

## SUPREME COURT OF INDIA

Management of the Cannanore S. and W. Mills, Ltd.

Vs.

Secy., Cannanore S. and W. Mills Workers' Union

C.A.No.247 of 1958

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

04.02.1960

### JUDGEMENT

#### **DAS GUPTA, J.:**

1. The two main questions raised in this appeal against an award of the Industrial Tribunal, Ernakulam, directing payment of three months' basic wages as bonus to the staff as well as to their workers over and above three months' bonus already paid are:-firstly, whether the Tribunal was wrong in rejecting the appellant's case that some portion of the reserve has been used as working capital and thus rejecting the claim for interest on the amount so alleged to have been used; and secondly whether an unduly large portion of the available surplus has been given to the workmen. The net profit according to the profit and loss account was Rs. 3,51,918 and the statutory depreciation was Rs. 3,16,810. During the year a sum of Rs. 3 lakhs had been paid to M/s. Malabar Industrial Syndicate the Managing Agents by way of compensation for the premature termination of their agency and for their loss of office as Managing Agents for the unexpired term in full and final settlement of their claims and the question arose whether any portion of this should be added back in calculating the gross profit. Before the Tribunal, however, the employer agreed that for the sake of industrial peace the sum of Rs. 3 lakhs should in the calculation of gross profit be spread over a period of three years. In view of this concession it is no longer open to the appellant to dispute the addition of Rs. 2 lakhs out of these three lakhs to the net profit and the depreciation amount in arriving at the gross profit. The calculation of the gross profit at Rs. 8,68,728 must therefore be accepted as correct. From this, three sums were deducted as prior charges for computation of the available surplus. The first item was on account of rehabilitation, this being equivalent to the amount of the statutory depreciation. The second item was Rs. 3,41,464 being tax which would have become payable if Rs. 2 lakhs of the Rs. 3 lakhs paid to the Managing Agency had not been deducted as a revenue expenditure. The third item was a sum of Rs. 90,000 being 6% return on the capital of Rs. 15 lakhs. The available surplus thus stood at Rs. 2,20,454. Leaving out the additional bonus already paid the balance left was Rs. 1,35,115. The Additional bonus of Rs. 85,340 being equivalent to three months' wages would leave in the hands of the Management-for the employer as well as for the industry together-a sum of Rs. 49,773 plus Rs. 74,674 as the income-tax rebate available i.e., a total sum of Rs. 1,24,447 as against the amount of Rs. 1,70,684 for the workmen.

2. It appears to have been the employer's case before the Tribunal that an amount of Rs. 18,060 should have also been deducted as one of the "prior charges" being 4% return on the reserves worked as working capital. In rejecting this claim the Industrial Tribunal pointed out that

"before a return could be allowed on reserves employed on working capital, it must be proved that the amount on which return is claimed was actually used in or about the business and also the period for which it was so utilised. Where the Company failed to prove the fact of any reserves being employed as working capital for the year in question, claim for return on such head must be negatived. Here the Company has not adduced any such proof."

It was urged on behalf of the appellant that an analysis of the statements in the balance sheet would clearly establish the fact that the amount claimed to have been worked as working capital was in fact so used. It is unnecessary for us to consider in this case whether an analysis of the statements in the balance-sheet would establish this fact, for before such analysis can be usefully undertaken it is necessary for the employer to establish that the statements in the balance sheet are in fact correct. In the absence of any evidence to show that the statements in the balance-sheet are true it is not possible for the Tribunal nor is it possible for us to presume the correctness of such statement. No such evidence has been attempted to be given in this case. The conclusion of the Tribunal that no part of the reserves has been shown to have been actually used as working capital during the relevant period is therefore unassailable.

3. It is convenient to mention here that similar failure to adduce proper evidence is also a sufficient basis for the disallowance of the employer's claim of a reduction of Rs. 4,81,002/- towards the rehabilitation expenses over and above the statutory depreciation of Rs. 3,16,810/- Learned counsel for the employer has conceded that there is no evidence on the record on the basis of which he could reasonably ask us to hold that any further amount should be deducted on account of rehabilitation in addition to the statutory depreciation of Rs. 3,16,810/-. He drew our attention, however, to an observation made by the Tribunal that the rehabilitation can be allowed only in the case of machinery purchased in pre-war days. We entirely agree with the learned counsel that the Tribunal was clearly wrong in this view. Even post-war machinery will have to be rehabilitated. As in other cases the multiplier and the divisor for ascertaining the rehabilitation costs of such machinery permissible for deduction have to be assessed, on the basis of evidence. The residue of life in case of most of such machinery is likely to be much more than in the case of pre-war machinery so that divisors will be larger. There may also be some cases where the multiplier will not exceed unity because the probable cost at the time when rehabilitation is needed is expected to remain the same. In other cases, however, the evidence may show even for post-war machinery that a multiplier exceeding unity is justified. The divisor in cases of post-war machinery is likely to be large-how large has to be decided on the evidence. But the general observation made by the Tribunal that rehabilitation cannot be allowed in the case of post-war machinery is clearly incorrect.

4. As, however, in the present case there is admittedly no evidence to show what amount in addition to Rs. 3,16,810/- is deductible for rehabilitation expenses no further discussion of this question is necessary.

5. This brings us to the consideration of the other point that arises in this appeal, viz., an unduly large portion of the available surplus has been made available to workmen. Special stress is laid by Sri. Vishwanatha Sastri on behalf of the appellant on the fact that the employer agreed that the amount of Rs. 3 lakhs actually paid as compensation to the former Managing Agents should be spread over a period of three years. It has been urged that but for this generous gesture on the part of the employer no portion of this three lakhs could have been added back in arriving at the gross profit and that the gross profit would have stood then at Rs. 6,68,728/- and the available surplus would have dwindled to a sum of Rs. Twenty-thousand and odd rupees. While account may no doubt be reasonably taken of such conduct on the part of the employer this is one of the many

factors which have to be taken into consideration in deciding how the available surplus should be shared. One of these factors is the extent of the gap between the wages paid and the living wage.

It appears that while the working force of the Mills is 850 the monthly wage is Rs. 28,447/-, the average wage per workman thus works out at about Rs. 33/-. While the exact amount of dearness allowance cannot be ascertained on the materials on the record it is reasonable to think that even adding the dearness allowance to the basic wage the actual average wage received per workman will not be more than Rs. 50/- per month. Even the grant of six months' basic wages as bonus would raise the average receipts per workman to only about Rs. 70/- per month. When all these things are taken into account we cannot say that the Tribunal in exercise of its discretion, awarding an additional sum of three months' wages in addition to the 3 months' basic wages already paid by the employer, has acted unreasonably.

6. We see no reason to interfere with the Tribunal's award and dismiss the appeal with costs.

Appeal dismissed.

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