Vegetable Products Ltd. vs Their Workmen on 9 November, 1964

Equivalent citations: AIR1965SC1499, [1965(11)FLR30], (1965)ILLJ468SC, AIR 1965 SUPREME COURT 1499, 1965 (1) LABLJ 468, 1965 (11) FACLR 30, 1965 2 SCJ 770, 1964 27 FJR 302, 1964 2 SCWR 290

Author: K.N. Wanchoo

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

JUDGMENT

K.N. Wanchoo, J.

1. This is an appeal against the award of the Fourth Industrial Tribunal, West Bengal. There was a dispute between the appellant and its workmen as regards profit bonus with respect to the years ending December 1959 and December 1960. Further there was dispute also about Puja bonus payable in 1961. Consequently, a reference was made by the Government of West Bengal on March 13, 1962 to the tribunal with respect to these matters, namely, (i) Puja bonus payable in 1961, and (ii) profit bonus for the years ending December 1959 and December 1960.

2. The case of the workmen was that payment of Puja bonus had become either an implied term of employment between them and their employer or customary. As to profit bonus, the workmen claimed that they were entitled to profit bonus in view of the large profits earned by the appellant in the two years in question. Thus they claimed four months wages as profit bonus for both the years and 1 1/2 months wages as Puja bonus payable in 1961.

3. The appellant on the other hand contended that payment of Puja bonus had neither become an implied term of service between the appellant and its workmen nor had the same become customary or traditional at Puja time. As to profit bonus, the appellant's case was that there was no available surplus in either of the two years and, therefore, the workmen were not entitled to any profit bonus.

4. The tribunal took necessary evidence and came to the conclusion that payment of one month's wages at the time of Puja as customary bonus had been established, though it apparently did not accept the claim that payment of Puja bonus as an implied condition of service had been proved. As to profit bonus it came to the conclusion on calculation of available surplus that four months' wages could be paid as profit bonus for the year ending December 1959 and one month's wages for the year ending December 1960, in the result it made its award accordingly.

5. The appellant challenges the finding of the tribunal that Puja bonus at the rate of one month's wages per year had become customary in this concern. The appellant further challenges the

calculations of the tribunal with respect to profit bonus for the two years in dispute.

6. We shall first consider whether it has been established that payment of one month's wages as bonus at the time of Puja has become customary in this concern. So far as the contention that such payment had become an implied condition of service is concerned, it does not appear to have been seriously pressed before the tribunal; and in any case it stood negatived by the fact that in 1959 the payment was made and accepted as ex gratia. It is, therefore, necessary only to consider whether the tribunal was right in holding that payment of one month's wages at the time of Puja as customary bonus has been proved.

7. The circumstances for proving the payment of customary or traditional bonus on the occasion of a festival like Puja were considered by this Court in The Grahams Trading Co. (India) Ltd. v. Its Workmen , and it was laid down that on proof of the following four circumstances payment of customary or traditional bonus on the occasion of a festival like Puja can be said to be established, namely-

> "(i) that the payment has been made over an unbroken series of years;
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> (ii) that it has been for a sufficiently long period, the period has to be longer than in the case of an implied term of employment;
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> (iii) that it has been paid even in years of loss and did not depend on the earning of profits; and
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> (iv) that the payment has been made at a uniform rate throughout."

It was also held that "the fact that the employer made the payment ex gratia made no difference; nor did unilateral declarations of one party inconsistent with the course of conduct adopted by it matter".

