

Management of Consolidated Coffee Estate Limited

v.

Workmen

(Supreme Court Of India)

HON'BLE MR. JUSTICE J.M. SHELAT HON'BLE MR. JUSTICE V.
BHARGAVA

Civil Appeal No. 1007 Of 1966 | 17-09-1968

Shelat, J.

1. This appeal, by special leave, is by the employer company against the award dated November 18, 1965 of the Special Industrial Tribunal, Bangalore, by which the Tribunal awarded bonus at the rate of 6 months basic wages for the year 1962-63 to the staff members of the company. There were in the company's employment at the relevant time staff members, artisans and daily rated labourers, but as the reference to the Tribunal was confined only to the question of bonus payable to the staff members, we are not concerned in this appeal with the artisans or the labourers.

2. The appellant-company has been paying bonus to the staff members for the last several year. The practice followed by the company was first to fix the amount of bonus which it was prepared to pay and then to negotiate with the employees as to differences, if any, between them. Bonus thus was so far not determined on the basis of the Full Bench Formula as approved by this Court in Associated Cement Companies v. Its Workmen (1959) S.C.R. 925. For the year 1960-61 the company paid bonus to staff members equal to 8 1/2 months basic wages. For 1961-62 the bonus paid was at the rate of 5 1/2 months basic wages. For the year in question, i.e., 1962 63, the company finalised its accounts on October 31, 1963. The accounts showed a net profit of Rs. 18.19 lacs. In its P & L account the company, showed Rs. 36.39 lacs as expenditure under the heading "salary, wages and bonus". This amount included the sum Rs. 1, 15, 000 for bonus.

3. The union's case was that the company had agreed to pay bonus to the staff members at the rate of 7 months basic pay. In the alternative, it relied on three facts, viz., (1) the offer by the company to pay bonus at the rate of 6 months basic pay, (2) the fact of the company having provided Rs. 1, 15, 000 as bonus in the P & L account, and (3) the fact of the company having paid to one staff member and three artisans at the rate of 5 1/2 months basic pay. From these facts the union pleaded that the company had admitted its liability to pay bonus at the rate of 6 months basic pay and that therefore the only question for adjudication by the Tribunal was with regard to the excess claimed by the staff members. The union claimed that considering the profits of the year the company was bound to pay bonus at the rate of 8 months basic pay and because of the past practice it was not entitled to contend that bonus should be computed according to the law applicable to the year in question. The appellant company in its reply denied to have agreed to pay bonus at the rate of 7 months basic pay. The company conceded that bonus had been paid during earlier years at rates negotiated between and agreed to by the parties and, therefore, no question of its being calculated according to law arose. For the year in question, however, the parties could not settle the question as to the quantum of bonus with the result that the rate at which the bonus should be paid had to be decided according to law. The company offered the maximum, i.e., at the rate of 20% of the total salary and dearness allowance, as it believed that Payment of Bonus Ordinance or the Payment of Bonus Act, 1965 applied to this case. But S.33 of the Payment of Bonus Act having been declared invalid by this Court in *Jalan Trading Co. (Private) Ltd. v. Mill Mazdoor Union* (1967) S.C.R. 15, neither the Ordinance nor the Act could be applied, and, therefore, if the parties were not able to settle the question, it had to be decided on the basis of the Full Bench Formula. The company conceded that during negotiations between the parties an offer was made on its behalf to pay bonus equivalent to 6 months basic pay. The negotiations, however, failed and since the union went for conciliation proceedings the offer lapsed. Any offer, therefore, made by the Managing Director during the said negotiations, which was not accepted by the union, cannot be said to constitute an agreement. Regarding Rs. 1, 15, 000, included under the heading "Salary, Wages and Bonus", the company's case was that the entry was validly made as that amount had to be provided for in the P & L account as also in the balance sheet in order to arrive at the net profits of the year. Such an entry and the fact that the company's shareholders had passed the audited accounts would not mean that the amount was treated by the company as bonus actually due by it nor could it mean an agreement or an admission binding on the company. The company pleaded that it was prepared to have the

bonus quantified in accordance with law, in this case, according to the principles laid down in the Full Bench Formula.

4. The evidence of the Managing Director was that there were discussions between the union and the company in December 1963. The union demanded bonus at the rate of 9 1/5 months basic pay but came down to 7 months basic pay. The company, on the other hand, offered first bonus at the rate of 5 1/2 months basic pay, but went upto 6 months basic pay. The union did not agree to the offer with the result that negotiations between the parties broke down. His evidence further was that the company had given to the Managing Director the mandate to offer bonus upto 6 months basic pay in full settlement of the dispute. But that also was not acceptable to the union. Three artisans and one staff member accepted bonus at the rate of 5 1/2 months' basic pay and since they accepted that amount unconditionally the company paid them at that rate. According to the Managing Director the offer to pay bonus at the rate of 5 1/2 months' basic pay was kept open but as the union did not accept it and approached the conciliation officer, the offer lapsed and was not longer open.

