Mathura Prasad Srivastava and Others

v.

Saugor Electric Supply Company, Limited, and Another

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR (CJI) HON'BLE JUSTICE K. N. WANCHOO HON'BLE JUSTICE M. HIDAYATULLAH HON'BLE JUSTICE V.RAMASWAMI HON'BLE JUSTICE P.SATYANARAYANA RAJU

Civil Appeal No. 703 To 706 Of 1964 | 02-11-1965

Wanchoo, J.

1. These four appeals by special leave arise out of two references which were disposed of by the industrial tribunal. Madhya Pradesh, by the same order. Two of them are by the management and two by the workmen. We shall deal with them together in the same way as the tribunal has done.

The demands raised by the two references which are still outstanding are these :

(i) Revision of pay-scales with effect from July, 1959.

(ii) Bonus for the period 1 January, 1958 to 31 March, 1959.

(iii) Gratuity at the rate of one month's earnings for each completed year of service.

(iv) Bonus for the year 1959-60.

2. It may be added that the company had paid bonus for the two periods at 10 per cent of the total earnings. The workmen however claimed that bonus should be paid at the rate of 30 per cent of the earnings.

3. The tribunal worked out the bonus on the basis of the Full Bench formula and came to the conclusion that nothing further was due to the workmen for the period form 1 January, 1958 to 31 March, 1959. It however awarded a further bonus at the rate of 10 per cent for the period 1959-60. A question was raised in that connexion as to whether certain coal coolies were also entitled to bonus. The case of the company was that these coolies were not its employees but were the employees of an independent contractor, while the workmen claimed that they were the employees of the company. The tribunal held that there was no reference of the question whether these coolies were the employees of the company or were employed by an independent contractor. Therefore, the tribunal accepted the evidence of the contractor to the effect that they were his employees and rejected the claim made on behalf of these coolies for payment of bonus.The tribunal then considered the question of revision of wages and in that connexion went into the financial capacity of the company to bear the burden of increase in wages. It found that the profit of the company in the year 1959-60 was Rs. 32, 986. It also found that the increase in wage-scales demanded by the workman would add Rs. 30, 000 annually to the wage-bill with a recurring increase of Rs. 5, 000 annually on account of increments. It, therefore, held, that the company was not in a financial position to bear the burden of increase in wages. It also compared the wage-scales prevalent in the company with the wage-scales of a similar company in Jabalpur under the same management, and found that they were the same. It also took into account the wage-scales paid by the Madhya Pradesh Electricity Board to its employees at Saugor and on a comparison came to the conclusion that there was no case for increasing the wage-scales. It, however, gave an increase of Rs. 5 per month on an ad hoc basis in the cost of living allowance subject to certain adjustments.

4. On the question of gratuity the tribunal came to the conclusion that the company had not made consistently progressive profit. It took also into consideration the fact that though the lease of the company expired in 1975, there was some prospect of the electricity board taking over the company even before that. It, therefore, felt that the company would not be in a position to bear the burden of a gratuity scheme.

5. In effect, the tribunal rejected the demands of the workmen except for extra bonus of 10 per cent of the year 1959-60 and an ad hoc increase in the cost of living allowance. The two parities have appealed against the award in so far as it goes against each.

6. We shall first take the question of bonus. It has again been urged before us that the coal coolies employed by the so called independent contractor are also entitled to bonus. We, however, agree with the tribunal that the question whether these coolies were the employees of the company or of an independent contractor was not raised in the reference and that question cannot be considered indirectly while determining the question of bonus. The tribunal has accepted the evidence of the contractor who stated that the coal coolies were his employees and not that of the company. In theses circumstances, the question whether the coal coolies are the contractor's employees or of the company cannot be decided in this indirect manner without even a proper reference on the question of abolition of contract labour. We therefore agree with the tribunal that the coal coolies employed by the contractor are not entitled to any bonus.As to the amount of bonus for the two periods the tribunal found that the available surplus for the period January, 1958 to March, 1959 was not sufficient to justify payment of anything more than what the company had already paid. As to the year 1959-60, it found that the available surplus justified an additional payment of 10 per cent as bonus. In this connexion a number of mistakes have been pointed out on behalf of the workmen, and it is urged that if these mistakes are corrected, the workmen would be entitled to more than what the tribunal has awarded. It is also urged on behalf of the workmen that contingency reserve and development reserve which have been allowed as prior charges should not have been so allowed. On the other hand, it has been urged on behalf of the company that the tribunal has made a mistake in taking the net revenue balance as the starting point instead of net profit and that if it had taken into account only the net profit as shown in the profit and loss account there would have been no case whatsoever for any further bonus over and above what the company had already paid.

