SUPREME COURT OF INDIA

Rohtas Industries Ltd.

Vs.

Workmen

C.A.No.480 of 1957

(P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.)

03.02.1960

JUDGEMENT

DAS GUPTA, J.:

1. This appeal is against the award of 3 1/2 months' basic wages amounting approximately to Rs. 8,22,500/- as bonus to workmen of the appellant Company, the Rohtas Industries Limited in a reference under the Industrial Dispute Act. For the purposes of application of the "Full Bench Formula" the Industrial Tribunal assessed Rs. 34,50,840/- as the annual share deductible for replacement and rehabilitation of buildings and machinery, the return on paid up capital at 4% as Rs. 8,16,967/-, the return on reserves employed as working capital at 2% as Rs. 4,88,214 and after making other deductions in respect of which there is no dispute now viz., depreciation fixed assets other than buildings and machinery at Rs. 3,45,000/- and taxes on profit as Rs. 15,95,489/-, it assessed the total deductible charges as Rs. 66,96,510/- Deducting this amount from the gross profits of Rs. 78,50,099/- the Tribunal found the surplus out of which bonus could be claimed as Rs. 11,53,589/- In arriving at the figure of Rs. 34,50,840/- as the annual share for replacement and rehabilitation in respect of buildings and machinery the Tribunal adopted as the multiplier, for machinery installed before 1947 at 2.5 and for post 1947 machinery at nil and the multiplier for pre 1947 buildings at 2 and post 1947 buildings as nil. As regards divisors for deciding the period over which the amount arrived at by the application of the multipliers should be spread, the Tribunal held 18 years for pre 1947 machinery and 28 years for post 1947 machinery as the proper figures and 27 and 36 years as the proper figures for pre 1947 and post 1947 buildings respectively.

2. In appeal before the Appellate Tribunal the employer challenged the correctness of these multipliers and divisors and also contended that the rate of return on paid up capital should have been calculated at 6% and the rate of return on reserves used as working capital at 4%. If these contentions were accepted there would be no available surplus and the contention on behalf of the employer was that no bonus should have been awarded.

3. The Appellate Tribunal rejected all these contentions except as regards the claim for 4 % as the rate of return on reserves used as working capital. On this count it held that the surplus would be reduced by a sum of Rs. 4,88,214/-. The Appellate Tribunal then proceeded to say :-

"Taking into consideration the rebate in income-tax and the return of 4 per cent. per annum on reserves employed as working capital the available surplus would be Rs. 9,78,100/-."

"In allowing bonus at the rate of 3 1/2 months' basic wages the Industrial Tribunal has ordered Rs. 8,22,500/- to be distributed by way of bonus. In our opinion the workmen were not entitled to bonus at the rate of 3 1/2 months' basic wages, thereby consuming about 90% of the available surplus."

"Now that the Management has distributed bonus at the rate allowed by the Industrial Tribunal we think no useful purpose would be served by interfering with the award of the Industrial Tribunal on the quantum of bonus."

4. Accordingly the employer's appeal was dismissed.

5. The Appellate Tribunal made its order on October 31, 1956. It appears that several months before this, the employer had paid out to the workmen the entire sum of Rs. 8,22,500 which the Tribunal had awarded as bonus. Admittedly this payment was made in accordance with the terms of the settlement which was arrived at in the course of conciliation proceedings between the employer and the workmen. It would be helpful to set out in extenso the first two terms of the settlement :-

"(1) Without prejudice to the claims of the parties concerning the appeal pending in the Appellate Tribunal arising out of the Award published in the Bihar Gazette, dated 10th August, 1955, of Sri Ali Hasan, the management agrees to pay three and half months' basic wage or salary as advance to each employee who was on the roll on 31st October, 1953, and continues to be on the rolls on the 17th of October, 1955. Sugar Factory seasonal workers will be paid advance of one month's basic salary or wage.

(2) This advance will be adjusted against any bonus that may become payable for year 1952-53, failing which the same can be adjusted from any other bonus of the subsequent years, failing which it would be adjusted for the salaries and wages of the employees concerned."

6. The first contention urged on behalf of the employer-appellant before us is that having come to the conclusion that the workmen were not entitled to the bonus at the rate of 3 1/2 months' basic wages awarded by the first Tribunal the Appellate Tribunal was not justified in dismissing the appeal merely because the amount has been already paid out. It is urged that it was wrong in thinking that no useful purpose would be served by interfering with the award since the Management had distributed bonus at the rate allowed by the Industrial Tribunal.

7. There can be no doubt about the soundness of this contention. Whether or not the employer will find it possible or practicable to adjust in accordance with the terms of the settlement any amount by which the bonus awarded by the Tribunal is ultimately reduced is of no relevance on the question as to what the correct amount of bonus is. It may even be that the employer may not think it wise or politic to try to insist on the terms of the settlement. That, however, is a matter entirely for the employer. When the parties come before a judicial or a quasi-judicial Tribunal for decision of a dispute the Tribunal is bound to give its decision irrespective of the fact whether the order made in favour of either party will be capable of execution or not. In our opinion, the Appellate Tribunal was bound to make its own assessment of the bonus, once it came to the conclusion that the workmen were not entitled to the bonus awarded by the first Tribunal.

