

Bharat Containers Pvt. Ltd. Vs. the Engineering Worker's Union and ors.

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Court : Mumbai

Decided On : Jun-10-1996

Reported in : (1998)IIILLJ926Bom

Judge : F.I. Rebello and ;V.P. Tipnis, JJ.

Appeal No. : Writ Petition No. 2039 of 1993

Appellant : Bharat Containers Pvt. Ltd.

Respondent : The Engineering Worker's Union and ors.

Advocate for Def. : Shri. P.M. Patel

Advocate for Pet/Ap. : Shri. Bhatt, Shri. Nerlekar

Judgement :

Tipnis, J.

1. This petition filed by the employer M/s. Bharat Containers Pvt. Ltd. impugnes the legality and corrections of the award dated 17th June, 1993 passed by the Member Industrial Tribunal, Bombay in Reference (IT) No. 87 of 1987.

2. The dispute was referred for adjudication to the Industrial Tribunal, Bombay between the petitioner M/s. Bharat Containers Pvt. Ltd. and its workmen. By a letter dated 2.12.1986 the Union served the Charter of demands on the

management. Having failed to reach any settlement by the conciliation, the matter was ultimately referred to the Tribunal under the provisions of the Industrial Disputes Act. After hearing the parties and recording the necessary evidence the learned Member of the Industrial Tribunal by the impugned award was pleased to grant demand No. 1 (scales of wages), demand No. 2 (adjustment and service increment) and demand No. 3 (dearness allowance) with retrospective effect from 1.12.1986. The demand No. 5 (leave benefits of special pay), demand No. 7 (leave travel allowance), demand No. 9 (uniform and washing allowance), demand No. 10, (Milk and milk allowance) and demand No. 11 (medical allowance) are granted under the said award with effect from 1.6.1993. The demand No. 1A (classification) being not pressed was not granted. Demand No. 4 (personal pay), demand No. 6 (discrimination in payment of special pay,) demand No. 8 (House rent allowance), demand No. 12 (education allowance) demand No. 13 (gratuity) and demand No. 14 (leave provision) were rejected by the Tribunal.

3. We have heard Shri M.V. Bhatt, learned counsel appearing for the petitioner company and Shri P.M. Patel learned counsel for the respondent-union, with the assistance of the learned counsel for both sides, we have gone through the impugned award and also the relevant material specifically brought to our notice by the respective counsel.

4. Shri Bhatt learned counsel for the petitioner mainly contended that the petitioner-company is a loss making concern, almost consistently and as such the Tribunal erred in placing the financial burden upon the concern which cannot bear it. Shri Bhatt also contended that while placing higher financial burden on the company, the learned Member of the Tribunal almost ignored the law laid down by the Apex Court in that behalf. Shri Bhatt contended that while calculating gross profits, the company was entitled in law and was justified in excluding the depreciation shown in the balance sheet of the company and the learned Member was in error in including the said ground of depreciation in the gross profits. Shri Bhatt also found fault with the learned Member for holding that some other concerns were comparable with the petitioner concerns. Shri Bhatt contended that the effect will be that the industry will have to be closed down. Shri Bhatt in support of his various contentions relied upon the judgments of the Apex Court

reported in : (1964)ILLJ380SC Workmen of Balmer Lawrie & Co. Ltd. v. Balmer Lawrie and Co. Ltd. and Anr. : (1967)ILLJ1SC , Calcutta Insurance Co. Ltd. v. Their Workmen : (1973)ILLJ115SC , Messrs. Karamchand Thapar & brothers (P) Ltd. v. Their Workmen : (1975)ILLJ125SC , Sangam Press Ltd. v. The Workmen : (1978)ILLJ532SC , Shiaraj Fine Arts Litho Works etc. v. State Industrial Courts and Ors. etc. : (1969)ILLJ791SC , Workmen of Gujarat Electricity Board Baroda v. Gujarat Electricity Board, Baroda : (1972)ILLJ576SC M/s. Unichem Laboratories Ltd. v. The Workmen, and : (1979)ILLJ383SC , Management of Shri Chalthan Vibhag Khan Udyog Sahakari Mandali Ltd. etc. v. G.S. Barot, Member, Industrial Court, Gujarat etc.

5. Shri P.M. Patel learned counsel for the respondent union on the other hand supported the reasoning and findings of the learned Member of the Industrial Tribunal. Shri Patel contended that the material on record clearly showed that the financial position of the company was quite sound; that the demands of the workers were reasonable and legitimate and that the company was in a position to bear the additional financial burden, which were put upon the company by the directions in the award. Shri Patel contended that all the findings recorded by the learned Member of the Industrial Tribunal are full supported and are justified by the material on record. Shri Patel in support of his submission relied upon the several authorities and particularly on the observations of the Apex Court in the judgment reported in : (1972)ILLJ576SC and : (1979)ILLJ383SC (supra).

