Workmen

Vs

Management of Dunlop Rubber Company of India Limited

Civil Appeal No. 1291 of 1968

(C. A. Vaidialingam, A. N. Grover JJ)

04.05.1973

JUDGMENT

VAIDIALINGAM, J. –

1. This appeal, by special leave, by the workmen is against the award, dated October 20, 1967, of the Industrial Tribunal, Madras, in I.D. No. 65 of 1966 in so far as it declined to grant additional bonus for the years 1962 and 1963.

2. The respondent, Dunlop Rubber Company of India Limited, which is engaged in the manufacture and sale of tyres and tubes for light and heavy vehicles, has a factory in Calcutta, besides one at Ambattur in Madras, which was started in or about 1959. At the time of the award, the company was employing about 1,200 workmen but, during the years 1962 and 1963, it was employing about 800 workmen. The company paid to its workmen for each of those two years, 1962 and 1963, 12 weeks' basic wages as annual bonus. The workmen were not satisfied with the said payment and demanded additional bonus of three months' basic wages for each of these years. According to the workmen, the company has made a net profit of about 3.30 crores in each of these years. The company, however, declined to meet the demand with the result that the Government of Madras by its order, dated October 15th, 1966, referred the dispute regarding the additional bonus to the Industrial Tribunal, Madras. There was also another dispute referred regarding the alteration of the gratuity scheme. But we are not concerned with this dispute.

3. The case of the workmen, as disclosed by their written statement before the Tribunal, was as follows.

4. The company, according to their published profit and loss account has made a net profit of Rs. 3.30 crores and Rs. 3.27 crores for the years 1962 and 1963 respectively. The management have made various deductions from their gross profit, which were not justified according to the full Bench Formula. The management in their work sheet claimed Rs. 2.49 crores as rehabilitation and this huge amount has been claimed to purposely defeat the just demands of the workmen. Having due regard to the profits earned by the company, the demand of three months' basic wages as additional bonus was justified.

5. The company resisted the claim of the union. The case of the company was as follows.

6. In each of these two years, 1962 and 1963 it has paid to its workmen in India bonus equivalent to fifteen weeks' basic wages. All the workmen, except the workmen at Ambattur, who represent only about 12 per cent. of the total number of employees, have accepted the payment and they are fully

satisfied with the amount paid voluntarily by the company. The company made proper deductions and additions according to the full Bench Formula and arrived at the available surplus. Out of the said available surplus, the company has paid nearly 60 or 63 per cent. as bonus to the workmen which represents fifteen weeks' basic wages.

7. Before the Tribunal, the company as well as the workmen filed charts in respect of their pleas. The union objected to the deductions made by the company in respect of the commission received out of the sales made by the Dunlop United Kingdom as well as the royalties receivable out of the sales made by the London firm. There were also objections taken by the union in respect of certain deductions and claims made by the company. As those contentions have been raised before us also, we will refer to those matters later. There was also controversy regarding the rehabilitation claimed by the company. The Tribunal, on a consideration of the materials placed before it by both the parties, ultimately accepted the case of the management and held that the bonus already paid to the workmen was sufficient and that they are not entitled to any additional bonus for these two years.

8. Mr. M. K. Ramamurthi, learned counsel for the appellant-workmen, attacked the view of the Tribunal accepting the claims made by the company in respect of several items. The company had filed before the Tribunal a statement, Ex. M-3, extracted below, showing the available surplus for the years 1962 and 1963 :

