Bengal Kagazkal Mazdoor Union & Another

Vs

The Titaghur Paper Mills Co. Ltd.

Civil Appeal Nos. 550 and 551 of 1962

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

11.04.1963

JUDGMENT

WANCHOO J. –

These two appeals by special leave arise out of the same award of the Second Industrial Tribunal, West Bengal and will be dealt with together. The two appeals are by two unions of workmen of the Titaghar Paper Mills Co., Titaghar No. 1 and the Titaghar Paper Mills Co. Kankinara No. 2. The two mills have been treated as one establishment and are under one management. So the Government of West Bengal referred the dispute between the mills and the unions for profit bonus for the years 1955-56, 1956-57, 1957-58 and 1958-59 to the tribunal for determining the quantum of bonus for each year and the method of its distribution amongst different categories of workmen including temporary hands.

The tribunal went into the matter and came to the conclusion after the application of what is known as the Full Bench formula evolved by the Labour Appellate Tribunal in 1950 and approved by this Court in the Associated Cement Companies Ltd. v. Its Workmen [(1959) S.C.R. 925.], that there was no surplus in any of the four years for the grant of bonus and therefore rejected the claim of the workmen. The two appeals are by the two unions against this award.

The contention of the workmen is that the tribunal's conclusion that there was no available surplus in any of the years is incorrect and four points have been urged in this connection to show how the tribunal went wrong. These points are : (1) The tribunal's calculation of gross profits for the years 1956-57 was wrong; (2) The tribunal went wrong in the matter of calculation of income-tax for all the four years; (3) The tribunal went wrong in the matter of calculating working capital for all the four years; and (4) The tribunal went wrong in calculating rehabilitation for all the four years. We shall deal with these points one by one.

Re. (1).

The contention in this behalf is that for the year 1956-57 the mills revalued their stock of raw materials, chemicals and dyes etc. as well as general stores, machine furnishings etc. and paper stock as well as coal stock. This revaluation resulted in an increase of Rs. 38,81,618/- in the value of these things as on April 1, 1956. This increase in the value was reflected in the consumption of raw materials, general stores and coal and in the sale of paper with the result that the profit-and-loss account showed inflated figures in terms of money on the basis of this revaluation, though in actual fact this amount was not spent, the increase being merely due to a paper entry on account of revaluation. Therefore it is said that as the tribunal ignored this aspect of the matter it did not

correctly calculate the gross profits for the year 1956-57. The tribunal in this connection relied on the judgment of this Court in the Tata Oil Mills Co. Ltd. v. Its Workmen [(1960) 1 S.C.R. 1.], and said that if there had been any addition to the profit on account of an increase in the value of the stock, that would be an extraneous profit for which no credit could be claimed by the workmen and such extraneous profit could not be taken into account in calculating the available surplus. It is urged on behalf of the appellants that the tribunal was in error in applying the principle laid down in the Tata Oil Mills Co.'s case [(1960) 1 S.C.R. 1.], to the facts of this case.

There is in our opinion force in this contention. It is true that in The Tata Oil Mills case [(1960) 1 S.C.R. 1.], the profit of rupees three lacs which arose merely on account of a change in the method of accounting was treated as extraneous income; but the judgment of that case does not show that the result of the revaluation was that increased value was taken into account in the matter of consumption of raw materials etc. The tribunal overlooked this fact when it proceeded to apply the ratio in the Tata Oil Mills case [(1960) 1 S.C.R. 1.], to the facts of the present case. It has however been urged on behalf of the respondent that there is a contra-entry in the profit-and-loss account and that shows that the tribunal was right in ignoring the effect of revaluation on the debit side, for the same sum of money i.e. Rs. 38,81,618/- was entered on the credit side and so there could be no mistake in arriving at the correct gross profit for that year. We have not been able to understand what the effect of this entry on the credit side is in arriving at the gross profit for the year; nor has the learned counsel for the respondent been able to explain the position clearly to us. We are of the opinion that the matter requires looking into and evidence may have to be taken to find out how exactly the real profits have been affected by showing on the debit side as consumption the valuation of raw materials etc. at the revaluation cost. The matter will therefore have to be investigated further. But it may be added that if the stocks are revalued that is no reason for showing the revalued cost on the debit side as consumption, for in reality, the revalued price is not what the mills paid for the raw materials etc., consumed and therefore to get a correct picture of the actual profit made, it is only the original cost price which will have to be taken into account for that purpose, for that is what the mills actually paid for acquiring the raw materials. Further on sale of paper, the profit made must be on the original valuation of paper stock and not on the revalued figure which was not the cost to the mills of making the paper. Finally it will also have to be considered what is the effect of the so-called contra-entry on the credit side of the profit and loss account for that year. Expert evidence may be necessary to explain the position properly and arrive at the correct profits for that year and so there will have to be a remand for the determination of this question by the tribunal, as it is not possible for us on the materials available on the record to arrive at a final conclusion ourselves.

