Workmen of Joint Steamer Companies

Vs

Joint Steamer Companies

Civil Appeals Nos. 811 and 812 of 1962

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

29.04.1963

JUDGMENT

DAS GUPTA J. –

These two appeals raise a somewhat difficult problem as regards the grant of bonus to workmen of an industry operating not only in India but also outside this country. The appellants are the workmen of two Steamer Companies, the Indian General Navigation and Railway Co., Ltd., and the Rivers Steam Navigation Co., Ltd., which have for many years been operating jointly and are conveniently referred to as "Joint Steamer Companies". Disputes having arisen between these companies and their workmen on the question of bonus for the years 1949, 1950, 1951 and 1952, they were referred by the Government of West Bengal to the Industrial Tribunal, by two separate orders of reference, one in respect of the dispute for bonus for the years 1949 and 1950 and the other in respect of the years 1951 and 1952.

The Tribunal disposed of these two references by one common judgment and rejected the workmen's claim for bonus for all the four years. This order of rejection was confirmed by the Labour Appellate Tribunal, though on different grounds. It is against this decision of the Labour Appellate. Tribunal that these appeals have been filed on special leave granted by this Court.

The respondent companies were established more than a century ago and for more than half a century before India was partitioned, they were carrying on transport business in the eastern part of the country in co-operation with each other. Their business of transporting goods and passengers is carried on in 600 or 700 vessels plying on the Ganges and the Brahmaputtra rivers and their tributaries. This business continued even after the partition of India as a result of which a portion of the State of Pakistan intervened between Assam and the remainder of India. The main traffic of the company in the years with which we are concerned, viz., 1949 to 1952 has been as before, namely, (a) traffic within India; (b) traffic within Pakistan, and (c) traffic between India and Pakistan. The headquarters of the Companies remained as before at Calcutta. The major portion of the large fleet of vessels in which the companies carried on their business remained in common use for traffic originating in Pakistan and for traffic originating in East Bengal and Assam, so that no appreciable part of the fleet could be classed as being in use specifically in one country or the other.

The workmen's claim for bonus was substantially based on the contention that large profits were earned by the companies on their operations in India. To these, the workmen contended, they had contributed and so they were entitle to bonus.

In resisting this claim the companies submitted that the transport business which they carried on in

India and Pakistan was one single, integrated, industrial undertaking and the overall result of the entire business had to be considered in deciding the question of bonus. According to them, if the principles for ascertaining profit bonus that are embodied in what is known as the Full Bench Formula, finally crystallized by this Court in Associated Cement Companies' Case ([1959] S.C.R. 925.), be applied, it will be found that no available surplus for distribution of bonus remains. In support of this case the companies submitted charts showing their version of the calculation of available surplus in accordance with the Full Bench Formula.

The workmen's Counsel conceded before the Appellate Tribunal that they had no case for bonus if that claim had to be applied to available surplus on the basis of the profits of the companies derived from the entire business in India and Pakistan. Their contention was that the Full Bench Formula had to be applied on the basis of profits derived in West Bengal or at any rate on the basis of the profits derived in India to the exclusion of Pakistan which is foreign country.

The Appellate Tribunal accepted the Companies' contentions and accordingly rejected the workmen's claim for bonus.

As before the Appellate Tribunal, so before this Court the main controversy between the parties has centred round the question whether the Full Bench Formula has to be applied on the basis of the overall results of the Companies' operations in India and Pakistan or on the results of the operations in India only. If all these operations are carried on as parts of one integrated industrial activity there would ordinarily be no justification for deciding the question of bonus on the operations in India only. The question whether different operations carried on by the same employer form one integrated industrial activity or not has often been considered by industrial adjudication. This Court has also had to deal with the question on several occasions and has in a series of decisions indicated a number of tests which are of assistance in deciding it. Integrality of functions; inter-dependence of finance; community of control and management; community of man-power and of recruitment and discipline in respect of them; whether the employer himself has treated the different parts as forming part of one unit or not - these are some of the many tests that have been laid down. It has also been emphasised that the application of one single test in preference to the other has to be generally avoided and the weightage to be given to the different tests applied will depend on the circumstances of each case and the nature of the industrial activity. A.C.C. Ltd., v. Their Workmen (1960 (1) L.L.J. 1.); Pratap Press v. Their Workmen (1960 (1) L.L.J. 497.); The Management of Pakshiraja Studio v. Their Workmen (1916 (3) F.L.R. 369.); Fine Knitting Co., Ltd., v. I.C. (1962 (1) L.L.J. 275.); D.C.M. Chemical Works v. Its Workmen (1962 (1) L.L.J. 388.).

