Workmen of Messrs Binny Ltd

Vs.

Management of Binny Ltd. and Another

Civil Appeal No. 440 (NL) of 1973

(D. Chinnappa Reddy, V.B. Eradi, V. Khalid JJ)

22.08.1985

JUDGMENT

KHALID, J. -

1. This is an appeal, by special leave, filed by the Binny Employees' Association a registered trade union, against the award dated May 20, 1972, made by the Industrial Tribunal, Madras, in I.D. No. 35 of 1971.

2. The first respondent is a company incorporated on June 30, 1969, which commenced its business in the name and style of Binny Ltd. on and from November 1, 1969. The petitioners were formerly employed by Binny & Co. Ltd., and are now employed in the Finance, Trading and Agency division of the respondent-company. Messrs Binny & Co. Ltd. in which the petitioners were formerly employed, was a well established British company of a standing of more than 170 years with branches all over India. The company had accumulated huge reserves and was able to acquire interest in various other companies. Such companies are Messrs Buckingham and Carnatic Co. Ltd., The Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Binny Engineering Works Ltd., Gange Transport and Trading Co. Ltd., and Madura Company Pvt. Ltd.

3. Pursuant to orders passed in company petitions in various High Courts and in accordance with the scheme of amalgamation sanctioned by the High Courts, the undertakings of all the six companies referred to above were amalgamated with the respondent-company. The scheme of amalgamation made provisions for various matters. Clause 12 of the scheme provided that "all the employees of the amalgamating companies will become employees of the new company without interruption in service and on terms no less favourable to them". Clause 13 provided that "a separate profit and loss account would be prepared for each of the amalgamating companies for the financial year 1069". The six companies filed company petitions in the High Court of Madras for sanction of the scheme of amalgamation. Notices as required under the Companies Act were published. The secretary of the Employees Union opposed the unconditional grant of approval to the scheme of amalgamation and wanted to get rights of the employees safeguarded and for that purpose requested the Court for incorporation of certain conditions in the order of sanction. The High Court while sanctioning the scheme, included the following, in paragraph 11 of the order :

> In the result, the scheme of amalgamation is sanctioned without prejudice to the rights of the employees of Binny and Co. Ltd. in working out their existing rights under the aforesaid Acts (Payment of Bonus Act and Industrial Disputes Act) as against the new company, if they are so entitled.

4. Till the year 1968 the employees of Binny & Co. Ltd. viz., the petitioners, had been getting the maximum bonus of 20% of their gross salary every year in view of the huge profits earned by the said company. However, in the financial year 1969 the respondent company declared and paid the minimum bonus of 4% of the gross salary to the petitioners along with other employees of the respondent company, who were formerly the employees of the remaining five amalgamating companies on the basis of a consolidated profit and loss account of the respondent-company for the said year. The petitioners objected to this and raised a claim that they were entitled to receive bonus at 20% of their gross salary on the basis of the separate profit and loss account for the company formerly known as Binny & Co. Ltd. This claim was referred to the Industrial Tribunal, Madras, by a reference order dated May 19, 1971, directing the question of fixation of the quantum of bonus for the year 1969 for adjudication. The Tribunal considered the evidence before it and also referred to the relevant provisions of the law governing the question and came to the conclusion that no separate balance-sheet was prepared for this company and the quantification of the bonus payable had to be made on the consolidated surplus available taking into account the balance-sheet of the amalgamating companies. Hence this appeal.

5. The case of the appellant before the Tribunal and repeated before us is that the amalgamating companies maintained separate profit and loss accounts notwithstanding their amalgamation into the respondent-company. They also stated that the provident fund account of the employees of each amalgamated unit was also separately maintained. The petitioners relied upon clause 13 of the scheme which provided that insofar as the financial year 1969 is concerned a separate profit and loss account for each of the amalgamating companies would be prepared and that, in fact, a separate profit and loss account was prepared accordingly for that year. This profit and loss account shows that Binny & Co. Ltd., of which to the petitioners were originally employees, had earned a profit of Rs. 26,01,272 during the financial year 1969 in addition to a further sum of more than Rs. 10 lacs lying to the credit of the petitioners as on December 31, 1968. If the profit mentioned above is taken into account, the petitioners contend that they would be entitled to the maximum bonus of 20% of their gross salary for the year 1969.

6. The respondent-company pleaded in their return that consequent to the amalgamation, the respondent-company (Binny & Co. Ltd.) became a single unit and all the employees were covered by the same terms of the Payment of Bonus Act. They denied that the business activities of the former Binny & Co. Ltd. constituted a separate department or undertaking as envisaged in the Payment of Bonus Act. According to them, there was only a single balance-sheet for the whole Binny Ltd. They admitted that separate profit & loss account was prepared for the year 1969 for the finance, trading and agency division and the garment factory (former Binny & Co. Ltd.) as required in the scheme of amalgamation, but no separate balance-sheet was prepared. The company relied upon section 3 of the payment of Bonus Act which stated that the various companies which have been amalgamated should be treated as part of the same establishment under the Act for the purpose of computation of bonus.

7. It is against these facts, that the controversy in this appeal has to be decided. The only question that is involved in this appeal is as to which is the undertaking whose trading profits have to be taken into consideration for computing the bonus for the year 1969 : the employees' union contending that it is the trading profits of the former Binny & Co. Ltd. and the respondent-company contending that it is the total profits of the six units put together.

