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Court : Mumbai

Decided On : Aug-29-1958

Reported in : (1959)ILLJ293Bom

Judge : M.R. Meher, J.

Appeal No. : In Ref. (I.T.) No. 123 of 1957

Appellant : Hind Cycles Ltd. and anr.

Respondent : their Workmen (Supervisors and ors.)

Judgement :

AWARD

1. In this reference award - part I was made by me on 7 February 1958 regarding the demands of the supervisors at the Worli factory [Bombay Government Gazette, Part I-L, dated 6 March 1958, at p. 1172]. The demand in respect of the workmen employed at the chain plant at Kandivli was kept pending.

2. By an order dated 14 January 1958, the Central Distributors, Ltd., Kandivili, which had taken over the chain plant from the Hind Cycles, Ltd., were added as a party to these proceedings on the application of the Engineering Mazdoor Sabha. The Central Distributors, Ltd., Kandivili, and the sabha arrived at an agreement on 18 March 1958 regarding all the demands pertaining to workmen employed in the chain plant at Kandivili, except the demand in respect of bonus for the year 1955. I made award - part II on 24 April 1958, in terms of the agreement [Bombay

Government Gazette, Part I-L, dated 22 May 1958, at p. 2645]. In that agreement it is stated :

'The demand of bonus for the year 1955 is left to the learned tribunal for his decision and the said award of the learned tribunal on this demand will be accepted by the company and the sabha.'

3. I now proceed to make my award in regard to the demand that the workmen at the chain plant should be paid bonus for the year 1955 at the rate of two and a half months' wages. This demand being in respect of the year 1955 in which the chain plant was owned by the Hind Cycles, Ltd., is against that company. The company in its written statement submitted that the services of all the workmen were terminated from 23 April 1957. The chain plant was working at a loss from its inception, and for the year 1955 it incurred a loss and so the demand should be rejected.

4. The audited accounts of the Hind Cycles, Ltd., show that the company kept separate accounts for the Hind Cycles, Ltd., the factory of which was and is at Worli, and the chain plant at Kandivali. The company paid a bonus for 1955 equal to two and a half months' basic wages to the daily paid workmen at the Worli factory and two months to the office and supervisory staff (see Exs. C. 2 and C. 17). No bonus was paid to the daily paid workmen in the chain plant at Kandivli who are the workmen concerned in this reference.

5. At Ex. C. 21 the company has produced the accounts of the chain plant (referred to in the published annual report and balance sheet as establishment No. 2). They show that for the year 1955 there was not loss of Rs. 5,219. The company produced some of its original account books from which this figure has been taken and they show that separate accounts for the chain plant have been kept and have been checked by the auditors. Sri Ram Desai, on behalf of the sabha, urged, however, that the chain plant was in reality an integral part of the factory at Worli, and he urged during the arguments some points on which there was dispute as to the facts. I, therefore, suggested to the sabha that an affidavit might be filed and the company should reply by an affidavit. Accordingly Sri Ram Desai, for the sabha, has filed an affidavit, and Sri M. C. Vohra, the General

Manager of the Hind Cycles, Ltd., has filed an affidavit in reply.

6. In the affidavit filed by Sri Desai, he has stated inter alia that the chain plant was always an integral part of the company, that for the purposes of taxable income the Hind Cycles, Ltd., and the chain plant at Kandivali are treated as one company by the Income-tax authorities, that there has been transfer of employees from the factory to the chain plant, that workmen at the chain plant were given bonus for 1955, that the company sells cycles in breakdown condition and the chains are marketed as a spare part of the Hind Cycles, Ltd., and that the workmen at the chain plant are legally and morally entitled to the same bonus as the workmen at the factory.

7. Sri M. G. Vohra, the General Manager of the Hind Cycles, Ltd., stated in his affidavit in reply that the company has maintained separate accounts for the factory at Worli (establishment No. 1) and the chain plant (establishment No. 2). The profits and loss accounts were separately prepared and for the sake of convenience the results ultimately found their way into the balance sheets of the company, that for the purposes of payment of dividends to the holders of equity shares, the profits of establishments No. 1 and No. 2 were taken into account separately. For the year 1954 the company paid dividend at the rate of Rs. 8 per ordinary share out of the profits of establishment No. 1 and a dividend of Rs. 2 per share out of the profits of establishment No. 2. (The annual report and balance sheet substantiating this statement has been produced.) He has further stated that for 1955 as establishment No. 1 only had made profit, and establishment No. 2 had made a loss, a dividend of Rs. 10 per share was declared in respect of the former and none for the latter. The Incometax authorities treated the two establishments as separate entities. Sri Vohra has given an extract from the Incometax Assessment Order for 1955-56 substantiating this contention. Sri Vohra has further stated that wage-scales at establishment No. 2 were quite different from the wage-scales at establishment No. 1. In 1953 the services of some technical engineers and supervisory staff were lent to establishment No. 2. As their services were lent it was obligatory on the company to continue to them all the benefits arising from continuity of service. The chain plant has been leased out to the Central Distributors, Ltd., from 1 December 1957. Till 1957 the company

