

(1973) 03 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No's. 279 and 280 of 1969

National Iron and Steel Co. Ltd.

APPELLANT

Vs

The Workmen

RESPONDENT

Date of Decision : 01-03-1973

Acts Referred:

Citation : AIR 1973 SC 2354 : (1973) 27 FLR 361 : (1973) LabIC 1472 : (1973) 2 LLJ 239 : (1974) 4 SCC 844

Hon'ble Judges : I. D. Dua, J;C. A. Vaidyalingam, J;A Alagiriswami, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

A. Alagiriswami, J.—These appeals are against the awards of the Third Industrial Tribunal of West Bengal in the matter of the bonus payable for the years 1957-58 and 1958-59 in respect of two companies, National Iron and Steel Co., Ltd. and Britannia Building & Iron Co. Ltd. to their workmen. The reference in these cases was made on February 8, 1960. The common issues referred were as follows:

1. Whether 11/2 months' wages paid by the company before the Puja in 1958 should be regarded as customary and/or profit bonus for the year 1957-58? Are the workers entitled to any additional customary and/or profit bonus for that year?
2. Are the workers entitled to any customary and/or profit bonus for the year 1958-59?

The award in the cases of both the companies was given on February 9, 1968. We may incidentally refer to another award made by the same tribunal in Britannia Building & Iron Company's case dated July 12, 1983 in respect of the bonus payable on the eve of Durga Puja of 1959 in respect of their workers. This reference was made on June 13, 1960. In the award earlier referred to the Tribunal directed that three and a half months' wages bonus should be paid to the workers of the two companies for both the years; but in the other award

dated July 12, 1963 the Tribunal had held that there was no available surplus and so the workmen would not be entitled to get any amount as bonus for the year ended March 31, 1959. This award was not referred to or taken into account in the second award but this relates only to the year 1958-59. It is not necessary to refer to the various points raised by Mr. Sinha on behalf of the appellants because we consider that this point along with another to which we shall refer presently necessitates that both the appeals should be allowed and the Tribunal should be directed to re-consider the whole question afresh.

2. One of the items which the Tribunal took into account in calculating the available surplus in the case of the National Iron & Steel Company was a sum of Rs. 26,18,000/- as income from sales not included in the profit and loss account. This was based on the assumption that the evidence of Dr. J.N. Basu, who has been examined as D.W. 1, to the effect that 24.67 per cent of iron rods which he examined were underweight and 1.32 per cent of the rods overweight meant that the sale proceeds of 24.67 per cent of iron rods were not shown in the profit and loss account. The Tribunal seems to have considered that if 24.67% of the total production of the company were underweight then 24.67% of the total production of the company should be deemed not to have been brought into account. The Tribunal did not stop to consider the exact extent of deviation in weight of these underweight rods. We have in the paper book the report of Dr. Basu himself. It shows that the measurements of various rods for width as well as thickness were taken at various points and the deviation was sometimes plus and sometimes minus, but in no case was it more than one per cent (see page 264 of the paper book). The figures given at p. 265 show that the percentage of deviation by weights was anywhere from 2 to 10.2 but cases of the latter kind are very few. So, what would be necessary to find out is the exact deficiency in weight, and if one were to go by the deficiency in the width and thickness, it seems doubtful whether the deficiency in weight would on the average be anything more than 1 or 2 per cent. We are putting this in a very rough manner. But that would make all the difference to the calculation of the available surplus. If the underweight is only 2% instead of 24.67% which the Tribunal took into account, the realisations from sales not included in the profit and loss account would become Rs. 2 lakhs instead of Rs. 26 lakhs which the Tribunal has taken into account. In this we are assuming that the saving as a result of sale of underweight rods were not brought into account. But that may - or may not. be correct. We are purposely not going into the merits of the other contentions taken before us. We think, therefore, that it is necessary that the whole matter should be re-examined by the Tribunal and a new award given. The parties are at liberty to adduce fresh evidence, oral and documentary. Unfortunately the respondents have not appeared before us to be of any assistance. The Tribunal should issue notice to the respondents and afford them sufficient opportunity to place any further evidence which they may choose to place. As this is a very old matter, the Tribunal should try to dispose of this matter expeditiously. There will be no order as to costs.