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BIHAR STATE ELECTRICITY BOARD, PATNA

v.

THEIR WORKMEN

September 30, 1975

[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

B

*Industrial Disputes Act—Computation of financial burden before making an award :**Electricity Supply Act, 1948—S. 59, 64, 65, 66, 67 and 68.*

C

The Employees Provident Fund Act applies only to establishments which are factories. The industry in question, electricity—including generation, transmission and distribution thereof, is one to which the Act applies. But only a small proportion of employees connected with the generation of electricity is establishments which are factories. To the rest, the Act does not apply. The appellant maintains a contributory provident fund for those employees who are not covered by the Act where the contribution is on the basis of basic wage, the appellant and the employees contributing equally. The contribution under the Act is 8 per cent whereas under the appellant's scheme it is 6½ per cent.

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The workmen respondents claimed before the Industrial Tribunal in a reference made by the Govt. of Bihar (1) that all workmen of the appellant should have the same and the similar benefits and that, therefore, there should be no distinction between the appellant's contributory provident fund scheme and the scheme under the Employees Provident Fund Act.

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(2) The services of the workmen of the appellant are liable to be transferred from one establishment to another both of which may not be covered by the same scheme and such anomalies can be removed by giving the same benefits to all the workmen; (3) That the State was the financier of the appellant which now charges interest at the rate of 6½ per cent as against previous 4 per cent; (4) That no scheme run by the Board was running at a loss; (5) That a large amount was paid to the Government by the appellant in the shape of interest towards the loans received from the Government and that such amounts should be taken as dividends to be paid to the Government by the appellant and should not be taken into consideration while deciding the matters regarding benefits to be made available to its employees.

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The appellant contended before the Industrial Tribunal that the demand of the workmen would impose additional financial liabilities which the appellant would not be able to bear.

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The Tribunal did not consider the validity of the above submissions. It merely relied on an earlier award in which it was observed that if the interest realised by the Government were excluded from consideration there would be surplus in favour of the appellant. The Tribunal held that since the position of the appellant was not worse than what it was at the time of the earlier award, the appellant should extend the benefits of the contributory provident fund to all workmen who are not covered by the Act and that the contributions should be 6½ per cent not on the basic wages but on the total wages.

Allowing the appeal,

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HELD : (1) The Tribunal has treated the whole matter in a very perfunctory manner. The main question for consideration by the Tribunal was the financial capacity of the Board. It has made no effort at all to analyse the balance sheet of the appellant to show the actual results of his working. It has made no effort to work out the financial implications of its order. It has not made it clear what exactly are the total wages. This Court in the case of Gramophone Company, although it was a case of ordinary commercial concern, calculated the actual burden to protect the stability of the industry and to see that the imposition of the burden does not result in loss to the employer. [45 B—G].

(2) The appellant is not an ordinary commercial concern. It is a public service institution. It is not expected to make any profits. It is expected to extend the supply of electricity to unserved areas without reference to considerations of loss that might be incurred as a result of such extension. Section 59 of the Electricity (Supply) Act, 1948 provides that as far as practicable the Board shall carry on its operations so as not to incur loss. S. 64 enables the State Government to advance loans to the Board. S. 65 authorises the Board to borrow. S. 66 authorises the State Government to guarantee loans raised by the Board. S. 67 lays down the manner in which the profits have to be distributed. S. 68 imposes obligation on the Board to make a credit to the depreciation reserve in the prescribed manner. [46 A—C].

The assessment by the Tribunal that the interest should not be taken into account in working out the profits is not borne out by the provisions of the statute. The Tribunal did not look into the Act at all. Whether in view of the statutory obligations laid on the appellant under the aforesaid sections, whether the same considerations which apply in the case of private commercial concerns could be applied to the Board while analysing the capacity to bear the additional burden is rather a difficult question. We do not express any view on that question. However, various sums payable under s. 67 have to be deducted before the profits could be ascertained and with regard to depreciation reserve, the provision of s. 68 may have to be taken into account. [47 C—E].

The matter was remanded back to the Tribunal to be disposed of in the light of the observations made in the judgment.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2104 of 1969.

Appeal by Special Leave from the Judgment and Order dated the 27th February, 1969 of the Industrial Tribunal, Bihar, Patna in reference No. 54 of 1966.