Cases often occur where the same employer carries on the same industrial activity at different place and the question arises whether the units at the different places are one and the same or distinct and separate. Thus, where the same company engaged in the manufacture of cement starts two different factories at two place, A and B, they may well be distinct and separate, so that the claim for bonus of the workmen of the Factory at A will be decided on the results of the Factory working at A and not on the combined result of the working of the two factories at A and B. If of these two places, one is in India, and the other in a foreign country, that will make no difference; for it will still be possible to ascertain the different items for the application of the Full Bench Formula.

It is difficult to see however how the operations of a company carrying on transport business between two different places can be said to be carried on as different and distinct industrial activities at these two places. It is unnecessary to discuss in detail the application of the tests mentioned above for deciding whether the companies' operations in Pakistan and their operations in India form two

different units of industrial activity or they are really one as Mr. Chatterjee, who appeared before us for the appellants, did not seriously contend that they form two different units. It was however strenuously contended by Mr. Chatterjee that assuming that the operations in India and Pakistan form part of one integrated industrial activity, a way should still be found for separating the two sets of operations for the purpose of the application of the Full Bench Formula. The bulk of the companies' operations, Mr. Chatterjee, contends is carried on in India. As the companies' own witness admits, 61.4% of the total receipts was in India. It appears reasonable to think also that the greater part of the traffic was from one point to another point in India. The workmen contend that a proper scrutiny of the Companies' accounts would show that these operations where the traffic originated in India and the destination was also in a part of India, resulted in considerable profits to the companies, and it will be unjust that they should be denied a share of the profits in the form of bonus merely because other operations carried on by the companies, whether within Pakistan or between India and Pakistan resulted in loss. It is suggested that conditions in Pakistan are so very different from conditions in India that it would be denial of justice to the workmen in India to tie them to whatever happened in Pakistan. We find it impossible to say that there is not much force in these submissions. We might have been prepared therefore to consider whether it would be possible to evolve some principles for the application of the Full Bench Formula to these peculiar conditions, if we could derive assistance for the same on the materials on the record. The evidence that has been given in the case however affords us little assistance in the matter. This becomes painfully clear when we try to apply the Full Bench Formula to the fact of the case.

At the threshold of the task, we are faced with the difficulty of ascertaining the profits of the companies for what is called its "Indian operations". Assuming that wherever the traffic originates in India the receipts in freights and fares for such traffic should be held to constitute the receipts for the Indian operations, even such an approximation cannot possibly be applied to the allocation of the expenditure. For the same vessel which carries traffic originating say, in Calcutta in India to a destination in India. say, Dibrugarh in Assam, would often carry traffic also from Calcutta to some points in Pakistan and from points in Pakistan to some points in Assam. There is no indication in the evidence we have got on the record to show how in these circumstances the total expenditure incurred should be allocated between purely Indian operations of the traffic and the rest.

Mr. Chatterjee, drew our attention to a notification of the Government of India dated December 10, 1947 which gave effect to an agreement between the Government of the Dominion of India and the Government of the Dominion of Pakistan for the avoidance of double taxation of income, and suggested that the principles laid down in this agreement for calculating what proportion of the total income each of the Dominion would be entitled to charge in respect of concerns, which do business both in India and Pakistan, may be conveniently applied for ascertaining the profits, for the Indian operations, for the purpose of the Full Bench Formula.

It is difficult to see how this agreement between the two Governments for the specific purpose of action under the Income-tax Act can furnish a just or proper basis for computation of profits for the purpose of Full Bench Formula for bonus.

