KHANDESH SPG. & WVG. MILLS CO. LTD.

v.

THE RASHTRIYA GIRNI KAMGAR SANGH, JALGAON

1960
January 22.

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, AND K. C. DAS GUPTA, JJ.)

Industrial Dispute—Bonus—Full Bench Formula—Rehabilitation—Reserves used as working capital—Mode of Proof.

In ascertaining the surplus available for the payment of bonus according to the Full Bench formula the Industrial Court allowed the statutory depreciation but did not give any credit for the rehabilitation amount claimed. The Industrial Court estimated the amount required for rehabilitation at Rs. 60 lakhs; out of this amount it deducted Rs. 51 lakhs representing the reserves and the balance of Rs. 9 lakhs spread over a period of 15 years gave the figure of Rs. 60,000 as the amount that should be set apart for the year in question for rehabilitation. This amount being less than the statutory depreciation the Industrial Court held that the appellant was not entitled to any deduction on account of rehabilitation as a prior charge. The appellant contended that the balance-sheet disclosed that the entire reserves had been used as working capital and consequently the said reserves should not be excluded from the amount claimed towards rehabilitation.

Held, that the appellant had failed to prove that the reserves had in fact been used as working capital and as such the amount was rightly deducted by the Industrial Court from the amount fixed for rehabilitation.

The Associated Cement Companies Ltd. v. *Its Workmen.* [1959] S.C.R. 925, referred to.

In view of the importance of the item of rehabilitation in the calculation of the available surplus it was necessary for tribunals to weigh with great care the evidence of both parties to ascertain every sub-item that went into or was subtracted from the item of rehabilitation. If parties agreed, agreed figures could be accepted. If they agreed to a decision on affidavits, that course could be adopted. But in the absence of agreement the procedure prescribed by O. XIX, Code of Civil Procedure had to be followed. The accounts, the balance-sheet and profit and loss accounts were prepared by the management and the labour had no hand in it. When so much depended on this item it was necessary that the Industrial Court insisted upon a clear proof of the item of rehabilitation and also gave a real and adequate opportunity to labour to canvass the correctness of the particulars furnished by the employers.

Indian Hume Pipe Company, Ltd. v. *Their Workmen.* [1960] 2 S.C.R. 32, *Tata Oil Mills Company Ltd.* v. *Its Workmen.* [1960] 1 S.C.R 1. *and Anil Starch Products Ltd.* v. *Ahmedabad Chemical Workers' Union.* C.A. No. 684 of 1957 (not reported), referred to.

1960

Khandesh SPG. & WVG. Mills Co. Ltd.
v.
The Rashtriya Girni Kamgar Sangh, Jalgaon

CIVIL APPELATE JURISDICTION: Civil Appeal No. 257 of 1958.

Appeal by special leave from the Award dated August 20, 1957, of the Industrial Court, Bombay, in Reference (IC) No. 197 of 1956.

C. K. Daphtary Solicitor - General of India. S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the appellant.

B. P. Maheshwari, for the respondent.

I. N. Shroff, for Interveners Nos. 1 and 2.

The Intervener No. 3 did not appear.

1960 January 22, The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—This appeal raises the question as to what extent the reserves can be deducted from the amount required for rehabilitation of plant and machinery and also as to the manner by which the deductible reserves can be ascertained. It would be enough if we narrated only the facts relevant to the question raised. The appellant, Khandesh Spinning and Weaving Mills Company Limited, is a textile mill and its factory is situate at Jalgaon. The respondent, Rashtriya Girni Kamgar Sangh, represents the employees of the appellant-Company. The respondent on behalf of the employees issued a notice to the appellant under s. 42(2) of the Bombay Industrial Relations Act, 1946, demanding payment of reasonable bonus for the period from January 1, 1955 to December 31, 1955. Negotiations in this regard having failed, the respondent made a reference to the Industrial Court under s. 73A of the said Act for arbitration of the dispute arising out of the said notice.

The arbitrator, i.e. the Industrial Court, following the "Full Bench Formula", ascertained the surplus to be Rs. 2·20 lakhs after deducting the prior charges from the gross profits of the Company, but it did not give any credit to the rehabilitation amount apart from the statutory depreciation. The Industrial Court disallowed this item for the following reasons: It estimated the amount required for rehabilitation at Rs. 60 lakhs; out of this amount it deducted Rs. 51 lakhs representing the reserves and the balance of Rs. 9 lakhs spread over a period of 15 years gave the

figure of Rs. 60,000 as the amount that should be set apart for the year in question for rehabilitation. As the statutory depreciation was Rs. 83,639, it came to the conclusion that the Company would not be entitled to any allocation as a prior charge for rehabilitation. After excluding the said item of rehabilitation, it fixed the surplus in a sum of Rs. 2·20 lakhs and awarded to the employees four months' basic wages as bonus.

