Employers In Relation to the Management of Indian Cable Co.

Vs

Their Workmen

Civil Appeal No. 855 of 1968

(C. A.Vaidialingam, D. G. Palekar, K. K. Mathew JJ)

11.04.1972

JUDGMENT

VAIDIALINGAM, J. –

1. This appeal, by special leave, is directed against the Award, dated October 26, 1967, of the National Industrial Tribunal, Calcutta in Reference No. NIT-3 of 1967, holding that for the accounting year 1965-66, the quantum of bonus payable by the appellant to its workmen is 20% of the effective salaries or wages with a further direction to set on a sum of Rs. 1,46,252/-.

2. The appellant, India Cable Company Ltd. (hereinafter to be referred as the Company) occupies a very prominent position in the Cable Industry of India having its Head Office at Calcutta and its factory at Jamshedpur. It has branches in Bombay, Madras, New Delhi, Kanpur, Ahmedabad and Bangalore. In addition to insulated cables, the Company manufactures Aluminium Rods, Radio Aerials, Fuse Wires and other products. Its paid up capital is Rs. 2,48,65,450/-. It employed workmen numbering over 5,000. The gross effective salaries and wages of its employees for the relevant accounting year amounts to Rs. 1,05,32,880/-. Its accounting year is from April 1 to March 31, of the succeeding year.

3. For the accounting year 1964-65, the Company declared and paid bonus at 20% to all employees in accordance with the provisions of the Payment of Bonus Act, 1965 (hereinafter to be referred as the Act). For the year in question 1965-66, it calculated a sum of Rs. 23,68,785/- as available surplus. This amount was arrived at by the Company after calculating direct tax without deducting the provision for payment of bonus payable to its workmen. A sum of Rs. 14,21,271/- being 60% of the said available surplus was declared as bonus for the year 1965-66. This amount represented 13.51% of the wage bill. The workmen were dissatisfied with this offer of bonus at 13.51% and demanded payment of bonus at the maximum rate of 20% as provided in the Act. In consequence they raised a dispute with the Company. In view of the agreement, dated November 24, 1966, between the parties to refer the claim for additional bonus for adjudication to a Tribunal, the workmen received the bonus at the rate of 13.51% offered by the Company. The Central Government by order, dated June 23, 1967, referred for adjudication to the National Industrial Tribunal, Calcutta, the following dispute :

> "What should be the quantum of bonus payable to the workmen of the Indian Cable Company Limited, Calcutta for the accounting year 1965-66" ?

4. The Unions contended before the Tribunal that the computation of allocable surplus by the Company has not been properly made in accordance with the Act and that several items shown in

the profit and loss account as expenditure have to be added back to arrive at the actual gross profits. The Unions further alleged that the Company has spent large amounts for payment of liability for future years with a view to reduce the available and allocable surplus, which in consequence has resulted in the reduction of percentage of bonus. The Company on the other hand maintained that it has kept proper accounts which have been audited by a reputed firm of auditors Messrs. Lovelock and Lewes and that the computation of allocable surplus has been properly arrived at having due regard to the provisions of the Act. The Company denied the allegations of the Unions that enormous expenditure has been shown with a view to reduce the quantum of bonus. On the other hand, the Company pleaded that all items of expenditure were justified and those items are deductable in considering the claim for bonus.

5. At this stage it may be mentioned that the Unions served interrogatories requiring information on various matters and there is no controversy that the Company furnished all the informations that were called for.

6. Before the Tribunal the company required various deductions to be made from the net profits shown in its profit and loss account. On the other hand, the Unions requires various items to be added back. The Tribunal accepted the contentions of both the parties with regard to certain items. We will in due course refer to the items which are in dispute before us at the instance of both the Company and the Unions. The Tribunal computed the available surplus at Rs. 37,54,713/-, 60% of this amount being Rs. 22,52,828/- was fixed as allocable surplus. The Tribunal held that a sum of Rs. 21,06,576/- being bonus at 20% of the gross effective salaries and wages was payable for the year in question and it directed the surplus amount of Rs. 1,46,252/- to be set on. As the bonus at the rate of 13.51% had already been declared and paid by the Company, the Tribunal directed the payment of the balance 6.49% within the period mentioned in the Award. One aspect which has to be noted is that in calculating the available surplus, the Tribunal before calculating the notional direct tax, deducted the bonus payable for the accounting year in question.