8. It is therefore necessary for this court to calculate what the bonus, if any, should be. For this purpose it is necessary first to consider the challenge of the employers to the correctness of the figures taken as the multipliers and divisors. A considerable volume of evidence was adduced by the employer for a proper conclusion on the facts which fall to be considered on these questions. The

Tribunal arrived at its conclusion, as already stated, after a detailed consideration of that evidence. The Appellate Tribunal has accepted these findings. The mere fact that the Appellate Tribunal has not discussed the evidence in detail would not justify us in thinking that the matter was not properly considered by it. It is interesting to note that the Appellate Tribunal in its order has mentioned that the attempt to challenge the award of the Tribunal on the point of multipliers and the age of the machinery and buildings was a half-hearted one. Whether or not it was so, we are satisfied that the Appellate Tribunal agreed with the conclusion of the Tribunal on the point of multipliers and divisors after applying its own mind to the evidence. There is nothing therefore that would justify us in interfering with its conclusions as regards multipliers and divisors.

9. On the question whether the Tribunal was justified in allowing only 4 % as the rate of return on the paid up capital the appellate Tribunal after setting out the reasons mentioned by the tribunal for its view stated "In arguments the reasons given by the Industrial Tribunal for allowing return on paid up capital at Rs. 4 per cent per annum were not disputed." It is not said before us that the appellate Tribunal was wrong in making this statement . An attempt was made to explain away with this statement by saying that what the Appellate Tribunal wanted to say was that the correctness of the fact mentioned by the Tribunal in respect of its conclusion that the rate of interest was 4 % was not challenged. We see no reason to put such a strained interpretation on the words used by the Appellate Tribunal and think that when the Appellate Tribunal says that the reasons given by the Industrial Tribunal for allowing return on paid up capital at 4 per cent per annum were not disputed, they mean to say that the correctness of the reasoning was not disputed. In that view, we cannot allow the appellant to raise the question of rate of return on paid up capital before us.

10. As already stated, the Appellate Tribunal held that the first Tribunal was in error in allowing return at the rate of 2 per cent. per annum on the reserves used as working capital and the rate of 4 per cent. should be allowed. The Appellate Tribunal was clearly right in this and the correctness of this conclusion is not disputed before us on behalf of the workmen.

11. We therefore reach the position that the available surplus which was assessed by the Tribunal at Rs. 11,53,589 has to be reduced by the sum of Rs. 4,88,214.

12. That then is the surplus out of which the bonus is to be paid. Once bonus is paid the employer would obtain a rebate on income-tax in respect of the bonus. The process applied by the Appellate Tribunal of adding back the amount expected as rebate on income-tax in arriving at the amount of available surplus is however not only confusing but erroneous.

13. The fact that on bonus being paid the employer would be entitled to a rebate on income-tax is certainly a very important consideration which has to be taken into account before the final amount of the bonus is decided upon. As has often been pointed out and recently reiterated in Associated Cement Co., Ltd. v. Its Workmen, 1959 SCR 925 : (AIR 1959 SC 967), the Tribunal in deciding on the question of bonus to be given to workmen has to bear in mind that the Industry and the employer are also entitled to a fair share of the benefit derivable, by reason of the emergence of the surplus. It is in this connection that the amount available as abatement as income-tax in respect of the bonus awarded comes into picture. The proper approach to the question is to decide first on a tentative figure for bonus, after taking into consideration the wage structure of the Industry and other relevant matters and then to see after taking into consideration the amount receivable as rebate on income-tax how the share of the workmen on the one hand and the Industry and the employer on the other compare. If the tentative figure gives a fair share to both sides, that should be adopted as the final figure. If the tentative basis does not result in a fair division, another basis should be

attempted, and so on, until a figure which results in a fair division is reached.

14. It has to be mentioned first that we have not got the benefit in the present case of any evidence as regards the comparative position of the wage structure in these factories as compared to other industries in the neighborhood or as regards any of the other matters which have to be taken into consideration in deciding whether the share of the workmen should be small or large. In the absence of any such evidence we consider it proper that the bonus should be fixed at a figure which will have the result of giving the workmen on the one hand and the Industry and the employer on the other more or less equal benefit. We find that on reduction by Rs. 4,88,214, for the reasons mentioned above, the available surplus on the application of the Full Bench Formula stands at Rs. 6,65,375. The monthly wage bill at the relevant time is stated to be in the neighborhood of Rs. 2,40,000. If two months' basic wages be given as bonus the workmen would benefit to the extent of Rs. 4,80,000 while the benefit to the Industry and employer would be Rs. 1,85,375 plus Rs. 2,10,000 received as rebate on income-tax, i.e., Rs. 3,95,375. That would give an unduly large share to workmen. If a bonus equivalent to 1 3/4 months' basic wages be awarded so that the workmen would benefit to the extent of Rs. 4,20,000 the share of the Industry and the employer would work out at Rs. 2,45,375 plus Rs. 1,83,750,

i.e., Rs. 4,29,125. This appears to be reasonable.

15. We have therefore come to the conclusion that the award given by the Industrial Tribunal and confirmed by the Appellate Tribunal should be modified by reducing the bonus to 1 3/4 months' basic wages.

16. The appeal therefore succeeds in part. In view of the partial success of the parties we order that the parties should bear their own costs.

Appeal partly allowed.

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