8. The tribunal has held that these conditions have been satisfied in the present case and that is how it came to the conclusion that payment of customary or traditional bonus on the occasions of a festival like Puja had been proved. Before we consider the attack by the appellant on this finding of the tribunal we may clarify two of the circumstances referred to above. The third circumstance lays down that it has to be proved that the payment has been made even in years of loss. This only means that where there have been years of loss, payment should have been made in those years also. But it does not mean that where there has been no year of loss at all and the concern has been fortunate enough always to earn profit, there can be no customary or traditional bonus connected with a festival like Puja, even though payment at a uniform rate has been made for a large number of years. This circumstance should,, therefore, be read only thus: in case there have been years of loss, it must be proved that payment has been made in those years also. The fourth circumstance mentioned above is to the effect that payment should have been made at a uniform rate throughout. That, however, does not mean that uniformity should be established from the beginning to the end. Take a case where for the first few years payment at a certain rate was made. But later on, for a much larger

number of years payment at a somewhat different but uniform rate has been made. In those circumstances, the tribunal may well come to the conclusion that the payment was at a uniform rate ignoring the first few years. Where, however, it appears (for example) that payment for a few years was at one rate, say X; for the next few years at the rate of X-Y; for another few years at the rate of X; and for the last few years at the rate of X + Y; and then a dispute arises, it may be said in those circumstances that the payment had not been at a uniform rate. Whether or not payment is shown to have been made at a uniform rate is always a question of fact.

9. Let us now see what had happened in the present case. It appears that the concern in question was established sometime after 1946 but it went into liquidation and the appellant purchased it in 1953. It is not known what happened at the time of the earlier owner but it appears from the evidence of the Secretary of the Union of the workmen that Puja bonus was paid for the first time on the eve of the Puja festival in 1954 at the rate of 10 days' wages. In 1955 it was paid at the rate of 20 days' wages. From 1956 to 1961 the payment has been made before Puja at 30 days' wages. The tribunal has ignored the payment in the first two years and has come to the conclusion that there has been payment at a uniform rate from 1956 to 1961 and that establishes that there is a custom of payment at the rate of 30 years' wages as bonus before Puja in this concern. Now if the facts were only these the tribunal may very well have ignored the payment in the first two years and held that as there had been payment at the rate of 30 days' wages from 1956 to 1961, that established uniformity in payment. But the tribunal has apparently ignored evidence which militates against payment of customary or traditional bonus on the occasion of a festival like Puja being held proved. It appears that from 1956 to 1958 payment was made without any dispute and without conditions. But in 1959 a dispute arose as to payment of Puja bonus for that year and was settled before the conciliation officer by a settlement between the appellant and its workmen. The first term of that settlement is material and runs thus:--

> "It is agreed by the company and accepted by the workmen that 30 days' wages will be paid as bonus (ex gratia) for the accounting year 1957-58 to all the workmen who will have completed 240 days work by the day of payment and will be on the rolls of the company on that day. The payment will be made by the 26th of September 1959."

It will be clear from this term in the settlement that in 1959 the payment was not unconditional. It was paid ex gratia (out of bounty) and accepted as such by the workmen. This is not a case where the employer made a unilateral declaration that the payment was ex gratia. This was a case where the appellant said that the payment was ex gratia and the workmen accepted the payment as ex gratia. Besides there was a further condition that the payment would be made to those workmen only who had completed 240 days work by the day of payment. Now in the case of customary or traditional bonus there can be no such condition and a customary or traditional bonus connected with a festival has to be paid to all employees irrespective of the number of days they might have worked before the festival in the year in question. In these circumstances the payment in 1959 cannot be taken into account as it was made and accepted ex gratia and was hedged in by a condition. We may in this connection refer to Tulsidas Khimji v. Their Workmen , where it was held that a claim for customary bonus may be negatived on proof that the payment was made ex gratia and accepted as such, or that it was unconnected with any such occasion as a festival. In the present case the settlement shows

that the payment was made ex gratia and was accepted as such. Therefore, so far as this year is concerned, the payment cannot be taken as having been made towards customary or traditional Puja bonus and thus there would be a break in the payment of such bonus.