7. The grievance of the Company, as placed before us by its learned counsel, Mr. D. N. Mukherjee, relates to three items : (1) the method of computation of notional direct tax; (2) disallowance of the deduction from gross profits of the sum of Rs. 2.65 lakhs made as ex-gratia payment for the accounting year 1964-65 to employees drawing emoluments exceeding Rs. 750/- per mensem; and (3) disallowance of the claim for return on provision for doubtful debts.

8. The first contention relates to the principle to be adopted for calculating direct tax when computing the available and allocable surplus for payment of bonus under the Act. According to the Tribunal, under Sections 6 and 7 of the Act, the bonus payable for the relevant accounting year has to be deducted from the gross profits for calculation of direct tax or alternatively rebate for bonus found payable has to be calculated and 60% of the rebate has to be added back as allocable surplus. The Tribunal took notice of the fact that the Income-tax Authorities did not object to deduction of the provision made by the Company for payment of bonus for the accounting year 1965-66. On this reasoning the Tribunal added back to the gross profits as per the profit and loss account the provision made for payment of bonus. For coming to this view the Tribunal followed its previous decision in Indian Oxygen Ltd. v. Their Workmen (NIT-1 of 1966). The Tribunal has also noted that its Award in the Indian Oxygen Ltd. was pending appeal in this Court. According to Mr. D. N. Mukherjee, this method of calculation of direct tax under the Act, adopted by the Tribunal is contrary to the decisions of this Court.

9. We are in entire agreement with this contention of Mr. Mukherjee. In view of the decisions of this

Court, to which we will immediately refer, Mr. P. S. Khera, learned counsel for the Unions was unable to support the reasoning of the Tribunal on this aspect.

10. The question of calculation of direct tax under the Act was considered for the first time by this court in Metal Box Co. of India Ltd. v. Their Workmen. ((1969) 1 SCR 750 : AIR 1969 SC 612 : (1969) 1 Lab LJ 785) It was held therein that the notional tax liability is to be worked out by first working out the gross-profits and deducting therefrom the prior charges under Section 6, but not the bonus payable to the employees. Therefore, it clear from this decision that an employer is entitled to deduct his tax liability without deducting first the amount of bonus he would be liable to pay from and out of the amount computed under Sections 4 and 6 of the Act. The same principle has been reiterated in The Workmen of William Jacks and Company Ltd., Madras v. Management of William Jacks and Company Ltd., Madras (1971 Supp SCR 540 : (1972) 3 SCC 140), Delhi cloth and General Mills Co. Ltd. v. Workmen ((1971) 2 SCC 695) and Indian Oxygen Ltd. etc. v. Their Workmen. (AIR 1972 SC 471) In fact the last decision overruled the decision of the National Industrial Tribunal in Reference No. NIT-1 of 1966, which has been followed by the present Tribunal. We may also state that after the first decision of this Court, referred to above, the Act was amended in 1969. The last three decisions of this Court considered the question whether the amendments effected to the Act as made any change in the principle laid down by this Court in the first decision. It was uniformly held in all the three decisions that the amendment has not effected any change in the principle laid down in the earliest decision that the tax liability under the Act is to be worked out first by working out the gross profits and deducting therefrom bonus payable to the employees. Therefore, it follows that the Tribunal committed an error in law in computing direct tax after deducting bonus. Therefore, this point will have to be held in favour of the appellant.