S. V. Gupte and *U. P. Singh* for the Appellant.

A. K. Nag and *D. P. Mukherjee* for Respondents.

The Judgment of the Court was delivered by

ALAGIRISWAMI, J.—This appeal is by special leave granted by this Court against the award of the Industrial Tribunal, Bihar at Patna in reference No. 54 of 1966 made by the Government of Bihar on 25th November, 1966. The special leave granted is limited only to the question whether there should be a contributory provident fund scheme on the basis of basic wages or total wages. It was noted at the time of granting the special leave that the appellant Board is willing to extend that scheme to all the workers except the Government servants who are on deputation and those to whom the Employees' Provident Fund Act applies. Therefore the only item in reference No. 54 of 1966 which is relevant for the purpose of this appeal is the following :

“Whether the benefit of the Employees' Provident Fund Act, 1952 should be extended to any additional categories of workmen? If so, what should be the terms and conditions and from what date?”

The Employees' Provident Fund Act applies only to establishments which are factories. It could be applied to establishments which are not factories if the Central Government by notification in the Official

- A** Gazette specifies in this behalf. The industry in question, electricity—including the generation, transmission and distribution thereof, is one to which the Act applies. But as is well-known only a small proportion of employees connected with the generation of electricity is in establishments which are factories. The transmission and distribution is all over the State and the employees concerned with transmission and distribution and the maintenance of those lines of transmission and distribution are spread all over the State and probably far outnumber those working in establishments which are factories. To them the Employees' Provident Fund Act does not apply. The Board maintains a Contributory Provident Fund where the contribution is on the basis of basic wage, the Board and the employees contributing equally.

- C** The workmen claimed that all workmen of the Board should have the same and similar benefits and that therefore there should be no distinction between the Board's Contributory Provident Fund scheme and the scheme under the Employees Provident Fund Act. Moreover, the contribution under the Act is 8 per cent whereas under the Board's scheme it is 6½ per cent. The employees also contended that the services of the workmen of the Board are liable to be transferred from one establishment to another both which may not be covered by the same scheme under the Act and therefore it will bring about serious injustice if they are deprived of their benefits under the Act, and such anomalies will be removed by making the benefits under both the schemes similar.
- D** The Board's contention was that this would impose additional financial liabilities which the Board would not be able to bear. Therefore, the main question which the Tribunal had to consider was the Board's financial capacity to implement the Provident Fund scheme as demanded by the workmen. It seems to have been argued on behalf of the workmen that the State Government is the financier of the Board which charges interest now at the rate of 6½ per cent as against the previous 4 per cent per annum. It was also contended that no scheme run by the Board was running at a loss. Exhibit 17, purported to contain trading results of the Board, was shown to the Tribunal and it was argued that in the year ending March 1969 Board's gross profits amounted to Rs. 305.12 lakhs and it had been continuously rising from Rs. 59.39 lakhs in 1961. Exhibit 18 shows the loans which have been received from the Government by the Board and the balance sheet shows a very large amount in the shape of interest payable to the Government. It was argued on behalf of the Union that this amount should be taken as dividend to be paid to the Government by the Board and should not be taken into consideration while deciding matters regarding benefits to be made available to its employees. The validity of none of these contentions was considered by the Tribunal. It referred to an award made by it in 1964 in reference No. 19 of 1960 in which it had held that if the interests realised by the State were excluded from consideration, there would be surplus in favour of the Board. In that award it had been pointed out that it had not been explained by the management how the depreciation had been calculated. That award also pointed out that one of the main reasons for the deficits shown was heavy interest on the capital investment, that in an electrical establishment capital investments are heavy in the initial stages, that the Board expected that after the load developed fully the scheme would start giving adequate
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profits. The Tribunal thought that the position at present was not worse than what it was earlier and that therefore the Board should extend the benefits of the Contributory Provident Fund to all workmen other than those who are covered by the Act. It therefore ordered that the contribution should be 64 per cent but not on the basic wages but on the total wages.

The Tribunal has treated the whole matter in a very perfunctory manner. The main question for consideration by the Tribunal was the financial capacity of the Board. It has made no effort at all to analyse the balance sheet of the Board to show the actual results of its working. It has made no effort to work out the financial implications of its order. It has not made it clear what exactly are the total wages. In *Gramophone Co. v. Its Workmen*⁽¹⁾ it was held by this Court that :

“Before the real profit for each of the relevant years is ascertained amounts to be provided for taxation and for development rebate reserve could not be deducted in order to ascertain the financial capacity of the employer. In considering the question of provident fund and gratuity which stands more or less on the same footing the industrial tribunal has to look at the profits made without considering provision for taxation in the shape of income-tax and for reserves. The provision for income-tax and for reserves must take second place as compared to provision for wage-structure and gratuity, which stands on the same footing as provident fund which is also a retiral benefit. Payment towards provident fund and gratuity is expense to be met by an employer like any other expense including wages and if the financial position shows that the burden of payment of gratuity and provident fund can be met without undue strain on the financial position of the employer, that burden must be borne by the employer. It will certainly result in some reduction in profits; but if the industry is in a stable condition and the burden of provident fund and gratuity does not result in loss to the employer that burden will have to be borne by the employer like the burden of wage-structure in the interest of social justice. While on the one hand casting of this burden reduces the margin of profit, on the other hand it will result in the reduction of taxation in the shape of income-tax.”