The learned Solicitor General contended that the Industrial Court accepted the position that the reserves were used as working capital, but deducted the said amount from the amount required for rehabilitation on a wrong and unjustified assumption that, as the amounts so required would be spent for rehabilitation over a course of 15 years by instalments, the temporary user of the said reserves would not affect the question as they would be released in part or in whole in future years. He argued that this assumption was contrary to the view expressed in decided cases and also the principle governing the ascertainment of the amount for rehabilitation purposes.

On the contrary the learned counsel for the respondent argued that the Industrial Court only assumed that the reserves had been utilised as working capital, as in the view taken by it, it did not in the least matter whether the reserves were so utilised or not and that, even if that view was wrong, the appellant could not succeed, unless it proved by relevant and acceptable evidence that the reserves were so utilised and that it did not place before the Industrial Court any such evidence to prove that fact. The first question, therefore, is, what is the scope of the finding of the Industrial Court in this regard? The Industrial Court in dealing with the contentions of the parties before it observed as follows:

> "It is true that until some amount is required to be spent for rehabilitation, replacement or modernization, reserves must be used as working capital, but Shri Vimadalal's argument overlooks that the amount required to be spent for rehabilitation over a course of 15 years is not required to be

1960

Khandesh SPG. & WVG. Mills Co. Ltd. v. The Rashtriya Girni Kamgar Sangh, Jalgaon

Subba Rao J.

spent all at once, but by instalments over a long period."

These observations did not record any finding that the reserves were used as working capital. It was only an assumption made by the Industrial Court, as, in the view taken by it, it was immaterial whether the reserves were used as working capital or not. We do not think that the aforesaid opinion expressed by the Industrial Court is sound. In ascertaining the surplus for the purpose of fixing the bonus for a particular year, the state of affairs in that year is the guiding factor. If in a subsequent year any part of the reserves used as working capital is released, that amount will have to be taken into account in ascertaining the surplus for that year and so on for subsequent years: otherwise it will lead to the anomaly of the reserves being excluded from the amount required for rehabilitation, though as a matter of fact the entire reserves were utilised as working capital, and though in future years they were expected to be released but in fact not so released. This would lead to a result inconsistent with the decisions on the subject which have clearly laid down that the reserves which have been used as working capital shall not be deducted from the amount fixed for rehabilitation.

This result does not advance the case of the appellant, unless it is able to prove by admissible evidence that it has used the reserves as working capital during the bonus year in question. The principles governing the "reserves" in this context are well-settled. This Court in *The Associated Cement Companies Ltd.* v. *Its Workmen* (1) restated the principle thus at p. 970:

> "Before actually awarding an appropriate amount in respect of rehabilitation for the bonus year certain deductions have to be made. The first deduction is made on account of the breakdown value of the plant and machinery which is usually calculated at the rate of 5% of the cost price of the block in question. Then the depreciation and general liquid reserves available to the employer are deducted. The reserves which have already

(1) [1959] S.C.R. 925.

been reasonably earmarked for specific purposes of the industry are, however, not taken into account in this connection. Last of all the rehabilitation amount which may have been allowed to the employer in previous years would also have to be deducted if it appears that the amount was available at the time when it was awarded in the past and that it had not been used for rehabilitation purposes in the meanwhile. These are the broad features of the steps which have to be taken in deciding the employer's claim for rehabilitation under the working of the formula."

This decision, therefore, lays down, so far as it is relevant to the present purpose, that two items shall be deducted from the rehabilitation amout ascertained by adopting the "Full Bench Formula" namely, (i) general reserves available to the employer; and (ii) reserves which have not already been reasonably earmarked for specific purposes of the industry. The question is whether the mere availability of reserves or the simple earmarking for specific purposes would be sufficient to claim the said amounts as deductions. We do not think that by using the said words this Court meant to depart from the well-recognized principle that if the general reserves have not been used as working capital, they cannot be deducted from the rehabilitation amount. The reserves may be of two kinds. Moneys may be set apart by a company to meet future payments which the company is under a contractual or statutory obligation to meet, such as gratuity etc. These amounts are set apart and tied down for a specific purpose and, therefore, they are not available to the employer for rehabilitation purposes. But the same thing cannot be said of the general reserves: they would be available to the employer unless he has used them as working capital. The use of the words "reasonably earmarked" is also deliberate and significant. The mere nominal allocation for binding purposes, such as gratuity etc., in the company's books is not enough. It must be ascertained by the Industrial Court on the material placed before it whether the said amount is far in excess of the requirements of the particular purpose for which

1960

Kandesh SPG. & WVG. Mills Co. Ltd.
v.
The Rashtriya Girni Kamgar Sangh, Jalgaon

Subba Rao J.

