Messrs. Alloy Steel Project

Vs

The Workmen

Civil Appeal No. 2128 of 1969

(V. Bhargava, J. M. Shelat, C. A. Vaidialingam JJ)

02.02.1971

JUDGMENT

BHARGAVA, J. -

1. The appellant Messrs. Alloy Steel Project, is an undertaking owned, controlled the managed by a Government Company, viz., Messrs. Hindustan Steel Ltd. Alloy Steel Project was started in the year 1961 and it went into production in the year 1964-65. No profit was earned at least right up the year 1967-68. The workmen, however, claimed bonus at the minimum rate prescribed under the Payment of Bonus Act No. 21 of 1965 (hereinafter referred to as "the Act") in respect of the year 1965-66 on the plea that this Alloy Steel Project was a part of the Hindustan Steel Ltd., and could not be treated as a new establishment for purposes of Section 16 of the Act. Hindustan Steel Ltd., was itself an establishment which had been in existence for a long period and had been even earning profits, so that exemption could not be granted to this Company in respect of payment of bonus under Section 16 of the Act. This claim of the workmen was resisted by the Company on the plea that Alloy Steel Project was a separate establishment in respect of which separate balance-sheets and profits and loss accounts were maintained, so that no bonus was payable until either this Project itself earned profits, or from the sixth accounting year following the year 1964-65 when this Project went into production. The dispute between the workmen and the Company could not be resolved amicably and, consequently, a reference was made under the Industrial Disputes Act, 1947 which came up before the Ninth Industrial Tribunal, West Bengal. The Tribunal held that Alloy Steel Project could not be treated as a separate establishment because, under the Act, a Company is itself an establishment, so that all units of a Company like Hindustan Steel Ltd., will constitute one establishment. Since this project had not been earning any profits, the Tribunal directed payment of bonus at the minimum rate of 4 per cent. of wages prescribed by the Act. Aggrieved by this award of the Tribunal, the Company has come up in this appeal to this Court by special leave, though the name of the appellant is shown as Alloy Steel Project, because it was under this name that the reference was dealt with by the Tribunal

2. The main basis of the decision of the Tribunal is that "the word 'establishment' has been used in this Act to indicate a 'Company' as called in common parlance". It was on this view that the Tribunal further proceeded to consider whether this Alloy Steel Project could be held to be an establishment separate from Hindustan Steel Ltd., or it had to be treated as a part of the parent establishment, viz., Hindustan Steel Ltd. In this approach, it is clear that the Tribunal committed an obvious error, as it ignored the indications which the manifest from the language used in the Act. In Section 2, sub-sections (15) and (16), establishments have been divided into two classes and their meaning has been defined. In clause (16), "establishment in public sector" is defined as meaning an establishment owned, controlled or managed by -

(a) a Government company as defied in Section 617 of the Companies Act, 1956;

(b) a corporation in which not less than forty per cent. Of its capital is held (whether singly or taken together) by -

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation owned by the Government or the Reserve Bank of India.

In clause (15) of Section 2. "establishment in private sector" is defined to mean any establishment other than an establishment in public sector. Thus, between these two clauses, all establishments are covered. If an establishment is in public sector, it is covered by the definition in clause (16). If the establishment is not in public sector, it will be covered by the definition of "establishment in private sector" in clause (15). The significant words are those contained in clause (16) which show that an establishment in a public sector has to be owned, controlled or managed by a Government company, or by a corporation of the nature described in that clause. Obviously, therefore, an establishment in a private sector would be one which is owned, controlled or managed by a person or body other than a Government company or a corporation of the nature described in clause (16). In this view, an establishment cannot be identified with a company. It would be absurd to say that a company is owned, controlled or managed by a Government company or a corporation. Obviously, the word "establishment" is intended to indicate something different from a company as defined in the Companies Act. This is further clarified by the provisions of sub-section (3) of Section 1 which lays down the applicability of the Act. The Act has been made applicable to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. Supposing a company has a factory in one premises and has another workshop entirely distinct and separate from the factory, in which the number of persons employed is less than 20. The Act itself will apply to the factory, but will not apply to the other establishment in which the number of employees is less than 20. This applicability of the Act will be independent of the other provisions of the Act. Learned counsel for the respondent-workmen relied on Section 3 of the Act to urge that even the establishment employing less than 20 persons will be a part of the parent establishment consisting of the factory. Section 3 is as follows :

"3. Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus."

