

Britannia Engineering Company, Limited, West Bengal

v.

Their Workmen

(Supreme Court Of India)

HON'BLE JUSTICE P.B.GAJENDRAGADKAR (CJI)

HON'BLE JUSTICE K. N. WANCHOO

HON'BLE JUSTICE V.RAMASWAMI

Civil Appeals Nos. 227-228 of 1964 | 15-04-1965

Hidayatullah, J.

1. These are two appeals from an award dated 29 October, 1962 by the second industrial, West Bengal, in an industrial dispute between the Britannia Engineering Company, Ltd., Titaghur, West Bengal, and its workmen. The dispute related to profit bonus for the year 1959. By all order of the Government of West Bengal dated 25 January, 1961 the following issue was referred :

"Whether the workmen are entitled to any bonus for the accounting year 1959 payable in 1960 over and above one month's basic wages already distributed ? If so, what should be the quantum and mode of distribution thereof?"

2. The workmen were represented to the hearing by as many as four unions. The tribunal answered the first questions in the affirmative and on the second it held that workmen who had worked for a minimum number of 240 days in the year were entitled to one month's basic wage as additional bonus, workmen who had worked for more that six months but less than 240 days, to additional bonus equal to half-month's wage and workmen who worked for three months but less than six months additional bonus equal to one-fourth month's wage. Piece-rated workmen were to get the same benefit on the basis of monthly average basis earning. Workmen who had worked less than three months were held disentitled to any bonus.

3. From this award the employers and three unions have appealed special leave. The main dispute centres round the calculation of the available surplus by the tribunal from which the bonus is payable. Both sides have fairly conceded that the approach to the problem by the tribunal was full of errors. This appears to be due to a misunderstanding of the balance sheet and the profit and loss account of the company. It is not necessary for us to enter too elaborately into the dispute, for our decision can be stated in very short and simple terms. It is agreed on both sides that the net profits came to Rs. 6, 23, 065 and to it must be added Rs. 5, 48, 717 for depreciation and Rs. 5, 32, 000 provision for taxation. This addition gives a figure of Rs. 17, 33, 782 and so far there is no dispute. The dispute arises over some of the other "add-backs" and the deduction of "prior charges" as laid down in what is popularly known as the Full Bench formulas. The tribunal added back to the sum of Rs. 17, 33, 782 certain sums to arrive at the adjusted gross profits before making deductions for prior charges and we shall review these additions separately. The first sum added back is Rs. 29, 884 which was claimed as a part of expenditure on account of canteen. In Ex. G. 8 which is a part of the accounts dealing with miscellaneous expenses, a sum of Rs. 59, 768 is shown as made up of two items. Rs. 18, 838 (medical expenses) and Rs. 40, 930 for welfare (including subsidy to works, canteen, pantry expenses and tiffin expenses, etc.). The workmen asked that the whole of this amount should be added back. Evidence led on behalf of the workmen was that they were not given any tiffin allowance and that the canteen served only the manual and clerical staff or visitors. The management, in its evidence, established that the workmen get a cup of tea at the concessional rate of 3 paise. All this is not much to the purpose. The fact is that the canteen was subsidised and the amount was actually spent. The tribunal attempted some kind of justice by adding back half of the amount, overlooking in the first instance that a part of the sum (medical expenses) was in a different category altogether and in the next that no such add-back was possible when the next amount was proved to be spent. In our opinion the add-back of Rs. 29, 884 must be cancelled.

4. The tribunal next added back a sum of Rs. 1, 00, 868 which it described as "repairs of building machineries." The workmen had not asked for this addition. One of the unions (Sramik Union) in its statement had made a general remark :

"That the company spends a large sum on capital and establishment expenses,

and this was equally generally and vaguely replied to by the company by saying that it spent. only necessary sum for its usual and necessary expansion and establishment expenses."

This hardly raised a triable issue. What the tribunal did is interesting. In the profit and loss account an amount of Rs. 1, 51, 302 was shown under the heading "repairs." The break-up of the amount was :

RS.

Buildings . .	52, 970	Plant and machinery . .	79, 500	others . .	18, 832	-----
Total . .	1, 51, 302	-----				

As this work done departmentally and as the Companies Act requires that the amount should be shown separately on account of labour and material, a footnote was added which showed a second break-up of the total figure :

RS.

