KARNATAKA HIGH COURT

N.G.E.F. Ltd.

Vs.

Deputy Regional Director

M.F.A. No. 723 of 1976

(Jagannatha Shetty, Venkatachaliah and Rama Jois, JJ.)

29.08.1978

JUDGMENT

Jangannatiia Shetty, J.

1. A Division Bench of this Court having found that there is a conflict of decisions on the scope of 'wages' as defined under Section 2 (22) of the Employees' State Insurance Act, 1948, has referred the following question for opinion to a Full Bench:

> "Whether the amount paid by way of an incentive tinder the Scheme referred to in the settlement entered into between the Management and its Workmen can be treated as wages as defined under Section 2 (22) of the Employees' State Insurance Act?"
> The learned Judges who have referred the question, have opined that the view expressed this Court in Regional Director of Employee's *State Insurance Corporation v. Management of Mysore Kirloskar Ltd*[1]*.,* at p. 360, does not appear to be in accord with the decision in Government Soap Factory v. Regional Director of Employees' State Insurance Corporation M. F. A. No. 69 of 1973, decided on 27-11- 1973 (Kant).
> They have further stated that the decision of this Court in Kirloskar's case has not been approved by the High Court of Bombay, in *M/s. Mahalaxmi Glass Works Pvt. Ltd. v. Employees' State Insurance Corporation*[2]*,* and Full Bench of the Andhra Pradesh High Court in Employees' State Insurance Corporation Hyderabad v, Andhra Pradesh Paper Mills Ltd, AIR 1978 Andh Pra 18.

2. Before we refer to these decisions and the provision of the Employees' State Insurance Act, 1948. (hereinafter referred to as "the Act"), it will be necessary to set out the relevant facts of the case. The appellant is a public limited company incorporated under the Companies Act, 1956. It carries on the business of manufacture and sale of electrical equipments of various kinds. It has about 4,000 employees on its rolls. The Management of the Company has been making its

contributions in terms of the provisions of the said Act since September 1.964. On 6th July, 1968, the Manager,:, introduced an incentive scheme for the benefit of its employees and as per the terms of the scheme it has been

[1](1974) 1 Kant LJ 358

[2]1976 Lab IC 514

making incentive payments to its employees. Treating the payment as purely incentive, the Management did not take into consideration the said payment for calculating the contributions payable by it under the Act. On 25th October, 1971, the Deputy Regional Director of the Employees' State Insurance Corporation ("the Corporation") called upon the Management to include also the incentive payment made to the employees as part ,of wages for the purpose of determining the contribution payable under the Act. The Management resisted the demand. When the Corporation persisted, the Management took up the dispute before the Employees' Insurance Court Bangalore under Section 75 of the Act.

> The learned Judge of the Employees' Insurance Court, after considering the rival contentions, held that the incentive scheme was introduced on account of the bilateral agreement and not on the unilateral offer of the Management and the scheme shall continue to bind the parties until it is terminated by the Management. He also held that the Management has no right to withdraw the said scheme unilaterally and payment thereof was in the nature of "wages" as defined under the Act and the Management therefore, was liable to pay the contribution. Against that order, the Company has preferred the appeal to this Court.

3. A perusal of the incentive scheme introduced by the Management shows that the learned Judge was right in his conclusion that it was not a one sided, offer by the Management. It was proposed by the Union and accepted by the Management which is evident from Paragraph VI of the Memorandum of Settlement entered into between the Management and the Employees' Union on 6th July. 1968. The scheme provides for fixation of time standards on a scientific basis and the employee was guaranteed of his time wages irrespective of his rate of production. Under the Scheme, the employee starts earning incentive when be exceeds "standard efficiency". He would get a benefit of the saving in 1980 Lab. L. C./28 V direct labor cost resulting from the higher rate of production at the rates prescribed in Table I of the scheme. That means, if an employee produces 25 percent more than he is expected to produce at standard efficiency, he will be paid 25 per cent more by way of incentive wages. It is not in dispute that this kind of arrangement is still being continued although a right has been reserved for the Management to terminate the scheme by serving three months' notice after the standard time is fixed.

