of service behind him to not even get the statutory minimum wages. This situation is sometimes explained by the management, and even by the Deputy Labour Commissioner, in terms of "no work-no pay". But the truth is that the workers have been reporting for work and producing as much as external conditions allow. Thus a recent production report signed by a supervisor shows in an 8 hour shift, most workers have put in 2 hours of work and for the remaining 6 hours there was "lack of material". This is a situation more akin to "no production targets-no pay".

Another attempt to shift responsibility for external factors onto the workers is evident from the interim memo of understanding of January 1997, according to which it was agreed that workers would be paid in terms of despatch. While 'production' refers to the goods produced, 'despatch' refers to goods actually taken out of the factory for sale. Thus it is possible that only a part of the production is despatched in a given period of time. According to the agreement 17% of the despatch value was to be distributed among the workers. This distances wages from the actual amount of work put in by the workers. The agreement went even further than linking wage payment to production targets and sought to link wage payment to *the ability of the company to sell its goods*.

Wages have not been paid not only to workers but also to staff members. According to workers, staff salaries have not been paid for 19 months. The situation is not very clear, but salaries have definitely not been paid since September 1996. In a letter to the Deputy Commissioner (17 October 1996), the management has offered this explanation for its conduct: "We do not wish to believe that the staff members have instigated workmen for negative activities... However, there appears to be no inclination on their part to make efforts to increase productivity or to guide workmen away from negative activities....and if assuming they are inclined to do this they are not effective at all". These reasons are patently absurd not to mention illegal. For example, a

telephone operator's duty is not to persuade protesting workers. Nor can the company in such an arbitrary fashion thus deny wages to the staff for not being "effective" in curbing worker protest.

Administrative Response

According to the Deputy Commissioner (D.C) the Jhalani Tools issue deserves consideration on humanitarian grounds. He believes that the Jhalani family want to make money by selling property and wants "to get out of Faridabad". He states that the company would not be allowed to sell any immovable property without paying the workers' dues. However the D.C. sees no point in dealing with the middle level management and is waiting for the senior Vice President (who was in Germany at the time of the interview) to return to Faridabad.

The chief labour officer dealing with this issue in Faridabad is the Deputy Labour Commissioner. According to him such a problem can be dealt with in two ways. First, there is the Payment of Wages Act, 1936, under which a company can be fined for not paying wages to its workers. However, this Act applies only to those companies whose workers earn less than Rs.1600 per month and the Jhalani workers do not fall into this category. (On the other hand the Jhalani Tools workers point out the case of another company, Hitkari Potteries, that was 'challaned' for non-payment despite its workers earning more than Rs.1600 a month. This is confirmed at the DLC's office and provides a clear instance of differential application of the law).

A second possibility is for the workers to formally make a 'dispute' of the matter and approach a labour court under the Industrial Disputes Act. The DLC says he cannot help in this matter since the contesting versions given by different parties necessitate the gathering of proper evidence, which only a court can do.

The bottomline in every statement of various officials involved is that the workers must move the labour court. They even give off-the-record assurances that the court verdict would certainly be in the workers' favour. An unavoidable question arises. Why has the Jhalani management, who is said to be sure to lose in a labour court, not faced any punitive action from the labour department (except challans from the Provident Fund department) for all of 19 months? The workers disbelieve such assurances and understand them as the bureaucracy's attempts to avoid having to deal with their case. This is not surprising since over the last few months these authorities have sent the workers to seek help from sources as diverse as the General Manager of the District Industrial Centre, Faridabad, and the local Grievance Committee constituted by the town's eminent persons.

While officials ascribe the reluctance of workers to move court to their illiteracy and ignorance, workers themselves point out the countless examples of litigation that they have observed around them in Faridabad. The average worker cannot afford the time, money and energy that he must invest, from the labour court in Faridabad, to the High Court in Chandigarh to Supreme Court in New Delhi. Workers pointed out the case of the East India Cotton Company in Faridabad as an example of the near irrelevance of the legal machinery to their cause. The Jute Mills of this company were closed in 1983. Despite a prolonged court case the 900 workers retrenched at that

time have still not managed to retrieve their due wages and gratuity in 1997. In August this year, they went back to sitting in demonstration outside company gates.

Conclusion

"...ration shops do not give us food on credit any more...electricity connections are getting cut...children's education is in jeopardy...our daughters are of marriageable age...please do get our husbands their wages or we will be forced to commit suicide."

letter to D.C signed 'wives of workers of Jhalani Tools', August 1997

Over a long period of time the Jhalani Tools management has deprived its 2000 workers of their wages and other rightful dues for no fault of theirs. In a vicious cycle, the management first created (and allowed to exist) such conditions that work could not efficiently take place. Then, the workers were denied remuneration on the grounds that no work had taken place. And when the workers protested against this injustice, remuneration was further cut in terms of fines and 'recovery'. Moreover, they have had to face arbitrary dismissals, without any right of reply, from their 20 years of service.

In such a context many workers are being forced to seek new sources of livelihood, however ad hoc and insecure these may be, and are unable to pursue the matter of their dues any further. It is possible that some would accept a pittance from the management and in return forsake their rights to much larger dues. Thus, while the management has already laid off its workers without giving the situation its correct name (*see Box on page 8*), it is further, effectively creating a situation of retrenchment without having to bear the responsibility of calling it retrenchment.