8. Before proceeding further, we may usefully quote Section 3 of the Payment of Bonus Act :

> 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 :
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> 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.

9. This section provides that different departments or undertakings or branches of an establishment should be treated as parts of the same establishment for the purpose of computation of bonus under the Act. For our purpose, the proviso is important. The proviso deals with situations where in any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department of an establishment. It is not disputed that the profit and loss account for the Binny & CO. Ltd. was, in fact, prepared. Nor is it disputed that a trial balance-sheet was also prepared for this unit. But the company takes refuge in the plea that a separate balance-sheet was not prepared for this unit., to opt out of the proviso to Section 3. To reinforce this plea, the company relies upon Clause 13 of the Scheme which reads as follows :

> Separate profit and loss accounts will be prepared for each of the amalgamating companies for the financial year 1969.
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> The contention of the company is that this clause speaks only of separate profit and loss account for each of the amalgamated companies for the financial year 1969 and not of a separate balance-sheet for this year. The question before us is whether the company could be permitted to put forward such a specious plea to defeat the claim of the employees, though the profit and loss account and the trial balance-sheet disclose surplus permitting the company to pay 20% bonus as claimed by the petitioners. It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak. If only a separate balance-sheet had been prepared for this unit, the company would have and no answer to the claim made by the petitioners. It could be that a separate balance-sheet was not prepared deliberately to avoid payment of bonus to the employees of this unit under the cover of the provision to Section 3 of the payment of Bonus Act and Clause 13 of the scheme. When evidence and facts made available before the Court show that the claim of the employees (on the strength of profit and loss account and trial balance-sheet) is justifiable, it would be not only improper but unjust for the courts and Tribunals to deny to themselves the jurisdiction to direct a company to prepare a balance-sheet in terms of the profit and loss account and the trial balance-sheet. We thought it necessary to make this position clear because of the observations made by the Tribunal in the award in answer to the plea raised by union that the Tribunal could authorise preparation of a balance-sheet under Section 25 of the payment of Bonus Act and in the light of such balance-sheet, so prepared, the Court could proceed to award bonus on the allocable surplus. That portion of the award reads as follows :
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> But Section 25 does not apply to a company as in this case. The section does not authorise

> the Court to prepare a balance-sheet. Even otherwise, I cannot agree that the Court can order a balance-sheet to be prepared from the accounts available of Binny & Co. and at on it under Section 3 of the Act for the simple reason that a balance-sheet so drawn up cannot by any stretch of imagination be considered to be prepared and maintained by the undertaking or unit.

10. If this statement of the Tribunal is accepted as the correct law that would result in adverse consequences on the employees and would render them helpless in their claims for bonus, in situations like the one that we have in this case. Where an amalgamating unit can prepare a balance-sheet, when a trial balance sheet and profit and loss account are available, omission to do so deliberately and without any valid reason would amount to denial of the benefit of the proviso to the employees of such an amalgamating unit. To say that Tribunals or court cannot even in such exceptional situations direct the employer-company to prepare the balance-sheet would, in our opinion, create undesirable results, adverse to the employees.

11. It is necessary to bear in mind the scope of Section 3 and its proviso. Section 3 is an enabling provision in favour of the employers. When an establishment consists of different departments, undertakings or branches, all such departments, undertakings or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the Act. This means that the employees will be entitled to bonus on the basis of the surplus available from all the units put together. The proviso speaks of separate balance sheet and profit and loss account being prepared and maintained for any accounting year in respect of one of the units of the whole undertaking. In such cases, the computation of allocable surplus for the payment of bonus should be on the basis of such separate profit and loss account and balance-sheet thus prepared and the employees will be entitled to claim bonus on this basis. The claim of the employees on this basis can be defeated only if this separate unit was treated as part of the establishment for the computation of bonus immediately before commencement of the accounting year in question. In this case, the company has not put forward a plea that for the previous year, Binny & Co. Ltd., was treated as part of the respondent-company for the purpose of computation of bonus. The only plea put forwards that no separate balance-sheet was prepared for this unit. The mere omission to prepare a separate balance-sheet for one of the amalgamating units will not by itself help the company to deny bonus to the employees of such a unit. When profit and loss account and trial balance-sheet are prepared one fails to understand the difficulty in preparing the regular balance-sheet. It is not disputed, nor can it be disputed on the materials available before us, that the employees of Binny & Co. Ltd., could get 20% bonus as claimed by them. They cannot be denied this bonus merely on the ground that separate balance-sheet was not prepared for their unit when all the materials were available for preparation of such a balance-sheet.

12. The employees should be deemed to have foreseen the difficulties of this kind when they sought and obtained an order from the High court about which mention has been made earlier to see that their rights were safeguarded and the scheme of amalgamation was not permitted to work to their detriment.

13. We do not think it necessary to consider the various authorities on this point in detail because the dispute falls within a short factual compass which we have indicated above. We would like to make it clear that in situation like this where the second part of the proviso to section 3 is not attracted, the adjudicating authority has powers to direct the employers to prepare and submit a regular balance-sheet, on being satisfied that such balance-sheet was not prepared to defeat the claims of the employees. In our opinion, the appeal has to succeed. We, therefore, set aside the order

of the Industrial Tribunal, Madras, allow this appeal and upheld the claim of the petitioners for 20% bonus. The first respondent is directed to pay the cost of the petitioners.

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