5. The Tribunal held that no dispute was pending before the State Government or any Tribunal immediately before May 29, 1965 when the Payment of Bonus Act came into force. Section 33 of that Act did not apply and therefore the Act could not apply to the present dispute. It accepted the company's figure of net profits at Rs. 18 lacs and odd for 1962-63 and held that therefore there could be no dispute as to the company's liability to pay bonus. It also found that there was no agreement between the parties under which the company had promised to pay bonus at the rate of 7 months' basic wages as alleged by the union. So far as these findings are concerned there is no difficulty.

6. But the difficulty in appreciating the award begins when the Tribunal proceeded to observe that the dispute between the parties, if at all, was with regard only to the excess over six months' basic wages claimed by the union and that there was no dispute between the parties so far as bonus at 6 months basic pay to be paid to the respondents was concerned. The Tribunal also observed :

"It is common ground between the parties and the Managing Director himself admits in his examination in chief, that he had admitted the liability to pay 6

months basic wages as bonus if it was accepted in full settlement and as the staff members demanded seven months basic pay the amount was not paid."

These observations are factually incorrect. It is clear from the company's reply that the offer to pay bonus at the rate of 5 1/2 months or 6 months basic pay was no more than an offer, that the offer lapsed after the union took the matter to the conciliation officer and that thereafter the company was prepared to pay bonus only in accordance with law, i.e., either under the Payment of Bonus Ordinance or the Act or the Full Bench Formula. The fact that the company was prepared to pay bonus at the maximum rate of 20% under the said Ordinance and the said Act appears to be in conformity with its stand in its reply that it would pay bonus according to the provisions of said Ordinance or the Act. The Tribunal's observation, therefore, that there was no dispute as regards the company having to pay bonus at the rate of 6 months basic pay and that the dispute was only with regard to bonus over 6 months basic pay is contrary to the company's reply. It is true that the company made an offer during negotiations, first, to pay bonus at the rate of 5 1/2 months and then at the rate of 6 months basic pay. The union, on the other hand, made a counter offer, first for 8 months' basic pay which it subsequently reduced to 7 months basic pay. Neither party having accepted the offer or the counter offer, negotiations between them fell through. That being so, there was not, and could not be, a completed contract as observed by the Tribunal. It is beyond controversy that the offer to pay bonus equivalent to 6 months basic pay was not accepted by the union. It is also beyond controversy that the union's claim for bonus equivalent to 7 months basic pay was never accepted by the company. Obviously, therefore, there was no completed contract which could bind the company or the union.

7. Equally erroneous is the observation by the Tribunal that the Managing Director had in his evidence admitted the company's liability to pay bonus at the rate of 6 months basic wages. That evidence amounted to this only that the company was prepared to pay bonus equivalent to 6 months basic pay provided it was accepted in full settlement of the demand. That settlement again amounts to an offer only which the company conceded its Managing Director made during negotiations. There was no question, therefore, of the Managing Director having admitted the liability to pay bonus at the rate of 6 months basic wages. Since the offer was not accepted by the union and the union, on the contrary,

demanded bonus at the rate of 7 months' basic wages that offer lapsed. Indeed the Tribunal itself found that the union's allegation that there was an agreement under which the company promised to pay bonus at the rate of 7 months' basic pay was not correct and that all that happened was that the company offered to pay at the rate of 6 months basic pay and the union did not accept it but demanded bonus at the rate of 7 months' basic wages. It follows that if there was no agreement to pay at the rate of 7 months' basic wages, there was, on the same reasoning also, no agreement between the parties to pay bonus at the rate of 6 months basic wages. The observation, therefore, that it was common ground between the parties and that the managing director had admitted the company's liability to pay bonus at 6 months' basic wages is misconceived.

8. The Tribunal then proceeded to observe that of the four types of bonus not cut by it in the award, the present one was a contractual bonus, that though the company had made a conditional offer, i.e., to pay at the rate of 6 months basic pay provided the staff members accepted it in full settlement of their demand, the Tribunal conducting industrial adjudication was not bound by the rules as to contracts and has the power to modify a contract entered into between the parties if it felt that the modification was necessitated in the interest of justice and industrial peace. In support of this proposition the Tribunal relied upon certain observation made by this Court in *New Maneck Chowk Spg. & Wg. Co. Ltd. v. Textile Labour Association*, 1961 (3) S.C.R. 1. The Tribunal then proceeded to state that in the light of these observations it had the power to overlook the condition which the company attached to its offer and hold that it would discard the condition and hold that the offer amounted to an admission of liability and in view of that admission, the staff members were entitled to get bonus equivalent to 6 months basic wages. The Tribunal next held that the inclusion of Rs. 1, 15, 000 for bonus in the said entry under the heading "Salary, Wages and Bonus" in the P & L account also amounted to an admission of liability. Lastly, it held that the payment of bonus by the company to the said four persons at the rate of 5 1/2 months basic wages and its refusal to pay that amount to the rest of the staff amounted to discrimination, that as an industrial tribunal it could not permit such discrimination, and that, therefore, in the interest of industrial harmony it would direct the company to pay bonus at that rate. Ultimately, however, the Tribunal awarded bonus equivalent to 6 months basic wages, thus unconsciously perpetrating discrimination between those who had accepted bonus at the rate of 5 1/2 months' basic pay and the rest of the staff members.