11. The second item relates to the disallowance of Rs. 2.65 lakhs which represented the ex-gratia payment made by the Company to certain employees drawing emoluments exceeding Rs. 750/- per mensem for the year 1964-65. The Company claimed that this amount should be deducted from the gross profits whereas the Unions contended that the same has to be added back to the gross profits down in the profit and loss account. The factual position relating to this claim is as follows : From the letter, dated February 4, 1966, Ext. I, written by the Company to one of its officers Mr. S. N. Banerjee, it is seen that the Company in appreciation of the officer's services during the year 1964-65 made an ex-gratia payment of Rs. 90/-. Mr. Banerjee has given evidence on behalf of the Unions. He has deposed to the fact that he was drawing about Rs. 1,000/- per mensem and that he received the letter Ex. I as well as the sum of Rs. 90/- mentioned therein. He has further stated that over and above this sum of Rs. 90/- he has also received the bonus payable to him under the Act for the year 1964-65. He has also deposed to the effect that the ex-gratia payment of Rs. 90/- was paid to him in lieu of bonus calculated on the difference in emoluments drawn by him and the ceiling of Rs. 750/- per mensem fixed by the Act. It was the practice of the Company to pay bonus to all the members of its staff without application of any ceiling. In view of the fact that a ceiling had been fixed under the Act, to make up for the lesser amount that the employees like Mr. Banerjee will get under the Act, this amount of Rs. 2.65 lakhs was paid to all such officers. The Tribunal accepted the evidence of Mr. Banerjee that the ex-gratia amount was paid to keep up the old practice of the Company of paying all the members of the staff without the application of any ceiling. The Tribunal held that such a payment was not an item which could be deducted from the gross profits under the Act as claimed by the management. Accordingly, it added back the sum of Rs. 2.65 lakhs to the gross profits shown in the profit and loss account.

12. Mr. Mukherjee urged that the Company was justified in claiming the above amount by way of deduction. He referred us to the definition of "employee" in Section 2(13) of the Act as also to the

employees declared eligible for bonus under Section 8. He also relied on Sections 10 and 11 which make it obligatory on an employer to pay the minimum bonus and also the maximum bonus up to 20% respectively.

13. We are not inclined to agree with the contention of Mr. Mukherjee that the Tribunal committed an error when it added back the sum of Rs. 2.65 lakhs. From the evidence of Mr. Banerjee, which has been accepted by the Tribunal, read along with the letter Ex. I, it is clear that Mr. Banerjee received not only bonus due to him under the Act, but also the extra amount of Rs. 90/-. Mr. Banerjee was admittedly drawing a salary of Rs. 1,000/- per mensem. For a person to be an "employee" under Section 2(13), among other things, he is a person drawing a salary or was not exceeding Rs. 1,600/- per mensem. Under Section 8, it is provided that every employee is entitled to be paid in an accounting year bonus as per the Act provided he has worked in the Establishment for not less than thirty working days in that year. Section 10 provides for payment of minimum bonus to every employee. Similarly Section 11 provides for payment of bonus to every employee subject to a maximum of 20% of his salary or wage. According to Mr. Mukherjee there is no prohibition in the Act from paying bonus to officers like Mr. Banerjee up to a maximum of 20%. Therefore, when the payment as in Ex. 1, has been made to officers like Mr. Banerjee and others, such amounts have to be computed as an item of expenditure, under the Second Schedule of the Act. It is no doubt true that an officer drawing a salary not exceeding Rs. 1,600/- per mensem is an employee under Section 2(13) and he will also be eligible for payment of bonus under Section 8, read with Sections 10 and 11 of the Act. But the point that is missed by the learned counsel is the imitation contained in Section 12. Though officers drawing salary up to Rs. 1,600/- per mensem are employees under Section 2(13) and eligible for bonus, still for purposes of calculation of bonus payable under Sections 10 and 11, such officers, whose salary exceeds Rs. 750/- per mensem, for calculating bonus, the salary or wages per month will be taken at the maximum of Rs. 750/- per mensem. That is, if an officer is getting Rs. 1,500/- per mensem he will be eligible for bonus; nevertheless for calculating bonus payable to him he will be treated as drawing a salary of only Rs. 750/- per mensem. Therefore, Mr. Banerjee, in the case before us, has admittedly to be paid bonus, which is due to him under the Act for the year 1964-65 on the basis that his salary is only Rs. 750/- per mensem. What the Company has done was to pay him not only the bonus as calculated under the Act, but also an additional amount. Such additional amount paid to all such officers totaling Rs. 2.65 lakhs cannot be considered to be an expenditure debited directly to Reserves. The Tribunal was justified in adding back this amount to the gross profits.