it is so earmarked and whether it is only a device to reduce the claim of the labour for bonus. We do not suggest that it is the duty of the Industrial Court to ascertain the correct or exact figure required for a particular purpose; but it is certainly its duty to discover whether the so-called earmarking for a particular purpose is a device to circumvent the formula. If it is satisfied that there is such a device, it shall deduct that figure in calculating the rehabilitation amount and if possible arrive at a real figure for that purpose. So too, in the case of general reserves when an employer claims that a specific amount reserved has been used as working capital, it is the duty of the Industrial Court to arrive at a finding whether the said reserves, or any part of them, have been used as working capital and, if so, to what extent during the bonus year. Shortly stated before a particular reserve can be deducted from the rehabilitation amount it must be established that it has been reasonably earmarked for a binding purpose or the whole or a part of it has been used as working capital and that only such part of the reserves coming under either of the two heads can be deducted from the said amount. To illustrate, take a particular bonus year, say 1955. To start with, from the gross profits of that year only items specifically declared by this Court in *The Associated Cement Companies Ltd.* v. *Its Workmen* (1) to have a prior charge over the bonus shall be deducted to arrive at the surplus. No question of deducting any other amount reserved in regard to the profits of that year arises. But the company has specifically earmarked certain amounts for specific binding purposes in 1954 or earlier to meet future binding obligations, such as gratuity etc.; or has reserved amounts for general purposes but not to meet any contractual or statutory obligations and has not utilised the same as working capital. In the former case the amount must be deemed to have been utilised and, therefore, it cannot be deducted from the rehabilitation amount; but in the latter case, as the said amounts were not utilised by the employer as working capital, they shall be deducted from the rehabilitation amount.

(1) [1959] S.C.R. 925

What then is the procedure to be followed for ascertaining the said facts ? The burden is obviously on the employer who claims the exclusion of the reserves from the rehabilitation amount on the ground that they are used as working capital or reasonably earmarked for a specifie purpose to establish the said facts and to prove the same by relevant and acceptable evidence. The importance of this question in the context of fixing the amount required for rehabilitation cannot be over-estimated. The item of rehabilitation is generally a major item that enters into the calculations for the purpose of ascertaining the surplus and, therefore, the amount of bonus. So, there would be a tendency on the part of the employer to inflate this figure and the employees to deflate it. The accounts of a company are prepared by the management. The balance-sheet and the profit and loss account are also prepared by the company's officers. The labour have no concern in it. When so much depends on this item, the principles of equity and justice demand that an Industrial Court should insist upon a clear proof of the same and also give a real and adequate opportunity to the labour to canvass the correctness of the particulars furnished by the employer.

Cases coming before us disclose that the Industrial Courts and Labour Tribunals are not bestowing so much attention on this aspect of the case as they should. Some of the tribunals act on affidavits and sometimes even on balance-sheets and extracts of accounts without their being proved in accordance with law.

For the purpose of holding an enquiry or a proceeding under the Bombay Industrial Relations Act, 1946, s. 118 of the said Act confers on the Industrial Court the same powers as are vested in Courts in respect of—(a) proof of facts by affidavits; (b) summoning and enforcing the attendance of any person and examining him on oath; (c) compelling the production of documents; and (d) issuing commissions for the examinations of witnesses. In Courts facts have to be established either by oral evidence or by documentary evidence proved in the

1960

Khandesh SPG. & WVG. Mills Co. Ltd.
v.
The Rashtriya Girni Kamgar Sangh, Jalgaon

Subba Rao J.

manner prescribed by law. But Order XIX of the Code of Civil Procedure empowers the Court to have particular facts proved by affidavits. Under rule 1 thereof, "any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable". But it is subject to the proviso that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. Under rule 2, "upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent". A combined effect of the relevant provisions is that ordinarily a fact has to be proved by oral evidence, but the Courts, subject to the conditions laid down in Order XIX, may ask a particular fact or facts to be proved by affidavits. Industrial Courts may conveniently follow the said procedure. In view of the importance of the item of rehabilitation in the matter of arriving at the surplus for fixing the bonus, principles of equity and justice demand that tribunals should weigh with great care the evidence adduced by the management as well as by the labour to ascertain every sub-item that goes into or is subtracted from the item of rehabilitation. If the parties agree, agreed figure can be accepted. If they agree to a decision on affidavits, that course may be followed. But in the absence of an agreement, the procedure prescribed in Order XIX of the Code of Civil Procedure may usefully be followed by the tribunals so that both the parties may have full opportunity to establish their respective cases.

Recent decisions of this Court emphasize this aspect of the matter. In *Indian Hume Pipe Company Ltd.* v. *Their Workmen* (1), the balance-sheet was relied upon for proving that the amounts were available for use as working capital and that the

(1) [1959] S.C.R. 925

balance-sheet showed that they were in fact so used. Bhagwati, J., who delivered the judgment of the Court, presumably to meet the contention that the balance-sheet had not been proved, observed at p. 362 thus:

> "Moreover, no objection was urged in this behalf, nor was any finding to the contrary recorded by the tribunal."