10. Then we may refer to what had happened in 1960 and 1961, which has also been ignored by the tribunal. The Secretary of the Union of the workmen admitted that in 1960 as well as in 1961, payment was made at the rate of 30 days wages before Puja as bonus. But in both the years the workmen gave a receipt in terms which stated that the payment was made as advance to be adjusted against profit bonus for the previous year. This again shows that the payment for these years was not towards customary or traditional Puja bonus. What we find is that payment was made unconditionally in the years from 1954 to 1958 and that may have been evidence of traditional or customary Puja bonus. But in 1959 the payment was made ex gratia and accepted as such; in 1960 and 1961 the payment was clearly made on condition that it would be adjusted towards the profit bonus for the previous year and was accepted as such. In these circumstances we cannot find that there has been payment for an unbroken series of years before the dispute was referred to the tribunal. Consequently the conclusion of the tribunal that payment of customary or traditional bonus on the occasion of the Puja festival has been established in this concern must be set aside.

11. We now come to profit bonus. We shall first take the year ending December 1960. In that year the tribunal found that the available surplus was Rs. 4,000. It. however, ordered the payment of one month's profit bonus which comes to Rs. 12,000. Obviously when the available surplus was Rs. 4,000 only, the tribunal could not award a bonus of Rs. 12,000, and in the circumstance there could be no profit bonus at all for that year. It is not denied on behalf of the workmen that the tribunal made a mistake in its award for the year I960 Therefore, the award of the tribunal granting profit bonus for the year 1960 must be set aside.

12. Finally we come to the year ending December 1959. The tribunal found the available surplus to be Rs. 1,04,000. It awarded four months' wages at the rate of Rs. 12,000 per month (i.e. Rs. 48,000 in all) as profit bonus for that year. On the basis of this available surplus, the amount awarded by the tribunal appears reasonable. The appellant, however, attacks the correctness of the calculation on two grounds. In the first place it is urged that the tribunal was wrong in holding that rehabilitation charges came to Rs. 54,000 only. The tribunal arrived at this figure by deducting Rs. 1,23,000 as depreciation from the amount determined by it as rehabilitation charge for the year. It is, however, pointed out that as the tribunal did not allow rehabilitation on certain items at all, the depreciation with respect to those items could not be deducted and the correct amount to be deducted from the rehabilitation charge was Rs. 1,07,000. This appears to be correct. But this will reduce the available surplus from Rs. 1,04,000 to Rs. 88,000. Even on this available surplus payment of four months' wages as bonus cannot be said to be unreasonable, particularly taking into account the rebate on income-tax which the appellant will get.

13. Secondly it is urged that the tribunal should have allowed a higher multiplier than 1.25 for machinery purchased before 1949. In this connection the appellant relied on a letter of the English company which originally supplied part of the plant giving the price at that time and the price prevalent in 1961. From that it does appear that the price has gone up more than double the original

price for that part of the plant. But there are two circumstances which have to be taken into account in this connection and which the tribunal has mentioned. The first is the difficulty in finding out what was the original price of all the machinery purchased before 1949 which has to be rehabilitated. In that connection the tribunal has accepted the figure 13.1 lakhs given by the appellant though there was no satisfactory evidence to prove that. Further with respect to the multiplier the tribunal has observed that for want of proper evidence it was once inclined to reject the claim for rehabilitation totally; but taking into account the general rise of prices of plant and machinery since 1949, the tribunal thought it proper to allow 1.25 as the multiplier. It does appear to us that 1.25 may not be the proper multiplier in this case, but in the absence of sufficient and proper evidence to prove the original cost price of plant and machinery purchased before 1949 and to prove the increase in price of the rest of the plant besides that purchased from the English company, we do not think that we should interfere with the finding of the tribunal on this point. We are, therefore, not prepared in the circumstances to allow a higher multiplier. In this view of the matter, the tribunal's award of four months' wages (at the rate of Rs. 12,000 per month) as profit bonus for the year 1959 must stand.

14. The appeal is, therefore, partly allowed and the tribunal's award in respect of customary Puja bonus payable in 1961 is set aside. We also set aside the award of the tribunal allowing profit bonus for the year ending December 1960. The award of the tribunal allowing Profit bonus at the rate of four months wages for the year ending December 1959 will stand. In the circumstances we pass no order as to costs.