6. After hearing the counsel and after having gone through the well-reasoned award and also after scrutinising the material on record, we are of the opinion that the petitioner has not made out any case for interference on any aspect of the matter in this petition.

7. The award clearly shows that the existing settlement between the parties has come to end on 30.11.1986. When the earlier settlement dated 4.5.1984 was signed, the consumer price index number for the working class in Bombay was 2642 points. The said index number was shot up to 5995 points in October 1992. Thus there was enormous increase of 3313 points in the CPI index number. The learned Member has also taken into consideration the fact that the company has

revised prices of its own products as admitted in Exh. C-35 and in paragraph 10 of the evidence of the witness on behalf of the company. It was also an agreed position that the company has given wage rise to its staff and other employees not covered by the previous settlement. The learned Member also observed that upward revision of scales of pay could be determined by applying the principle of industry-cum-region. The learned Member has held that undisputedly M/s. Shalimar Products . is a comparable concern. Shri Kanoria, the Company's Director, in para 36 of his deposition has stated that Digvijay Universal Can and M/s. Shalimar Manufacturing Co. are comparable concerns. The learned Member of the Tribunal negated the argument on behalf of the company that unless the capital, sales, reserves, surplus, financial position, number of workers, etc. of these comparable concerns are brought on record, they cannot be taken into consideration on the ground that, that company itself did not dispute the fact that the said concern is comparable concern. We do not find anything wrong in this finding of the Tribunal, on the basis of the material and documents on record.

8. Thereafter the learned Member has dealt with the submissions on behalf of the company with aspect to the financial position of the company. The Learned Counsel for the company has urged that the financial position of the company is very weak and in fact the company has been suffering losses. So far as this aspects of the matter is concerned, there can be no doubt that the financial position of the given concern has to be taken into consideration before the additional financial burden is placed on the company which would result from the grant of various demands. The question is how to assess financial capacity or position of the company. The main controversy in this behalf before the learned Member as well as before us, was as to whether the amount of depreciation should be included or excluded for the purpose of calculation of the gross profits. So far as this aspect of this matter is concerned, in our opinion the position appears to be settled by several decisions of the Apex Court and especially by the decisions of the Apex Court reported in : (1972)ILLJ576SC M/s. Unichem Laboratories Ltd. v. The Workmen and : (1979)ILLJ383SC , Management of Shri Chalthan Vibhag Khan Udyog Sahakari Mandali Ltd. etc. v. G.S. Barot, Member, Industrial Court, Gujarat etc. In the case of M/s. Unichem Laboratories Ltd., in paragraph 47 the Apex Court has observed as under :-

'We will presently show by reference to the decisions of this Court that the Tribunal was justified in computing gross profits without deducting taxation, depreciation and development rebate. In view of the decision, to which we will immediately refer Mr. Tarkunde was prepared to accept the position that, at any rate, taxation and development rebate cannot be deducted, but he still maintained that depreciation has to be deducted'.

Then in paragraphs 64 and 65 of the said judgment the Apex Court has observed as under :-

64 'In our opinion, the above statements may have considerable bearing in the preparation of profit and loss accounts having regard to the provisions of the Companies Act and mercantile usage; but they have no bearing on the question of fixation of wage structure and dearness allowance in an industrial adjudication'.

65 'From what is stated above, it follows that the Tribunal was justified in arriving at gross profits without deducting the provision for depreciation. As already mentioned by us Mr. Tarkunde has accepted that the Tribunal was justified in not deducting the provision made for taxation and development rebate. The result is that the average gross profits of the appellant being about Rs. 40,00,000.00 as held by the Tribunal, is correct'.

In paragraph 110 of the very judgment it was held that the claim made by the workmen, if otherwise justified, cannot be rejected on the sole ground that a provision is already made in an existing scheme of dearness allowance for adjustment depending upon an increase in the cost of living index. If it is established that the cost living shows a tendency to rise very high, the workmen would be entitled to claim and there may be a change in the rate of Dearness Allowance originally fixed, so as to provide for more neutralisation. It was further held that, that a claim made by the workman will have to be properly considered and adjudicated upon by the Tribunal.

