

(1994) 07 BOM CK 0129
In the Bombay High Court
Case No : First Appeal No. 801 of 1973

All India Glass Works Pvt. Ltd.

APPELLANT

Vs

Regional Dir., Employees State Insurance Corpn. and Another

RESPONDENT

Date of Decision : 11-07-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22)

Citation : (1995) 1 BomCR 110 : (1994) 96 BOMLR 116 : (1999) 3 LLJ 115

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—This appeal raises an interesting question of law as to whether the amount paid or payable to the employees under the "Incentive or production bonus" (Inam or Bakshis) Scheme (annexure "A" to Application No. 75 of 1972) constitute "wages" within meaning of the expression "wages : as defined in section 2(22) of the Employees" State Insurance Act, 1948 and whether the appellant is liable to pay amount of "employers special contribution" and "employees contribution" thereon as demanded by the respondent corporation.

2. Having regard to the observation of the Supreme Court in the later part of its judgment in case of Wellman (India) Pvt. Ltd. v. Employees" State Insurance Corporation 1993 2 CLR 161, it must be held that the amount paid or payable to the employees under the said scheme constitute "other additional remuneration" within meaning of the said expression, forming part of definition of the word "wages" u/s 2(22) of the Act though payable at the discretion of the employer. For the reasons indicated below I answer the question formulated above in affirmative.

3. On 7th March 1963, the appellant formulated an incentive or production bonus (Inam or Bakshis) Scheme. A copy of the said scheme is made available to the Court. A copy of the said scheme was annexed as Annexure "A" to application No. 75 of 1972 filed by the appellants before the Employee" Insurance Court at Bombay. By clause 2 of the said scheme, it was provided that with a view to

induce the workmen to improve their efficiency and increase the production during their normal working hours, the management had evolved an inam or bakshis or production bonus scheme which was usually known as "incentive production bonus scheme". It was specifically set out in the said scheme that the said scheme had no bearing on the wages payable to the workmen and was quite independent of it. By clause 3 of the said scheme, it was provided that if the workman gave quantum of production in excess of the target fixed by the management for the job, such worker would be paid Inam or Bakshis according to the rate applicable to such job. By clause 5 of the said scheme, it was provided that the management shall always be at liberty to withdraw the scheme or modify or amend the same at its discretion and without any notice to workmen and without giving any reason. By clause 6 of the said scheme, it was provided that in the event of there being a shortage of materials, power failure, breakdown of machinery, lack of workmen, etc. as a result of which workmen were unable to exceed or achieve the targets, the workmen will not get any Inam and they will have no right to make any grievance. By clause 7 of the said scheme, it was provided that the said scheme did not affect rights of the parties or conditions of employment or conditions of service governing the workmen. By clause 8 of the said scheme, it was provided that the scheme will come into force from 1st April, 1963. The said scheme provided for payment of "incentive amounts" to the employees/workmen in discretion of the employer. It is not disputed that the amounts paid or payable under the scheme was paid or payable every month.

4. The said scheme was not arrived at as a result of any settlement between the employer and the employees or their union and did not form part of contract of employment between the employer and the employees express or implied.

5. By notice of demand dated 16th August 1972, the respondent called upon the appellant to pay a sum of Rs. 2211.00 towards "employers special contribution" and a sum of Rs. 1382.14 towards "employees contribution" on "production bonus" paid by the appellant to the workmen during the period April 1971 to March 1972. The respondent protested against the said demand by letter dated 20th September 1972 relying, inter alia, upon the ratio of the judgment of the Supreme Court in the case of Braithwaite and Co. (India) Ltd. Vs. The Employees" State Insurance Corporation, .

6. In view of this situation, the appellant made an application before the Employees Insurance Court at Bombay being Application No. 75 of 1972 for adjudication of the dispute between the appellant and the Corporation. By the said application, the appellant sought a declaration that the payment made by the appellants under the "incentive or production bonus (Inam or Bakshis) Scheme" did not constitute part of the "wages" paid or payable by the employer to the employees and as such did not attract liability to pay "contribution" under the Act. By the said application, the appellants sought a relief to the effect that the notice of demand dated 14th August 1972 and the notice of recovery dated

31st August 1972 issued by the Collector, Bombay Suburban District, be set aside.