Assuming, however, that some guidance is available from what is stated in this agreement as to the calculation of the profits for the companies' operations in India, other difficulties in the way of applying the Full Bench Formula still remain. How is one to calculate the paid-up capital on which interest is to be allowed ? Admittedly, no demarcation is made between vessels used in the companies' purely Indian operations and vessels used for the traffic within Pakistan and for traffic between India and Pakistan. As we have mentioned earlier, the same vessel may carry and will in

many cases actually carry cargo for Indian destinations as also for Pakistani destinations. As far as we can see from the evidence on the record there is no easy way of ascertaining what portion of the total paid up capital of the companies could be said to have been used for the purpose of the Indian operations. It is equally difficult to ascertain the extent of the working capital used for their Indian operations. Unless these difficulties can be removed it is not possible to arrive at any figure for the prior charges to be deducted on account of interest on paid-up capital and interest on working capital. Equally difficult is the assessment of the amount necessary for rehabilitation. By far the major part of the capital that will require rehabilitation consists of the vessels in which the goods and passengers are carried. If it was known that out of the total fleet of 600 or 700 vessels some are ear-marked for purely Indian operations, it might be possible to find out what was required for their rehabilitation. Admittedly, however, there is no such ear-marking. Apart from the fact as mentioned above that an identical vessel is often used for carrying goods of the purely Indian traffic as also goods of the traffic within Pakistan and the traffic between India and Pakistan in one and the same trip, it also seems likely that some vessels which are at times confined to purely Pakistani traffic are from time to time transferred to Indian traffic. In these circumstances, it is not possible with the materials at our disposal to ascertain the amount for rehabilitation of the capital used for Indian operations only.

Learned Counsel for the appellant was conscious of these difficulties. He appealed to us however to try to find out some means for applying the Full Bench Formula to the companies' Indian operations. He himself has not been able to suggest any solution to the problem except suggesting that a way out may be found by apportioning the income, expenditure, paid-up capital and working capital for the entire operations in India and Pakistan between those in India and those in Pakistan. Some of the difficulties in the way of such apportionment have been indicated by us above. We must not however be understood to say that the task is wholly impossible of achievement. It may be that in another case the workmen may be able to adduce such evidence by examining expert witnesses, like actuaries, accountants or others that the tribunals may feel justified in computing, in respect of the Indian business, reasonably accurate figures for the different items of the Full Bench Formula. All we wish to say is that on the materials on the present record we are not in a position to apply the Full Bench Formula to a part only of the total operations of the companies in India and Pakistan.

We have therefore come to the conclusion that the Labour Appellate Tribunal has rightly rejected the workmen's claim for bonus for the years, 1949, 1950, 1951 and 1952.

Before we part with these appeals, we have to refer to a complaint vehemently pressed before us by Mr. Chatterjee that there has not been a fair hearing of these cases inasmuch as the workmen or their representatives were not given access to certain account books which they wanted to consult. We think it necessary to examine how far this complaint is justified as, in our opinion, even if these account books were made available to the workmen, it would be impossible on the materials on the record to arrive at proper figures for the different items involved in the Full Bench Formula. We think it proper however to emphasise the importance of both employers and workmen making available to industrial adjudication all relevant papers, including account books which are likely to assist a proper decision of the questions at issue. The provisions of s. 21 of the Industrial Disputes Act afford ample protection against disclosure of information which a party may wish to be treated as confidential. Where workmen or their representatives ask for inspection of such papers and account books, it should ordinarily be possible for the employers to comply with the request, subject however to the protection of s. 21 of the Industrial Disputes Act. When any such prayer is made, the Tribunal has to use its judicial discretion in the matter and in the absence of any special

circumstances would ordinarily be justified in asking the employers to give to the workmen reasonable access to all relevant papers.

As has been stated above, we have come to the conclusion that the Appellate Tribunal has rightly rejected the workmen's claim for bonus. The appeals are accordingly dismissed. There will be no order as to costs.

Appeals dismissed.

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