imported chains from abroad. The chains manufactured in the company were sold as an independent item according to the requirements of dealers. The company never sent out assembled cycles.

8. On consideration of the evidence given above, it is clear that the chain plant was to all intents and purposes treated as a separate venture though it was owned by the same company. It was treated by the Incometax authorities also as a separate establishment. It is undeniable that the chain plant has made a loss. It has since 1 December 1957 been leased out to the Central Distributors, Ltd. The company paid bonus at the rate of two months' basic wages for the year 1965 to the monthly staff loaned from the Hind Cycles, Ltd., because it had to continue to them the same conditions of service as they enjoyed in the parent company. That cannot make out a case for giving a bonus to the daily paid workmen of the chain plant when the concern had made a loss for the year. It has, however, to be noted that the company has paid bonus at the rate of two months' basic wages to the four watchmen at the chain plant. This is not stated in the affidavit of Sri Vohra. When Sri Khadilkar, who appeared at the adjourned hearing on 14 August 1958 mentioned this and pointed out that in the affidavit of Sri Vohra, that fact was not contradicted, I asked the company's representative whether it was a fact that the watchmen were paid bonus, and he replied that it was a fact that four watchmen were paid bonus; thereupon, Sri Narayanswamy, counsel for the company, who had at the previous hearing argued that the workmen at the chain plant were not entitled to bonus, stated that as the company admitted that it had paid bonus to four watchmen, he could not argue the case further. He felt that in view of a decision of the Supreme Court as the company had paid the bonus to four watchmen, he found it difficult to support the proposition that the other workmen should not get bonus. The case was postponed to 19 August 1958 for seeing if a settlement was possible. On 19 August 1958 Sri Ram Desai and the company's representative appeared and stated that there were talks of settlement, and the case was further postponed to 21 August 1958. On that day Sri M. G. Vohra appeared, but no one appeared for the sabha. Sri M. G. Vohra stated that the company could not agree to pay bonus to the chain plant workers, and that he wanted to make certain submissions. I told him that it had been stated at the previous hearing that if there was no settlement I should proceed to give the

award, but Sri Vohra still urged that he wanted to make certain submissions, whereupon I asked him to make an application. Sri Vohra said that he would make the application the next day. On the next day (22 August 1958) both the parties appeared, and Sri Vohra presented an application which is as under :- 'The last hearing of the above case was on 14 August 1958 when the company appeared through their counsel, Sri B. Narayanswamy.' At the last hearing, it appears that through some misunderstanding the counsel for the company indicated that he did not want to argue the case any further. The company, however, desires to bring to the notice of the tribunal a few more facts and it is, therefore, prayed that the tribunal will fix another date for hearing when the company may be in a position to place the aforesaid points for the consideration of this tribunal. Any inconvenience caused either to the tribunal or to the workmen is very much regretted.'

Sri Khadilkar who appeared for the sabha opposed the application and I asked him to put his objections in writing which he did on 23 August 1958 which was the date for further hearing. In the objection he has stated, inter alia, that it was very unfair on the part of the company to ask for a further hearing when on the previous hearing the company's counsel had stated that he had nothing further to argue. I did not think it to be fair to shut out Sri Vohra from making submissions, for at the most what Sri Narayanswamy had stated could be considered an admission on a point of law. Sri Vohra submitted that the chain plant was a separate establishment which had made loss, and so the workmen were not entitled to bonus, that the four watchmen had been paid bonus because they were monthly paid staff and the other monthly staff had been paid bonus, that if it had struck the company that by doing so it became liable to pay bonus to the other workmen who numbered 75 in all it would not have paid bonus to the four watchmen. I gave an opportunity to Sri Khadilkar to make any further submissions in reply.

