Maharashtra State Electricity Board

Vs

Maharashtra Veej Mandal Kamgar Sangh

Civil Appeal No. 2765 of 1987

(S.B. Majmudar, U.C. Banerjee JJ)

10.12.1998

JUDGMENT

S.B. Majmudar, J. –

1. The Maharashtra State Electricity Board by grant of special leave has brought in challenge the decision rendered by the Division Bench of Bombay High Court by which an order of remand was passed directing the Tribunal functioning under the Industrial Tribunal, Maharashtra, Bombay to recompute the allocable surplus for deciding whether the workmen under the appellant-Board were entitled to more than minimum 4 per cent bonus for the year 1965-66 to 1969-70. In order to appreciate the grievance made by learned senior counsel for the appellant-Board against the remanded proceeding it would be necessary to narrate to a few introductory facts. The appellant-Board is a statutory undertaking as defined in Section 5 of the Electricity (Supply) Act, 1948. It is employing in connection with its statutory functions a number of workmen. It is not in dispute that Payment of Bonus Act, 1965 (hereinafter to be referred to as the Act) applies to the appellant concern and its workmen. Two trade unions i.e. Respondent Nos. 1 and 2 on behalf of workmen of the appellant raised an industrial dispute pertaining to non-payment of appropriate statutory bonus to their members for the aforesaid relevant years as according to them, allocable surplus with the Board for these years was sufficient to make available to the workmen more than 4 per cent bonus. Their claim was based on Section 8 of the Act which lays down that every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. They also relied on Section 11 of the said Act. This dispute was referred for adjudication to the Tribunal. The Tribunal after hearing the parties came to the conclusion that after effecting relevant deductions on various items which the appellant-Board sought to get deducted from the gross profits for the relevant years, no allocable surplus for the relevant years resulted. Consequently, the workmen were not entitled to any bonus exceeding 4 per cent which was minimum statutory bonus payable under Section 10 as it stood during the relevant accounting years, irrespective of the fact whether any allocable surplus resulted for the relevant years or not and consequently the reference was decided against the respondents. The respondents carried the matter in a writ petition before the Bombay High Court. A learned Single Judge after hearing the parties confirmed the decision of the Tribunal and that is how the respondents carried the matter under Letters Patent before the Division Bench of the High court. The Division Bench took the view that the disputed items which were deducted by the Tribunal from the gross profits for the relevant years were not deductible. Consequently, the Tribunal was required to recompute the allocable surplus for all these relevant years and hence the impugned remand order was passed. Learned senior counsel Shri Dholakia

appearing for the appellant-Board, vehemently contended that at least for three items the Division Bench of the High Court was in error when it held them to be not deductible from gross profits. The three items for which the grievance is canvassed are as follows :

(i) Development rebate deductible according to the appellant under Section 6(d) of the Act.

(ii) Interest on bonds; and

(iii) Interest on Government loans.

We shall therefore, deal with these items seriatim.

So far as the first item is concerned, after mentioning the same and trying to pursue his contention for some time, learned senior counsel Shri Dholakia ultimately did not press this item for deduction. We therefore, confirm the view of the High Court that development rebate amount was not required to be deducted from gross profits earned by the appellant-Board during the relevant years. Now remains the last two items which we will consider together.

Interest on Bonds and Government Loans :

So far as these two items are concerned, the High Court in the impugned judgment has taken the view that none of the provisions of Section 6, would permit such deductions from the gross profit. Section 6 reads as under :

"6. *Sums deductible from gross profits* :- The following sums shall be deducted from the gross profits as prior charges, namely :-

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income-tax Act or in accordance with the provisions of the Agricultural Income-tax Act, as the case may be :

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the opinion of such employer (such option to be exercised once and within one year from that date) to be such notional normal depreciation :

(b) any amount of way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act;

(c) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year;

(d) such further sums as are specified in respect of the employer in the Third Schedule."

A mere look at Section 6 itself shows that these two items do not get covered by any of the clauses from (a) to (c).

They are not included in the list of deductible sums as mentioned in the Third Schedule. Hence clause (d) also does not apply to them. Consequently, no fault can be found with the impugned decision of the High Court when it took the view that interest paid by the Board on bonds or government loans for the relevant accounting years were not items deductible under Section 6 of the Act. However, this is not the end of the matter.