4. The question is, whether the payment made to workmen under the said scheme could be termed as wages. The word "wages" has been defined under Section 2 (22) of the Act as follows :

> "2 (22). 'Wages' means all remuneration paid or payable in cash to an employee if the

terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lockout, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include.

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act:

(b) any travelling allowance or the value of any travelling concession:

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment: or

(d) any gratuity payable on discharge."

The above definition could be conveniently divided into three parts: The first part deals with all remuneration paid or payable in cash to an employee under the terms of the contract of employment. The second part is the inclusive part of the definition. It covers any payment in respect of any period of authorised leave, lockout, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months. The third part excludes from the definition certain types of payment provided under clauses (a), (b), (c) and (d) of Section (22).

5. The meaning and scope of the first part of the definition of "wages" specifically came up for consideration before the Supreme Court in *M/s. Braithwaite and Co. (India) Ltd. v. The Employees' State Insurance Corporation*[3], at p. 415 para 2.

The question in that case was whether the Inam paid by the employer under a scheme known as "the Inam Scheme" was covered by the definition of "wages". After considering in detail the terms of the said scheme the Supreme Court held that the payment was a one sided offer made by the Management and it was not among the original terms of the contract of employment. It was also observed that since such payments depended on certain specified conditions to be fulfilled by the employees, like employees exceeding the targets of output appropriately applicable to them, or if the targets were not achieved due to lack of orders, lack of materials etc., it could not form part of the contract of employment. The decision of the Supreme Court entirely depended upon the terms upon which the Inam was payable under the Inam Scheme and first part of the definition of "wages" in Section 2 (22). The decision apparently has no reference to the second part of the definition. This is clear from the following observation of Bharagava, J.:

"The High Court has held that the Inam in question is covered by this definition where it is laid down that "wages" means all remuneration paid or payable in cash to an employee, if the terms of the con- tract of employment express or implied, were fulfilled. Reliance is not placed on the second clause of the definition which includes other additional remuneration, if any, paid at intervals not exceeding two months. Counsel appearing for the respondent before us also did not rely on this second part of the definition and sought to support the decision of the High Court only on basis that it is covered by the first part.

> Counsel appearing for the appellant also did not rely on the last part of the definition which excludes from the definition of "wages" items mentioned in clauses (a), (b), (c). and (d). In this case therefore, we have to confine our decision to the interpretation of the first part of the definition of "wages".

6. In the Regional Director of Employees' State Insurance Corporation v. Management of Mysore Kirloskar Ltd., (Govinda Bhat, C. J. and Srinivasa Iyengar, J.) the question arose whether the payment akin to that made under the Inam Scheme considered by the Supreme Court in M/s. Braithwaite's case, was "wages". It was urged in that case that even if such payment was excluded from the first part of the definition of "wages" it

[3] AIR 1968 SC 413

could still fall within the second part of the definition. While repelling that contention, Govinda Bhat, C. J., speaking for the Bench, observed; at page 360 :-