9. In the case of Management of Shri Chalthan Vibhag Khan Udyog Sahakari Mandali Ltd. etc., on which reliance has been placed by both the learned counsel for the rival parties before us, in paragraphs 23 and 24 the Apex Court has

observed as under :-

23 'It may be that for prudent management of an industry it will be desirable to take into account to some extent the depreciation of the machinery for otherwise after lapse of years the machinery may get worn out and without provision for replacement the industry itself will come to a stop. Whether provision for such depreciation should be made and if so to what extent will depend upon the facts of the case. Depreciation allowances to the extent of making out a loss need not be accepted but reasonable provision should be made. The three decisions of this Court referred to were given on the particular facts of the case and may not be understood as laying down that under no circumstances deduction of depreciation, reserves, etc. could be made. It is of utmost importance that the industry must be kept going as long as it could pay the minimum wages. It may sometimes be necessary for the workers to make some sacrifice to keep the industry going. It is not wise to kill the goose that lays the golden eggs. The capacity of the industry to bear the burden will have to be taken into account in determining whether provision could be made for fixing a wage structure including provision for contribution to provident fund, gratuity, etc. In determining the capacity of the industry to bear the burden all relevant facts will have to be taken into account and actual state of affair determined. The procedure adopted by the industry to determine the financial capacity for other purposes may not be relevant. It cannot be taken as a hard and fast rule that provision for depreciation, provision for development rebate, tax liabilities should never be allowed. While the preservation of the industry is paramount the attempts of the management to show that the company is running at a loss by boosting depreciation allowances, etc. should not be permitted. In short the real capacity of the industry to bear the extra burden will have to be determined.

'An employer claiming depreciation allowance is only entitled to the actual or probable depreciation of the machinery, tools, etc. for the period due to wear and tear. The depreciation cannot be computed on any natural basis or on the profit and loss account furnished by the company. In the cases before us the management has claimed by way of depreciation the cost of purchase of machinery for expenses of the manufacturing plant. In the matter relating to

Chalthan Sugar Mills in the profit and loss account for the year ending June 30, 1975 Rs. 1,07,56,523 is claimed by way of depreciation at the end of the year. The balance brought forward on this account from the previous year is Rs. 79,11,066. During the year, an amount of Rs. 20,46,457 is added. In the profit and loss account for the year ending June 30, 1976 the depreciation fund increases from Rs. 1,07,56,523 to Rs. 1,30,24,242. In the profit and loss account for the year ending June 30, 1977 an amount of Rs. 22,97,553 is added to the depreciation fund. The figures furnished by the other sugar factories follow the same pattern. During the course of arguments the appellants admitted that the amount shows as depreciation actually represented the cost of purchase of new machinery and balance for expansion of the manufacturing units. These amounts relate to expansion of the industry and should be shown in the capital account and cannot be claimed as deduction due to depreciation. The accounting of the sugar factories concerned is for the purpose of minimizing the profits and showing loss for the purpose of depriving the workers their dues. Such depreciation cannot be allowed. But as pointed out by us the actual depreciation which should be deducted in the interest of the industry can be taken into account. In the cases, before us if the inflated figures should be left out of account we feel that the industry has the capacity to bear the burden due to increase in expenditure by this judgment running at a loss by boosting the depreciation all should not be permitted. In short the real capacity of the industry to bear the extra burden will have to be determined.'

10. Taking into consideration the aforesaid principle laid down by the Apex Court, if one turns to the material on record and the findings recorded by the learned Member of the tribunal, it is difficult to find any fault with the conclusions reached and the findings arrived at by the learned Member of the Tribunal. We ourselves have gone through the balance sheet relied upon by both parties and from the statement showing the financial position of the company filed by the Union at Exh. U-34, it is clear that the company has been making consistently gross profits during the years 1978 till 1992. It is difficult to appreciate and accept the submission of Mr. Bhatt that the gross profits have to be calculated after deducting the huge amounts of depreciation. In fact in the aforesaid case of Management of Shri Chalthan Vibhag Khan Udyog Sahakari Mandali Ltd. and the earlier decision

of the Apex Court, it is clearly held that the depreciation has to be included while calculating gross profits. Undoubtedly in paragraph 23 in Management of Shri Chalthan Vibhag Khan Udyog Mandali Ltd. case the Apex Court has observed that the decisions of the Apex Court referred to therein were given in particular facts of the case and may not be understood as laying down that under no circumstances deduction for depreciation, reserves etc. would be made. The Apex Court has further observed in the said paragraph that it cannot be taken as a hard and fast rule that provision for depreciation, provision for development, rebate, tax liabilities should never be allowed. However, it is also relevant to notice that in paragraph 24 of the very judgment the Apex Court has observed that an employer claiming depreciation allowance is only entitled to the actual or probable depreciation of the machinery, tools, etc. for the period due to wear and tear. The depreciation cannot be computed on any natural basis or on the profit and loss account furnished by the company.

