Wasting House Saxby Farmer vs Workmen on 11 April, 1973

Equivalent citations: AIR1973SC1442, [1973(26)FLR333], 1973LABLC1122, (1973)IILLJ126SC, (1973)2SCC150, 1973(5)UJ573(SC), AIR 1973 SUPREME COURT 1442, 1973 2 SCC 150, 1973 LAB. I. C. 1122, 43 FJR 432, 1973 2 LABLJ 126, 26 FACLR 333

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Bench: A.N. Grover

JUDGMENT

Vaidialingam, J.

1. This appeal, by special leave, is directed against the award dated February 12, 1967, of the Third Industrial Tribunal, West Bengal, in case No. VIII-81 of 1960, directing the appellant to pay to its workmen for the accounting year ended June 30, 1959, bonus at the rate of four months wages. For the reasons given in this order, it is regrettable that there has to be a second remand to the Tribunal for proper adjudication.

2. For the accounting year ended June 30, 1959, the appellant offered to pay two months basis wages as bonus to its workmen, but this offer was not accepted. But it is seen that later on the workmen, under the advise of their union, received the amount under protest. As the workmen were claiming a larger amount for bonus, the Government of West Bengal by its order dated March 30, 1960, referred for adjudication to the concerned industrial Tribunal the question:-

> Bonus for the accounting year ended June 30, 1959, payable in 1959.
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> On July, 20, '62, the Industrial Tribunal, after a consideration of the materials placed before it, came to the conclusion that there was no available surplus for payment of bonus for the year in question; and as such it held that the workmen were not entitled to receive any profit bonus for the accounting year ended June 30, 1959. The workmen dissatisfied with this award came to this Court, by special leave, in civil Appeal No. 152 of 1964. The first contention that was raised by the workmen before this Court related to the Tribunal's decision on the question of Puja bonus. We are not concerned with that aspect. The second and the third contentions are relevant for the purpose of this appeal. The second contention was the Tribunal committed an error in fixing the life of the machinery at twenty years instead of thirty years. The third contention was that in calculating rehabilitation, the Tribunal should have taken into account the accumulated depreciation and other reserves available before

arriving at the proper sum to be allowed to the employer every year for rehabilitation.

3. This Court, by its judgment dated April 12, 1965, allowed the appeal of the workmen, set aside the order of the Tribunal and remanded the case to it for recalculating the amount of rehabilitation, in the light of the observations contained in the judgment. Liberty was given to the parties to adduce further evidence, if necessary, on the said question. It was also made clear that the rest of the calculations, except rehabilitation, will stand and that the Tribunal was to go into the only question of rehabilitation and find out if there was any surplus available after meeting the annual rehabilitation charge.

4. It is to be noted particularly that regarding the question of the life of the machinery, this Court has accepted the plea of the employer that since 1955 three shifts have been working. In view of this, it was observed that if the life of the machinery was thirty years, when two shifts were working it is bound to be only twenty years when three shifts were working. But it was made clear that the calculation of rehabilitation amount on the basis of twenty years of life can be only from 1955 onwards. It was emphasized that for the period upto 1954 the life has to be taken as thirty years and thereafter at twenty years and on this basis the residuary life should be properly calculated. To enable the Tribunal to properly calculate life to the machinery of the appellant on the basis of thirty years upto 1954 and thereafter at twenty years, this Court had worked out the life of the machinery purchased in 1935, 1932 and 1950. This was only to point out the error committed by the Tribunal and to indicate the proper method of calculation. The Tribunal was directed to re-calculate the relevant amount after making necessary corrections as to the remaining life of the machinery. This was first direction.

5. Regarding the question about the deduction of reserves, this Court, after a reference to some of its earlier decisions, has stated that the calculation charts show that no deduction for available reserves has been made from the total rehabilitation amount before arriving at the annual rehabilitation charge. It appears to have been pointed out by the employer that its total reserve was of the order of rupees sixty lakhs while raw materials, consisting of stocks and works in progress, were of the order of rupees sixty-four lakhs at the end of June, 1959, and hence no part of the reserve could be deducted. After a reference to certain other aspects, this Court declined to go further into the matter an express and opinion as the question had not been really gone into by the Tribunal. It was, however, directed that the entire balance sheet and the various charts filed by the management will have to be properly scrutinised by the Tribunal in order to find out how such of the reserves amounting to rupees sixty lakhs were actually available on June 30, 1959, for purposes of rehabilitation and were not looked up either as working capital consisting of raw materials, etc. or earmarked for specific purposes like payment of debentures. This was the second direction.

6. From the above it will be seen that this Court gave two directions both relating to the recalculation of the amount of rehabilitation. The other calculations, which had already been made, were allowed to stand.

7. In accordance with the directions contained in the order of remand of this Court permitting the parties to give further evidence on the question of rehabilitation, the appellant herein further

examined as DW 1, its Deputy Secretary, Shri Jitendranath Maitra. The appellant filed before the Tribunal a chart, Ext. O, which according to it contained "details of revised computation of rehabilitation of plant and machinery as per directives of the Hon'able Supreme Court (life of machineries upto 1954 being thirty years and thereafter twenty years)". A statement, Ext. G-1 was also filed showing the total annual replacement costs of additions from 1922 to 1959. Regarding the deduction of reserves, the management filed a calculation, Ext. G-2, Evidence on these Exhibits was also given by DW 1, who was further cross-examined on behalf of the workmen. The workmen do not appear to have adduced any further evidence after remand.

