

(1961) 11 MAD CK 0019
In the Madras High Court

United Bleachers (Private) Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 20-11-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) 2 LLJ 130

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The industrial tribunal, Madras, on a reference made to it of a dispute, inter alia relating to fixation of bonus for the year

1957-53, declined to accept the profit and loss statement furnished by the United Bleachers (Private) Ltd., Madras, but calculated the available

surplus for purposes of computation of bonus on revised basis of the rates charged for non-member customers of the concern and fixed one and a

half months' wages as bonus payable to the workmen for the year. This petition under Article 226 of the Constitution is to quash that award.

2. The short contention for the petitioner is that the tribunal was ex facie in error in reopening the balance sheet of the company for the year 1957-

58, which showed a loss for the year, and calculating the receipts of the company on an imaginary basis to arrive at the available surplus. United

Bleachers (Private), Ltd., as the name itself implies, is engaged in the business of bleaching grey cloth for its members who are themselves, mills,

and also to outside customers. For the year in question the concern charged third parties at a rate of 20 per cent higher than that charged to its

members. The balance sheet was prepared on that basis. It is a common ground that on that basis there would be no surplus profit, but on other

hand there would be a deficit for the year. But on behalf of the workers it was said that the profits of the company should be calculated as if its

member B had also been charged at the same rate as outsiders and if that were done, there would be available surplus to allow bonus. This

contention found favour with the industrial tribunal which reopened the balance sheet and arrived at the bonus payable to the workmen as already mentioned.

3. It is well settled that for arriving at the available surplus for purposes of bonus the profit and loss account as furnished by the management will

have to be taken as the basis, and it is only when there is justifiable suspicion about the debit entries or genuineness of the accounts on which the

balance sheet has been drawn up, or there is prima facie proof of mala fides that it will be within the purview of a tribunal to go behind the balance

sheet and compute the available surplus on a different basis which it may consider to be appropriate and just in the light of the relative facts and

circumstances. In *The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another*, the Supreme Court,

referring to this aspect, observed:

The working of the formula begins with the figure of gross profits taken from the profit and loss account which are arrived at after payment of

wages and dearness allowance to the employees and other items of expenditure. As a general rule, the amount of gross profits thus ascertained is

accepted without submitting the statement of the profit and loss account to a close scrutiny. If, however, it appears that entries have been made on

the debit side deliberately and mala fide to reduce the amount of gross profits, it would be open to the tribunal to examine the question and if it is

satisfied that the impugned entries have been made mala fide, it may disallow them.

Again in *Crompton Parkinson (Works) Private Ltd., Bombay Vs. Its Workmen and Others*, the Supreme Court reiterated the principle in these

words:

In the absence of cogent and compelling evidence leading to the definite conclusion and finding that a purported expenditure was sham or bad been

made with the express object of minimizing the profits with a view to deprive the workmen of their bonus, it is no part of duty of an industrial

tribunal to substitute its own judgment as to what was or was not commercially justified in the place of the judgment exercised by the company and

its directors in whom in law the management of the company is confided.

4. It is true that on the facts in the last case the question was whether payment of remuneration at a certain amount for services rendered to the

company was exaggerated with a view to diversion of the profits in the context of a liability to pay bonus. Disagreeing with the tribunal, the

Supreme Court held that it was entirely for the management to decide the quantum of remuneration to be paid and be long as that was done by the

management bona fide, it was not within the province of the Industrial tribunal, according to its own notions, to reassess the quantum of

remuneration permissible and arrive at the bonus on that basis. But the principle of this decision is equally applicable to the facts of this case.

5. The tribunal here has not given any particular reason, tenable or untenable, relevant to the question whether it can justifiably reopen the balance

sheet. it may be that this is a peculiar case in which the concern itself has been incorporated for the purpose of mainly rendering services to its own

members, which, as I said, are themselves textile mills, and that it may be possible for the management by so manipulating the quantum of rate

chargeable per yard of cloth for bleaching to achieve a certain desired result directed to reduce the available surplus, for the purpose of bonus, it is

equally possible that in applying a concessional rate to member-constituents the management did not act with that objective but honestly and bona

fide. In the latter event, I do not see on what reasonable or justifiable basis the tribunal can refuse to act on the balance sheet drawn upon such

concessional rate, and apply its own judgment and hold that the balance sheet should be prepared on the basis of a different rate not actually

obtaining with reference to the member-constituents. But that is precisely what the tribunal in this case has done. The tribunal itself has recorded in

the course of its award thus:

of course, if any reduction in the profits is brought about by the management mala fide and with the object of cutting down the claim for bonus, it

would be open to this tribunal to Investigate into the matter. Sri Dolia for the union is not prepared to go to the extent of attributing any such

intention or motive to the management.

6. In view of this concession, which means that in applying the concessional rate to the member-constituents, the management did not have the idea

of cutting down the available profits, there was no basis or justification for the tribunal to decline to accept the balance sheet and arrive at an

available surplus notionally on the ground that the constituent members should have been charged at the same rate as the outsiders had been.

7. Mr. Dolia urged, however, that the difference in the rates charged to the constituent members and the outsiders should be deemed to be a sort

of a dividend declared, so to say, by the management, in an indirect way. It is enough to say that there is no factual basis whatever for this

contention. Further, it does not appear that this point in that precise form was urged even before the tribunal.

8. The award of the industrial tribunal, in so far as it fixed the bonus for the year 1957-68, is hereby quashed. The petition is allowed and the rule

nisi is made absolute. There will be no order as to costs.