> "The Dunlop Rubber Co. (India) Limited Available Surplus Computations for the years 1962 and 1963.
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> # 1962 1963---------- Rs. Rs. Rs. Rs.Net Profit perAccounts Add :Bonus (amountcharged inAccounts) .. 45,36,449 95,59,317 48,40,912 1,68,86,953Provision forTaxation perAccounts ... 2,34,78,958 1,58,82,441Depreciation perAccounts ... 60,79,969 3,41,45,376 59,82,664 2,67,06,024 ---------- ---------- ---------- ---------- 4,37,04,693 4,35,92,977Deduct : Commissionreceivable (Note 1) .. 3,94,964 3,94,973Royalties receivable(Note 2) .. 59,191 50,580Profit on sale offixed assets(Note 3) .. 98,596 (2,974)Provision forretirementGratuitieswritten back .. 5,52,751 5,00,000 9,42,579 ---------- ---------- --------- ---------Total GrossProfit .. 4,31,51,942 4,26,50,398Less : NotionalNormalDepreciation .. 72,67,887 83,90,107 ---------- ---------- ---------- ---------- 3,58,84,055 1,76,23,953 3,42,60,291Less : NotionalIncome Tax andSuper Tax .. 1,84,68,616Notional SuperProfits Tax/Sur Tax .. 49,09,965 2,33,78,581 23,36,585 2,01,60,538 ---------- ---------- ---------- ---------- 1,25,05,474 1,40,99,750Less : Return onpaid-up CapitalOrdinary share .. 27,00,000 27,00,000Capital (6%)Share Premium(6%) .. 4,20,000 4,20,000Preferenceshare Capital(actual) .. 4,60,000 4,60,0004% Return onreservedemployed asworking capitalSchedule A .. 23,35,009 59,15,009 24,90,563 60,70,563 ---------- ---------- ---------- ---------- ----------Availablesurplussubject torehabilitationclaim .. 65,90,465 80,29,190----------##
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> Note 1. - Commission receivable arises out of sales made by Dunlop U.K. of their products to India either through the Indian High Commissioner's purchasing Commission in London or to direct, Importers.
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> Note 2. - Royalties receivable arise out of sales made by Dunlop U.K., of their products to Afghanistan, Burma and Pakistan.

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9. According to company, it has paid more than 60 per cent. of the available surplus as bonus to the workmen and that they are not entitled to any additional bonus. The first item that was challenged by Mr. Ramamurthi was regarding the deductions made by the company in the sum of Rs. 3,94,964 and Rs. 3,94,973 for the years 1962 and 1963, respectively, as commission as well as the sums of Rs. 59,191 and 50,582 as royalties for the years 1962 and 1963 respectively, received from Dunlop, United Kingdom. According to the counsel, the workmen have also contributed to enable the company to earn these amounts and, therefore, they will be entitled to a share in the said profits. In this connection, Mr. Ramamurthi referred to the decision of this Court in Tata Oil Mills Co. Ltd. v. The Workmen & Others ((1960) 1 SCR 1 : AIR 1959 SC 1065 : (1959) 2 Lab 250.). In that decision certain items were claimed by the company as extraneous income obtained by them without any contribution by labour. While allowing the claim of the company in respect of two items, regarding the rest it was held by this Court that they had been earned by the company in the normal course of its business and that there was no reason why the labour should be excluded from its share in the profits. It was no doubt observed by this Court that normally there must be contribution of the workmen in earning profits before they are entitled to profits bonus, but it is not necessary that a direct connection between the efforts of the workmen and a particular item of profit earned has to be established before the profit can be taken into account for the purpose of arriving at the available surplus.

10. Mr. B. Sen, learned counsel for the company, on the other hand, referred us to Notes 1 and 2 in Ext. M-3 which has been extracted by us earlier. Notes 1 and 2 clearly explain the circumstances under which the said amounts are earned by the company and they show that the labour has made no contribution whatsoever in the company's earning either the commission or the royalties. Mr. Sen also drew our attention to the evidence of M.W. 1, the Deputy Chief Accountant of the company, who has explained the circumstances under which the said amounts were received.