14. The third item relates to return on provision for doubtful debts. The Company had calculated return of Share Capital and Reserves. It further claimed a return at 6% on Rs. 2.5 lakhs, which according to it was a provision for doubtful debts. The amount claimed as return under this head was Rs. 15,000/- and the Company claimed to deduct this amount from the gross-profits as an item of expenditure. The Tribunal has rejected this claim of the Company. It is not necessary for us to dwell on this point at any great length in view of the decision of this Court in Indian Oxygen Ltd. etc. v. Their Workmen (supra), where the decision of the Tribunal directing such an amount to be added back in computing the gross profits has been approved. The legal position has been dealt with in the said judgment. Accordingly, we hold that the Tribunal was justified in adding back the said amount to gross profits.

15. Mr. P. S. Khera, learned counsel for the Unions has contended that the Tribunal was not justified in allowing deduction of certain items from the gross profits for purposes of computing the available and allocable surplus. The Unions no doubt have not filed any appeal. In fact in the particular circumstances of this case they could not have filed an appeal because they have been

awarded the maximum 20% allowable under the Act. But, according to Mr. Khera, if the items on which he has relied on had been added back, the Award of the Tribunal can be maintained even on the basis that the principle adopted by the Tribunal in respect of direct tax is found to be erroneous by this court.

16. The right of parties like the respondents before us even in labour adjudication to support the decision of the Tribunal on grounds which were not accepted by the Tribunal or on other grounds which may not have been taken note of by the Tribunal, has been recognised by this Court in Management of Northern Railway Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan etc. ((1967) 2 SCR 476 : AIR 1967 SC 1182 : (1967) 2 Lab 46) In fact this decision had to deal with an appeal filed by a Co-operative Society against the Award of the Tribunal setting aside the order passed by the Society removing from its service an employee. This Court permitted the Union concerned, which was respondent in the appeal, to support the Award of the Tribunal, directing reinstatement of the employee on grounds which had not been accepted by the Tribunal and also on ground which had not been taken notice of by the Tribunal. Similarly, in J. K. Synthetics Limited v. J. K. Synthetics Mazdoor Union, ((1971) 2 LLJ 552 : (1971) 3 SCC 509) this Court permitted the Union, which was the respondent in the appeal, to support the decision of the Industrial Tribunal on a method of computation regarding bonus which was not adopted by the Tribunal. Though the management-appellant therein challenged the right of the Union to support the award on other grounds without filing an appeal, that contention was rejected by this Court as follows :

> "On behalf of the management the right of the union to challenge the multiplier and divisor, in the absence of an appeal by it, is strenuously contested but in our view there is little force in this objection. The appeal by the employer is against the grant of bonus to the employees which implies that the method of computation of the gross profits, as well as of the available surplus and the rate at which the bonus is granted can be subjected to scrutiny. It is needless to recount the several priorities that have to be deducted and the items in respect of which amounts have to be added, before arriving at the available surplus. In an appeal, the several steps which have to be taken for computation of the available surplus, either in respect of the actual amounts or the method adopted, can be challenged. If so, the union, even where it has not appealed against the award, can support it on a method of computation, which may not have been adopted by the Tribunal but nonetheless is recognised by the Full Bench formula of this Court so long as in the final result the amount awarded is not exceeded. We are supported in this view by a decision of this Court in Management of Northern Railway Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur and Another (supra), where it was held that the respondents were entitled to support the decision of the Tribunal even on grounds which were not accepted by the Tribunal or on other grounds which may not have been taken notice of by the Tribunal while they were patent on the face of the record."

17. In the said decision this Court also found support for the above view in the decision of Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and Others, ((1965) 1 SCR 712 : AIR 1965 SC 669) though the latter decision related to an election appeal.