It is to be noted that the principal part of Section 3 lays down that different departments or undertakings or branches of an establishment are to be treated as part of the same establishment only for the purpose of computation of bonus under the Act. They cannot be treated as part of one

establishment for purposes of sub-section (3) of Section 1 of the Act. In fact, Section 3 cannot be resorted to at all when the Act itself is inapplicable in view of the provision contained in Section 1, sub-section (3). It is, thus, quite clear that the Tribunal went entirely wrong in holding that simply because Alloy Steel Project is owned, controlled and managed by Hindustan Steel Ltd., it has to be treated as part of Hindustan Steel Ltd., which is itself an establishment. Hindustan Steel Ltd., cannot be described as an establishment. The facts appearing on the record show that Hindustan Steel Ltd., has a number of establishments. These include Alloy Steel Project besides the Head Officer, Rourkela Steel Plant, Bhilai Steel Plant, Durgapur Steel Plant, Coal Washeries Project and Bokaro Steel Project. The Company, Hindustan Steel Ltd., cannot be equated with any one of these units. They are all separate undertakings, departments or branches owned, controlled and managed by one single Company and, consequently, the point raised has to be decided on the basis whether, under the proviso to section 3, the Alloy Steel Project is to be treated as a separate establishment, or is to be treated as part of the main establishment owned by Hindustan Steel Ltd.

3. Learned Counsel for the respondent-workmen, however, advanced a new argument which was not put forward before the Tribunal. His submission was that, if an establishment of a Company consists of a number of departments, undertakings or branches, the principal part of Section 3 will apply and all such departments, undertakings or branches must be treated as parts of one single establishment for purposes of computation of bonus under the Act, but the proviso to Section 2 will not apply in such a case. According to him, the proviso to Section 3 will apply to establishments consisting of different departments, undertakings or branches which are owned, controlled or managed by persons other than companies. This argument was based on the reasoning that, in order to calculate available surplus for distribution of bonus in the case of a company, the Act lays down in Section 6(d), read with the Third Schedule that the deductions to be made from net profits will also include dividends payable on preference share capital, and 8.5 per cent. Of its paid up equity share capital as at the commencement of the accounting year. This provision cannot be given effect to in respect of separate units of a Company, because the paid up capital or the preference share capital is not allocated between different units. In the case of the present Company, viz. Hindustan Steel Ltd., the entire paid up capital is shown in the accounts of the Head Office. The money needed for working of the various units, including the Alloy Steel Project, is shown as remittance received from the Head Office and not as paid up capital of the Alloy Steel Project, etc. The result is that, if Alloy Steel Project or other units of the Hindustan Steel Ltd., are treated as separate establishments and available surplus is calculated separately for each unit, there will be no deduction at 8.5 per cent. of the paid up equity share capital as envisaged by Section 6(d) and the Third Schedule of the Act.

4. We do not think that there is any force in this argument. First, it would be a strange method of construction of language to hold that the establishment referred to in the main part of Section 3 will include all different departments, undertakings and branches of a company, while it will not do so in the proviso to the same section. Such different meanings in the same section in respect of the same words or expression cannot be accepted. Secondly, it seems to us that no difficulty of the nature pointed out by learned counsel can arise in calculating available surplus. Wherever the Act lays down that certain deductions are to be made, it is obvious that those deductions will only be effective if, in fact, circumstances do exist justifying such deductions. In the Third Schedule itself, the first deduction envisaged is dividend payable on preference share capital. A number of companies do not have preference share capital. In such cases, clearly, no occasion would arise for making such a deduction. Very similar is the position with regard to certain other deductions which are permissible under the Second Schedule which principally lays down the method of calculation of available surplus. There is, therefore, no reason for interpreting the proviso to Section 3 in the manner urged by learned counsel simply because, in the case of separate departments, undertakings

or branches of the establishment of a company, it may not be possible to make a deduction at 8.5 per cent. of the paid up equity share capital.