11. We are of the opinion that the Tribunal was justified in accepting the contention of the company that the amounts received as commission and royalties need not be added back. M.W. 1, the Deputy Chief Accountant of the company, has deposed to the nature of these amounts received by the company. According to him, the commission is received from the parent-company in United Kingdom for sales made by them through the High Commission in London or sales effected as against order received directly by the company from the Indian customers. The amounts due to the company were credited by the London office. Similarly, royalties were also received out of sales of Dunlop products made to Afghanistan, Burma, and Pakistan. No canvassing for orders in those countries is done by the company. Apart from the fact that Notes 1 and 2 in Ex. M-3 have been challenged, we also find that there is no cross-examination by the union of M.W. 1 when he has referred to the nature of these receipts, which go to show that the workmen in India have not at all contributed in any measure, in earning those amounts. In our opinion, the amounts received by the company, by way of commission and royalties, are analogous to the home delivery commission, which was held by this Court in Workmen of M/s. Hindustan Motors Ltd. v. M/s. Hindustan Motors Ltd. & Another ((1968) 2 SCR 311 : AIR 1968 SC 963 : (1969) 1 SCJ 592.), to be extraneous income. The Hindustan Motors Limited, which was manufacturing cars in collaboration with a foreign concern, was entitled to commission on the sales made in India by the foreign concern, even though the company was not a party to those transactions This amount was called home delivery commission. The company claimed that the said commission should be deducted while calculating the surplus out of the profits available for distribution of bonus. The workmen challenged the said deduction. This Court, however, rejected the contention of the workmen and held that the amount

received as home delivery commission has to be treated as extraneous income, which was earned by the company without any activities in which the workmen participated or contributed their labour. The decision relied on by Mr. Ramamurthi in the Tata Oil Mills Co. Ltd. (supra) was referred and it was held that the situation therein was entirely different. But the principle laid in the Tata Oil Mills Co. Ltd. case (supra) that if any income was earned in the course of the normal business of a company in which the workmen were also engaged, that income must be included in the profits for calculation of surplus available for distribution of bonus, was approved in the Hindustan Motors case (supra). Applying the said principle to the case on hand, we are of the opinion that the commission and royalties received by the company did not require any contribution or work or labour on the part of the workmen and it accrued to the company in view of the arrangements spoken to by M.W. 1. In the circumstances, the deduction of these amounts from the profits by the company was fully justified.

12. It may be mentioned that the company had deducted from the profits the provision made for retirement gratuities written back. Mr. Sen has quite fairly accepted that the deduction is not justified. Therefore, this item need not be discussed further.

13. The company had claimed Rs. 4,20,000 for each of these years being return of 6 per cent. on the share premium of 70 lakhs. The company had also claimed a sum of Rs. 27 lakhs for each of these years being 6 per cent. return on ordinary share capital. The claim for return made in respect of ordinary share capital is not challenged. But the claim made for return on the share premium of 70 lakhs is attacked by Mr. Ramamurthi on the ground that the share premium does not represent paid-up capital. The Tribunal did not accept this contention advanced on behalf of the workmen.

14. M.W. 1 has again spoken regarding the share premium amount. From his evidence it is clear that when a company makes a Rights issue, the Government, while giving consent, fixes a certain amount of premium to be charged for those shares. Those shares are issued only to the shareholders, who ask for it and who pay the premium amount in addition to the nominal value of the share. A capital introduced by the shareholders in the company is shown as part of share capital according to the companies Act up to 1956. When the said Act was amended, it had to be shown in accordance with Schedule VI as a separate item, as it was only available for issue to shareholders and could not be distributed as dividend. The said share premium amount had no bearing as general reserves and they were really the share capital of the company and, therefore, the company was justified in claiming 6% return on this amount. The share premium is not undistributed profit and cannot be distributed as dividend. We are satisfied, in the circumstances, that the contention of the union that no return should be allowed on the share premium amount has been rightly rejected by the Tribunal.

15. The third item relates to the deductions made by the respondent out of the profits of two items of donations made in 1962. No donations were claimed as deduction in 1963. As a substantial part of the donations was for the National Defence Fund, the Tribunal held that the expenditure was properly incurred and the company was justified in deducting the donations from the profits. Mr. Sen accepted that the deduction made by the management under this head is not justified. Even otherwise, the company is not entitled to deduct those amounts, as is clear from the decision of this Court in Voltas Limited v. Its Workmen ((1961) 3 SCR 167 : AIR 1961 SC 941 : (1961) 1 Lab LJ 323.).