Re. (2).

The contention under this head is that the tribunal while calculating income-tax has only taken into account the notional normal depreciation and not the statutory depreciation, as it should have done. This matter was considered by this Court in Sree Meenakshi Mills Ltd. v. Their Workmen [(1958) S.C.R. 878.], and again in the Associated Cement Companies case [(1959) S.C.R. 925.], and it was pointed out that in calculating the income-tax the tribunal should take into account the concessions given by the Income-tax Act to the employers, for two more depreciations are allowed under s. 10(2)(vi) of the Income-tax Act. At p. 962 of the report in the Supreme Court Reports, the word "not" has been printed by mistake and what this Court then decided was that in calculating the amount of tax payable, the tribunal should take into account the concessions given by the Income-tax Act, though in the report it is printed that the tribunal should not take into account the concessions. This will however be clear from the calculation of income-tax which is made at p. 994.

Chart V shows that the notional normal depreciation in that case was Rs. 100.22 lacs. Note A below that chart further shows that in arriving at the amount to be deducted as income-tax, the statutory depreciation amounting to Rs. 165.49 lacs was deducted from the gross profits and it was on the balance that income-tax payable was calculated. We may add that a correction slip was issued later. In the present case the tribunal had apparently calculated income-tax after deducting the notional normal depreciation and not the statutory depreciation. The contention of the appellants is that the statutory depreciation is much higher. The respondent has not been able to controvert this contention of the appellants, though there does not seem to be any evidence on the record as to what is the exact amount of statutory depreciation allowed during these years. It seems that on behalf of the workmen calculation sheets were put in for all the four years, according to which the statutory depreciation was much higher that the depreciation which was deducted by the tribunal from gross profits in arriving at the income-tax payable. But as the appellants were unable to point out any evidence beyond their own charts to prove the exact statutory depreciation for the years in controversy, it is not possible for us to calculate the correct amount of income-tax to be deducted in the absence of such evidence. The matter will therefore have to go back to the tribunal for taking further evidence on this point and then arriving at the amount payable as income-tax after deducting statutory depreciation from gross profits.

Re. (3).

Three contentions have been raised in this respect on behalf of the appellants. It is now well settled that a balance-sheet cannot be taken as proof of a claim of what portion of reserves has actually been used as working capital and that the utilization of a portion of the reserves as working capital has to be proved by the employer by evidence on affidavit or otherwise after giving opportunity to the workmen to contest the correctness of such evidence by cross-examination : (see Petlad Turkey Red Dye Works Ltd. v. Dyes & Chemical Workers' Union [(1960) 2 S.C.R. 906.]. What happened in the present case was that the accountant of the respondent gave two alternative calculations for arriving at the reserves used as working capital. Thus there were two figures given by the respondent to show what reserves were actually used as working capital. Further, according to the accountant, the lower figure represented the assets which could be at once converted into liquid cash while the higher figure represented both cash invested in the business and liquid cash that would be available. He then went on to state that the amount was always available for utilization as working capital and that it was actually utilised during the years. There was no effective cross-examination of this statement. However, before the tribunal it was claimed on behalf of the respondents that the lower figure should be taken as the actual working capital and that the tribunal did. We must say that it looks odd that the respondent should have produced two figures for the working capital for each year. We should have expected more positive evidence on the point which would have shown one figure, for reserves actually used as working capital could only be represented by one figure. Though therefore the accountant did swear that the amount was used as working capital and his oath was apparently with respect to both figures, the respondent in the end was content to take the lower figure. This in our opinion is not the right way of proving what reserves were actually used as working capital during the year and we should expect a firm figure to be given by the employers for this purpose. But as there was no effective cross-examination on the point by the appellants, we would not disallow interest on working capital altogether. As we are remanding the matter we expect proper evidence to be given by the respondent in this connection.

