
(1974) 05 MAD CK 0004
In the Madras High Court

Dharangadhara Chemical National Workers' Union
Vs
Industrial Tribunal and Others

APPELLANT

RESPONDENT

Date of Decision : 08-05-1974

Acts Referred:

Payment of Bonus Act, 1965 — Section 3, 4, 5, 6, 7

Citation : (1975) 1 LLJ 251

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioners are the workmen employed in Dhrangadhara Chemical Works Ltd., Sahupuram, Tirunelveli District. The company is registered under the Companies Act and has its head office at Dhrangadhara in Gujarat State but has got its caustic soda unit at Sahupuram. The workmen were paid 4% minimum bonus as provided under the Payment of Bonus Act, 1965. They contended that they were entitled to additional bonus for the year 1967-68. This claim of the petitioner-workmen was referred for adjudication to the Industrial Tribunal, Madras, by the Government in G.O.R. No, 428/Labour dated 2nd March, 1970. The Tribunal by its award dated 31st May, 1974, in Industrial Dispute No. 20 of 1970 held that the petitioners were not entitled to any additional bonus. It is to quash this award of the Industrial Tribunal this writ petition has been filed.

2. The controversy between the parties lies within a very narrow compass. Section 3 of the Payment of Bonus Act, 1965. along with the proviso is as follows:

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:

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.

3. The parties proceeded on the basis that the caustic soda unit at Sahupuram falls within the proviso to Section 3 of the Act and therefore, they treated it as a separate establishment for the purpose of computation of bonus under this Act, for the year in question. The balance sheet and profit and loss account prepared for the relevant year in question allocated the share capital, reserves and the common liabilities of the company. The contention of the petitioners was that this unit as such did not have a separate share capital and therefore, deductions provided u/s 6(d) read with the Third Schedule ought not to be made. The Tribunal rejected this contention. As a matter of fact, the Tribunal relied on a Bench decision of this Court in *K.C.P. Ltd. v. K.C.P. Employees' Association*, Madras, reported in 1969 L.L.J. 817. This decision directly covers the point in controversy. In that case, the company K.C.P. Ltd., owned a sugar factory, a confectionery, a distillery at Vuyyuru, a cement factory at Macherla and Central Workshop at Tiruvottiyur engaged in manufacture of heavy machinery. The question that came to be considered by the Bench was whether the Central Workshop at Tiruvottiyur could be treated as a separate establishment under the proviso to Section 3. The Bench held that it could be so treated. The Bench pointed out:

Further, if the main part of the section, as we think, embraces all establishments comprehensively, including companies, co-operative societies, corporations, partnerships and private ownership, it is obvious to us "such department, undertaking or branch" in the proviso to the section must be related to the main establishment, whether a company or not. There is nothing in the schedules to the Act, more particularly the section and Schedule III, which compels a different construction of the proviso. So far as the share structure and common items of asset and liability of the establishment are concerned, it will have a bearing on the computation of the gross profits of its department undertaking, or branch. That is a matter for proportionate allocation in the light of the relevant figures and considerations exhibited by the relative balance sheet and profit and loss account of the establishment, as well as of the separate balance sheet and profit and loss account prepared and maintained in respect of any such department, undertaking or branch. In our view, therefore, the proviso to S. 3 does include a department, undertaking or a branch of an establishment which is a company, and in respect of which a separate balance sheet and profit and loss account are prepared and maintained. Such a department, undertaking, or branch shall be treated as a separate establishment for purposes of computations of the bonus under the Act.

4. The decision of the Supreme Court in the *Delhi Cloth and General Mills Co. Ltd. v. Their Workmen*, reported in 1971 L.L.J. 539, is directly in point and fully

supports the conclusion of the Tribunal. The Supreme Court has elaborately considered the scope of Section 3 as well as the proviso. The Supreme Court pointed out (at page 179):

...Once it is ascertained that a branch, department or a factory is an establishment by itself under the Act, Sections 4 to 7 are to have effect in respect of that establishment by themselves without the impact or connection with other branches, departments or factories even if they subserve a common cause. Gross profits of such an establishment like the two mills before us would have to be calculated in terms of the Second Schedule to the Act by taking the net profit as per profit and loss account and adding thereto the various amounts therein mentioned and deducting the amounts like capital receipts, profits of, and receipts relating to, business outside India, etc. The gross profits to be computed for the purpose of bonus would not be the same as to be computed under the Indian Companies Act or the Income Tax Act. u/s 5 of the Act the available surplus in respect of the two units would be the gross profits computed u/s 4 as reduced by the prior charges mentioned in Sub-clause (a) to (d) of Section 6. All these amounts, i.e., gross profits, available surplus and sums deductible from gross profits, would be notional amounts in that they would not be the amounts which would be computed under the Companies Act for submission to the shareholders or for assessment under the Income Tax Act to the taxing authorities...

This statement of law by the Supreme Court is direct answer to the claim of the petitioners herein. As I have already pointed out, the petitioners contended that the Sahupuram unit being a branch or establishment of the company itself, there was no separate capital for the unit in question and therefore, the deductions provided for in the Third Schedule ought not to be made. However, as the Supreme Court has pointed out, these calculations are notional and therefore, with reference to profit and loss account and the balance sheet of the separate establishment, the deductions provided for in the Third Schedule have to be made, which reductions are authorised by Section 6(d) of the Act. Therefore this judgment of the Supreme Court is directly in point and supports the conclusion of the Tribunal. Under these circumstances, the writ petition fails and is dismissed. No orders as to costs.