

SUPREME COURT OF INDIA

Kirloskar Oil Engines Ltd.

Vs.

Its Workmen

C.A.No.770 of 1957

(S. R. Das, C.J.I., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ.)

05.05.1959

JUDGEMENT

GAJENDRAGADKAR J.:

1. This appeal by special leave arises between M/s. Kirloskar Oil Engines Ltd. (hereinafter called the appellant) and its workmen who fall in three categories. The first two are represented by two unions respectively and the last one who are not represented by any union. These workmen will hereafter be called the respondents. The appeal is in respect of the latter's claim for bonus for the year ended 31-3-1955. The appellant is a public limited company and does business of manufacturing oil engines at Kirkee, Poona. The appellant was registered under the Indian Companies Act, 1913 in the year 1946, and it went into production from June 1949. The accounting year of the appellant ends on March 31. The appellant has adopted for its workmen the wage-structure prescribed by the Standardisation Committee (Engineering), Bombay, and it pays to its workmen, in addition to their normal wages and dearness allowance, production incentive bonus and attendance bonus. Besides, the appellant gives other amenities to its workmen. In the result the appellant claims that on the whole the wages paid by it to its workmen amount almost to a living wage.

2. The respondents disputed this last allegation. They contended that the wages paid to them together with the production bonus and attendance bonus as well as other amenities provided for them fall far short of a living wage and they were entitled to claim bonus from the available surplus of the trading profits of the appellant. They accordingly made a demand for bonus for the year in question equal to 1/3 of their earnings of that year immediately and without attaching any condition.

3. The industrial dispute to which this demand gave rise was referred to the conciliation officer under S. 12 (4) of the Industrial Disputes Act, 1947 (14 of 1947) by the Government of Bombay. The attempt at conciliation however failed; and on receiving the report of the conciliation officer the Government referred the dispute to the Industrial Tribunal, Bombay, under S. 12 (5) of the said Act. By its award delivered on 9-1-1957, the tribunal directed the appellant to pay to the respondents bonus equal to 1/8 of their basic earnings (exclusive of allowances and production bonus) within a period of two months from the date the award would become enforceable subject to two conditions specified in the award. It is against this award that the appellant has preferred the present appeal.

4. The calculations made by the tribunal under the Full Bench formula show that even after the appellant pays the bonus as directed by the award it would be left with a surplus of Rs. 1.89 lakhs.

These calculations are, however, challenged by the appellant as being inconsistent with the formula. It is urged on its behalf that the tribunal was in error in not granting to the appellant its claim for the deduction of income-tax payable by it on the profits of the bonus year according to the formula. There is no dispute about the material facts in respect of this claim. If the income-tax payable by the appellant on the amount of profits ascertained after deducting from the gross profits the admissible depreciation claimed is allowed to the appellant, it would amount to Rs. 2.25 lakhs. This was and is conceded by the respondents. They, however, urged before the tribunal that for the previous year ending on 31-3-1953, the appellant had sustained a loss of Rs. 9 lakhs and under S. 24 (2) of the Income-tax Act the appellant would be entitled to absorb the said loss in the profits of this year and as a consequence it would in fact not be liable to pay any tax for the relevant year. The respondents' case was that in such a case the appellant was not entitled to claim any deduction on account of income-tax. This argument has been accepted by the tribunal and it has disallowed the whole of the claim made by the appellant in respect of the whole of the item of income-tax.

5. In *Associated Cement Companies Ltd., Bombay v. Their Workmen*, Civil Appeals Nos. 459 and 460 of 1957, D/-5-5-1959: (AIR 1959 SC 967), we have considered this point and we have held that in working out the Full Bench formula the employer is entitled to claim the appropriate amount of income-tax payable on the profits determined under the formula even though under the provisions of the aforesaid section of the Income-tax Act he may not be required to pay the said tax. In view of the said decision we must hold that the tribunal was in error in not allowing the appellant's claim for deduction of Rs. 2.25 lakhs as a prior charge under the item of income-tax payable for the relevant year. It has been fairly conceded by Mr. Phadke, for the respondents, and we think rightly, that if this item is allowed to the appellant the conclusion of the tribunal that there was available surplus from which bonus could be paid to the respondents cannot be sustained. The award shows that the available surplus from which bonus has been ordered to be paid is Rs. 2.26 lakhs. If Rs. 2.25 lakhs is deducted from the surplus we are left with a figure of only .01 lakhs whereas the amount ordered to be paid by way of bonus is 0.37 lakhs.

6. There is another point on which the appellant has attacked the award under appeal. The appellant had made a claim for interest at 4 per cent. on depreciation fund used as working capital. This claim amounts to 0.32 lakhs. The tribunal has disallowed this claim on the ground that the employer cannot claim any allowance on depreciation fund. This point also has been considered by us in the case of *A. C. C. Ltd.*, (AIR 1959 SC 967) (*supra*), and we have held that if it is shown that the amount in the depreciation fund was in fact available to the employer and has been used by him as working capital he would be entitled to claim a return on it. At what rate of interest the return should be allowed is a question of fact to be determined in each case in the light of relevant circumstances. It is true that in this case the appellant has not filed any statement on oath showing that the amount from the depreciation fund on which it claims a return at 4 per cent. was available to it and has in fact been used as working capital. On the other hand a claim for .32 lakhs was made by way of return on the said fund and it was not disputed by the respondents on the ground that the fund had not been used as working capital or was in fact not available to the appellant. It appears that it was known to the parties that the tribunal had for some time past been taking the view that depreciation fund cannot earn any return even though it is used as working capital. That explains for the state of the pleadings in the present case. However, it is unnecessary to decide whether the appellant is entitled to any return on the depreciation fund in this case because, as we have just indicated, if only the amount of income-tax claimed by it is allowed that itself would entitle the appellant to succeed in this appeal.

7. Mr. Naunit Lal who appeared for respondent 2, however, attempted to argue that the tribunal was

not justified in awarding to the appellant Rs. 1.39 lakhs by way of provision for rehabilitation. His contention was that a claim for rehabilitation had not been established by the appellant by proper evidence. We do not think there is any substance in this argument. Mr. Mandke, the appellant's Works Manager, has made an affidavit in the proceedings before the tribunal that he had prepared Ex. C. 15 from his personal knowledge and that the said statement correctly showed the life of the machinery employed by the appellant and the period after which it would require to be replaced. The said witness had also filed other statements in support of the appellant's claim including Ex. C. 8 which explain the method adopted by the witness for arriving at the amount of rehabilitation claimed by the appellant. It appears that the appellant offered this witness for examination before the tribunal but the respondents did not desire to cross-examine him and so he did not step into the witness-box. That is why the tribunal held that the estimate given by the appellant for rehabilitation, replacement and modernisation should be accepted and the quota asked for by the appellant should be allowed from out of profits. On these facts it is impossible to accept the argument that the claim for rehabilitation has not been proved by the appellant.

8. In the result the appeal must be allowed and the award passed by the tribunal must be set aside. Since the decision of this appeal follows on the view that we have taken in the case of A. C. C. Ltd., (AIR 1959 SC 967) (*supra*), we think that there should be no orders as to costs.

Appeal allowed.

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