

**Management of Mysore Kirloskar Ltd. Vs. their Workmen and anr.**

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**Court :** Karnataka

**Decided On :** Nov-19-1996

**Reported in :** (1998)IIILLJ1136Kant

**Judge :** V.P. Mohan Kumar, J.

**Acts :** Payment of Bonas Act, 1965; Payment of Bonas (Amendment) Act, 1976

**Appeal No. :** W.P. No. 10075/1987

**Appellant :** Management of Mysore Kirloskar Ltd.

**Respondent :** their Workmen and anr.

**Advocate for Def. :** K. Subba Rao, Adv.

**Advocate for Pet/Ap. :** R. Gururajan, Adv.

**Judgement :**

**V.P. Mohan Kumar, J.**

1. The challenge relates to the award passed by the Industrial Tribunal with respect to the dispute referred on the question of payment of bonus for the year 1981-82. The management had paid 8.33 per cent. as bonus. The claim of the workers was declaration of 20 per cent bonus for the said period. This dispute was referred to the Industrial Tribunal for adjudication.

2. The management in the claim statement averred that several items of the earnings of the company were not liable to be included for the purpose of calculating the gross profit. After consideration of the respective contentions, except in respect to two items, the claim of the management as regards the others have been upheld. The two items which were disallowed by the company to be included as gross profit of the company are:

(i) Rs. 5,00,000 paid as donation to the school ; and

(ii) Rs. 44,36,492 received by the company as cash subsidy.

3. They are described as items to be included for this purpose of determining the profits for the purpose of fixing the bonus payable. The contention raised by the petitioner is that whether these two items referred to above should be excluded while reckoning gross profits earned by the company.

I have heard Mr. Gururajan, learned counsel for the petitioner as also Mr. Subba Rao, learned counsel for the respondent.

4. On the earlier occasion, I had directed Mr. Gururajan to file a statement showing the split up as to how the claim of Rs. 44,36,492 is made as subsidy received by the company. He has filed a statement stating that except Rs. 3,08,965.83 out of the amount the rest are declared as the cash assistance received by the company with respect to the export made by them.

5. The two questions that arise for consideration are whether the two items of deductions claimed by the petitioner-company are liable to be excluded while reckoning the gross profit earned by the company. There is no dispute regarding the payment of donation to the school, namely, Rs. 5,00,000. The Tribunal has held that this amount has to be included while fixing the gross profit. I do not find that the Tribunal has erred in holding that the said amount is liable to be treated as gross profit earned by the company. This payment is made out of the profit and is not eligible to be excluded while fixing the gross profit. I would, therefore, uphold the award of the Tribunal in this behalf.

6. The Schedule to the Payment of Bonus Act has described the items to be taken into account for the purpose of arriving at the gross profit. Item 6 of Schedule II to the Payment of the Bonus Act reads as follows:

'Deduct.--(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for Income-Tax- or agricultural income-tax).

(b) Profits of, and receipts relating to, any business situated outside India.

(c) Income of foreign concerns from investments outside India.

(d) Expenditure or losses (if any) debited directly to reserves, other than,--

(i) Capital expenditure and capital losses (other than losses on sale or capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);

(ii) Losses of any business situated outside India.

(e) In the case of foreign concerns proportionate administrative (overhead) expenses of head office allocable to Indian business.

(f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus depreciation, taxation or development rebate or development allowance, if written back.'

And item 6(g) reads, as it stands after the 1976 amendment, as follows:

'(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in; force or any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.'

Clause (g), prior to the amendment, namely, by the Second Schedule, reads as follows :

'Subsidy, if any, received from Government or from any body corporate established by any law for the time being in force.'

7. This Section was replaced by the present Section as referred to above. This clearly shows that subsidy received from the Government or from any other agency or from any agency for specified purpose shall be excluded while reckoning the gross profit of the company. The contention of learned counsel for the petitioner is that cash subsidy received by them is for the exports made by them. I have gone through the statement filed by the petitioner which describes that cash subsidy. The payment represents the actual amount paid to make up the value the company would have earned had they sold the same in open market. Therefore, this payment is actual payment of subsidy described in a different manner.

8. Mr. Subba Rao, learned counsel for the respondent submits that until the payments are earmarked and described early as subsidies then it can be treated as allowable deduction under item 6(g) of the Schedule II to the Act. I do not think that this argument is acceptable. In the decision of the Supreme Court in *Shri Ambica Mills v. Textile Labour Association*, (1973-1-LLJ-102) referring to *Corpus Juris Secundum*, the definition of 'subsidy' has been referred to as hereunder at page 106:

'Something, usually money, donated or given or appropriated by the Government through its proper agencies ; a grant of funds or property from a Government, as of the State or a municipal corporation, to a private person or company to assist in the establishment or support of an enterprise deemed advantageous to the public ; a subvention.

Pecuniary premiums offered by the Government to persons enlisting in the public service, or engaging in particular industries, or performing specified services for the public benefit are treated in Bounties.'

9. We would examine item 6(g) in Schedule II to the Act, keeping the above definition in mind. Item 6(g) has to be read in the following manner:

'(i) cash subsidy, if any, given by the Government or by any body corporate established by any law;

(ii) cash subsidy, if any, given by any other agency through budgetary grants and the proceeds of which are reserved for such purposes;

(iii) cash subsidy paid by any agency for specific purpose and the proceeds of which are reserved for such purpose.'

10. If item 6(g) is understood in the above manner, then there will be no difficulty in holding that the claim made by the company, namely, the amount described as cash compensatory support is a cash subsidy received by them within the meaning of item 6(g) of the Act. The finding of the Tribunal otherwise has to be overruled.

11. I had called upon the company to file a statement disclosing the amount of subsidy received by them with respect to the export made by them. It has placed materials before this Court to show that it had accounted for Rs. 41,27,526.17. The statement produced by the petitioner shows that the amount received by way of cash compensatory support which in fact is subsidy is Rs. 41,27,526.17. The whole amount is, therefore, liable to be excluded under item 6(g) of Schedule II to the Payment of Bonus Act, 1965.

The balance amount will be taken for the purpose of reckoning the gross profit of the company. Therefore, in modification of the award by the Tribunal, I hold that the company is entitled to exclude Rs. 41,27,526.17 out of the gross profit reckonable for the purpose of fixing the bonus under Section 4(b) of the Payment of Bonus Act. The balance amount of Rs. 3,08,965 together with Rs. 5,00,000 shall be deemed to be the gross profit of the company. With this modification, the writ petition is disposed of.