

(1960) 07 KL CK 0013
In the High Court Of Kerala
Case No : O. P. No. 850 of 1958

Malabar Plywood Works

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-07-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 1227

Hon'ble Judges : M. A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : V. K. K. Menon and C. S. Padmanabha Iyer, for the Appellant; V. Viswanatha Menon V.N. Gopalakrishnan Nair for 3rd Respondent, for the Respondent

Judgement

Ansari, C.J.—The Malabar Plywood Works, Feroke, is a registered partnership, and has filed this petition to vacate the award in Industrial Dispute No. 47/57. The aforesaid award was made in a dispute between the petitioner and the firm's employees, which the Government had referred to the Industrial Tribunal, Kozhikode; and, on the Tribunal being abolished, to the Industrial Tribunal, Ernakulam. Six issues were referred, but we are concerned only with two, whose findings the petitioner seeks to vacate. The issues are:--

(1) Issue No. 4. "Whether or not bonus at the rate of 25 per cent of the total earnings should be paid for the years of 1954-55 and 1955-56."

(2) Issue No. 6. "Whether or not the management should introduce a gratuity scheme at the rate of 15 days' wages for every year of service for the benefit of those workers, who will have to retire from service".

Dealing with the fourth issue, the Tribunal has found Rs. 70,508--6--5 to be the available surplus for 1955, and Rs. 5,382--8--9 for 1956, out of which the bonus claims of the employees are to be paid. From the aforesaid amounts, the Tribunal has deducted Rs. 3,152/- which been actually paid on account of the income tax

for the year 1955; and Rs. 197/- paid for the same tax for the year 1956. The finding of the Tribunal on the sixth issue is that the gratuity scheme framed in the award, would be in force for a period of three years; but should the provident fund scheme come into force, the management would find it difficult to bear the double burden, and, in such eventuality, the management could again raise the question. The writ petition challenges the correctness of the parts of the " award on two grounds, which are:--

(1) The Tribunal has erred in not deducting from the gross profit the entire amount of income tax payable by the firm, and has allowed only what the partners been held liable to pay; thereby increasing the profit made available for purposes of the bonus; and

(2) The conclusion in the award about the financial ability of the management to implement the gratuity scheme, is not decisive so as to justify such scheme being framed; and, in any case, the provident fund scheme having been applied to the industry carried by the management, a fresh examination of the finding on this issue, has become necessary, particularly because the award has itself provided for such fresh adjudication.

The learned advocates for the parties before us are agreed on the deductions to be made for the purposes of ascertaining the profit, that becomes available for distribution among the workmen as the bonus. Some of these deductions have been shown in *Mill Owners' Association, Bombay v. Rashtreeya Mill Mazdoor Sangh, Bombay 1950-2 L. L. J. 1247* and are still treated as correctly indicating how the aforesaid profits are to be ascertained. Indeed, the Supreme Court, in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, has approved of what had been laid by the Labour Appellate Tribunal in the aforesaid case to be the proper deductions. According to the decision, the following are the first charges on gross profit:--

- (1) Provision for depreciation,
- (2) Reserves for rehabilitation,
- (3) A return at 6 per cent on the paid up capital,
- (4) A return on the working capital at a lesser rate than the return on paid up capital.

2. Since then, income tax payable by the concern, been also treated as a justifiable item of debit for ascertaining the distributable surplus; for, *Gajendragadkar J. in Kirloskar Oil Engines v. Their Workmen 1960-1 L. L. J. 512* while affirming the earlier decision of *Associated Cement Companies Ltd. v. Their Workmen 1959-1 L. L. J. 644* has said:--

.....we have considered this point and we have held that in working out the Full Bench formula, the employer is entitled to claim the appropriate amount of income tax payable on the profits determined under the formula, even though

under the provisions of the aforesaid Section of the Income Tax Act, he may not be required to pay the said tax. In view of the said decision, we must hold that the Tribunal was in error in not allowing the appellant's claim for deduction of Rs. 2.25 lakhs as a prior charge under the item of income tax payable for the relevant year.....

It is, therefore, clear that income tax payable is a justifiable item of deduction, and the issue raised in the writ petition is whether the Tribunal has erred in deducting only what the partners had paid as such taxes. The petitioner's learned counsel has agreed that, inasmuch as the firm is the employer, the income tax payable by the firm must be brought on the debit side for purposes of ascertaining the surplus, even though liability for the payment be distributed among the partners, due to the firm being registered. The Tribunal's learned advocate has urged that though the tax be on the firm, the liabilities to pay are those of the partners, and the entire tax amount cannot be deducted for purposes of ascertaining the profits. In support of this contention, he relies on *Plywood Products v. Plywood Mazdoor Union* 1955-1 L.L.J. 308. Therein, Dr. Wali-Ullah and Shri Bind Basni Prasad have held that the liability to pay the tax being that of the partners, against which they can bring in their personal losses of the earlier year, the amount assessed as the income tax can, on no standard of fairness, be debited against the gross profit of the firm. With respect we differ. It is clear from the observations of the Supreme Court in *Kirloskar Oil Engines* case 1960-1 L. L. J. 512 that payment of the income tax is not the ground for the tax being deducted from the gross profit; for, had that been the ground, no tax amount would be deductible where, due to losses of the earlier year, no tax been paid, whereas such amounts are deductible. Therefore, the proposition, that is established from the aforesaid observations, is that the profit earned by the joint effort of capital and labour, should be determined in the usual form and after deducting all the expenses of the enterprise. It follows that whatever tax the partners pay, becomes the expenses of the partners, and would not be relevant when the profits to be determined are of the partnership. No question of the deductions being unfair can arise, because, under all systems for determining the profits of an enterprise, its liabilities should be provided for. No interest may be charged for the paid up capital nor for the working capital; yet these are deducted and only to determine the profits according to the general method for ascertaining profits. We feel that from this stand-point, the Tribunal has erred in not deducting the income tax amount charged on the firm. The writ petitioner's counsel has also argued that the Tribunal has further erred in not giving his client other allowances. As the petitioner had not claimed such allowances, the Tribunal was justified in not granting them. Nor do we feel such claims should be allowed to be made now before the Tribunal, after the case is remanded for fresh finding on the issue. The management is precluded from making any new claims at this stage of the proceeding. The award on Issue No. 4 is alone vacated.

As regards Issue No. 6, we do not think that in exercise of our power under Article 226, we should vacate the conclusion on the issue. The continuance of the

gratuity scheme is, however, contemplated till the provident fund scheme be extended to the petitioner's industry; and a new situation has arisen from such an extension. The Tribunal must examine the new situation, which has arisen because of the extension, as the petitioner rightly apprehends that the conclusions on this issue of the award would bar any future consideration of this situation. Therefore, the writ petition is allowed with the direction that the Tribunal must ascertain the surplus profit available for distribution as bonus, after deducting the income tax amount of the firm, and must further determine how far the gratuity scheme should continue, in view of the provident fund scheme having been extended to the writ petitioner's industry. Parties will bear their costs as it is not pressed.