Burn and Company Ltd. Vs. Its Workmen

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Court : Supreme Court of India

Decided On : Dec-06-1963

Reported in : [1964(8)FLR138]; (1964)ILLJ370SC; [1964]5SCR823

Judge : K.C. Das Gupta and; P.B. Gajendragadkar, JJ.

Acts : Preference Shares (Regulation of Dividends) Act - Sections 3(1)

Appellant : Burn and Company Ltd.

Respondent : its Workmen

Judgement :

Das Gupta, J.

1. This dispute between Burn & Company Limited, (Iron Works), Howrah and its workmen is over the profit bonus for the year 1960. Previous disputes between this Company and its workmen on question of bonus of the years 1951-52, 1953-54 and 1955-56 ended with awards of Industrial Tribunals in West Bengal. The dispute for the bonus payable for the year 1955-56 came up to this Court in appeal and was disposed of by its Judgment dated March 8, 1960. For the Company's financial year from May 1, 1958 to April 30, 1959, the bonus, if any, would be payable in 1960. The Company was prepared to pay bonus equivalent to 3 1/2 months' wages but the workmen demanded much more. It appears that the Company has already made an advance of three months' wages on the suggestion of the Deputy Labour Commissioner during negotiations for settlement. But the talks for settlement ultimately failed. On applying the principles laid down by this Court in the matter, the Tribunal worked out the net available surplus out of which the claim for bonus had to be made at Rs. 53.31 lacs. After taking into consideration that the Company had contributed Rs. 10.74 lacs towards the employees' provident fund and the income-tax rebate which would be available to the Company in respect of the bonus payment, the Tribunal was of opinion that a sum of Rs. 35.20 lacs could be fairly distributed to the workmen as bonus. It has accordingly awarded bonus to the extent of 5 1/2 months' wages. It has further directed that the amount of wages already paid in advance towards the bonus shall be set off against the bonus now awarded. Both the Company and the workmen have appealed against the award by special leave.

2. The main controversy, as it always is in these cases, is on the computation of the available surplus. Different statements have been filed by the several Unions by whom the workmen were represented showing a gross profit at rupees seven crores and thirty-five lacs and available surplus only a few lacs less than this. The Company's statement showed the gross profits at Rs. 1,48,891.72. From this prior charges which have to be deducted in arriving at the available surplus were shown as

On account of income tax..... Rs. 58,92,925On account of return on paid up capital..... Rs. 95,55,300As return on working capital..... Rs. 5,73,326For rehabilitation inclusive ofRs. 20,37,103 the normal notional depreciation for theyear..... Rs. 72,64,579

3. The figure thus reached for available surplus is Rs. 1,95,932 which would be equivalent to less than 10 days' wages for the workmen. The Tribunal in arriving at the figure of Rs. 53.31 lacs as available surplus has calculated the gross profits at Rs. 181.82 lacs. From this it has deducted Rs. 71.36 lacs for income-tax, Rs. 7.39 lacs as return on working capital and a further sum on account of rehabilitation. For rehabilitation it has deducted Rs. 23.66 lacs as 'rehabilitation charges' exclusive of the sum of Rs. 20.37 lacs under the head Notional Normal Depreciation. As Mr. Sen who appeared before us for the Company in these appeals, fairly pointed out that there is an obvious mistake in this calculation inasmuch as the Tribunal having decided that Rs. 23.66 lacs should be that annual rehabilitation charges should not have deducted this entire amount after having already deducted Rs. 20.73 for Notional Normal Depreciation. Mr. Sen admits that if the decision that Rs. 23.66 lacs should be the annual rehabilitation charge allowable in the year in question, only an amount of Rs. 3.29 lacs should be deducted as prior charge in addition to Rs. 20.37 lacs already deducted under the head Notional Normal Depreciation. If the other figures stood as calculated by the Tribunal this would result in the increase of the available surplus to Rs. 73.68 lacs. It is also clear that if the Tribunal's decision that Rs. 23.66 lacs is the proper rehabilitation charge allowable for the year in question is left undisturbed the available surplus would remain at about Rs. 51 lacs, even if all the other figures as computed by the Company in its statement were allowed to stand. For, as already stated the Company's claim for rehabilitation charges inclusive of Notional Normal Depreciation is over Rs. 72.64 lacs, i.e., about 49 lacs more than what the Tribunal has found as allowable.