11. In the facts and circumstances of the case before us the company has claimed depreciation to be deducted from the amount of gross profits as shown in the balance sheet, which cannot be permitted. The company has not even made attempt much less succeeded in showing the actual or probable depreciation as envisaged by the Apex Court in para 24 of the aforesaid judgment. As such we are of the clear opinion that the learned Member of the Industrial Tribunal was absolutely justified in calculating the gross profits without deducting the huge amount of alleged depreciation shown by the company. The learned member of the Tribunal in our opinion, has correctly relied upon the fact that the material on record showed that the initial capital of the company in the year 1959 was Rs. 1,75,000/- which capital has been increased to Rs. 25,95,000/- in the year 1984. The learned Member of the Tribunal has also referred to the increase in the subscribed capital and gross assets of the company. It is observed by the learned Member of the Tribunal that the gross block for the year 1991-92 is Rs. 1,64,20,975/-, the reserves and surplus is Rs. 22,17,093/- and the turn over of the company is Rs. 2,95,82,808/-. He has also observed that the assets during the year 1978-79 to 1991-92 is to the extent of Rs. 1,08,77,604/-. Although there is some justification in the criticism of Shri Bhatt regarding learned Judge's observation regarding benefits drawn by the directors is concerned, in our opinion

in the facts and circumstances of the case and on the basis of the material on record that will not make any difference at all to the ultimate conclusions reached by the learned Member of the Tribunal. The learned Member in fact came to the finding that he cannot avoid to mention that the company is inclined to magnify the alleged weak financial position of the company. The learned Member also referred to the vital admission given by the Managing Director that the company has invested large amount of Rs. 80,52,000/- for the purchase of new machineries, which in the opinion of the learned Member is indicative of the prosperity of the company. Shri Bhatt contended that as a matter of fact this should have been held as liability in as much as the machinery was purchased by obtaining loans from the banks, for which company was liable to pay substantial amount by way of interest. We are not impressed by this submission at all. Obviously the company would be investing lacs of rupees in new machineries only with the resultant increase in the production and increase in the profits. On the basis of the material on record the learned Member of the Tribunal was more than justified in coming to the conclusion that the company seems to be a prosperous one and has very bright future. As stated earlier no evidence at all having been adduced by the company about the actual extent of depreciation or wear and tear of the machinery concerned, the learned Member was absolutely right in totally ignoring the huge amount of depreciation shown in the balance sheet of the company. The learned Member also referred to rosy picture drawn about the company's future by the statement of the directors in the report. May be that Mr. Bhatt is right in submitting that, that should hardly be a material evidence to judge the financial position of the company. However, in our opinion in the facts and circumstances of the case, the said observation of the learned Member of the Tribunal does not make any difference at all, to the ultimate finding recorded by the learned Member of the Tribunal regarding the financial capacity of the company. As pointed out by Mr. Patel learned Counsel for the Union and as observed by the learned Member of the Tribunal, as a matter of fact this controversy should not have been raised by the company inasmuch as in their written statement of the company, it is categorically stated as under :-

'The company has made halting progress during the last 7 years and its average gross profit was in the range of 9.94 lacs whereas the average net profit during the

last 7 years amounts to only Rs. 1.75 lacs'.

12. Coming to the different demands granted by the learned Member of the Tribunal, on the basis of the material on record, learned Member was justified in granting demand No. 1 i.e., scales of wages and making them operative from the date of demand i.e., 1.12.1986. So is the case of grant of adjustment and service increment at the rate of one increment for every 5 years of service with effect from 1.12.1986, subject to the maximum of three increments. So far as the dearness allowance is concerned, it requires to be noticed that the demand of the Union was at the rate of Rs. 4 per 10 points above index No. 650 in place of the existing scheme of Rs. 2.60 for 10 points. The rate of neutralisation provided after 650 points is also at a low rate of Rs. 2.60 for every 10 points rise was fixed in the award dated 5.8.1970 and since then there had been no upward revision in that scheme. The learned Member has observed that the company has expanded its business activities and paying capacity of the company has increased many-fold; quantum of production has also increased and under the circumstance the refusal by the company to pay dearness allowance for 649 points mounts to injustice. The workers are required to pay full price rise to purchase essential commodities and they cannot be denied neutralisation by way of dearness allowance for the remaining index numbers. After taking into consideration various rulings of the Apex Court and the material on record the learned Member of the Tribunal has ultimately granted dearness allowance at the rate of Rs. 3.25 per 10 points above index No. 650. We do not find anything improper or incorrect in the aforesaid grant of dearness allowance. All the other demands in our opinion are minor from the point of view of the additional financial burden and have been rightly dealt with by the learned Member of the Tribunal. We must here repeat that the main plank of the argument of Shri Bhatt on behalf of the company was regarding alleged financial incapacity of the company and so far as the individual demands are concerned, there was hardly anything which he could bring to our notice requiring interference in writ jurisdiction of this Court.

13. Under the circumstances we so not find any merit in this petition, petition is dismissed. Rule discharge. The petitioner shall pay costs to the respondent-union. All interim orders stand vacated forthwith.

14. At this stage Shri Nerlekar learned counsel for the petitioner company prayed for continuation of the interim orders for some time with a view to enabling the petitioner to approach the Apex Court. Prayer is granted and accordingly the interim order shall continue to be operative till 31st July, 1996. Certified copy expedited.

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