The next point urged on behalf of the appellants with respect to the calculation of working capital is that investments cannot be taken into account in arriving at the figure of working capital. Put in this broad form the contention of the appellant cannot be accepted, for there may be circumstances in

which investments may have been used, as working capital while equally there may be circumstances in which investments may not have been so used, and it will depend on the evidence available whether investments have been actually used as working capital or not. For example, where investments at the beginning of the particular year were of a particular kind and the same investments appear at the end of the year without any change, it cannot be said that the amount invested has been used as working capital. We may make this clearer by a hypothetical example. Suppose at the beginning of the year the employer has investments in government securities of 3 percent conversion loan to the tune of 20 lacs. At the end of the year also, the same investment continues in the same form, namely 3 percent conversion loan for Rupees twenty lacs. In those circumstances it cannot be said that this investment has been used during the year as working capital. On the other hand where investments have been realised during the year and actually used as working capital, evidence can be given to show that this has happened and then the investments so realised and used as working capital can be taken to be part of the working capital for the year. If such a thing has happened the balance-sheet will show that though, for example, at the beginning of the year the investment consisted of 3 percent conversion for loan for Rs. 20 lacs but at the end of the year it consisted of 3 percent conversion loan for Rs. 5 lacs, which would show that Rs. 15 lacs out of investments, might have been used as working capital. Similarly where investments are pledged as security for the purpose of business, even though there may be no change in them, that may show that part of the investments so pledged has been used as working capital. Therefore the question whether investments have been actually used as working capital is question of fact; whether they have been so used will have to be shown by evidence, oral and documentary, in support thereof. In the present case however it seems to have been assumed by the tribunal that all investments have been used as working capital and this in our opinion was not correct. The matter will therefore have to go back to find out exactly what investments were used as working capital.

The last argument under this head is that certain advances have also been taken into account as working capital and that this is not permissible. Here again the contention of the appellants cannot be accepted in this broad form. There may be some advances which may have been used as working capital while there may be others which may not have been so used. Where advances have been given for obtaining raw materials etc., they would certainly be part of the amount used as working capital. On the other hand where advances are purely loans and have not been realised during the year and the same advances which appear at the beginning of the year continue at the end of the year to the same person and the advances have not been made for the purpose of business, such advances cannot be taken to have been used as working capital. Further, as in the case of investments, if advances have been realised during the year and the amount realised has then been used as working capital, evidence will have to be given to show this. In the present case however it seems that advances have been taken en bloc as part of working capital and this in our opinion is not correct.

The result therefore is that there will have to be a remand on the question of determining working capital and the interest to be allowed on it in the light of the observations we have made herein.

Re. (4).

We now come to the question of rehabilitation. It is urged that the tribunal had occasion to consider the question of rehabilitation in connection with the respondent-mills for the year 1954-55, i.e., just before the four years now in dispute. On that occasion, the tribunal found that the total amount necessary for rehabilitation was Rs. 43.39 lacs per year; but in the four years in dispute the tribunal has increased this amount to Rs. 63.56 lacs in 1955-56 and Rs. 67.66 lacs in 1956-57. As for the

