

Aluminium Corporation Of India vs Their Workmen on 14 February, 1969

Equivalent citations: [1969(18)FLR274], (1970)ILLJ657SC, (1969)3SCC832, AIRONLINE 1969 SC 18, AIRONLINE 1969 SC 54

Bench: J.M. Shelat, V. Bhargava

JUDGMENT

1. This Appeal by aluminium Corporation of India, Ltd., Calcutta, filed by special leave, is directed against an award of the fourth industrial tribunal, West Bengal, in an industrial dispute relating to payment of bonus for the year 1958-59 to the workmen employed in the appellant's factory at J.E. Nagar, and the head office at Calcutta. The workmen were represented by the Aluminium Mazdoor Union, J.K. Nagar, district Bardwan, and the Aluminium Corporation Calcutta Employees' Association, Calcutta. The tribunal calculated the surplus available for distribution of bonus on the basis of the Full Bench formula approved by this Court in the case of Associated Cement Companies, Ltd. (Dwarka Cement Works), and Ors. v. their workmen [1059-1 L.L.J. 644]. The appellant had granted voluntarily bonus equivalent to one-sixteenth of the annual basic wages. In the appeal, the award is challenged on only two grounds. One is that the tribunal wrongly rejected the claim of the appellant for return on reserves employed as working capital, and the second is that the tribunal was also wrong in disallowing rehabilitation charges in respect of buildings and machinery of the appellant. Consequently, in this appeal, we are only concerned with these two aspects of calculation of surplus available for distribution of bonus in accordance with the Full Bench formula.

2. Before we deal with the merits of the appeal, we may mention that, subsequent to the award by the tribunal, a compromise was arrived at between the appellant and the Aluminium Mazdoor Union, J.K. Nagar. In this compromise, parties settled disputes relating to numerous matters and, amongst these disputes settled, they also Included the dispute relating to payment of bonus for the year 1958-59. This compromise was signed by counsel who have represented the two parties before us in this appeal. There is a prayer that this compromise be recorded. We accept this compromise and direct that it be recorded, so that the award of the tribunal in respect of payment of bonus for the year 1958-59 as between these two parties shall stand varied in accordance with the terms of this compromise. As a result of this order, we make it clear that the sub-sequent order to be made by us in respect of the award of the tribunal on the merits shall only be binding as between the appellant and those respondents who are not bound by the compromise and the settlement forming part of the compromise.

3. In dealing with the appeal, we first take up the claim of the appellant in respect of return on reserves employed as working capital dating the year 1958-59. This claim was rejected by the tribunal on the view that the evidence given on behalf of the appellant was very unsatisfactory. Only general statements were made by the witnesses examined on behalf of the appellant stating that amounts to the value of about Rs. 44 lakhs out of the depreciation reserve and some other reserves

were utilized as working capital during this year. A statement Ex. 1(i) was filed on behalf of the appellant-company showing the various reserves which were available throughout the year 1958-59. By this statement it was claimed that an average amount of Rs. 1,36,78,004 of reserves was available during this year for being used as working capital and witnesses stated that the amount was actually so used. The tribunal, In (sic) opinion, was right in rejecting this evidence because the mere fact that the reserves were available for use as working capital does not necessarily, lead, to the conclusion that the reserves must have been so used. The reserves could as well have been utilized for making investments or in acquiring fixed assets. It was on this view that the tribunal rejected the claim for return on reserves used as working capital altogether. However, we consider that the claim should be partly allowed on the basis of the principle laid down by this Court in this behalf In the case of Workmen of Hindustan Motors, Ltd. v. Hindustan Motors, Ltd. and Anr. 1969-1 L.L.J. 523. It was held in that case that the balance sheet can itself give Indications from which inference can be drawn to find out what items in the balance sheet represent working capital and what items represent fixed assets. Investments, etc.. which cannot be treated as working capital. The Court also indicated how certain resources must necessarily be employed in acquisition of fixed assets, Investments, etc., so that they will not be available for utilization as working capital, while there are some resources which must necessarily be utilized as working capital. After the amounts are taken into account, it is possible to find out what amounts out of the reserves were utilized as working capital and what amounts were utilized for other purposes. Learned counsel for the appellant rightly urged that a calculation on the same principal may be made in the present case and return on reserves employed as working capital may be allowed accordingly. The classification of the assets as well as of the resources has made in the same manner in which the Court proceeded to do so in the Case of Hindustan Motors, Ltd. [1969-I L L. J. 523] (vide supra).

4. Applying those principles, It seems to us that, according to the balance sheet of the appellant for the year 1958-59, the amounts of Rs. 74.11,509 representing the value of current assets, Rs. 6,33,761 shown as loans and advances, and Rs. 3,03,954 shown as cash and bank balances, Ignoring Rs. 8,00,000 in short deposit accounts with banks, can be properly treated as forming part of the working capital. Tills makes a total of Rs. 83,49,224. The remaining assets shown as fixed assets of the value of Rs. 2,85,20,803, library books of the value of Rs. 9,8,160, investments of the value of Rs. 10,915, Trustees A.O.I. Employees' Provident Fund amount of the value of Rs. 5,95,435, and Rs. 8,00,000 in short deposit accounts with banks must be held to be Items of assets which are not part of the working capital. These amounts total to Rs. 2,99,43,343.