> "...The result is that the Supreme Court has made a declaration that the Inam paid or to be paid under the Inam Scheme is not "wages" as defined under the Act. The declaration made by the Supreme Court is not merely that the Inam paid under the said scheme is not wages within the first part of the definition of the word "wages" but that the Inam paid is not 'wages' as defined in Section 2 (22) of the Act. If this Court, accepting the argument of the learned counsel for the appellant were to hold' that payments of the same character as were concerned in Braithwaite's case are wages as defined in Section 2 (22) of the Act, we would be disregarding the law as laid down by the Supreme Court: It was open to the Corporation to urge before the Supreme Court in Braithwaite's case that the second part of the definition viz., 'other additional remuneration', is not of the same nature as the remuneration defined in the first part of the definition and that the Inam under the Scheme is also 'wages' as defined under the Act. Such an argument was advisedly not pressed. The issue for decision before the Supreme Court was whether the Inam under the Inam Scheme was not a term of contract of employment express or implied and whether the said payment constituted 'wages' as defined in S. 2 (22) of the Act. The decision was that such payment is not 'wages' as defined in Section 2 (22) of the Act. When there is a decision of the Supreme Court to the effect that payment in Inam made by an employer to his employees which does not form a term of contract of employment, express or implied, is not 'wages' as defined in Section 2 (22) of the Act, it is not open to, any High Court to take a contrary view on the ground that before the Supreme Court reliance was not placed on the second part of the definition."
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> It was further observed :-
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> "According to the decision in Braithwaite's case, the first part of word.' "wages" included remuneration paid under the terms of the contract of employment, express or implied, but not voluntary payment by the employer which can be withdrawn or varied at his will and pleasure. The second part of' the definition, in our opinion, merely lakes in additional remuneration of the same nature as remuneration falling under the first part. In other

words, the additional remuneration contemplated is also remuneration payable under terms of employment express or implied. That seems to be the intention of the legislature is clear from the definition of the word 'wages' in Section 2 (vi) of the Payment of Wages Act, 1936, where the definition is almost similar.

The same learned Judges in Govt. Soap Factory's case, while considering the nature of payment of incentive bonus under a scheme to employees of the Government Soap Factory, held that payment of bonus was under the terms of the contract of employment and the employer was, therefore, liable to pay contribution on the incentive bonus."

7. It is clear from the decisions in Kirloskar's and Govt. Soap Factory's cases, there is no conflict of views expressed by this Court as opined in the order of reference. Kirloskar's case proceeded on the basis that the payment concerned therein was not included within the terms of the contract of employment, whereas the decision in the. Govt. Soap Factory's case proceeded on the ground that the incentive payment in question therein was a remuneration tinder the terms of the contract of employment. Both the decisions proceeded on the principle that any remuneration paid or payable to workmen, in order to be "wages" must be under the terms of employment, express or implied and in Kirloskar's case, this Court has gone a step further and held that the decision of the Supreme Court in M/s. Braithwaite's case was also a decision covering the second part of the definition of "wages". It was further held that the second part of the definition, merely takes in "additional remuneration" of the same nature as remuneration falling under the first part, that is, the 'additional remuneration' contemplated is also remuneration payable under the terms of employment, express or implied.

8. It seems to us, that this court in Kirloskar's case was wrong in taking a narrow view of the second part of the definition of wages. The second part of the definition is quite distinct and different from the first part. The second part declares that any payment to any employee in respect of any period of authorized leave, lockout, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months shall also be included in the definition of 'wages'. All these items of payments apparently can- not have any reference to the terms of the contract of employment of any employee. But nonetheless they are also termed as wages because they are included in that definition. In the *State of Bombay v. Hospital Mazdoor Sabha*[4], at p. 614 para 10 the Supreme Court observed that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. It was also observed that when we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation. Support to this proposition was also drawn from the following meaning of the word "include" as defined in Stroud's Judicial Dictionary, Fourth Edition, Volume 3, Page 1333.

"'Include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statutes: and when it is so used, these words or phrases must be construed as comprehending, not only such things as they

signify according to their natural import but also, those things which the interpretation clause declares that they shall include".

The following passage from Caries on Statute Law (Seventh Edition, Page 213) further clarifies the meaning and scope of the inclusive definition:

"There are two forms of interpretation clause. In one, where the word defined is declared to 'mean' so and so, the definition is explanatory and prima facia restrictive. In the other, where the word defined is declared to 'include' so and so, the definition is extensive, e, g. 'sheriff' includes 'under sheriff'".