16. The fourth item, which is contested by the appellant, is the return of 4 percent. on reserves employed as working capital. The company claimed Rs. 23,35,009 and Rs. 24,90,563 as 4 per cent. return on reserves employed as working capital in 1962 and 1963 respectively. According to Mr.

Ramamurthi, this claim has not been established in accordance with the decisions of this Court. He referred us to the decisions in The Oriental Gas Company Ltd. v. Their Workmen ((1971) II LLJ 657.) and Bareilly Electricity Supply Co. Ltd. v. The Workmen and Others ((1972) 1 SCR 241 : (1971) 2 SCC 617.). In both these decisions, the nature of the evidence to sustain a claim for return on working capital has been discussed and laid down. In particular in the second decision cited above, the various decisions bearing on the point have been exhaustively reviewed. The position emerging from the decisions of this Court is that mere production of a balance-sheet by a company cannot be taken as proof of a claim, as to what portion of the reserves has been actually used as working capital. The utilisation of any amount from the reserves as working capital has to be proved by an employer by adducing proper evidence by way of affidavit or otherwise, after giving an opportunity to the workmen to contest the correctness of the same in cross-examination. The company will have to satisfactorily prove that the amount on which return is claimed, has been actually used as working capital.

17. The question is whether the criticism of Mr. Ramamurthi that the company has not properly established its claim for return on working capital in accordance with the decisions of this Court, is justified ? The company has filed Ext. M-8 containing particulars regarding the amount used as working capital for the years 1962 and 1963. It has also filed Ex. M-9 the certificate of the chartered accountant, that reserves of Rs. 5,83,75,228 and Rs. 6,22,64,083 have been used as working capital in the years 1962 and 1963 respectively. M.W. 1 has spoken to the contents of Exts. M-8 and M-9. The chartered Accountant of the auditors, who issued the certificate, Ext. M-9 has also given evidence as M.W. 2. When they have spoken about the amounts used as working capital, there is absolutely no cross examination by the union regarding these matters. This is not a case where merely the profit and loss account alone has been filed without any further evidence adduced by the management. Mr. Ramamurthi no doubt attempted to satisfy us by a reference to the profit and loss account for the two years that the entire amount claimed by the company could not have been used as working capital. We have gone through the balance-sheet and profit and loss account. We are satisfied that the Tribunal has rightly accepted the claim of the management for 4 per cent. return on the working capital.

18. The fifth and the last item that is in controversy between the parties is the claim for rehabilitation made by the company. Before we consider that question, we must refer to a contention raised by Mr. Ramamurthi that the management had no claim for rehabilitation and, therefore, no claim for rehabilitation should be allowed. In particular, Mr. Ramamurthi referred us to the statement in Ext. M-3, which we have adverted to earlier, to the effect "available surplus subject to rehabilitation claim" and stressed that the company itself has made a calculation without claiming any rehabilitation. We are not inclined to accept this plea of Mr. Ramamurthi. On the other hand, Ext. M-3 shows that the company was prepared to take a stand that even without any claim for rehabilitation being allowed in its favour, the available surplus shown in Ex. M-3 will establish that the workmen have been paid more than 60 to 62 per cent. of the available surplus as bonus for each of the two years. Ext. M-3 does not and cannot be put against the company if it can properly establish a claim for rehabilitation. Before we discuss further the claim for rehabilitation, it is now necessary to work out the figures on the basis of the findings recorded by us earlier. We have accepted the claim for deduction of commission and royalties in favour of the company. We have also accepted its claim for return on the share premium amount of Rs. 70 lakhs. We have disallowed the claim of the company regarding the amount paid by them as donation in 1962. We have allowed the company's claim for return on the working capital. On the above basis, two charts have been prepared of the available surplus for the years 1962 and 1963. They are as follows :

