

Sangam Press Limited

Vs

The Workmen

Civil Appeal No. 470 of 1975

(P. K. Goswami, A. Alagiriswami, P. K. Goswami JJ)

02.05.1975

JUDGMENT

GOSWAMI, J. –

1. This appeal by special leave is directed against the award of the Industrial Tribunal, Maharashtra. Several items including the claim of 30 per cent wage rise were referred to the Tribunal for adjudication. The Tribunal granted all the reliefs except with regard to two demands which were not pressed. The Tribunal granted 25 per cent increase in wages. Hence this appeal.

2. Even according to the Tribunal the total additional financial burden of the company (appellant herein) in accordance with the award will come to Rs. 1,16,687.18. The company owns a press employing 150 workers. The State Government prescribed minimum wages with a special allowance under the Minimum Wages Act for press employees. It is not disputed before us that the company's wages scale is not lower than the prescribed minimum wages. The company pleaded before the Tribunal its inability to bear any more financial burden. The company produced the accounts and showed that it was incurring losses in several years (1968-69, 1970-71 and 1971-72).

3. We are dealing with a case of a company whose employees are in receipt of some kind of a fair wage, not bare minimum wage at subsistence level. It is well settled that while the question of capacity to pay is irrelevant in the case of minimum wage, the matter of a fair wage stands on a different footing. In case of a fair wage, besides the principle of industry-cum-region, the company's capacity to bear the financial burden must receive due consideration. The past performances of the company and the future prospects with a totality of the picture must be present in the mind of the adjudicator in deciding a dispute of this nature.

4. The Tribunal was conscious of its duty to ascertain the financial capacity of the company but in doing so adopted an absolutely wrong approach resulting in erroneous conclusion. The Tribunal seems to have computed the profits of the appellant for each year on the assumption that the capital expenditure incurred in a particular year must have come out of the profits of that year and, therefore, to arrive at the correct trading result, the amount of the capital expenditure must be added back. This assumption, with great respect, betrays ignorance of the true function of the profit and loss account and fails to take note of the basic principle of accountancy that capital expenditure does not go into the profit and loss account. There can, therefore, be no question of adding back the amount of the capital expenditure to the profit and loss appearing in the profit and loss account for the purpose of arriving at the correct trading result. Equally patent is another error committed by the Tribunal, namely, of adding back the carried forward loss of the previous years -on the footing that is not genuine - to the profit or loss appearing at the foot of the profit and loss account in order to

determine the true profit or loss of the particular accounting year. This exercise on the part of the Tribunal is based on the assumption that the carried forward loss of the previous years is taken into account in arriving at the profit or loss appearing in the profit and loss account of the particular accounting year, and, therefore, if such carried forward loss is not genuine, it must be excluded in computing the profit or loss of the particular accounting year and to that extent, the real profit or loss would stand enhance. But this assumption is clearly wrong. The profit and loss account of a particular accounting year never includes the carried forward loss of the previous years. It merely reflects the trading result of the year in question. In any particular item debited in the profit and loss account is wrong, it may be added back, but the carried forward loss of the previous year not being an item of debit in the profit and loss account, it is impossible to see how it can be added back to arrive at the true profit or loss. The Tribunal was, therefore, clearly in error in taking the view that the gross profit of the appellant for nine years from 1962-63 to 1971-72 was Rs. 16,55,361.75, or that the average annual gross profit was Rs. 1,83,939.23 and basing its award on these erroneous figures.

5. We also note that the Tribunal drew an inference against the company from the Director's report of 1971-72 evidencing a slight optimum for future in view of the reduction of expenditure. The inference, however, is not in accord with the reality of the situation reflected in the accounts of the company. Sometimes observations of the like nature in the annual reports are made to strike a note of hope to dispel doubts and misgivings in the minds of the shareholders and these cannot be substituted for actual audited figures.

6. The learned Counsel appearing on behalf of the workmen, however, tried to support the ultimate conclusions in the award on the basis of other material on record. He relied on an award made by the Industrial Tribunal in Reference (II), No. 37 of 1969 and published in Maharashtra Government Gazette, Part I- L, dated February 8, 1972 at page 1411. This award related to about 12 presses in the Poona region and the contention urged on behalf of the workmen was that some of these presses were comparable concerns and if the wage scales awarded in respect of these presses were taken into account on industry-cum-region principle, the increase of 25 per cent in the consolidated wages given by the Tribunal in the present case clearly appeared to be justified. The learned counsel also attempted to refer to certain other material on record to show that what was in fact awarded by the Tribunal was fair and just and there was no reason to interfere with it. Whether the Poona presses in the aforesaid award are comparable concerns may require investigation into facts. We, therefore, declined to permit the learned counsel to sustain the award on other grounds in this appeal. But while so doing we would like to make it clear that ordinarily a party to a reference should be entitled to justify the award of the Tribunal on other grounds, so long as he does not travel outside the material or record.

7. We are clearly of opinion that there was no proper adjudication of the dispute referred to the Tribunal. The award is, therefore, set aside and the reference is restored to the file of the Tribunal for a proper and early disposal in accordance with law and in the light of the observations made herein above. The appeal is accordingly allowed with no order to costs.

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