years 1957-58 and 1958-59 the tribunal has found the rehabilitation amount only for the pre-1939 block as Rs. 64.59 lacks and Rs. 64.71 lacs respectively. The appellants contend that these calculations are incorrect and that rehabilitation calculations are a long term matter and there was no reason for rehabilitation amount to go up as compared to that for 1954-55 as there was no appreciable change in prices during the four years in dispute as compared to the prices in 1954-55. It is conceded that rehabilitation may have increased slightly on account of new blocks which came into existence after 1954-55. Even so it is urged that the tribunal has fallen into two basic errors and that is how it came to arrive at such an inflated figure of rehabilitation for the years in dispute as compared to the year 1954-55. The first basic error is said to be that the tribunal did not take into account what had already been allowed for the previous years as rehabilitation and proceeded to calculate rehabilitation as if nothing had been allowed for rehabilitation for the previous years, which would naturally have the effect of inflating the rehabilitation amount year by year. The second basic error is said to be that the tribunal did not give credit for all the reserves available for rehabilitation as it should have done with the result that the amount of rehabilitation found by it became inflated.

We are of the opinion that there is force in this argument and the tribunal has undoubtedly fallen into error on both counts. In the first place determination of rehabilitation is a long term affair and once it has been determined it cannot go on increasing from year to year except in case of sudden appreciable rise in prices or on account of new blocks being added followed by further rise of prices after the purchase of the new blocks. As was pointed out in the Associated Cement Companies case [(1959) S.C.R. 925.], the tribunal has before awarding the proper amount in respect of rehabilitation, to make deduction, (firstly) on account of break-down value, (secondly) on account of depreciation and general liquid reserves available to the employer other than those reasonably earmarked for specific purposes and (thirdly) on account of rehabilitation amount which may have been allowed to the employer in previous years and remained unused in the meantime. It appears that in the year 1954-55 the net figure arrived at for rehabilitation for that year was Rs. 33.39 lacs after allowing depreciation for that year and as the available surplus after deducting other prior charges was only Rs. 24.46 lacs, the tribunal did not grant any bonus to the workmen. Even so it is remarkable, that out of the rehabilitation amount of Rs. 33.39 lacs for that year a sum of Rs. 24.46 lacs was left in the hands of the employer as rehabilitation amount. The tribunal seems to have ignored this fact altogether in calculating rehabilitation amount for the years in dispute. As was pointed out in the Associated Cement Companies case [(1959) S.C.R. 925.], all the rehabilitation amount which may have been allowed to the employer for rehabilitation in previous years but remained unused for rehabilitation in the meantime, has to be taken into account in arriving at the amount required for rehabilitation. The same result can be arrived at in other way, provided there is no appreciable rise in price, by taking the rehabilitation amount once arrived at and adding to it such amounts as may be due for rehabilitation for new blocks and also such amounts as may not have been left in the hands of the employer in the previous years, because the available surplus in his hand after allowing all other prior charges was less than the rehabilitation amount found due. In any case the tribunal was certainly wrong in not taking into account the rehabilitation amounts allowed in previous years in working out the rehabilitation amount for the years in dispute.

The second error into which the tribunal fell was in the matter of deducting the amount available from liquid reserves other than those ear-marked for specific purposes. What the tribunal did in this case was that it did not properly take into account the liquid reserves available and deduct them from the rehabilitation amount found due by it. The tribunal seems to have held that whatever sum was working capital could not be deducted from the gross rehabilitation amount found by it and reliance in this connection was placed on the judgment of this Court in Khandesh Spg. & Wvg.

