
(1978) 11 BOM CK 0023

In the Bombay High Court

Case No : Misc. Petition No. 867 of 1972

Vegoils (P) Limited

APPELLANT

Vs

N.G. Chitale and Others

RESPONDENT

Date of Decision : 27-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Bonus Act, 1965 — Section 3

Citation : (1979) 2 LLJ 313

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Judgement

1. In this Miscellaneous Petition Vegoils Private Limited - the petitioners impugned the order of the 1st respondent dated 25th October, 1972, given in Reference No. (IT) 50 and 200 of 1971. The order was in a reference for adjudicating the bonus demand of the workmen of the petitioners for two years, i.e., for 1968-69 and 1969-70. For these two years the employers of the workmen was another company, i.e., Karamchand Premchand Private Limited and this company later on transferred this particular undertaking to the present petitioners who have thus got involved in the question of payment of bonus for these two years. In respect of these two years the employers' contention for second of such year, i.e., 1969-70 was accepted and hence not questioned in the petition. However, the employers' contention for the first of the two years, i.e., for 1968-69 was not accepted by the Industrial Tribunal and hence this court has been moved.

2. Under these two references the bonus demands on the workmen and clerical staff of the factory situate at Salt Pan Road, Wadala were involved. However, a reference to the history of this undertaking becomes material in view of the rival contentions which are required to be considered and decided. The public limited company, viz., Swastik Oil Mills Limited originally owned the factories with which we are concerned and which are now owned by the petitioners company. One of these factories is at Ambarnath. A scheme of amalgamation was formulated

between the said Swastik Oil Mills Limited and Karamchand Premchand Private Limited under which the assets of Swastik Oil Mills Limited were to be taken over by the private limited company, i.e., the transferee company and this scheme was ultimately, after all necessary processes were carried out, sanctioned by the High Court by its order dated 31st March, 1969 with effect from 1st April, 1968. Thereafter a deed of transfer dated 30th March 1970 was made between Karamchand Premchand Private Limited and the petitioner-company the undertakings with which we are concerned which originally constituted the assets of Swastik Oil Mills Division were transferred to and vested in petitioner-company. All the requirements necessary for the petitioner-company to take over the liabilities of the said private limited company to its workmen under the said several provisions of the Labour Laws in question have been observed.

3. Now in respect of bonus demands for the said two years the workmen claimed bonus on the basis of the balance-sheets and profit and loss accounts of Karamchand Premchand Private Limited for the two years. According to the employers, however, the accounts were being separately maintained in respect of the Swastik Oil Mills Division of the said Private Limited Company, both for its Wadala and Ambarnath factory. The employer's contention was that the bonus had to be calculated on this separate accounts and reliance was placed on the proviso proviso to S. 3 of the Payment of Bonus Act, 1965.

4. At this juncture it becomes necessary to reproduce S. 3 and the proviso thereof and the same reads as follows :

"Where an establishment consists of different departments or undertakings or has branches, Whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus."

5. Before the Industrial Tribunal, on behalf of the employer, an affidavit had been filed by one Mr. Balgopal Menon, Assistant Chief Accountant and his examination he confirmed the statement made in his affidavit and was thereafter cross-examined by the advocate, who appeared on behalf of the union. It appears from the impugned order that the Tribunal accepted the contention that the accounts were being separately maintained by the said division, but in its opinion the proviso to S. 3, above quoted; was not available to the employer for the following two reasons :

(1) The report of the Auditor's of Karamchand Premchand Private Limited for the

year 1968-69 certifying that the accounts have been audited and found correct was dated 8th September, 1969 whereas similar certificate for the Swastik Oil Mills Division for the year 1968-69 was dated 27th October, 1969. According to the Tribunal this showed that the balance-sheet and profit and loss account of the Swastik Oil Mills Division certified on 27-10-1969 could not have been sent for amalgamation and incorporation in the accounts at Ahmedabad (which was the place at which the accounts of the Private Limited Company were maintained) Prior to 8th September, 1969. According to the Tribunal further this clearly indicated that the accounts were not separately maintained as contemplated by proviso to S. 3 of the Payment of Bonus Act.

According to the Tribunal although the Director's report of the Private Limited Company, i.e., Karamchand Premchand Private Limited states that the working results of the Swastik Oil Mills Division for the year 1968-69 are indicated in the balance-sheet and profit and loss account there is no specific statement that it was being treated as separate department undertaking or branch. According to the Tribunal such an indication in the report that this division was treated as separate unit for account purpose was requirement contemplated by proviso to S. 3 of the Payment of Bonus Act.

6. This was two fold basis which employers' contention was negated by the Tribunal for the first of the two years, i.e., 1968-69 though it was accepted for the following year, i.e., 1969-70.

