

(1961) 09 P&H CK 0031
In the Punjab And Haryana At Chandigarh

Saraswati Steel Rolling Mills	Vs	APPELLANT
Labor Court and Others		RESPONDENT

Date of Decision : 21-09-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1962) 2 LLJ 279

Hon'ble Judges : Grover, J

Bench : Single Bench

Judgement

Grover, J.—The question whether the workmen of the petitioner (the Saraswati Steel Rolling Mills) were entitled to the grant of bonus for the year 1958-59 was referred for adjudication to the labour court, Rohtak, by means of a notification dated 19 November 1959, u/s 10 of the Industrial Disputes Act, 1917. An award was made on 19 October 1960, which was published in the Punjab Government Gazette, Part I, dated 18 November 1960, in which the labour court has directed payment of bonus equivalent to fifteen days' consolidated wages to the workmen employed by the petitioner concern. By means of the present petition under Article 226 of the Constitution, the validity and legality of the aforesaid award have been challenged.

2. The point that has been canvassed before me can be stated very shortly. The award proceeded on the basis that there was an available surplus of Rs. 4,500 out of which bonus could be distributed. This item was arrived at after

- (a) reducing the salary of the partners from Rs. 19,200 to Rs. 15,000,
- (b) disallowing Rs. 533.39 nP. on account of donations towards charity,
- (c) disallowing Rs. 740 on account of entertainment expenses, and
- (d) disallowing Rs. 542.78 nP. on account of bad debts.

The total of the items disallowed was Rs. 6,016.17 nP. It is contended that even

taking the figures relating to the aforesaid items as determined by the labour court to be final, there would have been a net loss of Rs. 8,457.96 nP. and not a surplus of Rs. 4,500 as found by the labour court. These calculations are shown in annexure C. It is common ground that the labour court has not deducted incometax at the rate of seven annas in a rupee which would have come to Rs. 13,020. If this item was deductible according to law for the purposes of determining the surplus, then admittedly there would be a net loss of Rs. 8,457.96 nP. during the material period and there could be no available surplus so as to justify bonus being granted.

3. Mr. Bhagirath Dass, who appears for the petitioner concern, submits that as a result of the law laid down by their lordships of the Supreme Court in the matter of calculating surplus for the purposes of awarding bonus the labour court was bound to deduct the amount of Rs. 13,020 on account of incometax at the rate of seven annas in a rupee. As far back in 1950 the Labour Appellate Tribunal was called upon to consider the workmen's claim for bonus. In its decision in *Millowners' Association v. Rashtriya Mill Mazdoor Singh* 1950 L.L.J. 1247 the tribunal evolved a formula under which the amount of the available surplus in the hands of the employer can be determined. This formula received the general approval of the Supreme Court in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, *In State of Mysore v. workers of gold mines The State of Mysore Vs. The Workers of Gold Mines*, it is mentioned that it was conceded before their lordships that since 1950 the basis supplied by this formula has been adopted by industrial adjudication all over the country in dealing with the workmen's claim for bonus in different kinds of industries. Now, the formula evolved by the Full Bench may be stated in the words of Gajendragadkar, J., in the aforesaid case (at pp. 483-484):

This formula takes the figure of the gross profits made by the industry for the relevant year and makes provisions for depreciation, for reserves, for rehabilitation for return at 6 per cent on the paid-up capital, for a return on the working capital at a lesser rate than the return on the paid-up capital and for the payment of incometax. These items are treated as prior charges and the amount determined after deducting the aggregate total of these items from the gross profits is deemed to be the, available surplus for the relevant year. It is in this available surplus thus deduced that labour is entitled to claim a reasonable share by way of bonus.

Any departure from the formula evolved by the Tribunal was deprecated in *Associated Cement Companies, Ltd. v. their workmen* 1939 I L.L.J. 644 which matter was reiterated in *Crompton Parkinson (Works) Private Ltd., Bombay Vs. Its Workmen and Others*, It is true that the formula is elastic enough to meet reasonably the claim of the industry and labour for fairplay and Justice, but in its broad features it recognizes the claim of the industry and tabulates them under different items as prior charges, and then provides for the distribution of available surplus. The items specified in the formula have to be worked out

notionally on theoretical grounds *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*,