(a) Salaries, wages and bonus . .	41, 088	(b) Consumption of stores . .	1, 10, 214
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Total . . 1, 51, 302

The general items of wages and consumption of stores in the profit and loss account, of course, did not include the items (a) and (b) above.

5. The tribunal held that some person should have come forward on behalf of the company to deny that the sum of Rs. 1, 51, 302 was not spent on capital account, and the tribunal added back two-thirds, excusing, as it said, one-third in the company's favour. This was quite erroneous. There was nothing to show that the profit and loss account was wrong and no error in it was pointed out by

the tribunal. The balance sheet and the profit and loss account were not held by any authority (such as the Income-tax Department) to be wrong. Ordinarily the balance sheet and the profit and loss account are accepted as correct and more was this the case here because no objection was raised and no inquiry was made. The tribunal was surmising when it attributed a part of the expenditure on repairs to the capital account. In our judgment, the whole of this add-back must be cancelled. The tribunal next added back a sum of Rs. 1, 00, 000 which was transferred to the development rebate reserve. There is no reason given by the tribunal for this action. The balance of profits which was carried down to the appropriation account consisted of this sum and a further sum Rs. 78, 052 which was the balance brought forward from the previous year. In this way the company had Rs. 7, 31, 117 in the appropriation account. Additions to machinery as shown in the "fixed assets" were Rs. 4, 96, 464 (roundly Rs. 5 lakhs). The company could earn rebate in income tax if it transferred a minimum of 75 per cent of 20 per cent of that sum. It transferred Rs. 1, 00, 000 which was 100 per cent of 20 per cent of Rs. 5 lakhs. The company next distributed Rs. 4, 48, 636 as dividends and carried to the balance sheet the sum of Rs. 1, 82, 481.

6. As the transfer was made after the net profits were calculated the amount could not be added back. It would have been different if it had been transferred before the calculation of net profits. However, in the calculation of income tax the company would get a deduction of Rs. 45, 000 arising from the transfer of the sum to the development rebate reserve. That we shall adjust later when we set down the calculations. The "add-back" must be excluded in adjusting the gross profits.

The tribunal next added back provident fund contribution of Rs. 2, 06, 007 and gratuity paid in the year Rs. 21, 869. No doubt its Indian Hume Pipe Company Ltd. v. its workmen [1959 - II L.L.J. 357], this Court made observations that provident fund and gratuity.

"however necessary, may not be included in the category of prior charges"

but the remarks were obviously made on the assumption that the money in question was being kept in hand to meet future liabilities. The provident fund

here was payable statutorily to the trustees and this was money actually paid out. The same is the case with gratuity. These two amounts could not be added back - see *Burn & Co., Ltd. v. Their workmen* [1964 - I L.L.J. 370]. Sri Ramamurthi, who appeared for the workmen, did not even attempt to argue the point. The next amount added back is Rs. 4, 95, 838. In the profit and loss account, the company had shown "consumption of raw materials" Rs. 94, 09, 526 and "consumption of stores and spares" Rs. 5, 07, 234. The tribunal has added together these two amounts and of total (Rs. 99, 16, 760) the tribunal said :

"It is not Known how much of this was revenue expense and how much capital expense. There is no evidence in this respect."

7. The unions had no way challenged the entry in the profit and loss account and it was, of course, on revenue account being in the profit and loss account. The unions had not asked that any part of it be added back. The tribunal thought that a small portion of it (5 per cent) could be added back as expense on capital account. In doing so the tribunal was perhaps influenced by *Burn & Co.* case [1964 - I L.L.J. 370] (vide supra). But in that case an issue was joined and the case cannot be followed where there was no such dispute. The balance sheet and profit and loss account were certified and must be presumed to be correct unless they are challenged and demonstrated to be wrong. In our judgment this addition was also improper.

The next two items give no trouble at all. The sum of Rs. 6, 533, representing interest paid for the previous year is accepted on behalf of the company and must be added. The sum of Rs. 12, 983, it is accepted by the unions, must be deducted. The latter represents income from other sources or, in other words, income which was earned without the assistance of labour. The adjusted gross profits, therefore, stand thus :

Rs.