Mills Co. Ltd. v. The Rashtriya Girni Kamgar Sangh, Jalgaon [(1960) 2 S.C.R. 841.]. In that case the employer claimed that the balance-sheet disclosed that the entire reserves had been used as working capital and consequently such reserves should not be excluded from the claim towards rehabilitation. It was however held that the employer had failed to prove that the reserves had in fact been used as working capital and as such the amount was rightly deducted by the industrial court from the amount fixed for rehabilitation. In our opinion the ratio of that case has been misunderstood. That case does not lay down that all the amount on which interest is allowed as working capital cannot be deducted from the gross rehabilitation amount found by the tribunal to arrive at the net rehabilitation amount. What that case decided was that before a particular reserve could be said to be not available for rehabilitation it must be established that it has been reasonably earmarked for a binding purpose or the whole or a part of it has been used as working capital and that only such part of the reserves coming under either of the two heads can be said to be not available for rehabilitation. This means that if any reserve has been earmarked for a particular purpose which is binding and must be carried out, for example, an amount kept in reserve for paying debentures when they fall due, it cannot be deducted from the gross rehabilitation amount. Further when that case lays down that the whole or a part of the reserves which have been actually used as working capital cannot be deducted from the gross rehabilitation amount it does not mean that money which may be available for use as working capital in the next year cannot also be deducted from the gross rehabilitation amount. The position would be clear if we indicate how generally the amount of working capital is arrived at. What is usually done is to take into account the liquid assets of various kinds available at the beginning of the relevant year and the total of such assets available at the beginning of the year is considered as working capital for that year, if there is evidence that it has been actually used during the year. But when we come to the end of the year and look at the balance sheet we have to find out the liquid assets available at the end of the year from which the amount available as working capital for the next year may be arrived at. But the liquid assets available at the end of the year will usually be of two kinds; firstly there will be cash assets in the various reserves and secondly there will be assets in the shape of raw materials, etc. and both together become the available working capital for the next year subject to necessary adjustments and also subject to the evidence that they were actually used as working capital. Now, what was laid down in the Khandesh Spg. & Wvg. Co.'s case [(1960) 2 S.C.R. 84], when it was said that the amount which had been actually used as working capital could not be deducted from the gross rehabilitation amount was that part of the working capital which is in the shape of raw materials etc. could not be deducted. The distinction which we have pointed out did not arise for consideration in that case, for it was held that in that case that there was no evidence to show that any part of such reserves had in fact been used as working capital and this Court upheld the award of the industrial court deducting the entire reserves from the gross rehabilitation amount. The matter will be clearer if we take a concrete example. Take the year 1955-56. Now the working capital is generally arrived at by finding the liquid reserves available on April 1, 1955. These liquid reserves may be in the form of reserves of various kinds i.e. depreciation reserve, general reserve, renewal reserve, and so on, and also in the form of investments, advances and raw materials etc. in stock. All these have to be taken into account in arriving at the working capital after necessary adjustments. As we have already pointed out, the amount of working capital thus arrived at if there is evidence that it was actually used as working capital for the year may be allowed interest in accordance with the Full Bench formula. But then we come to the end of the year i.e. March 31, 1956. At that time we have again to see what the position of the reserves is. The reserves may be again in the form of cash reserves or investments or advances and also in the form of raw materials etc. From these reserves working capital for the next year may have to be calculated and if evidence is given that it has been actually used, interest may have to be allowed on it; but that is no reason for not deducting that part

of the reserves which is in the shape of cash reserve, investments or advances on the ground that it is not available for rehabilitation, as it may be used as working capital for the year 1956-57. Only that part of the reserves which is in the shape of raw materials etc. or which is ear-marked as indicated already cannot be deducted for purposes of rehabilitation, for it will not be available for that purpose and would be consumed or sold during the course of the next year or used for a specific purpose. But all other reserves are available for rehabilitation on March 31, 1956 and have to be deducted from the gross rehabilitation amount for the year. The tribunal in this case however, has not followed this principle on a misappreciation of the effect of the judgment of this Court in Khandesh Spg. & Wvg. Co.'s case [(1960) 2 S.C.R. 841.]. All that decision lays down is that part of the reserves which go to make up the working capital which is in the shape of raw materials, etc. or earmarked for reserve will not be deducted from the gross-rehabilitation amount; it does not lay down that all cash reserves in the shape of depreciation reserve, general reserve, renewal reserve and so on and also in the shape of investments and advances cannot be deducted from the gross rehabilitation amount as they may be used as working capital next year. This means that the tribunal has to recalculate the rehabilitation amount due in view of what we have said above.

In view of the fact that the adjudication of the claim for bonus has already been delayed, we direct the tribunal to recalculate the available surplus in accordance with the observations made in this judgment after giving opportunity to the parties to adduce further evidence and submit its findings to this Court within three months of the receipt of the record by it. When the findings of the tribunal have been received, notice will be given to parties to file objections if any within ten days of the receipt of the notice and thereafter the appeals will be listed for final disposal.

Case remanded.

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