7. By its judgment and order dated 31st July 1973, the trial Court dismissed the above referred application made by the appellants.

8. Section 2(22) of the Act, defines the expression "wages". The said definition reads as under :

"Wages" means - (1) all remuneration paid or payable in cash to an employee, if the terms of the contract of employment express or implied were fulfilled, and

(2) includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and

(3) other additional remuneration, if any, paid at intervals not exceeding two months.

The said definition excludes certain categories of payments from purview of the definition of the expression "wages" like contribution and by the employer to any pension fund or provident fund, travelling allowance, gratuity payable on discharge, etc. In this appeal, the Court is not concerned with the categories of payments excluded from the definition of the expression "Wages" under the provisions referred to hereinabove.

9. The first question which arises for consideration of the Court is as to whether the payment made by the appellant to the employees under the Scheme dated 7th March 1963 is liable to be considered as remuneration paid to an employee under the terms of contract of employment express or implied. Having regard to the ratio of the judgment of the Supreme Court in the case of Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation, , I have no hesitation in holding that the amount payable under the Inam Scheme dated 7th March 1963 does not constitute wages within meaning of the first part of the definition of the expression "wages" referred to hereinabove. In the above referred to hereinabove. In the above referred case, Bhargava J. speaking for the Apex Court observed that the payment of Inam, though remuneration could not be said to have become a term of the contract of employment within meaning of the word "wages" as defined in Section 2(22) if the Scheme under with the amounts were paid could be withdrawn by the employer at his discretion. The term of contract of employment must be arrived at between the employee and the employer as a result of contract arrived at between the parties. In the case of Braithwaite and Co., the employer had unilaterally propounded an incentive scheme and the amount payable to the employees under the said scheme was payable at the will of the employer. It was held by the Court that the mere fact that a reward for good work offered by the employer was accepted by the employee after he had successfully satisfied the requirements laid down by the employer company for earning reward could not mean that the payment became a part of contract of employment. If attendance bonus or production bonus is

payable as a result of settlement mutually arrived at between the employer and the employee, such a payment would fall within first part of the definition of expression "wages" but not the payment made by the employer unilaterally under a scheme which could be withdrawn at his will. Whether such payment shall constitute "other additional remuneration" and consequently "wages" is a different matter. This aspect of the appeal shall be examined separately and independently of the first part of the above referred definition.

10. The real question which arises for consideration of the Court in this appeal is as to whether the payment made by the appellant to its employees under the incentive or production bonus (Inam or Bakshis) Scheme can be considered as "other additional remuneration" within meaning of the said expression forming part of the definition of the word "wages" u/s 2(22) of the Act. The trial Court has observed in its judgment that the amount of incentive bonus was payable by the employer to the employees monthly and not "at a period exceeding three months". The correctness of this observation made by trial Court is not disputed by the learned counsel appearing on either side.

11. Shri. A. N. Samant, the learned counsel for the appellant, has submitted that the payment made under the above referred scheme cannot constitute "other additional remuneration" within meaning of third part of the definition of expression "wages" as set out in Section 2(22) of the Act. This submission requires scrutiny.

12. It must be stated here and now that in the above referred judgment of Supreme Court delivered by Bhargava J. for the Apex Court reported in Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation, , the Apex Court in terms observed as under :-

"Reliance is not place on the second clause of the definition which includes other additional remuneration, it 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 the basis that it is covered by the first part. Counsel appearing for the appellant also did not rely on the 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".

It is well settled law that a case is an authority for what it decides and the ratio of the case decided cannot be extended by analogy. Thus the inquiry in the above referred Scheme was confined to the question as to whether the amount paid by the employer under the scheme similar to the scheme in our case constituted "wages" under the first part of the definition. The Apex Court had thus no occasion in the above referred case to consider as to whether the payment of amounts to the employees under such an incentive scheme constituted "other additional remuneration" or not.