4. Mr. Sen's main attempt has therefore been to persuade us to reject the Tribunal's conclusion on the question of rehabilitation charge allowable for the year 1958-59. It appears that the Tribunal calculated the annual rehabilitation charge at this figure of Rs. 23.66 lacs mainly on the basis of what had been decided on the question of rehabilitation charges in the bonus dispute for the year 1954-55. It pointed out that in the said award the annual rehabilitation cost was assessed at Rs. 14.30 lacs for machinery and Rs. 4.00 lacs for buildings, a total of Rs. 18.30 lacs. To this it added an additional charge of Rs. 5.36 lacs in respect of the period that had elapsed since 1954-55. The evidence that was adduced by the Company in the present Reference, on this question of rehabilitation was rejected by the Tribunal.

5. Mr. Sen's argument is that the Tribunal fell into error in considering itself bound to proceed in the present reference on the assessment of the rehabilitation cost in the bonus dispute for the year 1954-55 and that this error was really the basis of his rejection of the evidence given by the Company in the present case. There can, in our opinion, be no doubt that once the question as to what is necessary for rehabilitation and over how many years it should be spread has been decided by industrial adjudication after proper investigation and careful scrutiny of the evidence adduced in any one year the assessment thus made ought not to be lightly disturbed when the question comes up again in any future year in respect of rehabilitation. The very nature of the problem makes it necessary for industrial adjudication to project itself into the future and decide the total rehabilitation charges over the years and the number of years over which rehabilitation has to be spread. There is bound to be some amount of unreality in its conclusions because of the difficulty of ascertaining in the present what will be necessary in the future. In spite of that however the calculations thus made give on the whole a firm basis for making deductions for calculating the available surplus a reasonable sum for rehabilitation of machinery and buildings and other items of capital as may require rehabilitation. Once however any particular amount has been found necessary as the total rehabilitation charge for a number of years and from that an assessment is made for the particular year in dispute of the amount allowable for that year, it will be unreasonable and indeed meaningless for the matter to be re-investigated year after year. Rehabilitation is rightly regarded as a long term problem and that is why once the matter has been investigated and the proper figure ascertained, that calculation should ordinarily be adhered to for future years.

6. Mr. Sen does not seriously contest the correctness of this proposition. He however contends that where the decision in one year is more on the basis of lack of evidence than on an investigation of the evidence adduced it would be unreasonable to treat this as binding for all the years to come. He pleads that when the question

of rehabilitation charges was raised in the bonus dispute for the year 1954-55 the employer was not in a position to adduce full evidence and that is how the assessment of Rs. 18.30 lacs as necessary amount for rehabilitation of machinery and building came to be made. Now that he is in a position to adduce proper evidence he should not be deprived of the opportunity of convincing the Tribunal of the actual needs for the purpose. There is, in our opinion, considerable force in this contention. We have examined the award in the bonus dispute of 1954-55 and are satisfied that in making the assessment for rehabilitation charges the Tribunal did not get the benefit of proper evidence in the matter. We agree that in these circumstances it would not be reasonable to treat the assessment made in that year as binding on the employer in the present dispute also.

7. We are unable to agree however with Mr. Sen's contention that the real reason why the Tribunal rejected the evidence adduced on behalf of the employer was that it considered itself bound by the previous assessment. On the contrary, it appears to us clear that the evidence that was adduced was examined fully and carefully by the Tribunal independently of the assessment for the year 1954-55 and it was when that evidence was found unreliable that the Tribunal gave the employer the benefit of the previous assessment. The Tribunal has given clear and cogent reasons for rejecting the evidence that was adduce and we find nothing that would justify us in re-assessing the same for ourselves. One of the main reasons which weighed with the Tribunal was that while quotations were received from Western European countries no quotations were obtained from Eastern European countries like, East Germany, Poland, Czechoslovakia and U.S.S.R. etc. Mr. Sen has rightly urged that it must be left to the Company to decide from which country the new machinery should be obtained and if it decided that rehabilitation could properly be made by obtaining replacements of the machinery from Western European countries from where the original machinery was obtained, it would be unreasonable to ignore the quotations received from those countries. The Tribunal however points out that Mr. Mukherjee, the Company's witness has himself admitted that rehabilitation could be conveniently made by importing from Eastern European countries. The only reason this witness has given for not obtaining quotations from those countries was that all kinds of machines would not be available there at a time. This explanation is obviously beside the point. Because it will not be ordinarily necessary to replace all the machines at any one time. In this connection one is bound to take notice, as the Tribunal had done, of the fact that it is easier to arrange payments for purchase from Eastern European countries which would accept payments in rupees than for similar purchases in Western European countries the foreign exchange for which might not be easily available. The Tribunal also pointed out that Mr. Mukherjee has produced no records to show the new purchases of machine in recent years which would have shown how the replacements have been made. There is much force also in the Tribunal's comment that when Mr. Nadjarian who has given evidence about the price of buildings says that he got these from records and these records have not been produced it becomes difficult to accept his testimony.