9. In our view the entire reasoning on which these observations were made is erroneous and suffers from misapprehension about the true meaning of the observations made by this Court in the said decision. Those observations simply mean that workmen are not precluded from raising an industrial dispute, by the mere fact of there being a binding contract between them and their employer. If the employees raise an industrial dispute an industrial tribunal, dealing with such dispute, is equally not precluded, if it considers necessary in the interest of industrial harmony, to give an award which might be inconsistent with or have the effect of modifying the terms of such a contract. But that does not mean that if the employees themselves rely on a contract for their claim for bonus the Tribunal has the power to modify or discard the terms of contract which would govern the claim. If, on the other hand, a claim is made de hors the contract, the fact that the contract is binding on the parties would not preclude the raising of an industrial dispute or its adjudication which may not be in conformity with the terms of such contract. The Tribunal, therefore, was in error in observing that it could overlook or discard the condition attached to the company's offer and treat that offer as an admission of liability. An offer made during negotiations is no more than an offer and unless it is accepted it cannot ripen into a completed contract binding on the company.

10. Equally erroneous is the Tribunal's view that the inclusion of Rs. 1, 15, 000 in the entry relating to wages, salary and bonus against gross receipts in the P & L account amounted to an admission of liability. While making its P & L account and arriving at the net profits of the year the company had to provide for bonus which it knew it would have to pay. When the company prepared its balance sheet and the P & L account in October 1963 it could not have known what the amount of bonus it ultimately would have to pay. In para 23 of the award the Tribunal itself observed that it was in evidence that the exact amount of bonus would be decided after negotiations between the parties were over. The amount of Rs. 1, 15, 000 shown as bonus in the P & L account and the balance sheet could, therefore, be at best an estimated amount. The company could not at that stage also know what amount it would have to pay by way of taxes as they were not then ascertained. It had, however, to make provision for taxes while preparing the balance sheet and the P & L account. The amount provided for taxes also would be an estimated amount on taking into account the estimated amount for bonus. Both amounts were, however, subject to finalisation. The income-tax authorities could not claim that because a provision

was made for taxes in the company's accounts, the company must be taken to have admitted at least that amount as due by it. The same is true for the amount of bonus shown in the P & L account. The fact that the company's accounts and the balance sheet were approved by the shareholders also cannot mean that there was by the company an admission of liability to pay the amount of Rs. 1, 15, 000 as bonus and the rest of the amount claimed by the union only was a matter of dispute to be adjudicated by the Tribunal. Section 34 of the Evidence Act in terms lays down that though entries in books of accounts are relevant, they by themselves are not sufficient to charge a person with liability. No decree can be passed on the basis of the entries alone unless there is in addition evidence of the transaction relating to which the entries are made.

11. The Tribunal was also in error in holding that the company was guilty of discrimination by paying the said four persons bonus at the rate of 5 1/2 months basic wages. The company had made it clear from the very beginning that it was prepared to pay that rate if the members of the staff accepted that amount in full settlement of their demand. These four employees accepted the company's said offer and the company paid them at that rate. The rest did not, and went in for conciliation first and thereafter for adjudication. It is difficult to see how the company can be said to be guilty of discrimination, and how to avoid such discrimination the Tribunal could compel it to pay at least that amount to the rest of the staff members.

12. In our view the Tribunal was in error in fastening on the company the liability to pay bonus on the grounds set out in the award. Even though the company had been paying bonus in the past by negotiating with its employees, and the parties, therefore, had not to have recourse to computation of the bonus to have recourse to computation of the bonus amount on the basis of the Full Bench Formula, if the company for the year in question insisted that it would pay in accordance with the relevant law the Tribunal could not prevent the company from having its liability for bonus determined accordingly. Once the Tribunal held that the Payment of Bonus Ordinance or the Act did not apply, the only alternative for it was to compute bonus on the basis of the Full Bench Formula. In fairness to the parties, the Tribunal ought to have, in the circumstances of this case, called upon them to furnish computations and determine the amount of bonus payable by the company. The award not being founded on any valid principle cannot be sustained.

13. The appeal is, therefore, allowed and the award is set aside. Considering the fact that the demand of the employees has been pending for a long time we would have ourselves computed the bonus payable by the company, but in the absence of data we are not in a position to do so. Reluctant, though we are, we are compelled to remand the case to the Tribunal. The Tribunal will give opportunity to the parties to adduce evidence and determine the amount of bonus payable by the company on the principles laid down in the Full Bench Formula as approved by this Court. Since the case has been pending for a long time, we direct the Tribunal; to expedite and give its award as soon as possible. There will be no order as to costs.