8. The Tribunal, by its award dated February 13, 1967, under attack, has, as mentioned earlier, directed the appellant to pay bonus at the rate of four months wages. The main criticism leveled against the award on behalf of the appellant by its learned Counsel, Mr. Malhotra, is that Tribunal has not complied with the directions given by this Court in its order of remand dt. April 12, 1965 and that the award is contrary to the materials on record. The unions representing the workmen, though served, has not appeared before us.

9. We have gone through the award of the Tribunal and we are satisfied that the criticism leveled by the appellant is fully justified. A major part of the award is taken up by reference to that took place at the time when the original award was passed on July 20, 1962. The two directions given by this Court are no doubt quoted in extenso, but unfortunately full effect has not been given to those directions by the tribunal. The evidence of DW 1 as well as the materials contained in Exhibits G and G-1 have not been at all properly considered by the Tribunal. The specific direction by this Court was that the Tribunal should make calculations on the basis that upto 1954 the life of the machinery has to be taken as thirty years and thereafter at twenty years and on this basis the residuary life should be properly calculated. As this has been omitted done by the Tribunal in its award dated July 20, 1962, the Tribunal was directed to calculate the residuary life as indicated by this Court. The Tribunal has only chosen to criticise the evidence of DW 1 and the charts, Exhibits G and G-1. Even here it has to be stated that the Tribunal has totally misunderstood the nature of the evidence given by this witness. At the earlier stage of the proceedings, a calculation Memo, Ext. E-1, had been filed. Witness, DW 1, after remand deposed that most of the figures and particulars have been taken from Ext. E-1 and a recalculation has been made in Exts. G and G-1 in accordance with the directions of this Court in Civil Appeal Nos. 152 of 1964. The Tribunal instead of attempting to find out as to how far the calculations made in Exts. G and G-1 conformed to the directions of this Court and, if not, to make itself a recalculation in accordance with the order in Civil Appeal No. 152 of 1964, has merely criticised the evidence of DW 1 on the ground that the previous calculation, Ext. E-1, his not been accepted by the Tribunal in its previous award dated July 20, 1962. In our opinion, the criticism of this witness is totally unjustified. Therefore it is clear that the Tribunal has made no attempt to recalculate the rehabilitation amount regarding the remaining life of the machinery, which was direction No. 1 of this Court.

10. Then coming to the question of deduction of reserves, the Tribunal has held that the evidence of DW 1, who is the solitary witness for the management and Ex. C-2, the fresh calculation memo filed, cannot be accepted. In this connection it refers to the various aspects, which have to be taken into account, when deciding the question of reserves used as working capital. Most of the discussion on

this aspect, in our opinion, was unnecessary in view of the clear directions given by this Court in its order of remand. In the said order, it was specifically directed that the Tribunal should properly scrutinise the various charts and balance sheets filed by the management and ascertain "how much of the reserves amounting to rupees sixty lakhs were actually available on June 30, 1959 for purposes of rehabilitation and were not locked up either as working capital consisting of raw materials, etc. or earmarked for specific purposes, like payment, of debentures". The Tribunal, unfortunately, has not complied with his direction. Ext. G-2 and the evidence of DW 1 have been rejected merely because the witness has made some contradictory statements regarding the rehabilitation calculation in Ext. W-1. The point that has been missed by the Tribunal is that Ext. E-1 was previous to the original award dated July 20, 1962. According to the appellant full particulars, details and figures were already in Ext. E-1 and they have been suitably modified according to directions of this Court. A wholesale rejection of the evidence of DW 1 and Ext. G-2 in the manner done by the Tribunal, is totally unjustified. The Tribunal had made no attempt to scrutinise the various charts and the balance sheets filed by the appellant and come to any conclusion of its own.

11. We have pointed out that the Tribunal has committed a very serious error in not complying with the directions of this Court. The calculation of the remaining life of the machinery and the deduction of reserves for purposes of rehabilitation will involve a close scrutiny of the various charts, balance sheets and statements filed by the parties. That work has to be and should be legitimately done in the first instance only by the Tribunal concerned. The Tribunal was specifically directed to investigate on the lines indicated in the remand order but it has omitted to do so. Under those circumstances there is no other alternative but to send back the proceedings to the Tribunal. Whether the claim for bonus is allowed or negatived or even granted to a limited extent, the Tribunal will have to prepare a chart giving all the necessary particulars and figures to indicate how it has arrived at such a finding.

12. Accordingly we allow the appeal and set aside the order of the Tribunal dated February 13, 1967, and remand the case to it for recalculating the amount of rehabilitation in accordance with the directions contained in the judgment of this Court in Civil Appeal No. 152 of 1994 dated April 12, 1965. It is open to the tribunal to call upon the parties to give further evidence oral or documentary or both, if necessary, on the question which it has to decide. As the claim rates to bonus for the year ended June 20, 1950, the Tribunal will give a very expeditions disposal to this matter. As the union has not appeared before us to support the award, there will be no order as to costs.