Therefore, the clear implication of the second part of the definition is that any additional remuneration paid otherwise than under the terms of the contract should also be treated as wages for purposes of the Act provided that payment is made by way of remuneration i. e., a recompense for service rendered and not any ex gratis payment: and paid at periodical intervals not exceeding two months. If any additional remuneration paid satisfies these two conditions, section 2 (22) declares it to be 'Wages" though paid de hors the terms of the contract.

9. It is true that the word 'remuneration' is found both in the first and second parts of the definition. But the condition attached to such payment in the first part cannot legitimately

[4] AIR 1960 SC 610

be extended to the second part. The other 'additional remuneration' referred to in the second part of the definition is only qualified by the condition attached there (that is, paid at intervals not exceeding two months). That was also the view taken by a Full Bench of the Andhra Pradesh High Court in Employees' State Insurance Corpn. Hyderabad V. Andhra Pradesh Paper Mills Ltd. and also the Bombay High Court in *M/s. Mahalaxmi Glass Works Pvt. Ltd. v Employee's State Insurance Corpn.* But this aspect of the matter has been completely overlooked by this Court in Kirloskar's case.

10. There is yet one other circumstance which compels us against concurrence with the view taken in Kirloskar's case. When the Supreme Court considered the Braithwaite's case the definition of the word "wages" under Section 2 (22) of the Act was in the following terms :

"In this Act, unless there is anything repugnant in the subject or context.

xx xx xX Xx xX

(22) 'wages' means all remuneration paid or payable in cash to any employee, if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months, but does not include -

xx xx xx xx xx"

There was also an Explanation to Section 41 giving an enlarged meaning to the word 'wages'. That Explanation reads:

"Explanation - For the purposes of Sections 0 and 41 wages shall be deemed to include

payment to an employee in respect of any period of authorised leave, lockout or legal strike."

The above Explanation was relied upon before the Supreme Court in Braithwaite's case in support of the contention that even payments falling outside the terms of employment were also covered by the first part of the definition. But the Supreme Court rejected that contention with the following observation:

"Applying the same principle, we have to hold that the Explanation to Section 1 is not to be utilized for interpreting the general definition of 'wages' given in Section 2 (22) of the Act and is to be taken into account only when the word 'wages' requires interpretation for purposes of Sections 40 and 41 of the Act. It cannot, therefore, be held that remuneration payable under a scheme is to be covered by the word "wages" if the terms of contract of employment are taken to have been fulfilled. What is really required by the definition is that the terms of the contract of employment must actually be fulfilled. It is, therefore, not correct to hold that because payments made to an employee for no service rendered during the period of lockout or during the period of legal strike, would be wages, Inam paid under that scheme must also be deemed to be wages".

The Act was amended by Act 44 of 1966, which came into force on 20-1- '1968. By the said amendment, the afore- said Explanation to Section 41 was bodily lifted and incorporated into See. 2 (22) of the Act. The definition after the said amendment reads as follows :

"2.

xx xx xx xx xx

(22) 'Wages' means all remuneration paid or payable, in cash to an employee if the terms of the contract of employment, express or implied were fulfilled and include any payment to an employee in respect of any period of authorised leave, lockout, strike which is not illegal or lay-oft and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include".

(Underlined, portion inserted by Act. No. 44 of 1966, with effect from 20-1- 1968)

In view of the aforesaid amendment and having regard to the said observation of the Supreme Court, the words "other additional remuneration' must receive the meaning of payments described by the preceding items. When the preceding items are required to be paid de hors the terms of the contract, express or implied, it cannot reasonably be said that 'other additional remuneration' which follows those items must be paid under the terms of employment. It is not correct to place such an interpretation having regard to the well settled principles of construction applicable to an inclusive definition.

We, therefore, overrule the decision in Kirloskar's Case.

11. For the reasons stated above out answer to the question is that the amount paid by way of incentive under the scheme referred to in the settlement entered into between the management and its workmen falls within the definition of "wages" as defined under section 2 (22) of the Employees' State Insurance Act.

Answer affirmatively.