5. In this connexion, Sri G. B. Pal, learned counsel for the appellant, urged before us that the sum of Rs. 8,00,000 in short deposit accounts with banks should also be treated as part of the working capital on the ground that this amount was available for use as working capital during the year, as it could be with- drawn from the banks as soon as the deposits matured. It, however, appears to us that this submission ignores the circumstances under which these deposits were kept in the banks. It seems that, prior to the year 1957-58, no such short deposit accounts were being maintained. It was for the first time in the year 1957-58 that a sum of Rs. 8,00,000 was kept In such accounts obviously because the appellant had this much surplus money. The balance sheet for the year 1958-59 shows that, at the end of that year, this deposit rose to Rs. 30,00,000; and in the next financial year, to about Rs. 49,00,000. Obviously, these amounts kept in short deposit accounts with bulks were not

needed for use as working capital in running the factory. The amounts were in fact in the nature of investments, though kept in short deposit accounts. In such cases, these amounts cannot be treated as part of the working capital and, in fact, it would be appropriate to hold that reserves available were being kept in these deposit accounts. To the extent of those amounts, therefore, the reserves available must be held not to have been utilized as working capital, but kept as investment in these accounts. That is the reason why we have excluded this amount of Rs. 8.00,000 from working capital of this year.

6. On the side of liabilities, indicating the resources from which moneys were available, the amounts, which must be treated as necessarily employed for purposes other than working capital according to the principles laid down in the case of Hindustan Motors, Ltd. [1969-1 L.L.J. 523] (vide supra), will be subscribed capital of Rs. 1,00,00,000, provident fund of Rs. 6,95,435, and mortgage debentures of the value of Rs. 85.00.000, totalling Rs. 1,40,95,436. The two sums of Rs. 10,00,000 representing secured loans obtained by issue of mortgage debentures, and Rs. 27,23,695 representing current liabilities and provisions, totalling Rs. 37,23,695 must necessarily be held to be amounts utilized in working capital. In this calculation also, learned counsel for the appellant argued that the sum of Rs. 10,00,000, which was obtained by Issue of mortgage debentures after giving security of the property and fixed assets of the appellant-company, should be treated as an amount utilized in the acquisition of fixed assets; but we are not prepared to accept this submission. The loan on mortgage debentures of the value of Rs. 35,00,000, which we have treated as a resource available for Investment in fixed assets, was obtained from the Industrial Finance Corporation of India, and a copy of the mortgage bond executed filed before us shows that the loan was specifically for expansion and investment in fixed assets. That is why we have treated that amount as available for investment in fixed assets only and not available as working capital. So far as the loan of Rs. 10,00,000 obtained on mortgage debentures from others is concerned, there is no evidence at all on behalf of the appellant to show that there was any similar limitation for the utilization of this loan. The burden of proving what amount out of reserves was utilized as working capital lay on the appellant and, if the appellant wanted to urge that this loan of Rs. 10,00,000 was not utilized as working capital and that the equivalent amount from reserves was so utilized, it was for the appellant to establish affirmatively that this amount of loan of Rs. 10,00,000 could not possibly have been utilized as working capital because of the terms of the loan. The appellant having failed to do so, it must be held: that the burden of proof, which lay on the appellant, has not been discharged and the benefit of this must go to the workmen.

7. On the basis of the above figures, the result arrived at is that towards the fixed assets of Rs. 2,99.43,343 the amount utilized from resources other than reserves come to Rs. 1,40,435, so that the balance of Rs. 1,58,47,908 in those assets must have been invested out of the total reserves of Rs. 2,04,73,437. So far as the working capital is concerned, the amount, which must have been utilized out of the reserves, comes to Rs. 46,25,529 being the difference between the total working capital of Rs. 83,49,224 and the amounts of Rs. 37,23,695 which must necessarily be allocated out of the resources other than reserves for utilization is entitled to 4 per cent return on the sum of Rs. 46,25,529 which is thus calculated as the amount of reserves utilized as working capital, The amount in respect of this return, which must be deducted when calculating surplus available for distribution of bonus, is Rs. 1,85,021.

