

**SUPREME COURT OF INDIA**

Management of Rajendra Mills Ltd.

Vs.

Their Workmen

C.A.No.294 of 1958

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

11.02.1960

**JUDGEMENT**

**DAS GUPTA, J.:**

1. Two common points arising for consideration in these three appeals by employers against the order of the Labour Appellate Tribunal of India directing payment of bonus are :- (1) whether the appellate Tribunal was justified in disallowing any amount on account of rehabilitation costs in the calculation of the available surplus and (2) even assuming the available surplus to have been correctly determined by the Appellate Tribunal whether the distribution thereof was fair. In all these three cases the Industrial Tribunal had allowed considerable sums on account of rehabilitation costs in consequence of the deduction of which as prior charges no available surplus remained for distribution of any further amount as bonus. The Appellate Tribunal being of opinion that a claim for rehabilitation costs has to be established by proper evidence as regards the several factors which enter into the computation of such costs held that as the employer in each of these cases had failed to adduce evidence on the point nothing could be allowed on account of rehabilitation costs in addition to what was already deductible as depreciation charges. The position in law is now well settled by a series of decisions of this Court that the burden of proving what amount, if any, should be allowed as rehabilitation costs is on the employer and this burden has to be discharged by adducing proper evidence and giving the other party an opportunity to test the correctness of the evidence by cross-examination. Admittedly that was not done in any of these cases. The mere fact that certain balance-sheets were placed on the record is of no assistance to the employer in discharging the burden. We must hold therefore that the Appellate Tribunal was right in its view that in the absence of proper evidence the claim for any deduction on account of rehabilitation costs must be rejected.

2. This brings us to the question of distribution of the available surplus. On this matter it is necessary to consider the three appeals separately.

Civil Appeal No. 294 of 1958 :

3. In Appeal No. 294 of 1958 which is by the management of Jawahar Mills Ltd., the amount that remained available for distribution was admittedly Rs. 1,10,573; out of this a sum of Rs. 64,901 inclusive of the amount voluntarily paid goes to the share of workmen as a result of the Labour Appellate Tribunal's award. This leaves to the employer a sum of Rs. 45,672 and on adding the amount available on income-tax rebate in respect of the bonus paid i.e. a sum of Rs. 28,394, the

management's share for the shareholders as well as the industry comes to Rs. 74,066. On behalf of the appellant it is contended that the Company carries a considerable debenture loan in respect of which a sum of Rs. 40,000 was provided for, in the debenture redemption fund. It is rightly urged that the fact that provision has to be made for redeeming the debenture should properly be taken into account when distributing the available surplus between workmen and management. The Labour Appellate Tribunal has taken no account of this fact.

4. We find, however, that the case that the requirement for provision for redemption of debentures should be taken into consideration while distributing the available surplus was not made on behalf of the appellant in the statement of case filed in this Court nor does any such case appear to have been made before the Appellate Tribunal. The appellant cannot therefore be allowed to make any such case before us now.

5. If this is left out there remains no ground for saying that the distribution of the available surplus has been unduly favourable to workmen. It has to be mentioned that Shri Viswanatha Sastri also wanted to argue that the amount of Rs. 5,045-5-9 shown in the profit and loss account as receipts of profit on sale of motor vehicles and another sum of Rs. 3,952-1-0 received as rent should be left out of account in the distribution of bonus on the ground that the workmen did not contribute to the earning of these receipts. As no such case had, however, been made at any stage on behalf of the appellant before the learned counsel raised it in this Court we have refused to hear him on this point.