8. On a consideration of the reasons given by the Tribunal we are convinced that it has not acted arbitrarily in treating the evidence adduced by the Company as unreliable.

9. Having rejected the Company's evidence the Tribunal might have felt inclined to refuse any amount for rehabilitation charge for the year 1958-59. But rightly resisting that inclination the Tribunal gave the Company the benefit of the assessment made for the year 1954-55. It is therefore not possible for us to disturb the Tribunal's findings on the question of rehabilitation charge.

10. We think it proper however to add that if in any future dispute reliable evidence is adduced by the Company on the question of rehabilitation due weight should be given to it in coming to a conclusion and the Tribunal should not reject it merely on the basis of what has been found in the previous dispute of 1954-55 or in the present Reference.

11. As has been already pointed out the consequence of leaving the Tribunal's findings on the question of rehabilitation undisturbed is that the available surplus would be about Rs. 51 lacs, even if all other figures as computed by the Company are accepted. On that figure of available surplus it would not be reasonable to

disturb the Tribunal's award of 5 1/2 months' wages as bonus to the workmen. This is sufficient to dispose of the Company's appeal.

12. In order however to decide whether the workmen's claim for bonus of more than what has been allowed by the Tribunal is justified or not it is necessary to examine some of the other figures in the calculation of the available surplus. In calculating the gross profits at Rs. 181.82 lacs the Tribunal has added back to the net profit, in addition to the sum which the Company agreed should be added, the sum of Rs. 2,87,342 paid as salaries for the previous years, Rs. 10,74,523 paid as contribution for provident fund Rs. 2,07,322 paid into the development rebate statutory reserves, Rs. 13,48,403 out of certain expenditure said to have been incurred on purchases of raw and other materials, stores and spare parts, repairs to buildings and repairs to machinery; Rs. 3,27,856 out of the expenditure shown under the head Miscellaneous Expenses; and Rs. 50,871 paid as rates and taxes in respect of previous years. The Tribunal is clearly correct in thinking that payment of salaries of previous years as also rates and taxes for previous years cannot be considered proper expenses for the year 1958-59 for the purpose of ascertaining the available surplus. For, as pointed out in previous decisions of this Court, the credits and debits referable to the working of previous years cannot be taken into consideration for this purpose for the simple reason that the workmen concerned do not remain identical year after year.

13. It is equally clear that the Tribunal was justified in refusing, in the absence of proper evidence to accept the Company's contention that the expenses shown in the profit and loss account under the head of purchases of (1) raw and other materials, (2) stores and spare parts consumed, (3) repairs to buildings, (4) repairs to machinery, were all revenue expenditure. Mr. Sen has pointed out that the annual accounts of the Company show the expenditure incurred for capital expenditure separately. He contends that entries in the profit and loss account on the items mentioned above having been accepted by the Auditors as properly shown as revenue expenditure, the correctness of that view should not have been doubted. We are unable to agree however that the Tribunal was bound to accept as correct whatever had been found to be correct by the Auditors. A controversy had already been raised whether or not these items had been entirely spent as revenue expenditure. It was up to the Company to adduce further evidence in support of what had been shown in profit and loss account. That was not done. No fault can be found therefore with the Tribunal in proceeding to calculate 2 1/2% of the figure of these four items as representing capital expenses.

14. The Tribunal was in our opinion also right in adding back the amount paid into the development rebate statutory reserve. Money paid into this reserve cannot properly be considered as an expenditure on revenue account. For, it remained available for the Company's use throughout the year.