13. Mr. Samanta has very fairly invited attention of the Court to the recent judgment of the Supreme Court in the case of Wellman (India) Pvt. Ltd. v. Employees" State Insurance Corporation 1993 2 CLR 161. In this case, the Supreme Court held that the attendance bonus payable to the employees under the terms of the settlement was covered within the first part of the definition of "wages" u/s 2(22) of the Act. It was consequently held by the Court that the attendance bonus payable to the employees under the terms of the settlement amounted to remuneration payable to the employees under the terms of a contract express or implied. In the latter part of the judgment, the Supreme Court interpreted later part of the definition of the expression "wages" i.e. the words "other additional remuneration" and in terms observed as under :-

"Hence, the expression" other additional remuneration, if any, paid" not only does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer."

The learned counsel for the appellant is justified in pointing out that no reference is to be found to the well known case of Braithwaite and Co. (India) Ltd. Vs. The Employees" State Insurance Corporation, in this case. Perhaps no such reference was necessary. It cannot be forgotten that in the case of M/s. Braithwaite and Co. the Supreme Court did not go into the question whether amount payable by the employer to the employees under the Inam Scheme in question there was liable to be considered as "other additional remuneration". For the reasons best known to parties, the parties restricted and confined their respective submission only to first part of the definition of the expression "wages" as set out in Section 2(22) of the Act. It is well/settled law that even the obiter dicta of the highest Court of the land binds the High Courts and other Courts. The High Courts are bound by the obiter dicta of the Supreme Court in absence of declaration of law on the subject in another case decided by the Supreme Court where the question directly arose and is in terms decided. In this view of the matter, I respectfully follow the above referred observations of the Supreme Court made by P. B. Sawant J. speaking for the Apex Court in para 6 of his judgment. I am not merely bound by the above referred observations of the Supreme Court, but, I also respectfully agree with the view taken by the Court in interpretation of the expression "other additional remuneration" used in third part of the definition of the expression "wages".

14. The learned counsel for the appellant invited the attention of the Court to the Full Bench judgment of High Court of Kerala in the case of N. G. E. F. Ltd. v. Deputy Regional Director, E. S. I. C. Bangalore 1980 LIC 431. The learned counsel in terms referred to observations made in para. 6 of the judgment delivered by Jagannatha Shetty J. on behalf of the Court. In view of the analysis of the ratio of the judgment in Wellman (India) Pvt. Ltd. v. Employees" State Insurance Corporation as indicated in the earlier part of this judgment, I do not agree with the view taken by High Court of Karnataka in the above referred case in respect of interpretation of Judgment of the Supreme Court in Braithwaite case.

15. The learned counsel for the respondent has invited attention of the Court to the full Bench judgment of the High Court of Andhra Pradesh in the case of Employees' State Insurance Corporation, Hyderabad v. Andhra Pradesh Paper Mills Ltd., Rajahmundry, reported in 1978 LIC 19. It appears to me that this case concerned itself with the question concerning payment of incentive bonus under "a settlement". This case is therefore clearly distinguishable and is of no relevance in a case where the amount is payable under a scheme not made as a result of any "settlement" between the employer and his employees.

16. The learned counsel for the appellant also invited the attention of the Court to the judgment of Hon"ble Justice O. Chinnappa Reddy in SLP (Civil) No. 9795 of 1983 in the case of M/s. Harihar Polyfibres v. The Regional Director, ESI Corporation. I have carefully gone through the said judgment. In my opinion, the said judgment also does not deal with the question as to whether the payment of incentive allowance made by an employer to his employee under a scheme of the kind as in this case constituted wages or not.

17. In the result, I hold that the Employees' Insurance Court was right in taking the view that the amount paid to the employees under the incentive or the production bonus (Inam or Bakshis) scheme constituted "wages" as defined by the Employees State Insurance Court and the demand made by the respondent Corporation for payment of contribution was valid.

18. In the result, the appeal fails. The appeal is dismissed. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

19. The learned counsel for the appellant applies for stay of the operation of the order passed by the Court today. At the interlocutory stage the appellant had applied for stay of operation of order passed by the trial Court. By an order dated 23rd July, 1974, the Register of this Court exercising power of the Court had dismissed the application for stay and discharged the rule with costs. Having regard to the facts and circumstances of the case, I see no reason to grant stay of the operation of the order passed by this Court today. In this appeal this Court has merely confirmed the order passed by the trial Court. No stay has been operative in favour of the appellant all these years and no stay of operation of order of trial Court need be granted by this Court at this stage.