6. We therefore see no reason to interfere with the award made by the Labour Appellate Tribunal.

7. The appeal is accordingly dismissed with costs.

Civil Appeal No. 295 of 1958:

8. Appeal No. 295 of 1958 which is by the Rajendra Mills Ltd., is in respect of the bonus for 1951-52. The amount available for distribution stands at Rs. 59,747. The amount awarded by the Labour Appellate Tribunal added to the sum voluntarily paid by the employer comes up to Rs. 51,192. The employer is thus left with a sum of Rs. 8,555 plus a sum of Rs. 22,396 receivable as rebate on income-tax in respect of the bonus paid. The result of the distribution thus is that whereas workmen get Rs. 51,192 the employer gets Rs. 30,951. On behalf of the appellant it is contended that there is no justification for giving such a large share to workmen. Shri Viswanatha Sastri has tried to persuade us that when the employer is found to have acted liberally in making a voluntary payment of as much as 15% of basic wages the Appellate Tribunal should not have ordered any bonus at all. There may be some force in the contention that where the employer has of his own acted liberally whether out of generosity or out of anxiety for a contended labour force industrial adjudicators should hesitate to do anything that might unnecessarily disturb such contentment. At the same time the Tribunal cannot omit to consider along with its consideration of the employer's conduct other factors such as the ordinarily low wage structure and when a Tribunal whose decision is under appeal before us has in its discretion allowed something in addition to what was voluntarily paid this Court will not lightly interfere. In the present case, however, it seems to us on a consideration of all the circumstances that the interests of justice require some modification of the Appellate Tribunal's award. While no inflexible rule can possibly be laid down as regards the proportion of distribution of the available surplus, a workable rule, where the surplus is not considerable, very often is that when no other evidence as regards the relevant factors is available the distribution should be such as to leave to the employer and the industry on the one hand and the workmen on the other approximately equal benefits.

9. The distribution by the Appellate Tribunal cannot be said to have achieved this result even approximately. Though we should be slow to interfere with the distribution made by the Tribunals below in their discretion, if some indication could be had of what guided their exercise of such discretion, we cannot in the present case where no such indication is available ignore the apparent disparity in the distribution. It appears that if instead of 8 1/3% additional bonus granted by the Appellate Tribunal the workmen are granted an additional bonus of 2 1/2% of the yearly basic wages the total amount that will be received by workmen as bonus would stand at Rs. 39,930 while the management will get approximately a sum of Rs. 37,568 inclusive of the amount receivable as income-tax rebate. This will be a fair distribution.

10. Accordingly in modification of the order made by the lower tribunals we award 2 1/2% of the yearly basic wages as additional bonus to the workmen in addition to the 15 % already voluntarily paid by the employer. Parties will bear their own costs.

Civil Appeal No. 296 of 1958.

11. The third appeal is Appeal No. 296 of 1958.

This is also by Rajendra Mills Ltd., and is in respect of bonus for 1952-53. The available surplus stands at Rs. 97,162. Out of this the Appellate Tribunal has granted Rs. 70,000 as bonus being 29 1/6% of the basic earnings of the workmen during the year. On payment of such bonus the employer receives Rs. 27,162 plus Rs. 30,625 being the rebate on income-tax, i.e., a total sum of Rs. 57,787. It is urged that this is too favourable to labour. As no evidence of any facts that may be relevant on the question of distribution of the surplus is available we think that here also a distribution which will secure approximately equal benefits to employer and workmen should be made.

12. We find that if a sum equivalent to three months' basic wages is given as bonus to the workmen the workmen will benefit to the extent of Rs. 60,000 while the management will get a sum of Rs. 632,312 inclusive of the rebate on income-tax in respect of bonus paid. In our opinion, this will be a fair distribution of the surplus.

13. Accordingly in modification of the order made by the Appellate Tribunal we direct payment of three months' basic wages as bonus for the year 1952-53. Parties will bear their own costs.

14. It may be mentioned that in these two appeals by Rajendra Mills Ltd., also Shri Viswanatha Sastri wanted to argue that a portion of the profit made should be left out of account as no contribution had been made by the workmen to its acquisition. As this point had not been raised at any earlier stage and is essentially a question of fact we did not allow Shri Sastri to urge this point before us.

Order accordingly.

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