15. We think however that the Tribunal has fallen into error in adding back Rs. 10,74,523 which was paid during the year by the Company to the trustees of the provident fund. In adding back this amount the Tribunal apparently relied on an observation of this Court in Indian Hume Pipe Co., Ltd., v. Their Workmen (1959) Su. 2 S.C.R. 948. At page 954 of the Report Bhagwati J. speaking for the Court said :

'It is well-settled that the actual income-tax payable by the Company on the basis of the full statutory depreciation allowed by the income-tax authorities for the relevant accounting year should be taken into account as a prior charge irrespective of any set off allowed by the Income-tax authorities for prior charges or any other considerations such as building up of income-tax reserves for payment of enhanced liabilities of income-tax accruing in future. It is also well-settled that the calculations of the surplus available for distribution should be made having regard to the working of the industrial concern in the relevant accounting year without taking into consideration the credits and debits which are referable to the working of the previous years, e.g., the refund of excess profits tax paid in the past or loss of previous years carried forward but written off in the accounting year as also future liabilities, e.g., redemption of debenture stock, or provision for Provident Fund and Gratuity and other benefits, etc., which, however, necessary they may be cannot be included in the category of prior charges.'

16. The reference in this statement to provision for provident funds as one to meet future liability was clearly made on the assumption that the money was being kept apart by the employer himself so that he would be able to make payment in a future year when the payment would become due. This can have no application to a case where the contribution to provident fund has to be made to somebody else. Indeed, it would be wrong to treat this as payment to meet a future liability inasmuch as the liability to make to payment to the trustees arose under the Act itself. This is not a case where the Company was laying by money for a future liability but was able to use it if it liked. That would be a proper case of provision to meet a future liability. The payment by way of contribution to the trustees of the fund in accordance with the statute cannot be, however, properly regarded as a provision to meet a future liability. This payment should therefore be regarded as payment made for a demand for liability of the year in question, viz., 1958-59 and cannot be added back to the net profits to ascertain the gross profits.

17. As regards the sum of Rs. 3,27,856 which has been added back out of the expenditure on Miscellaneous Expenses a mistake has clearly been made in respect of Rs. 2,83,156 out of it. The break up in Ex. F. for the Miscellaneous Expenses showed inter alia Rs. 6,52,230 as spent for freight, customs duty etc., The Tribunal thinks that as Rs. 2,83,156 has been separately shown in the profit and loss account as freight and shipping charges it is not unlikely that this amount has been again included in Rs. 6,56,230 shown under the head freight, customs duty etc. Mr. Sen contends that it would be unreasonable to think that the same vouchers had been accepted by the Auditors in support of entries of expenditure under two different heads and that it would be proper to think that Rs. 2,83,156 shown as freight and shipping charges was independent and separate from the freight and customs duty etc., included under the head Miscellaneous Expenses.

18. There is much force in this contention and we think it reasonable to believe that the sum of Rs. 2,83,156 shown in the profit and loss account under the head freight and shipping charges was not included under the head Miscellaneous Expenses. The Tribunal was therefore wrong in adding back this sum of Rs. 2,83,156. As regards the other items which, together with this Rs. 2,83,156 made up the total of Rs. 3,27,856 that have been added back by the Tribunal we see no reason to disturb its conclusion.

19. We see no reason also to disturb the Tribunal's findings that the rate of 7% on preference shares being a contractual one should not be diminished and that an increase of 30 % was also allowable under s. 3(1) of the Preference Shares (Regulation of Dividends) Act of 1960. We are of opinion that the Tribunal was also right in holding that such an increase was not admissible in respect of the ordinary shares.

20. On behalf of the workmen an objection was raised to the Tribunal's findings as to the amount of working capital used. It was said that the evidence did not clearly show the periods during which the amounts were used. In this connection the Tribunal has after consideration of the evidence of Mr. Ghose and Mr. Dutt accepted their evidence and the mere fact that it mentioned some weakness in respect of some minute details does not affect the finality of the Tribunal's conclusion.

21. The result of not adding back the sums mentioned above, viz., Rs. 10,74,523 and Rs. 2,83,156 is that the gross profits became Rs. 168.25 lacs. The Income-tax on this after making the allowances for statutory depreciation and the development rebate, i.e., a total sum of Rs. 17,86,583 is Rs. 67.67 lacs. The calculations for the available surplus therefore stand thus :-

(Rupees in lacs)Gross Profits 168.25Less Normal Notional Depreciation 20.37Less Income-tax 67.67Less Return on Paid-up Capital 7.39Less Return on Working Capital 5.73Less Rehabilitation Charges 3.29(23.66 minus 20.37)-------Available surplus 63.80-------

22. The award of bonus at 5 1/2 months' wages appears to be reasonable and proper on this figure of the available surplus. The employers' plea of reduction of the bonus of the workmen's claim for increase of it appear to us equally unjustified.

23. All the appeals are accordingly dismissed. There will be no order as to costs.

24. Appeals dismissed.