18. We will now deal with the items, which, according to the Union should not have been allowed to be deducted from the gross profits. The first item relates to a sum of Rs. 18,24,047/- paid by the Company to retired workmen at Jamshedpur Workshop under a Voluntary Retirement Scheme. This Scheme is Ex. G and it was framed on August 9, 1965. The Scheme states that the company has

been suffering from an acute shortage of imported raw materials in view of the difficulty in getting foreign exchange and as such production could not be maintained for some considerable time. In view of these difficulties it is stated that the Company has found it necessary substantially to reduce the number of workers in the workshop. The Scheme offered substantial benefits to workmen who choose to retire voluntarily, namely, ex-gratia payment equal to retrenchment compensation under Section 25 of the Industrial Disputes Act, and gratuity admissible to the workmen. There is evidence on the side of the Company that about 450 workmen availed themselves of the Voluntary Retirement Scheme and a sum of Rs. 18,24,047/- was paid. This item has been included in the profit and loss account under the heading "Salary, Wages, Bonus and Retirement gratuities". The Company gave a break-up of these items in answer to the interrogatories furnished to it by the workmen.

19. The contention on behalf of the Unions is that under the Retirement Gratuity Scheme, which is in force, a workman retires at the age of 60 and normally during the year 1965-66, the payment of gratuity to persons so retired would have come to Rs. 1.21 lakhs. Therefore, it was argued that the payment of Rs. 18.24 lakhs and odd paid as lump sum under the Voluntary Retirement Scheme during the year 1965-66 was not proper as that amount would have in the ordinary course been spread over eight or ten years.

20. The Tribunal has rejected this claim of the Union, and in our opinion, quite rightly. If there had been a retrenchment and compensation had been paid to all these workmen, the Union cannot raise and objection in law to the payment of such amount. If retrenchment had been resorted, the junior-most men under the principle "last come to first go" would have been sent out of service. On the other hand, the Voluntary Retirement Scheme enabled the younger workmen to continue in service while it offered a temptation for the older employees to retire from service. The Voluntary Retirement Scheme has not been challenged as mala fides by the Unions. We are in agreement with the view of the Tribunal that the payment of compensation to induce the workmen to retire prematurely was an item of expenditure incurred by the company on the ground of commercial expense in order to facilitate carrying on of the business land it was an expenditure allowable under Section 37(1) of the Income Tax Act. It was not an expenditure of a capital nature. The Tribunal was justified in declining to add back this item of expenditure to the gross profits.

21. The second item, which according to the Unions should have been added back is the sum of Rs. 65,764/- which was claimed as extra shift allowance of plants and machinery added during the year. The consideration of this claim was postponed by the Income-tax Officer on the ground that the Company had not furnished the requisite particulars. The Company claimed a sum of Rs. 36,10.594/- as depreciation allowable under Section 32(1) of the Income Tax Act. According to the Unions, as the sum of Rs. 65,764/- has not been accepted by the Income Tax Officer, the company can claim depreciation only in the sum of Rs. 35,44,830/- The Tribunal did accept this contention of the Unions on the ground that the amount of Rs. 65,764/- had not been disallowed by the Income Tax Officer. It is now stated in an affidavit filed in this Court on March 23, 1972, by the Chief Financial Accountant of the Company that the Company has filed an appeal against the order of the Income Tax Officer refusing to allow Rs. 65,764/- as extra shift allowance for the year 1965-66. In our opinion, the rejection of the Unions' contention in this regard by the Tribunal is justified. It is seen that the Company has produced figures for depreciation and that has not been subjected to any serious challenge by the Unions. Hence the objection regarding extra shift allowance has also to be rejected in view of the decision of this Court in Jabalpur Bijlighar Karamchari Panchayat v. The Jabalpur Electric Supply Co. Ltd. and Another. ((1971) 2 SCC 502)

22. The third item objected to by the Unions related to the expenditure shown by the Company for repairs and renewals. According to the Unions the expenses shown are very heavy and large and that the Company was not justified in incurring the same. In our opinion, this contention also has been properly rejected by the Tribunal. Apart from the fact that the Unions are not technically entitled to raise this objection, as they have not pleaded the same in their statement of case filed before this Court, this contention can be rejected even on merits. The Unions had furnished interrogatories requiring the Company to furnish certain particulars. Mr. R. N. Gupta, the Chief Financial Accountant of the company filed an affidavit before the Tribunal giving the answers to the interrogatories. He had categorically given details as to how the amount of Rs. 12.94 lakhs has been incurred as expenses for repairs and renewal. Mr. Gupta had also given evidence about this matter. In cross-examination he had stated that all the vouchers for repairs and renewal were scrutinised by the auditors and this evidence has been accepted by the Tribunal. Therefore, the Tribunal was justified in rejection this claim of the Unions.