7. I am afraid that the reliance placed by the Tribunal on date of the certificate of the auditor is totally irrelevant for determining the question. The proviso to S. 3 on which reliance was placed by the employers requires a separate balance-sheet and profit and loss account to be prepared and maintained in respect of a department, or undertaking or branch of a company. Once this is held proved by clear and cogent evidence then it follows that this department, undertaking or branch is required to be treated as a separate establishment for the purposes of computation of bonus and the consideration regarding the date of the auditor's certificate which seem to have weighed with the Tribunal considerably seems to me to be totally irrelevant in deciding the point under consideration.

8. Further there is no requirement in S. 3 of the Payment of bonus Act that in the accounts of the parent company or in the Director's report that there should be any statement that accounts were being separately kept a particular department, undertaking or branch. As a matter of fact even if such statement is to be found in the balance-sheet or profit and loss account of the parent company or in the Director's report but it is ascertained that in fact the accounts were not being separately maintained the employer will not be entitled to benefit of the proviso. Conversely if it is ascertained that the accounts of the department, undertaking, or branch are being separately and properly maintained the absence of such statement will not disentitle the employer from contending that the bonus should be calculated on the basis of these separate accounts.

9. It is true that under Ss. 23 and 25 of the said Act, there is a reference to audited accounts and balance-sheet certified by the auditor but this is for the limited purpose of raising certain presumptions as to correctness of figures mentioned in these accounts. It may be pertinent to point out that in the proceedings before the Tribunal inspection had been offered to the advocate on behalf of the employees of the accounts and the account books of the separately maintained account for the Swastik Oil Mills Division, but the advocate had not cared to inspect them.

10. Mr. Shetye has not really tried to substantiate the order of the Tribunal on the twofold footing that is to be found in the order that has rightly been done in as much as it is clear that what has been suggested by the Tribunal as the basis for its order negating the contention of the employers for the year 1968-69 was no basis at all, not even a tenuous one.

11. Mr. Shetye, however, has suggested that for the year 1968-69 the private limited company could not be said to be maintaining separate accounts of its Swastik Oil Mills Division as is contemplated by proviso to S. 3. As set out earlier, Swastik, Oil Mills was a public limited company till it became amalgamated with the said private limited company after the order of amalgamation was made by the High Court on 21st March, 1969. According to Mr. Shetye's submission from April, 1968 it was this public limited company which was maintaining its account and the accounts, therefore, could not be said to have been maintained by the department, undertaking or branch of the parent - company as an contemplated by proviso to S. 3. Now this submission although attractive at first blush is really not convincing on proper scrutiny. The proviso to S. 3 does not require that separate accounts are to be maintained on a particular footings by the parent - company or under the orders of the parent company. It merely provides for the maintenance of separate accounts for the maintenance of separate accounts and on a specific footing. Further retrospective operation was given to the order of amalgamation dated 21st March, 1969 would in my opinion be such as to remove the apparent lacuna on which Mr. Shetye relies. By such retrospective effect by a process of legal fiction accounts which were in fact being maintained by the public limited company would become the accounts of a division or a department of the private limited company. This is the legal result and logical effect of the order of amalgamation.

12. The order of the Tribunal for the year 1968-69 cannot be sustained on the two-fold basis indicated in the said order or on the basis of this novel argument submitted for consideration of the Court by Mr. Shetye. The order is totally erroneous and will require to be corrected even in the restricted jurisdiction of the High Court under Art. 226 of the Constitution of India. The error is apparent on the face of the order and the order proceeds upon a total misunderstanding of the legal position and legal requirements existing under the proviso to S. 3 of the Payment of Bonus Act.

13. In the result the Rule is made absolute in terms of prayers (a) and (b) and it

is further ordered that the calculation for bonus for the year 1968-69 will be made and bonus will be paid upon the same footing as held by in the Tribunal for the subsequent year 1969-70, i.e., on the footing contained in the proviso to S. 3. In other words, the bonus calculations are to be made and bonus paid to the workmen on the footing that separate accounts were being properly maintained in respect of Swastik Oil Mills Division and it is on the basis of these account that the bonus calculations will be required to be made.

14. I may clarity that what I have earlier stated that the accounts are being separated and properly maintained in respect of the Swastik Oil Mills Division only means that such accounts are being properly maintained for the purpose of calculation on the departmental basis as per proviso to S. 3 and it will be open for the employees to question any of the item in such accounts and object to the calculation on all grounds as are permissible in law.

15. Pursuant to the order of Kania, J., date 21-12-1972 the petitioners had filed in this Court the calculations of bonus for the year 1968-69 on the footing as directed by the Tribunal. Inasmuch as under this order that footing has been held to be totally erroneous and the direction given by the Tribunal quashed, I am ordering the Associate to return the envelope containing those calculations to the petitioners and after so doing he will make a note in the minutes that he has returned the same.

16. In the circumstances, parties will bear their own costs of the petition.