"AVAILABLE SURPLUS COMPUTATION FOR THE YEAR 1962 Rs. Rs.Net Profit per Accounts ... 95,59,317Add : Bonus (amount charged in Accounts) ... 45,86,449 Provision for Taxation per Accounts ... 2,34,78,958 Donation to N.D.F. ... 5,25,000 Depreciation per Accounts ... 60,79,969 3,46,70,376 ---------- ---------- 4,42,39,693Deduct : Commission receivable (Note 1) ... 3,94,964 Royalties receivable (Note 2) ... 59,191 Profit on sale of fixed Assets (Note 3). ... 98,596 5,52,751 ---------- ----------Total Gross Profits ... 4,36,76,942Less : Notional Normal Depreciation 72,67,887 ---------- ---------- 3,64,09,055Less : Notional Income-tax and Super-tax ... 1,87,31,116 Notional Super Profit-tax/Sur-tax ... 50,53,424 2,37,84,542 ---------- ---------- 1,26,24,513Less : Return on paid-up capital : Ordinary Share Capital (6%) ... 27,00,000 Share Premium (6%) ... 4,20,000 Preference Share Capital (Actual) ... 4,60,000 4% Return on Reserves employed as working ... 23,35,009 59,15,009 capital (5 Schedule A) ---------- ---------- Available surplus ... 67,09,504"----------
"AVAILABLE SURPLUS COMPUTATION FOR THE YEAR 1963 Rs. Rs.Net Profit per accounts ... 1,68,86,953Add : Bonus (amount charged in accounts) ... 48,40,912 Provision for taxation per accounts ... 1,58,82,448 Depreciation per accounts ... 59,82,664 2,67,06,024 ---------- ---------- 4,35,92,977Deduct : Commission receivable (Note 1) ... 3,94,973 Royalties receivable (Note 2) ... 50,580 Profit on Sales of Fixed Assets (Note 3) ... (2,974) 4,42,579 ---------- ---------- Total Gross Profit ... 4,31,50,398Less : Notional Normal Depreciation ... 83,90,107 ---------- 3,47,60,291Less : Notional Income-tax and Super-tax ... 1,78,73,953 Notional Super Profits-tax/Sur-tax ... 21,90,528 2,00,64,481 ---------- ---------- 1,46,95,810Less : Return on paid-up capital : Ordinary Share Capital (6%) ... 27,00,000 Share Premium (6%) ... 4,20,000 Preference Share Capital (Actual). ... 4,60,000 4% Return on Reserves employed as working capital (Schedule A) ... 24,90,568 60,70,563 ---------- ----------Available Surplus ... 86,25,247" ----------
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In both the charts no claim for rehabilitation has been taken into account. Out of the available surplus in 1962, the company paid nearly 66 per cent. as bonus for that year. Similarly, out of the available surplus in 1963, the company has paid nearly 60 to 62 per cent. as bonus. Prima facie, we are of the view that even if the claim of the company for rehabilitation is rejected completely, still on the basis of the figures worked out in the above charts, after taking into account the rebate in Income-tax that will be received by the company, the workmen have peen paid bonus at a rate which has been accepted as correct by this Court and as such they cannot have any grievance.

19. Regarding the claim for rehabilitation, the company had filed three statements. Exts. M-15, M-16 and M-17 are charts relating to the buildings, plant and machinery and moulds. The company has also adduced evidence in respect of the claims made in these statements. Mr. Ramamurthi has attacked the claim for rehabilitation made by the company. When the charts prepared by the management regarding rehabilitation were before the Tribunal, we find that several matters spoken to by the witnesses regarding the charts do not appear to have been seriously challenged by the workmen. Regarding the multipliers and divisor for plant and machinery, including moulds, these have been spoken to by the factory engineer, M.W. 3. Regarding the buildings, the architect M.W. 4, has also given evidence. Regarding all these matters, the chartered accountant attached to the auditors of the respondent-company, has given evidence as M.W. 2. The appellant has not objected to the data adduced as well as the documents produced by the company. No suggestions have been made to these witnesses that the figures on the basis of which the rehabilitation claim was made,

