

(1968) 03 BOM CK 0034

In the Bombay High Court

Case No : Special Civil Application No. 823 of 1967

Engineering General Kamgar Union

APPELLANT

Vs

Best Cotton Company and Another

RESPONDENT

Date of Decision : 14-03-1968

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1968) 2 LLJ 186

Hon'ble Judges : J.L. Nain, J;D.V. Patel, J

Bench : Division Bench

Judgement

Per Nain, J.—This is a petition under Art. 227 of the Constitution of India praying for the quashing of an award dated 17 March, 1967, made by the industrial tribunal, Bombay, in Reference (I.T.) Nos. 212 of 1965 and 44 of 1966. The petitioner is a trade union representing majority of the workmen employed by respondent 1, and respondent 2 is the tribunal.

2. Respondent 1 company had during the material time in its employment about sixty workmen. On 1 September, 1964, the petitioner sent a charter of demands to respondent 1 pertaining to gratuity, casual leave, sick leave, uniforms, stop-day allowance, lunch allowance, acting allowance, etc. As conciliation in respect of these demands failed, a report was made to the Government which made a reference on 23 June 1965. By another charter of demands on 8 April 1965, a demand for bonus for the financial year 1964-65 ending on 31 March 1965 was made. A separate reference dated 10 February 1965, was made in respect of this demand. The petitioner filed a statement of claim. Respondent 1 filed its written statement in respect of the first reference but failed to file any written statement in the matter of second reference. Both the references, however, were heard together and a common award (Ex. B) was made in respect of both of them.

3. During the hearing of these references respondent 1 produced its balance sheet and profit and loss account for the year 1964-65 showing a gross profit of Rs. 4,18,800 and a net profit after certain deductions amounting to Rs. 75,497.

Respondent 1 refused to produce its balance sheets and profit and loss accounts with regard to the years 1961-62 to 1963-64.

4. In the award respondent 2 has observed that the financial position of respondent 1 is not sound and the industry is in a dying condition and it rejected most of the demands made by the workmen.

5. Before us, Sri Shetye, for the petitioner, has pressed the demands for

(a) sick leave,

(b) stop-day allowance,

(c) acting allowance,

(d) lunch allowance, and

(e) bonus.

5. The demands in respect of these items were totally rejected by respondent 2. He has also pressed the demand for gratuity in respect of which respondent 2 awarded gratuity of seven days' basic wages for every year of completed service to the workmen, who retire or resign after fifteen years of service and to those workmen, whose service is terminated by the management after ten years.

6. The Supreme Court in *Burhanpur Tapti Mills v. Burhanpur Tapti Mills Mazdoor Sangh* [1965 - I L.L.J. 453] has observed that in deciding industrial disputes one has to see the profit-making capacity of the company and to appraise its financial condition. It further observed at p. 456 :

"To judge whether the financial position would bear the strain the average number of retirements per year must be found out. That is one part of the inquiry. The next part is to see whether the employer can be expected to bear the burden year to year. The present condition of his finances, the past history and the future prospects all enter into the appraisal of his ability."

7. In the present case, a gross profit of Rs. 4,18,800 appears to have been reduced by items of depreciation, 8.5 per cent interest on capital as at 1 April 1964 amounting to Rs. 8,81,198 and remuneration of the partners at Rs. 25,313. The amount of interest alone is taken at Rs. 74,901. The balance sheet and the profit and loss account should normally be scrutinized carefully by the tribunal and they should be shown to the parties, and in respect of any objections an opportunity should be given to the parties to lead evidence. We have made observations to this effect in Special Civil Application No. 2550 of 1967 decided on 12 March, 1968. This procedure does not appear to have been followed by the tribunal in this case. For the purpose of calculating bonus the petitioner submitted certain bonus calculations, which are Ex. A to the petition showing that even if 60 per cent of the profits be taken as bonus, which amounts to Rs. 30,105 and this amount is deducted from Rs. 50,175, there would still be a balance of Rs. 20,070. Respondent 1 appears to have filed its bonus calculation

in which it has by some process of calculations shown a deficit of Rs. 24,467. While there is reference in the award to the bonus calculations submitted by respondent 1 there is no reference at all to the bonus calculations submitted by the petitioner, and it is not shown as to why the bonus calculations of the petitioner are wrong and why those of respondent 1 are being accepted. It is wrong to come to any conclusion with regard to the capacity of an industry to bear the extra burden without going into the actual facts and figures of profits, if any, made by it for a considerable period prior to the date of reference which may at least to a period of five years. With regard to the interest amount claimed by respondent 1, an inquiry ought to have been made as to what amount is borrowed, from whom it is borrowed and whether the transactions of loan are benami transactions or havala entries. Respondent 1 refused to submit the balance sheets and profit and loss accounts for any year prior to 1964-65. The tribunal has stated in its award that respondent 1 refused to do so. In spite of this no adverse inference appears to have drawn against it. Normally in a case like this where the employer suppresses from the tribunal its financial position, it is not possible to come to the conclusion that it is not able to bear the burden of legitimate demands of the workmen. In cases where the employers do not assist the Court or tribunal and wilfully suppress the material from it, the proper way to deal with such employers is to grant all legitimate demands on the basis of region-cum-industry after taking into consideration what other employers in the same or similar kind of industry give to their workmen in the same region. In respect of Bombay region the normal allowances for sick leave, stop-day, acting, lunch and gratuity can easily be ascertained, because there have been numerous awards on these points.

8. In view of what we have stated hereinabove we quash and set aside the award dated 17 March, 1967, made by respondent 2 and remand the proceedings for a fresh inquiry in view of our observations in this judgment.

9. The petition is, therefore, allowed. The petitioner will get the costs of this petition from respondent 1. The rule is made absolute.