Net profits . . 6, 63, 065 Add-back depreciation . . 5, 48, 717 Add-back provision for tax . . 5, 32, 000 Add-back interest for previous year . . 6, 533 -----

----- 17, 40, 315 Deduct extraneous income . . 12, 983 ----- Adjusted gross profits . . 17, 27, 332 From the adjusted gross income the prior charges may now be deducted according to the formula. The first item to go out is the normal notional depreciation which in this case is Rs. 5, 22, 289. The next item to deduct is income tax on the balance at 45 per cent. It will be recalled that the development rebate reserve of Rs. 1, 00, 000 was not added back. The amount on which tax is to be calculated must be reduced by Rs. 1, 00, 000 as that amount will not bear tax. The return on the capital accounting to Rs. 3, 03, 226 is not challenged and that amount will also be deducted. Return on the working capital has been calculated at 2 per cent instead of the usual 4 per cent. This is strongly supported on behalf of the unions. The tribunal reduced the percentage on the ground that the working capital was not utilized. On the other hand, it is pointed out that the company had to borrow from the bank. The tribunal has again made a surmise that the whole of the amount was not used as working capital though there was no evidence that it was kept apart. In our judgment, there was no justification for reducing the amount to half. The proper reduction to make is thus Rs. 1, 65, 056. The amount of rehabilitation charges, which the tribunal placed at Rs. 1, 96, 067, is not challenged by Sri Niren De who submitted that in view of the resulting figure it was hardly necessary to do so. The account, therefore, stands thus :

Rs.

Adjusted gross profits . . 17, 27, 332 Deduct normal notional depreciation . . 5, 22, 289 ----- 12, 05, 043

Deduct -

Income tax (tax on Rs. 11, 05, 043 : (12, 05, 03 minus Rs. 1, 00, 000 development rebate reserve) . . 4, 97, 270

7, 07, 773 Returns on paid-up capital . . 3, 03, 226

4, 04, 547 Return on working capital . . 1, 65, 066

2, 39, 481 Rehabilitation charge . . 1, 96, 05743, 424 -----

8. It was contended that the rehabilitation charges should not be allowed because rehabilitation amount of previous year is still available and further that the old machines are being still used or kept to claim rehabilitation. The evidence on the latter part is interested and cannot be believed. It was contended that as the accumulated depreciation reserve not having been taken into account rehabilitation may not be admissible and reliance is placed on *Associated Cement Companies, Ltd. v. Their workmen* [1959 - I L.L.J. 644]. The company pointed out that the total rehabilitation charges for the year amounted to Rs. 5, 94, 943 for machinery (annexure E.1) and Rs. 1, 53, 471 on buildings (annexure E. 2). From these amounts the company, in its claim, deducted (as per annexure E. 3) Rs. 4, 03, 919 and 65, 350 as representing depreciation on the block leaving a net rehabilitation requirement of Rs. 2, 79, 145 for the year. The amount of depreciation totalling Rs. 5, 22, 289 has been deducted in arriving at the net rehabilitation charges and that amount (Rs. 2, 79, 145) has been further reduced to Rs. 1, 96, 067. The point raised by the unions does not survive.

9. The amount of available surplus to Rs. 43, 424. In view, however, of the fact that one month's wages have already been distributed and the wage-bill is Rs. 1, 63, 859 per month, there is no further surplus available. The point referred for the decision of the tribunal was whether the workmen were entitled to bonus in addition to the one month's basic wages already distributed. The answer to this question clearly is in the negative view of the fact that no more surplus is available.

10. A further questions raised by the unions was that in the previous award delivered by Sri P. K. Sarkar on 22 May, 1961, the question of puja bonus was gone into and the payment of one month's bonus for the year 1959 should not be treated as profit bonus. Reference to made to the observation of the tribunal : "The company already paid one month's basic wages to the workmen as bonus for the year under reference. That was an unconditional payment. The unions stated about payments of puja bonus as of right in their written statement. That is not the issue before me and I refrain from making any observation in regard to the question of puja bonus."

11. The unions apprehend a break in the continuity of payments of customary bonus and think that above remarks likely to be construed as meaning that what was paid was profit bonus. In this connexion it is only necessary to point out that payment of one month's bonus was unconditional and the apprehensions are perhaps not real. Beyond this it is not proper for us to say what was the nature of the payment.

12. Appeal No. 227 of 1964 is, therefore, allowed and the award of additional bonus is cancelled. Appeal No. 228 of 1964 is dismissed. There shall be no order costs in either appeal.