were in any way erroneous. It is before us for the first time that Mr. Ramamurthi has urged that the evidence of these witnesses is not sufficient to justify the claim for rehabilitation made by the company. Mr. Ramamurthi has referred us to the various decisions regarding the nature of the evidence that is required to be produced by a company when it makes a claim for rehabilitation. Mr. B. Sen invited our attention to the award, dated February 5, 1960, of the Industrial Tribunal, Calcutta, Ext. M-26, which related to the claim of the workmen of the respondent-company in Calcutta for bonus for the year 1957. In that award, the Tribunal has very elaborately gone into the evidence adduced by the company and has allowed a sum of Rs. 2,18,36,983, as calculated by the company, as rehabilitation charges. When once a Tribunal has considered a similar claim and has adopted on the basis of the evidence adduced by the parties, normally the amount awarded towards rehabilitation claim should be adopted. We do not say that it is conclusive. But that award is certainly entitled to due consideration at our hands. In that award the Tribunal had worked out the rehabilitation claim for the year 1957. The charts filed by the company regarding rehabilitation, though for the years 1962 and 1963, were worked out only on the basis of the replacement cost of the year 1958. We are mentioning this aspect because if the appellant's case was that the Tribunal, when working out the claim for 1957 in Ext. M-26, has not properly appreciated evidence, it should have elicited from the witnesses, who deposed on behalf of the company, that the figures furnished by them are not correct and cannot be accepted. No such attempt has been made by the appellant. Mr. Sen, learned counsel, relied on the decision of this Court in M/s. Hindustan Motors Ltd. case (supra) and pointed out that according to that decision, the only permissible deduction from the total amount claimed as required for rehabilitation by the appellant can be the depreciation amounting to Rs. 5.17 crores and Rs. 5.75 crores, in 1962 and 1963, respectively. He further pointed out that if the amount representing depreciation reserves is taken out of the total reserves, which is established by the evidence, then the balance amount has been utilised in raw material and hence there were no available liquid assets towards rehabilitation.

20. We do not propose to go into the details of the claim for rehabilitation made by the respondent-company, as well as the objection now made on behalf of the workmen to the said claim. The reason is that when evidence, oral and documentary, was adduced by the company before the Tribunal, the appellant has not objected to the data adduced and the documents produced by the management and they have not put any questions to the witnesses to establish that the calculation made by the company is erroneous. There is also the additional fact that from the two charts of available surplus for the years 1962 and 1963, reproduced earlier, even without allowing any claim for rehabilitation, the workmen have been paid bonus for the two years in question at rates higher than 60 per cent. Allowing for the benefit that the management will get by way of tax rebate on the amount of bonus paid, the payment of bonus already made is in accordance with the proportion accepted by this Court vide M/s. Gannon Dunkerley and Co. Ltd. v. Their Workmen (AIR 1971 SC 2567 : (1927) 3 SCC 443.). Even on the basis of the calculation to be made, according to the appellant, in respect of the rehabilitation claim, the company will be entitled to some amount at least in that regard. Even if the amount, as contended by Mr. Ramamurthi, is taken into account, the available surplus, as shown in the charts, will be reduced further. The result will be that even the amount paid as bonus already by the company, will be more than what the workmen will be entitled to according to the decisions of this Court. As pointed out earlier, even without making any provision for rehabilitation, the percentage of bonus paid is amply sufficient. Considering the matter from any point of view, there is no question of the workmen being entitled to any additional bonus over and above what has already been paid.

21. To conclude, we are satisfied that the award of the Tribunal holding that the workmen are not entitled to any additional bonus for the years in question, is correct. The appeal fails and is

dismissed. There will be no order as to cost.

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