5. In the present case, there is very clear evidence that, though the Company, Hindustan Steel Ltd., has a number of undertakings, separate accounts are kept for each separate undertaking. The annual reports for three years were produced before the Tribunal. They clearly indicate that separate balance-sheet was prepared for each unit and separate profit and loss account was worked out for each unit, except that, for the Head Office, though a separate balance-sheet was prepared, the profit and loss was worked out on the basis of the consolidated accounts. The Tribunal, in support of its view that Alloy Steel Project is a part of the establishment constituted by the Company, Hindustan Steel Ltd., relied on the circumstance that a consolidated balance-sheet is prepared for the Company in respect of all its unit and after such consolidation, profit and loss is also worked out for all the establishments together so as to find out the actual profit and loss earned or incurred by the Company itself. From this, the Tribunal sought to infer that there were no separate accounts in respect of each unit as are required to be maintained before they can be treated as separate establishments under the proviso to Section 3. The Tribunal has obviously gone wrong in ignoring the fact that separate balance-sheet and profit and loss accounts are in fact maintained for each separate unit and the consolidated accounts are prepared only for the purpose of complying with the requirements of the Companies Act. The Companies Act does lay down the requirement that a consolidated balance-sheet and profit and loss account for all the units of the Company must be prepared and, for that purpose, quarterly statements of accounts have to be sent by each unit to the Head Office. There is, however, no provision even in the Companies Act containing a prohibition to maintenance of separate balance-sheets and separate profit and loss statements for each unit for purposes of the Act. That accounts are separately maintained for each unit is not only established from the various annual reports filed before the Tribunal and the evidence of the Company's witness Umapada Chakraborty, but is also admitted by Suprakash Kanjilal, the only witness examined on behalf of the workmen. The latter also admitted that separate bonus calculation is made in respect of each unit and bonus was declared separately in each unit. No bonus was, however, declared in respect of the Alloy Steel Project. That declaration was not made because of the claim that Alloy Steel Project was exempt from payment of bonus under Section 16 of the Act. Section 16 runs as follows :

> "16. (1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only -
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> (a) from the accounting year in which the employer derives profit from such establishment; or
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> (b) from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment,

whichever is earlier :

Provided that in the case of any such establishment the employees thereof shall not, save as otherwise provided in Section 33, be entitled to be paid bonus under this Act in respect of any accounting year prior to the accounting year commencing on any date in the year 1964.

Explanation I. - For the purpose of this section, an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II. For the purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting year unless -

(a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III. - For the purpose of clause (b), sale of the goods produced or manufactured during the course of the trial run of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-section (1) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments :

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches (whether set up before or after that date) on the basis of consolidated profits computed as aforesaid."

Sub-section (1) of Section 16 grants exemption from payment of bonus to establishments newly set up for a period of six years following the accounting year in which the goods produced or manufactured are sold for the first time and, in the alternative, up to the year when the new establishment results in profit, whichever is earlier. If the Alloy Steel Project is treated as an establishment newly set up for purposes of Section 16(1), the exemption claimed would be fully justified. Section 16(2) of the Act makes it clear that the provisions of sub-section (1) are to apply even to new departments, undertakings or branches set up by existing establishments. Consequently, even if Alloy Steel Project is treated as a new undertaking set up by the existing establishments Hindustan Steel Ltd., the exemption under Section 16(1) would be available to it. The proviso to sub-section (2) of Section 16 also does not stand in the way of this claim, because there is no evidence at all that in any year, after Alloy Steel Project was set up, bonus was paid to the employees of all the units on the basis of consolidated profits of all such units. The only exemption has been in

the case of workmen of the Head Office where no separate profit and loss was worked out and the bonus was paid on the basis of the consolidated profits of all the units belonging to Hindustan Steel Ltd. That, of course, wasfully justified, because the Head Office was working for all the units, though as a separate unit. It was in the accounts of the Head Office that the entire paid up capital was credited and advances were made by the Head Office to the various units out of this capital or out of loans taken by the Head Office. In the case of the Head Office, therefore, the calculation of bonus on the basis of consolidated accounts was justified; but that does not affect the principle to be applied to the separate units for which separate accounts, separate balance-sheets and separate profit and loss statements are maintained. The proviso to sub-section (2) of Section 16 only comes in the way if bonus is paid in any year to the employees of all the units on the basis of consolidated accounts. That has never been done in the case of the Hindustan Steel Ltd. Consequently, the Alloy Steel Project should have been treated as a separate establishment newly set up in the year 1961. It went into production in 1964-65 and did not earn any profits at all till 1967-68. Therefore, no bonus was payable to the workmen of this undertaking for the year 1965-66 in view of the provisions of Section 16(1) of the Act.

6. The appeal is allowed, the order of the Tribunal is set aside, and the reference of the dispute is answered accordingly. In the circumstances of this case, we direct parties to bear their own costs of the appeal.

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