7. It does appear that mistakes have crept into the figures which the tribunal has mentioned in the award. These mistakes appear in the figures of depreciation which the tribunal has taken at a higher figure than what appears in the balance

sheet. It also appears that the tribunal has made the mistake of starting not with the net profit for each year but with the revenue balance in the balance sheet as if the net revenue balance was bet profit. The net profit has to be taken from the profit and loss account and not from the balance sheet and thereafter additions have to be made to arrive at the gross profit. Thus, for the year 1957-58, the tribunal has taken the net profit at Rs. 1, 41, 061, which was the net revenue balance while the net profit was only Rs. 55, 862. Similarly, for the year 1958-59, the tribunal has taken as if the net profit was Rs. 2, 08, 232, while in fact the net profit as it appears in the profit and loss account is Rs. 34, 786. For the year 1959-60, the tribunal has started with a net profit of Rs. 2, 34, 885, while the actual net profit according to the profit and loss account is Rs. 32, 986 only. It is not seriously disputed that if the starting figure is correctly taken as the net profit shown in profit and loss account there would be no reason for awarding anything more than 10 per cent as bonus which had already been paid by the company. The mistake in the figures for depreciation would not make any appreciable difference to this position. Further the contingency reserve and development reserve are statutory reserves which an electric company has to maintain under the Electricity (Supply) Act (54 of 1948). Even though these may not be considered as prior charges, they have to be taken into account when the tribunal comes to arrive at the figure of bonus after ascertaining the available surplus. The tribunal cannot fix the bonus at such a high figure as to leave insufficient funds in the hands of the company and make it difficult to provide for these two statutory reserves. Therefore, though these two statutory reserves may not be considered as prior charges, they have certainly to be taken into account when fixing the amount of bonus after ascertaining the available surplus. The tribunal, therefore, was not wrong in taking these two statutory reserves into account though it should not have deducted them as prior charges. Therefore, taking these reserves into account and also correcting the figures of net profit and depreciation, there can be no doubt that there was no scope for giving anything more than what the company had already given as bonus for the two periods. It is unnecessary to set down the figures, for it was not seriously disputed before us that if the starting figure is taken as the net profit shown in the profit and loss account - as it should be - nothing more than what had already been given by the company could be claimed as bonus for the two periods in question. The appeal of the workmen for increase in bonus is rejected, and the appeal of the company as to bonus is accepted and the extra bonus of 10 per cent awarded for the year 1959-60 is set aside.We now come to the question regarding revision of wages. We have already set out the reasons which impelled the tribunal to reject the claim for revision of wages. The reasons given by the tribunal for not increasing the wages appear to us to be

sound. The financial position of the company is such that it cannot bear the burden of a further wage-increase. As the tribunal has pointed out, the net profit for the year 1959-60 was only Rs. 32, 986, while the wage-increase demanded was of the order of Rs. 30, 000 for one year and thereafter there would be an increase at the rate of Rs. 5, 000 per year on account of incremental scales. Obviously the company has not the financial capacity to bear this increase in wages. We, therefore, confirm the order of the tribunal rejecting the increase in wages.

8. Then we come to the question of gratuity. The tribunal has rejected the claim of gratuity on the main ground that the company is not in a financial position to bear the burden. It has also taken into account the fact that the company is likely to be taken over by the Madhya Pradesh Electricity Board even before its licence expires. In these circumstances, we do not think that the tribunal was wrong in not imposing the burden of gratuity on the company.

9. The last question is about the increase in the cost of living allowance. The main contention under this head is that the tribunal has accepted that this company and the Jabalpur company which are under the same management were treated alike by the management and therefore the tribunal should have given the same increase in the cost of living allowance in this company as had been given in the Jabalpur company. It does appear that wage-scales of this company and the Jabalpur company are the same. It also appears that there had been some increase in the wage-scales of some categories and in the cost of living allowance in the Jabalpur company. Ordinarily the same increase would have been justified in the case of the present company; but it appears that the Jabalpur company is a much more prosperous concern. For example, in 1958-59, the net revenue balance of the Jabalpur company was over Rs. 11, 00, 000 while of this company it was only Rs. 2, 00, 000. The reserves of the Jabalpur company are also higher. The net profit of the Jabalpur company was over Rs. 2, 47, 000 in 1958-59 while of the present company it was only Rs. 34, 000 and odd. Similarly, in 1959-60, the Jabalpur company had a net revenue balance of about rupees eleven lakhs, while this company had a net revenue balance of Rs. 2, 34, 000 and odd. The net profit of the Jabalpur company was over Rs. 3, 41, 000 while the net profit of this company was only Rs. 32, 000 and odd. It was because of this disparity in the prosperity of the two companies that the tribunal refused to give the same cost of living allowance to the employees of this company. In the circumstances, we feel that there is no reason for us to interfere

with this part of the award of the tribunal.The two appeals of the workmen fail and are hereby dismissed. The appeal of the company with respect to extra bonus for the year 1959-60 awarded by the tribunal is allowed and the extra bonus awarded by the tribunal is set aside.

10. We dismiss the company's appeal as regards grant of Rs. 5 as additional cost of living allowance. In the circumstances, we order parties to bear their own costs in all the appeals.