23. The last item relates to the claim made by the Unions that after distribution of bonus at 20% for the year 1964-65, there must have been a surplus and it should have been set on for the next year, namely, 1965-66. This amount so set on should be taken into account for computing bonus for the year 1965-66. The assertion made on behalf of the Unions was controverted by the Company on the ground that there was no surplus left after paying the maximum 20% bonus for the accounting year 1964-65. In fact the evidence of Mr. Gupta shows that apart from there not having been any surplus, the Company paid 20% bonus merely because they had already announced that they will pay the same. It is clear from his evidence that bonus at 20% could not have been declared for the year 1964-65 and in order to honour the declaration made by the Company, bonus was paid at that percentage. This evidence of Mr. Gupta has been, in our opinion, rightly accepted by the Tribunal. No evidence contra has been adduced by the Unions. Once the evidence of Mr. Gupta is accepted, it is clear that there was no surplus after paying bonus for 1964-65. Therefore, the question of set on does not arise. This plea of Unions also has to be rejected.

24. From what is stated above, it is seen that the only aspect in respect of which the award of the Tribunal requires modification is in respect of the principle to be adopted for calculating direct tax. As we have accepted the contention of the Company in that regard, it follows that recomputation of the available and allocable surplus will have to be made after making a calculation of direct tax without deducting bonus payable for the year 1965-66.

25. In the original calculation filed by the Company, it calculated tax only in the sum of Rs. 98,10,893/-. It has later on corrected this figure by adding a sum of Rs. 1,34,921/- being surtax. Therefore, the total direct tax will be Rs. 99,45,814/-. Here again Mr. Gupta in his affidavit, dated March 23, 1972, has given the correct figures. Therefore the recomputation of the available surplus, allocable surplus and the percentage of bonus for the accounting year 1965-66 on the basis of our judgment will be as follows :

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Gross Profit per Award of National Tribunal Rs. 2,16,16,195

Less : (1) Depreciation admissible

under Section 32(1) of I.T. Act Rs. 36,10,594

(2) Development Rebate

admissible Rs. 6,76,224 Rs. 42,86,818

Rs. 1,73,29,377

Less : Direct Tax as per Clause 5(c)

including Dividend Tax Rs. 99,45,814

Rs. 73,83,563

Less : Statutory Deductions

Share Capital Rs. 21,13,563 Rs. 49,22,387

Rs. 2,48,65,450 at 8.5%

Reserves Rs. 4,68,13,739 Rs. 28,08,824

at 6% (without taking into

account 6% of Rs. 2,50,000/-

being provision for Doubtful

debts)

Available Surplus Rs. 24,61,176

Allocable Surplus 60% of Rs. 14,76,706

above. ---

Effective Gross Salary Rs. 1,05,32,880

Bonus paid at 13.51% Rs. 14,22,992

Balance .51% Rs. 53,714

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14.02% Rs. 14,76,706

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26. From the above, it will be seen that the workmen will be entitled to bonus at 14.02% of their total salary or wages and the amount will be Rs. 14,76,706 and not 20% as awarded by Tribunal. From this it follows that the further direction in the Award of the Tribunal regarding set on cannot be accepted. Admittedly, the Company has already declared and paid Rs. 14,22,992/- representing 13.51% of the total wages or salary. Therefore, the balance additional amount that the Company will have to pay by way of bonus to make up the 14.02%, as stated above, is Rs. 53,714/-. This amount will be paid by the Company within a period not exceeding two months from today.

27. The Award of the Industrial Tribunal is accordingly modified and the appeal allowed in part. Parties will bear their own costs.

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