That case was a case of an ordinary commercial concern. Even so it was noticed that the stability of the industry as well as the fact that the burden of provident fund and gratuity does not result in loss to the employer are to be taken into consideration. The actual burden was calculated and it was pointed out that 63 per cent of it would be met by reduction in taxation. Nothing of the sort has been done by the Tribunal in this case. It is true that in that case it was said that the amounts to be provided for taxation and for development rebate reserve could not be deducted in order to ascertain the financial capacity of the employer. Nothing was said there about the depreciation reserve

(1) [1964] II L. L. J. 131.

- A which is obligatory under s. 68 of the Electricity (Supply) Act. The Electricity Board is not an ordinary commercial concern. It is a public service institution. It is not expected to make any profit. It is expected to extend the supply of electricity to unserved areas without reference to considerations of loss that might be incurred as a result of such extension. The Government makes subventions to the Board for the purposes of the Act. Section 59 of the Electricity (Supply) Act, 1948 provides that as far as practicable and after taking credit for any subventions from the State Government the Board shall carry on its operations so as not to incur a loss. Under s. 64 the State Government may advance loans to the Board and under s. 65 the Board itself has the power to borrow. Under s. 66 the State Government may guarantee the payment of principal and interest of any loan proposed to be raised by the Board. Under s. 67 after meeting its operating, maintenance and management expenses and after provision has been made for the payment of taxes on its income and profits the revenues of the Board have to be distributed as far as they are available in the following order, namely :—
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- (i) interest on bonds not guaranteed under section 66;
 - (ii) interest on stock not so guaranteed;
 - (iii) credits to depreciation reserve under section 68;
 - (iv) interest on bonds guaranteed under section 66;
 - (v) interest on stock so guaranteed;
 - (vi) interest on sums paid by the State Government under guarantees under section 66;
 - (vii) the write-down of amounts paid from capital under the proviso to section 59;
 - (viii) the write-down of amounts in respect of intangible assets to the extent to which they are actually appropriated in any year for the purpose in the books of the Board;
 - (ix) contribution to general reserve of an amount not exceeding one-half of one *per centum per annum* of the original cost of fixed assets employed by the Board so however that the total standing to the credit of such reserve shall not exceed fifteen *per centum* of the original cost of such fixed assets;
 - (x) interest on loans advanced or deemed to be advanced to the Board under section 64, including arrears of such interest;
 - (xi) the balance to be appropriated to a fund to be called the Development Fund to be utilised for—
 - (a) purposes beneficial, in the opinion of the Board, to electrical development in the State;
 - (b) repayment of loans advanced to the Board under section 64 and required to be repaid :

Provided that where no such loan is outstanding, one-half of the balance aforesaid shall be credited to the Consolidated Fund of the State.

Section 68 lays an obligation on the Board to make a credit to the depreciation reserve in the prescribed manner.

The facile assumption by the Tribunal that the interest should not be taken into account in working out the profits is not borne out by the provisions of the statute. Indeed the Tribunal did not look into the Act at all. Whether in view of the statutory obligations laid on it under the various sections just now referred to in analysing the capacity of the Board to bear any additional burden in the matter of provident fund or other amenities the same considerations that applied in the case of private commercial concerns could be applied is a rather difficult question. In fact the decision might very often depend on a close analysis of the financial condition of the Board. We do not want at present to express one view or the other. One thing at least is obvious, that the various sums payable under the provisions of s. 67 have to be deducted before the profits could be ascertained. Even with regard to the depreciation reserve the provisions of s. 68 may have to be taken into account. If it is not it would have to be met by loans on which interest will have to be paid and deduction of interest so paid will have to be taken into account in calculating the profits. The contribution to the depreciation reserve is a statutory obligation and is a definite proportion whereas it is open to an ordinary commercial concern to credit any amount to the depreciation reserve. These and other matters cannot be properly decided in the absence of a detailed examination of the finances of the Board. That is why we said that the Tribunal has dealt with the matter in a perfunctory way. It should be directed to dispose of the matter afresh in the light of the observations made in this judgment.

The appeal is accordingly allowed. There will be no order as to costs.

P.H.P.

Appeal allowed.