9. Sri Khadilkar has in his application objected to the company being allowed to make any further submissions after the arguments were concluded on 14 August 1953 and postponed for reporting settlement. But Sri Khadilkar overlooks that even if I had refused to allow Sri Vohra to make any further submissions and proceeded to write the award, I was not bound to give effect to what can be considered at the most as an incorrect admission of counsel on a point of law and

I would still have to make an award in accordance with the true view of the law. It is unnecessary to cite authorities in support of this proposition. A party is also not bound by an opinion expressed by an advocate in the course of arguments adversely to his client's claim [See I.L.R. 28 Bom. 408 and I.L.R. 18 Mad. 73]. I have no doubt that in this case Sri Narayanswamy made the admission in good faith. Sri Narayanswamy did not cite the particular Supreme Court decision in view of which he found it difficult to support the proposition that the other workmen were not entitled to bonus. But he had, no doubt, in mind the case *Burn & Co. Ltd.*, and their employees wherein their lordships of the Supreme Court observed : 'In law, a claim for bonus will be admissible only if the business had resulted during the year in sufficient profits. And as the reason for the grant of bonus is that workers should share in the prosperity to which they have contributed, all of them would have the right to participate in it. Therefore, profits can be said to be sufficient to declare a bonus only if they are sufficient to make a payment to all of them. If the profits are not sufficient for that purpose, then the very condition on which bonus could be declared would be absent and no question of granting any bonus could arise. As it is common ground that the profits of the company are not sufficient to justify the award of bonus if it is to be paid to all the workers of the company in all its units, it follows that there is in law no ground for the grant of bonus. Nor can such a claim be sustained in equity. The entire profits of the company are the result of the labour of all the workmen and employees in all its units. To grant a bonus to a section of them on the basis of the total profits of the company will be to give them a share in profits to which they have not contributed. We are wholly unable to appreciate the observation of the Appellate Tribunal that to refuse additional bonus to the union employees would be to penalize them 'not for their own fault but for the laches of the co-workers, who abandoned their claim.' The tribunal forgets that, on its own finding, if all the workmen made a claim no bonus could have been declared. It is not a question of their abandoning their claim but of their realizing that they have none. If the order of the Appellate Tribunal is to be given effect to, some of the employees of the company would get a bonus while others not, and as observed in *Karam Chand Thappar & Bros.' workmen v. The company* 1953 L.A.C. 152 that must lead to disaffection among the workers and to farther industrial disputes. The order of the Appellate Tribunal awarding an additional one

month's basic wages as bonus is neither legal nor just and must be set aside and the award of Sri Banerji as regards bonus restored.'

It seems to me that the facts in both these cases bear no similarity to the facts in the present case and the ratio decidendi of those cases does not apply to the present case. If there had been profits and the company had paid bonus to some workmen and not to the other workmen or if the company by giving bonus to some and refusing to others was making unfair discrimination, the tribunal could direct the company to pay the other workmen also bonus at the same rate. But here the facts are that there has been a loss, and the company paid the four watchmen bonus for the considerations referred to above and because it did so the company is not legally bound to pay bonus at that rate to the other 75 workmen.

10. In the present case, the workmen were not entitled as a matter of right to any bonus because the chain plant concern had incurred a loss during the year. If that fact stood alone, the claim of the workmen would have to be rejected, but there are certain other facts which have to be borne in mind in this particular case. When the further circumstances of the case are taken into consideration, viz., that the company paid bonus equal to two months' basic wages to the supervisors and watchmen, although for certain special considerations referred to above, and hopes have been aroused among the other workmen by this payment as well as the submissions of the company's counsel referred to above and the amount involved is small in relation to the capacity of the Hind Cycles, Ltd., I think it would not tend to promote industrial peace if the claim of the workmen concerned in this reference is rejected in toto. If the alternative before me were only between allowing the workmen bonus at the same rate as that paid to the four watchmen, and rejecting the claim altogether, I would have had to take the latter course, but I think it is open for me to take a middle course which would be equitable and meet the peculiar circumstances of this case, and that is that the workmen concerned in this reference should be paid bonus at the rate of a month's basic wages. The amount would come to about Rs. 4,000. As the chain plant has now ceased to be owned by the Hind Cycles, Ltd., appropriate directions have to be given so that the workmen who have all ceased to be in the service of the company should get the bonus awarded.

11. I direct the Hind Cycles, Ltd., to pay to the employees of the Kandivali Chain Plant during the year 1955 bonus equal to one twelfth of the basic earnings (exclusive of dearness and other allowances and overtime) during that year, within a period of six weeks from the date on which they make a written application of payment of the bonus awarded. Any employee who has been dismissed for misconduct resulting in financial loss to the company shall not be entitled to bonus to the extent of the loss caused.

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