Indian Standard Wagon Co. Ltd. vs First Industrial Tribunal And Ors. on 25 April, 1973

Equivalent citations: AIR1974SC771, [1973(27)FLR15], 1974LABLC466, (1974)3SCC212, 1973(5)UJ687(SC), AIR 1974 SUPREME COURT 771, 1974 3 SCC 212, 1974 LAB. I. C. 466, 27 FACLR 15

Author: A.N. Grover

Bench: A.N. Grover

JUDGMENT

Vaidialingam, J.

1. This appeal, by certificate, is against the judgment and order dated March 7, 1968, of the Calcutta High Court in Appeal No. 24 of 1964, holding that the Industrial Tribunal has to Calcutta the claim for bonus made by the workmen according to the full Bench Formula, as explained by this Court. The proceedings between the parties had a very chequered career, as will be noted from the facts mentioned later. The dispute between the parties relates to a claim for additional bonus for the years 1957-58 and 1958-59 and for payment of bonus for the year 1959-60 and 1960-1961.

2. By order dated December 7, 1946, the Government of West Bengal referred a dispute between the appellant and its workmen for between the appellant and its workmen for adjudication under Rule 81A of the defence of India Rules to the Hon'ble Mr. Justice William Mecormick sharps. One of the questions that was referred and which has relevance to the present proceedings, was whether a profit sharing bonus scheme should be introduced in all or any of the factories mentioned in the order of reference and, if so, on what basis such a scheme be framed. The parties were able to reach an agreement during the proceedings before the Adjudicator and accordingly the same was incorporated in the award dated March 3, 1947. As per the agreement, the workmen were declared entitled to a profit sharing bonus at the rate of two day's basic wages for every 1% dividend declared after February 1, 1947 and paid to the ordinary shareholders of the company. Bonus at this rate had to be paid to both the labour and uncovenanted staff. The Government of Bengal by its order dated March 4, 1947, directed that the said award should remain in force and bind the parties for a period of four months and should also continue to be in force thereafter as long as Rule 81A of the Defence of India Rules continued to be in force. This award of Mr. Justice Sharpe will be hereinafter referred to as the Mcsharpe award.

3. The Mcsharpe award ceased to be in force after the expiry of the Defence of India Rules. But an industrial Tribunal, consisting of three Adjudicators, to whom the question of annual bonus along

with other matters was referred by the order dated October 31, 1947 of the State Government, gave an award on April 1, 1948, to the effect that the Mcsharpe award on the basis of the agreement between the parties will continue to govern question of bonus. This Tribunal rejected the claim of the workmen for an annual profit bonus equal to three month's basic wages. In the certified Standing Orders of the company, it was provided in Clause 17 that the profit sharing bonus is based on dividends paid to ordinary shareholders of the company and payments are made in accordance with the rules which have been separately published.

4. Later on, the appellant issued bonus shares and this resulted in an increase the ordinary share capital from Rs. 9,74,625/- in 1947-48 and to Rs. 38,98,500/- in 1958-59. The workmen in consequence demanded bonus equivalent to eight day's wages for each 1% dividend declared by the company on its ordinary shares. As the appellant was not agreeable to this demand, the State Government by its order dated July 6, referred to the First Industrial Tribunal for adjudication the issue relating to "additional bonus for 1957-58 and 1958-59 and bonus for 1969-60 and 1960-61". The union in its written statement claimed that it is entitled to claim six month's wages as bonus for each of these years on a proper working out of the percentage at the rate given in the Mcsharpe award or by applying the Full Bench Formula of that Labour Appellate Tribunal. Accordingly it claimed 118 day's pay as additional bonus for the years 1957-58 and 1958-59, after giving credit to the 65 days wages already paid by the appellant. It claimed the years 1959-60 and 1960-61 six months or 180 days pay as bonus.

5. The appellant contested the claim of the union on the ground that according to the Mcsharpe award, the claim was totally unjustified. It pleaded that the Mcsharpe Award was deed and gone and the claim for bonus should be adjudicated on the basis of the principles laid down by this Court. Even applying the Full Bench Formula, it was the contention of the appellant that no bonus was payable to its workmen.

6. The Union made a request to the Tribunal to pass an interim award regarding bonus for the years-1959-60 and 1960-61. They required that 67. 1/2 days' pay for 1959-60 and 64 days' pay for 1960-61, as originally offered by the appellant, should be directed to be paid under the interim award. The appellant opposed the request of the workmen for passing an interim award. In particular, the appellant requested the Tribunal to call upon the union to State categorically whether it is agreeable to be governed by the Mcsharpe award or it required on adjudication of the bonus claimed according to the law applicable to the same. The Union filed a statement on September 6, 1961, that to enable the Tribunal to pass an interim award, it does not press its case on full Bench Formula and that it will confine its case to Mcsharpe award subject to certain modifications because of the issue of bonus shares by the appellant.

