Oriental Metal Pressing Works (P.) Ltd. vs The Workmen And Anr. on 23 March, 1965

Equivalent citations: [1965(11)FLR9], [1966]60ITR202(SC), (1965)IILLJ99SC

Bench: K.N. Wanchoo, P.B. Gajendragadkar

JUDGMENT

Wanchoo, J.

1. This is an appeal by special leave against the award of the Industrial Tribunal, Maharashtra, at Bombay. There was a dispute between the appellant and its workmen as to bonus for the year 1959. The workmen-respondents claimed six months' wages as bonus. The appellant on the other hand claimed that on a proper working of the Full Bench formula there would be no available surplus to entitle the respondents to any bonus. As the dispute could not be settled, the matter was referred by the Government of Bombay to the tribunal. The tribunal went into the calculations on the basis of the Full Bench formula and came to the conclusion that there was sufficient available surplus to warrant payment of bonus at the rate of 10 per cent. of the basic earnings of each workman for the year 1959. It, therefore, gave an award to the effect that the appellant would pay 10 per cent. of their basic earnings for the year 1959 as bonus to the workmen concerned. The appellant then obtained special leave from this court and that is how the matter has come up before us.

2. Three points have been urged on behalf of the appellant in support of the appeal, namely, (i) the tribunal was not justified in reducing the remuneration of the managing director from Rs. 3,500 per month to Rs. 2,500 per month, (ii) the tribunal was wrong in not allowing a sum of Rs. 84,000 as further income-tax under section 23A of the Indian Income-tax Act, and (iii) the tribunal was wrong in allowing rehabilitation at rupees one lakh only and that a much larger sum was properly allowable as rehabilitation. We shall deal with these points one by one.

Re (i) : So far as remuneration of the managing director is concerned, the contention on behalf of the appellant is that, according to the written agreement between the appellant and the managing director, he is entitled to a salary of Rs. 3,500 per month and the tribunal was clearly wrong in not allowing this salary based on an agreement binding on the appellant. Reliance in this connection is placed on the decision of this court in Crompton Parkinson (Works) Private Limited v. Its Workmen We do not think it necessary for present purposes to decide this point for it is admitted on behalf of the appellant that it makes no difference to the amount awarded as bonus whether this amount of Rs. 12,000 per year is allowed or not. The question whether the tribunal can reduce the remuneration which is based on a written agreement binding on the employer is therefore left open to be decided in a case where it will matter.

Re (ii) : As to the claim of Rs. 84,000 as income-tax under section 23A of the Income-tax Act, it is enough to say that levy of income-tax under section 23A of the Income-tax Act depends upon certain conditions being fulfilled and in the absence of those conditions being fulfilled, no income-tax under section 23A is due. It is true that the Full Bench formula on the basis of which the available surplus is found is in many respects notional Even so, we are opinion that income-tax on the basis of section 23A cannot be allowed even nationally, for income-tax under that section may or may not be leviable at all. Therefore, an employer if he claims deduction for income-tax under section 23A must shows that in actual fact such income-tax was levied on him for the year in dispute. In the present case the evidence on behalf of the appellant shows that no income-tax was in fact levied on the appellant under section 23A of the Income- tax Act. In these circumstances the tribunal was right in disallowing any claim for income-tax under section 23A of the Income-tax Act.

Re (iii) : The last question relates to rehabilitation. In this connection the appellant examined an expert, namely, Pathanky, and according to his evidence, the rehabilitation amount came to be Rs. 8,28,163 per year. His statement was that rehabilitation of the machinery would require just over rupees thirty-six lakhs and according to the remaining life of the machinery he was of opinion that this rehabilitation had to be undertaken within a period of 4 1/2 years. That is how he arrived at a sum of over rupees eight lakhs as rehabilitation for the year in dispute. The tribunal has stated that it has found nothing in the evidence of the expert to discredit his testimony. Even so, it was of opinion that it should not allow the appellant more than rupees one lakh as rehabilitation for the year in dispute on account of certain circumstances. One reason for this was that the appellant had done nothing throughout its existence to rehabilitate its machinery and no good reasons had been given for this. The resultof this was that rehabilitation which should have been spread over a large number of years depending upon the life of the machinery had to be done in a concentrated from in 4 1/2 years. Another reason given by the tribunal was that in an earlier reference the appellant had contended that there was an agreement with the workmen that the claim for rehabilitation should be allowed with the workmen that the claim for rehabilitation should be allowed at rupees one lakh including the notional normal depreciation for each year for the period of four years from 1957 to 1960. The union in that case had not denied the agreement but had contended that it was conditional on an over all settlement of bonus for all the four years; but as no such overall settlement could be arrived at, the union contended that the agreement should not be enforced. In that case the tribunal had observed that the question of bonus for the years 1959/1960 would be at large, i.e., it would be open to the parties to agitate again on the point of rehabilitation. Even so, the tribunal held that though the union was claiming that it was not bound by the agreement, the appellant should be held to be bound by what it had stated in the earlier reference. In the result, the tribunal allowed only rupees one lakh as rehabilitation for the year in dispute. We cannot say that in the circumstances of this case, the tribunal was wrong. In this case also the appellant had in the alternative asked for rupees one lakh as rehabilitation for the four years 1957-60. We also make it clear that, in 1961 it will be open to the appellant to re-agitate the matter on production of proper evidence in case the matter comes up in reference again and it is able to show that it has in the meantime done something substantial towards rehabilitation during these four years. It is not disputed that if rehabilitation is only allowed at rupees one lakh, the order of the tribunal granting 10 per centum of the basic earnings for the whole year as bonus cannot be assailed.

3. We therefore dismiss the appeal, but in the circumstances of this case, order parties to bear their own costs.

4. Appeal dismissed.