4. According to Mr. Bhagirath Dass, the rule that has been accepted is that for the purpose of determining the surplus, apart from other deductions, a deduction of incometax at the rate of 7 annas in a rupee must be made and it is immaterial what the actual Income Tax paid is-whether it is more or less or whether it is payable at all or whether it is not required to be paid under the provisions of Incometax Act. This is clear from *Bharat Barrel and Drum Mfg. Co. Private Ltd. Vs. Govind Gopal Waghmare and Another*, and *Kirloskar Oil Engines, Ltd. v. their workmen* 1960 I L.L.J. 512. The ratio of these decisions is that the industrial tribunal is not concerned directly with what the incometax authorities assess as actual incometax in particular year; it is concerned with working out the Pull Bench formula in accordance with its notional calculations. In the first case, incometax was actually deducted notionally at the rate of 7 annas in a rupee. Mr. Anand Swarup, who appears for the workmen, has not controverted the notional figure at which Incometax is to be deducted in order to arrive at the figure of surplus, but he has argued that the petitioner concern is not a company which would be liable to be assessed to incometax but that it is a partnership and as such it is not the partnership concern that will be liable for payment of incometax but it will be the partners who would be assessed individually to incometax and will be liable for its payment. It is pointed out that in case if a partnership which is registered u/s 26A of the incometax Act, the total income of each partner of the firm including therein his share of his income, profits or gains of the previous year shall be assessed in his hands, although the firm will be the unit of assessment and the income of the firm will be computed in its hand as that of an entity Section 23(5) of that Act. Where the unregistered firm is assessed as a unit, the rate of tax applicable may be higher than those which would be applicable to the total income of a partner, inclusive of his share of the firm's profits, but a partner would not be entitled to any refund of the tax paid by the firm at the higher rates. The reason is that an unregistered firm is a distinct assessable entity for the purposes of the Act and pays the tax in discharge of its own liability and not on behalf of its partners, but in case of partners of a registered firm there is double taxation so far as Incometax (but not supertax) is concerned, and partial relief against such double taxation is afforded by Section 14(2)(aa) [Incometax by Kanga and Palkhivala, 4th Edn., p. 566. It may be mentioned that it is not clear whether the petitioner concern is a registered or unregistered partnership. However, in *Bombay Fine Worsted Manufacturers v. General Secretary and Anr.* 1958 L.A.C. 745, even in case of a partnership concern the Full Bench formula for working out the bonus was applied and it was pointed out that it being a notional formula the Incometax payable by a company had been accepted as the standard for provision on account of Incometax and there was no reason to depart from it. There the surplus had to be determined for awarding bonus in case of a partnership concern and incometax was deducted at 7 annas in the rupee according to the formula. This authority, as also the

decisions of the Supreme Court, referred to before, make it quite clear that it is hardly material whether, according to the provisions of the Incometax Act, tax is actually payable or not but deduction for Incometax must be made at the specified rate, namely, 7 annas in a rupee, in order to arrive at the figure which can be called surplus for the purposes of awarding bonus.

5. Mr. Anand Sarup, on behalf of the workmen, objects to any relief being granted under Article 226 to the petitioner concern. According to him, the award does not contain any mention of any claim having been made by the petitioner concern before the labour court for deduction on account of incometax. It is submitted that the onus was on the employers to claim the aforesaid amount by way of deduction in order to arrive at the figure of available surplus. Mr. Bhagirath Dass, on the other band, points out that the onus is always on the workmen to make out a case for the bonus. They must show after meeting the prior and other necessary charges and payment of dividend on the paid-up capital and the reserve employed as working capital that sufficient surplus is left, out of which bonus can be paid. This submission is based on what has been laid down by the Labour Appellate Tribunal in *Textile Workers' Union v. Sri Vikram Cotton Mills, Ltd.* 1953 II LLJ 858 in my opinion, it is unnecessary to decide the question of onus because it is abundantly dear that in order to make a legal and valid award in respect of bonus, it was for the labour court to arrive at the figure of available surplus in accordance with what is now called the Full Bench formula which has received the imprimatur of their lordships of the Supreme Court. According to that formula, incometax must be deducted along with other items of prior charges, etc., for the purpose of calculating the surplus, the existence of which is a condition precedent for awarding any bonus. As it was the duty of the labour court to follow the law, it is wholly immaterial whether the question of deduction of incometax was or was not raised before it. It may be mentioned that there is no satisfactory material to show that the petitioner did not ask for the aforesaid deduction to be made. The counsel for the workmen has relied only on the absence of any discussion relating to this matter in the award but that fact is by no means conclusive. No affidavit in reply has been filed by the workmen saying that this matter was not raised or agitated before the labour Court. In these circumstances, the petitioner is certainly entitled to maintain that there is an error apparent in the award since the Full Bench formula has not been followed while determining the available surplus. It is common ground that if Incometax had been deducted at the rate of 7 annas in the rupee, no surplus would have been left, with the result that no bonus could have been awarded by the labour court to the workmen for the period in question.

6. For the reasons given above, this petition is allowed and the award of the labour court is hereby quashed. In the circumstances, the parties will be left to bear their own coats.