8. So far as the claim for rehabilitation charges is concerned, learned counsel for the appellant took as through the evidence given in support of this claim. After going through the evidence, we have found that the Information supplied to the tribunal by the appellant was unsatisfactory and insufficient to enable the tribunal to calculate the rehabilitation charges properly. According to the evidence, the original cost of the buildings, plant and machinery has been entered in the statements prepared by the appellant only on the basis of balance sheets; but no evidence was produced to show that the figures in the balance sheets were correct. In fees, purchase registers and original accounts, which would have shown the amounts invested on these various items, were not even available for the period prior to the year 1945. Even, for the subsequent period, the original documents were not produced. The balance sheets merely showed the consolidated price of the plant and machinery and there was no explanation how the separate value of each plant or machinery was put down in the statements for purposes of calculation of rehabilitation charges when details constituting the total value entered in the balance sheets were not available in the accounts. Even the plant and machinery registers subsequent to the year 1945 were only bought to be supported by registers which have been rejected by the tribunal as unreliable. That rejection was fully justified, because, on examination of the registers, we ourselves found that they contained out-tings, appeared to have been written irregularly and not on consecutive dates, and indicated that amounts spent on repaint were also included in the capital values of the machines. The registers admittedly were never shown to the auditor. Figures based on such registers could not obviously have been accepted by the tribunal. Similarly, the evidence given to prove the replacement cost of the various machines was also highly unsatisfactory. Only one witness was examined who stated that he had obtained quotations from various firms for the various machines and plants. Quotations were obtained for only 70 per cent of the machines. Obviously, a multiplier could have been calculated on the basis of this quotations; but it could not possibly be applied to work out the replacement cost of the remaining 30 per cent of the machines, because their original cost was not available. The quotations, on the admission of the witness, himself, were some of them in writing and some obtained on telephone. No attempt was made to produce witnesses who sent the quotations. We also examined some of the sample quotations obtained and we found that, in fact, the parties sending the letters did not, in a large number of cases, purport to send quotations, but only gave estimates. In some of the letters those parties stated that they would be prepared to give quotations when formally asked to do so after details of the requirements were communicated to them. The estimates thus obtained, which were intended to be quotations by the appellants themselves, cannot be held to represent the replacement value of the machines. He attempt was also made to put forward before the tribunal any statement showing the coordination between these quotations or estimates and the existing machines and plants which they were supposed to replace. In this state of evidence, we are unable to hold that the tribunal committed any error in rejecting the claim for rehabilitation charges put forward on behalf of the appellant and in calculating the surplus available on that basis.

9. The result of the decision given by us above in respect of the claim for return on reserves utilized as working capital and rehabilitation charges is that, the surplus available for distribution of bonus calculated by the tribunal has to be reduced by a sum of Rs. 1,85,021, so that it will come down from the figure of Rs. 4,52,614 to Rs. 2,67,593. As we have stated earlier, the tribunal has granted an extra bonus equivalent to two months' basic wages in addition to bonus voluntarily granted by the appellant at one-sixteenth of the annual basic wages. We have found some difficulty in arriving at

the figure of annual basic wages of the workmen in this case. On behalf of the appellant, it was claimed that the total wages payable to the workmen amount to Rs. 63,000 per mensem ; but this figure was not accepted by the tribunal because there was no documentary evidence in support of it. On the other hand, our attention was drawn to the fact that, according to the appellant's own witness who is the assistant secretary of the appellant, a statement was prepared on behalf of the appellant showing a sum of Rs. 57,000 as provision for bonus for this year. Subsequently, this figure was revised by him on the basis that the provision for bonus, which could be taken to account according to the decision of this Court, must be confined to bonus meant for workmen only and not for officers, so that he reduced the figure to Rs. 34,212. Though this sum of Rs. 34,212 was only shown as a provision, this evidence given by the assistant secretary clearly leads to the inference that, according to him, this would be the amount payable to the workmen if they were given bonus equivalent to one-sixteenth of their annual basic wages only. On this basis, the monthly wages of the workmen would be Rs. 45,616. The amount of bonus awarded by the tribunal calculated on the basis of this figure would come to Rs. 1,25,444, so that out of the surplus of Rs. 2,67,593, the appellant will be left with a sum of Rs. 1,42,149. In addition, the appellant will get about Rs. 0.46 lakh as refund of income tax on the additional bonus paid to the workmen under the award, so that the appellant will be able to utilize surplus to the extent of over Rs. 1,88,000. On the face of it, therefore, the amount of bonus awarded to the workmen will not cause any hardship to the appellant. Sri Pal on behalf of the appellant urged before us that the workmen themselves, in the course of their evidence, admitted that the wages payable to them amounted to Rs. 52,000 per mensem and we should take this figure into account in calculating the allocation of the surplus. Even if this figure is taken into account, the total amount of bonus payable under the award to the workmen will come to Rs. 1,43,000, leaving a balance of Rs. 1,21,593 with the appellant. In addition, the appellant will get a refund of income tax of Rs. 52,000 on the additional two months' bonus required to be paid under the award. The share of the surplus with the appellant will, therefore, be Rs. 1,76,000, while the workmen will only get Rs. 1,43,010. Consequently, the bonus awarded by the tribunal is fair and justified on either basis and there is no reason for us to vary the order made by the tribunal.

10. The appeal, consequently, fails and is dismissed with costs, so that the award of the tribunal is upheld.