

# SUPREME COURT OF INDIA

Bombay Gas Co. Ltd.

Vs.

Workmen

C.A.Nos.185 to 187 of 1959

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

21.04.1960

## JUDGEMENT

### WANCHOO, J.:

1. These three appeals by special leave arise from the same award of the industrial tribunal, Bombay, and we shall dispose them of by one judgment. Appeals Nos. 185 and 186 are by the Bombay Gas Co. Ltd. (hereinafter called the Company) while Appeal No. 187 is by the workmen of the Company (hereinafter called the workmen). There was a dispute between the Company and its workmen with respect to bonus for the year 1956. The dispute was referred to the tribunal by two references. The first reference was with respect to all workmen who were clerical, technical and subordinate staff while the second reference was with respect to workmen other than the above. The two references were dealt with together by the tribunal and it came to the conclusion that the workmen were entitled to bonus for the year 1956 at the rate of one-twenty-fourth of the basic wage for the year. An award was accordingly made in favour of the two sets of workmen.

2. The Company in its appeal assails this award on the ground that the tribunal has not properly followed the Full Bench formula for awarding bonus worked out by the Labour Appellate Tribunal which has since been approved by this Court in *Associated Cement Companies Ltd., Bombay v. Their Workmen*, 1959 SCR 925 : (AIR 1959 SC 967). Its contention is that if the formula had been properly followed there would have been no available surplus from which bonus could be granted. The workmen in their appeal also contend that the tribunal was wrong in the manner in which it applied the formula and that on a proper application of the formula they would have been entitled to a larger sum a bonus. The only question therefore that calls for consideration is whether the formula as explained by this Court has been correctly applied.

3. There is no dispute between the parties as to gross profit for the year and the depreciation allowable. The parties are however at variance as to the amount to be allowed for income-tax and wealth-tax and for return on working capital and for rehabilitation. We propose to deal with these points one by one.

4. The Company claims income-tax at the rate in force in the year in dispute on Rs. 8.33 lacs while the workmen contend that the Company is only entitled to income-tax on Rs. 6.87 lacs. The difference is of Rs. 1. 46 lacs and the contention of the workmen is that this amount represents the income of the Company from its investments on which income-tax must already have been paid before the same was received by the Company. There is no evidence on this point on the record and

in the circumstances it is not possible to decide the matter. But we shall proceed on the assumption that the workmen's case is correct and income-tax at the relevant rate should be calculated on an income of Rs. 6.87 lacs. The amount of income-tax would thus come to Rs. 3.47 lacs. As to wealth-tax, the contention of the workmen is that it should not be allowed as it is not an item in the Full Bench formula. It must, however, be remembered that there was no wealth-tax when the Full Bench formula was evolved and there is no reason why, when there is wealth-tax, that should not be allowed on the same ground as income-tax. The Company will therefore be entitled to a deduction of Rs. 0.32 lacs on account of wealth-tax.

5. This brings us to the claim for return on the working capital. The tribunal has allowed 4 per cent. on the working capital. The workmen contend that only 2 per cent. should have been allowed. As has been pointed out by this Court in Associated Cement Companies case, 1959 SCR 925 : (AIR 1959 SC 967) and in other cases since then, there is no fixed rate for the return on working capital and it is usually allowed by tribunals at 2 per cent. To 4 per cent. depending upon the facts of each case. In the present case the tribunal has allowed 4 per cent. We see no reason why there should be interference with the rate allowed by the tribunal in the circumstances of this case. Therefore, the Company would be entitled to 4 per cent. return on its working capital which amounts to Rs. 1.05 lacs.

6. The last point of dispute relates to rehabilitation. No evidence was apparently led in the present case before the tribunal on this point because the Company relied on an earlier decision of this very tribunal in 1955 between these parties in connection with the bonus dispute for the year 1952. Rehabilitation amount was then worked out at Rs. 5 lacs including depreciation per year for a period of ten years from 1952 to 1961. The depreciation provided in this year was Rs. 3.58 lacs and the Company therefore claimed Rs. 1.42 lacs as rehabilitation. The tribunal, however, held that it was open to it to reduce the allocation for rehabilitation, because the cost of rehabilitation exceeded the amount that could reasonably be provided from the profits and that it would not be right to allow the whole amount of rehabilitation as that would wipe out the surplus to the detriment of labour and also because the Company had itself not made any provision for rehabilitation from out of profits in the account and had not spent much towards rehabilitation since 1952. It therefore disallowed the claim for rehabilitation over and above the amount available to the Company by way of depreciation. This view of the tribunal is obviously wrong and has been negated by this Court in Associated Cement Companies case, 1959 SCR 925 : (AIR 1959 SC 967). In the circumstances the Company is entitled to Rs. 1.42 lacs as rehabilitation, as the period of ten years is still to run out. It would have been a different matter if the workmen had shown that since 1955 when rehabilitation for ten years was worked out there had been change in circumstances, as, for example, fall in prices, justifying reduction in the amount then worked out. In the absence of any such material on the record there is no reason why the tribunal should have reduced the amount which it had itself worked out in 1955 for a period of ten years. It is true, as this Court has held in Associated Cement Companies case, 1959 SCR 925 : (AIR 1959 SC 967) that if it is shown that the employer deliberately and without sufficient cause does not use the amount allotted to him for rehabilitation that may be taken into account but that is not what the tribunal has purported to find. The Company would therefore be entitled to a sum of Rs. 1.42 lacs towards rehabilitation.

7. The final figures would therefore work out as follows :-

In Lac Rs.

Gross profits	11.91
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Less								depreciation
								3.58
	Balance		8.33					
Less	income-tax	at	50.5	per	cent.	on	Rs.	6.87 lacs.
								3.47
	Balance		4.86					
Less								wealth-tax
			0.32					
	Balance		4.54					
Less	6	per	cent.	return	on	paid-up	capital	
								2.40
	Balance		2.14					
Less	4	per	cent.	return	on	working	capital	
								1.05
	Balance		1.09					
Less								rehabilitation
								1.42
	Deficit		.33					

There is thus no available surplus and the tribunal was obviously in error in allowing any bonus for the year 1956.

8. We therefore allow the appeals by the Company and set aside the award of the tribunal and order that no bonus is payable for the year 1956. The appeal of the workmen naturally fails and is hereby dismissed. In the circumstances we pass no order as to costs.

Order accordingly.

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