In that case it was conceded that the reserves were in fact used as working capital. It is suggested that the learned Judge solely relied upon the relevant items in the balance-sheet in support of his conclusion and that the said observation was only an additional ground given by him, but we are inclined to think that the Court would not have accepted the items in the balance-sheet as proof of user if it was not satisfied that no objection was taken in that behalf. In *Tata Oil Mills Company Ltd.* v. *Its Workmen* (1), a similar question was raised. It was contended by the labour in that case that the depreciation reserve was not used as working capital and therefore no return should be allowed on the said reserve. The Chief Accountant of the Company made an affidavit on behalf of the Company that the said depreciation reserve, along with others, had been used as working capital. This Court accepted the affidavit for the year in question, but made the following observations for future guidance:

> "It will, however, be open to the workmen in future to show by proper cross-examination of the company's witnesses or by proper evidence that the amount shown as the depreciation reserve was not available in whole or in part to be used as working capital and that whatever may be available was not in fact so used in the sense explained above. In the present appeal, however, we must accept the affidavit of the chief accountant."

These observations also recognized the necessity to give an opportunity to the workmen to cross-examine the witnesses put forward by the management to prove the user of any particular reserve as working capital. This Court once again dealt with the same

(1) [1959] S.C.R. 924.

1960

Kandesh SPG. & WVG. Mills Co. Ltd.
v.
The Rashtriya Girni Kamgar Sangh Jalgaon

Subba Rao J.

subject in *Anil Starch Products Ltd.* v. *Ahmedabad Chemical Workers Union* (1). That appeal also raised the question whether return should be allowed on the depreciation reserve used as working capital. It was contended for the labour in that case that the depreciation reserve was not used as working capital. Rejecting the said contention, Wanchoo, J., observed :

> " It is enough to say in that connection that an affidavit was filed by the manager of the company to the effect that all its reserves including the depreciation fund had been used as working capital. The manager appeared as a witness for the company before the Tribunal and swore that the affidavit made by him was correct. He was cross-examined as to the amount required for rehabilitation, which was also given by him in that affidavit; but no question was put to him to challenge his statement that the entire depreciation reserve had been used as working capital.....In the circumstances, we must accept the affidavit so far as the present year is concerned and hold that the working capital was Rs. 34 lacs."

Notwithstanding the said finding, the learned Judge took care to reserve the rights of the workmen in future by making the following observations :

> "It will, however, be open to the workmen in future to show by proper cross-examination of the company's witnesses or by proper evidence that the amount shown as depreciation reserve was not available in whole or in part as explained above to be used as working capital and that whatever was available was not in fact so used."

This judgment again reinforces the view of this Court that proper opportunity should be given to the labour to test the correctness of the evidence given on affidavit on behalf of the management in regard to the user of the reserves as working capital.

What is the position in the present case ? It is not suggested that there is any reserve which has been reasonably earmarked to discharge a contractual or statutory obligation. We are only concerned with

(1) Civil Appeal No. 684 of 1957 (not reported)

general reserves. The learned Solicitor General contends that the balance-sheet discloses that the entire reserves have been used as working capital and that the respondent did not canvass this position in the statement filed by it before the Industrial Court. We have already pointed out that the balance-sheet, without its being proved by a person competent to do so, cannot prove that any reserves have been utilised as working capital. In the written-statement filed by the appellant before the Industrial Court, no specific allegation is made that the reserves were utilised as working capital, though in its statement of calculations the said reserves were not excluded from the amount claimed towards rehabilitation. As there is no specific allegation, the respondent also in its statement did not deny the said fact, but in its statement of calculations it did not deduct the reserves from the rehabilitation amount. Therefore, it must be held that the respondent did not accept the position that the reserve funds were utilised as working capital. Strong reliance is placed upon the evidence of the General Superintendent of the appellant-Company, but a perusal of that evidence discloses that the said witness has not deposed that the Company used the reserves as working capital; nor does the said witness seek to prove either the balance-sheet or any extract taken therefrom. In the circumstances, the respondent had no opportunity to cross-examine him in respect of the alleged user of the reserves. For the aforesaid reasons, we have no option but to hold that Rs. 51 lakhs representing the reserves were not used as working capital and, therefore, the said amount was rightly deducted by the Industrial Court from Rs. 60 lakhs fixed by it towards rehabilitation. As the balance of Rs. 9 lakhs spread over 15 years came to only Rs. 60,000 during the bonus year and as the statutory depreciation was Rs. 83,639, the Industrial Court rightly excluded the entire rehabilitation amount from its calculations in arriving at the surplus.

No other points were raised before us. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.