2. Learned senior counsel, Shri Dholakia placed before as a different contention which does not appear to have been placed before the Tribunal or before the learned Single Judge of the High Court but was placed before the Division Bench and which was repelled by the Division Bench by saying that it was faintly submitted and was not canvassed before the Tribunal or before the learned Single Judge. However, as the said contention has a direct linkage with the computation of allocable surplus during the relevant accounting years for which the proceedings are remanded by the High Court, we deem it fit to consider this contention on merits. In order to appreciate this contention of learned senior counsel appearing for the appellant - Board, Shri Dholakia we may have a look at Sections 11, 5 and 4 of the Act. Section 11 provides that if allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay bonus in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage. Section 2(b) defines allocable surplus. It is this surplus which is relevant for computing payable bonus as per Section 11. It has in its turn linkage with available surplus. Section 5 deals with available surplus. It provides that the available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 5, we have already seen that Section 6 does not cover the disputed two items of interest. However, it is obvious that the available surplus will consists of two ingredients i.e. (i) gross profits and (ii) deduction from the said gross profits permitted under section 6. Even if the deductions are not permitted under Section 6 of the Act so far as these two items are concerned, the further question would survive whether these items will have any nexus to the computation of gross profits. Computation of gross profits is provided by Section 4 of the Act which reads as under :-

"4. *Computation of gross profits* :- The gross profits derived by an employer from an establishment in respect of any accounting year shall -

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule;

(b) in any other case, be calculated in the manner specified in the second Schedule.

As the appellant-Board is not a banking company it would be covered by Section 4(b). That will take us to the Second Schedule. Second Schedule lays down the procedure for computing gross profits for the accounting year in question. The very first item of the Second Schedule shows that for the accounting year in question, the next profit as per the profit and loss account of the concern will have to be first ascertained and after that figure is arrived at certain items are to be added back as mentioned in item Nos. 2, 3 and 4 of the Schedule and that is how item No. 5 would consist of the sum total of item Nos. 1, 2, 3 and 4. So far as the deductions permitted

from this total figure arrived at item No. 6 are concerned, they are mentioned at item No. 6(a) to (g). It is not the contention of either side that these two disputed items could be deducted under any of the sub-clause of item No. 6. The short question with which we are concerned and which was highlighted for our consideration by learned senior counsel for the appellant, Shri Dholakia was as to what was the correct net profit figure for each of the accounting year in question. His submission was that net profits for the accounting year as per the accounting practice would entitle the appellant to get deducted from the gross profits the two items of interest which are disputed in the present case and then only the net profit as per the accounting practice would be worked out. Not only that but according to him, the net profit figures were submitted to the Tribunal as per Exhibit-19. The High Court in the impugned judgment has noted that the Tribunal has already computed the net profits for all the accounting years in the light of Exhibit-19 as found in paragraphs 16 to 25 of the Tribunal's judgment. However, Shri Dholakia, learned senior counsel submitted that the futures of net profit mentioned by the Tribunal for the relevant accounting years are not correctly mentioned and in his submission Exhibit-C-19 is misread by the Tribunal while mentioning the figures of net profits for all these years. When it was pointed out to him that such a contention was never canvassed before the learned Single Judge in that form of before the Division Bench, he submitted that before the learned Single Judge it was not canvassed but as the final decision of the learned Single Judge was in favour of the appellant-Board the said mistake did not assume importance and that the Division Bench in appeal relying on these figures was persuaded to pass an order against the appellant. According to learned senior counsel for the appellant, Shri Dholakia once the High Court in the impugned judgment has reversed the decision of the learned Single Judge and the Tribunal it became necessary for the appellant to move the High Court in a review petition in this connection and a review petition was moved but unfortunately it was dismissed and it is therefore that the said contention is again canvassed for reconsideration in this appeal. The submission of Shri Dholakia was to the effect that Exhibit-C-19, a copy of which was furnished to us in this proceeding, mentioned in the first item for all the relevant years surplus brought forward to net revenue account, while below that after mentioning the relevant items for deduction from the surplus figure the net profits were worked out for all these relevant years to be covered by item No. 1 being net profits as per Second Schedule. It was therefore contended that there was an apparent error committed by the Tribunal in wrongly mentioning as not profits the figures which are really shown as surplus brought forward to net revenue account for all these relevant years. Now, it must be noted that this contention though raised in the review petition was not raised earlier before the learned Single Judge or in this very form before the Division Bench. But as we find that the proceedings are already remanded by the High Court by the impugned judgment by disallowing the deductions on these two items from the gross profit under Section 6 of the Act and which disallowance is being upheld by us, in our view, interest of justice will be served if we maintain the remand order subject to the modification that the Tribunal while considering the allocable surplus for all these relevant five years in question, may also address itself to the moot question as to what was the net profit as per Second Schedule as available to the appellant-Board for all these relevant years. This question may be examined by the Tribunal after hearing the parties concerned and the Tribunal may thereafter take a final decision in the light of the evidence on

record. It will be open to the appellant to justify the figures mentioned in Exhibit-19 and it will also be equally open to the respondents to place relevant materials to justify their claim about correct net profits for all these years. We make it clear that we express no opinion on the merits of the controversies between the parties. The appeal is disposed off accordingly with no order as to costs. As the proceedings are pending since long we deem it fit to direct the Tribunal to dispose of this remanded proceeding within six months from today. The Tribunal shall proceed accordingly after issuing notice to the parties and fixing an early date of hearing. A copy of this order shall be sent by the office to the Tribunal concerned for information and necessary action.