Today, the fear of the workers is that the management does not wish to run the company any more but is not openly saying so. Jhalani Tool's background of sickness in the 1980s and, even today, the management's constant references to paucity of funds for paying wages, and to a backlog of problems, make workers apprehend that the management would prefer to close down the company and is trying to extract all that it can from various sources, before closure. The workers dues provide a large number of such sources to the management.

Many instances discussed in this report support such an argument. First, it is not just workers' monthly wages that are in dispute. The crores of rupees involved in unpaid Provident Fund, E.S.I, gratuity etc. take this issue far beyond the realm of controversial agreements and disputes over work done or not done. Second, arbitrary non-payment of staff salaries also adds to the suspicion that the management is fomenting problems with the workers, to not only save on their dues, but also to appropriate money from other sources. Another pointer is the management's attempts to sell the third plant which was closed in 1984. Questions are particularly raised about the closure of this plant, when of the three plants, it was in best running condition. The workers have petitioned the Deputy Commissioner to prevent this eventuality since, according to them, this would foreclose any possibility of third plant workers getting their wages and gratuity. Finally, even the Deputy Commissioner's reading of the situation is the same. He asserts that the owners want to close the plant, sell and withdraw from Faridabad.

As things stand today the Jhalani Tools workers find themselves in a beleaguered state. Yet another ad hoc committee has been formed recently which is waiting for the management to initiate a fresh round of negotiations. The administrative machinery claims not to be able to respond to their problem and pushes them towards court. And courts provide an expensive, time consuming option that seems to be no option at all. For Jhalani Tools workers, will a backlog of unpaid wages, an absence of Provident Fund or gratuity to fall back on and prolonged litigation with no guarantee of results, ever compensate for a lifetime of labour?

BOX-1

Saving on the Workers' Bill

"The gain of the company is our collective gain. In its realisation some delay may take place. But it is an unbreakable law that when we gain from something [i.e. the company], or *may* gain from it sometime in the future, then it is essential that we have reverence and gratitude towards it".

*Translation of a Hindi notice to workers
sd/- Y.C. Jhalani and P.C. Jhalani, 27 December 1996*

Non-payment of wages: Wages have not be paid to 2183 workers between March 1996 and September 1997. According to the workers their salary ranges from Rs.2800/- to Rs.3200/-. Taking Rs.3000/- as a rough average the amount gained by the company at the workers' expense adds up to 12 crore 44 lakhs and 31 thousand rupees.

Non-payment of bonus: 2183 workers have not been bonus for 2 years. At about Rs.800/- per worker, per month, this amount is 34 lakhs 92 thousand rupees.

Non-payment of Leave Transport Allowance : LTA is Rs.1500 per worker per year and has not been paid for 3 years. This works out to 98 lakhs 23 thousand rupees saved by the company.

The loss to each worker on account of the above three categories amounts to approximately Rs.60,000. However, the workers have also been denied other dues, of a qualitatively different nature.

Non-payment of ESI dues: The workers have complained to the Regional Director, Employees State Insurance Corporation that despite having ESI cards they get no medical facilities at ESI hospitals for 3 years now. "On being asked the officials say that the company has not deposited dues".

Non-payment of P.F.: The current union calculates that Provident Fund amounts have not been deposited since May 1994. P.F dues are also missing for 5 years in the mid-eighties. (This is partially confirmed by the company's annual report for 1995-96). According to Labour Department officials, challans have been issued against Jhalani Tools in this regard.

Non-payment of Gratuity: Workers allege that the company has not paid service gratuity due to them for many years. This too has been confirmed by Labour Department officials.

BOX-2

Relevant Legal Provisions

Minimum Wages Act, 1948: Under Section 25, "any contract or agreement whereby an employee either relinquishes / reduces his rights to a minimum rate of wages, or any privilege or concession accruing to him under this Act, shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this act".

Indian Contract Act, 1872: Under Section 23, "the considerations of or object of an agreement is lawful, unless it is of such a nature that if permitted it would defeat the provisions of any law or the court considers it opposed to public policy"

Industrial Disputes Act, 1947: Under Section 2 (kkk), 'lay off' is a failure, refusal or inability of the employer on account of shortage of coal, power or raw material, or the accumulation of stock, or breakdown of machinery, or for any other reason, to give employment to the workmen.

Under Section 25-M lay off is prohibited:

sub-section (1) no workman in an establishment employing 100 or more workers are to be laid off except with prior permission of the government, unless lay off is due to shortage of power or natural calamity.

sub-section (2) a copy of the application for permission is to be served on the workmen.

sub-section (8) lay off without adequate permission is illegal and workmen are entitled to all benefits as if they had not been laid off.

Section 25-C entitles workmen who have been laid off (with adequate permission) to 50% of the total of their basic wages and dearness allowance.

Further, under the **Provident Fund Act**, (Section 14, Section 14A, Section 14 AB) non-payment of Provident Fund deposits and under the **Employees State Insurance Act**, (Section 85) non-payment of P.F. and ESI contributions are punishable offences. Criminal cases can be instituted, responsible persons arrested and prosecuted to ensure compliance. **Payment of Bonus Act** (Section 28) similarly makes the non-payment of Bonus an offence.