7. The Tribunal passed an interim award based upon the original principle laid down by the agreement in the Mcsharpe award without any modification. The appellant filed a Writ Petition in the High Court and prayed for stay of further proceedings before the industrial Tribunal. The High Court by its order dated September 27, 1961, ordered stay of proceedings and gave certain directions as to how the payments made under the interim award are to be finally adjusted. In its final order on the writ petition, the High Court held that the workmen have made an unwise choice by giving up

their legal rights under the full Bench formula and that they have to face the situation before the Tribunal. The High Court declined to interfere with the interim award but gave a direction that the amounts paid under the interim award will have to be adjusted towards any bonus that may be declared by the company in future.

8. When the matter was taken up by the Tribunal, after the order of stay was cancelled by the High Court, it framed an issue on the question whether the workmen have repudiated the Mcsharpe award and whether they have also given up their claim under the Full Bench Formula. In its order dated September 13, 1963, the Tribunal held that the union is not entitled to claim additional bonus or Full bonus by a modification of the terms of the Mcsharpe award. It, however, held that it has got jurisdiction to consider the claim for bonus on the basis of the Full Bench Formula.

9. Against this order the Co. again filed a writ petition before the High Court. Its contentions appear to have been that the workmen have repudiated the agreement under the Mcsharpe award and that they have also declared that they are not claiming under the Full Bench Formula. Therefore, the Union was not entitled to any bonus at all for these years. The High Court, however, rejected both these contentions of the appellant and held that the claim of the workmen for bonus will have to be considered in terms of Full Bench Formula, even though they may have repudiated the agreement on the basis of which the Mcsharpe award was given. The appellant again carried the matter in appeal before the Division Bench. By the judgment under attack, the Division Bench also held that the calculation of bonus will have to be made according to the Full Bench Formula, as explained by this Court. The appellant challenges this decision of the High Court.

10. Mr. Sen, learned Counsel for the appellant, urged that the view of the High Court that claim of the workmen is to be on the basis of the Full Bench Formula, is erroneous in view of the fact that the union itself had stated before the Tribunal at the time of the interim award that they are not relying on the Full Bench Formula. He also urged that the union cannot make any claim on the basis of the Mcsharpe award with certain modifications. The point stressed such by Mr. Sen was that when the union itself stated that they are not claiming bonus under the Full Bench Formula, it amounted to a representation by the union that there was no available surplus for purposes of profit sharing bonus. On this basis, he urged that the order of the High Court directing bonus to be calculated by applying this Formula, was erroneous. Though before the High Court the appellant took up the position that no claim for bonus at all remains to be investigated be cause the Full Bench Formula has not been relied on by the union and the Mcsharpe award has also been repudiated, Mr. Sen was prepared to proceed on the basis that the claim of the workmen for bonus can be adjusted upon the basis of the agreement which had been incorporated in the Mcsharpe award. Mr. Sen Gupta, learned Counsel for the union, also indicated that the workmen may be willing to have the claim adjudicated on the basis of the McSharpe award but subject to the modifications indicated by them.

11. During the course of the arguments, it became clear that the parties have been unnecessarily fighting a litigation over the years in the various courts regarding the claim for bonus. Whether one or other of the contentions is ultimately accepted by us, the matter will have to go back to the Tribunal for adjudicating upon the amount that may be due as bonus for the fours years beginning from 1957-58. For this purpose, the parties will be again put to considerable expenses and trouble by

adducing evidence before the Tribunal. If it is held that the claim is to be adjudicated on the basis of the Full Bench Formula, the proceedings before the Tribunal will take considerable time.

12. In view of the above circumstances, we indicated that it will be to the interest to both the parties that the matter is closed here itself, instead of allowing them to drag on Mr. Sen, learned counsel, indicated that over and above the bonus paid for the years 1957-58 and 1958-59, his clients will be willing to increase the quantum still further and also pay at the same increased rate for the subsequent years, 1959-60 and 1960-61. Though the union's claim was for payment of six months wages as bouns, Mr. Sen Gupta, learned Counsel, also indicated that he is prepared to restrict the claim to three months' wages for each year. The manner in which both the counsel approached the problem clearly indicated that the parties were anxious that this litigation relating to bonus for the periods in question should be terminated here itself.

13. After further discussion and consideration, the counsel indicated their acceptance to the final suggestion made by us and, in our opinion, quite properly in the interest of both the parties. Accordingly we give the following directions :-

> (1) That the appellant company will pay to the eligible workmen bonus at the rate of 80 (Eighty) days' basic wages or salary for each of the financial years, 1957-58-1958-59, 1959-60 and 1960-61.
>
> (2) That the bonus for the year 1957-58 will be paid within two months from to-day and bonuses for the years 1958-59, 1959-60 and 1960-61 will be paid within three months, four months and five months respectively from to-day.
>
> (3) While making payment of bonuses as-aforesaid, the amounts already paid will be taken into account and will be deducted from the bonuses payable as aforesaid.

14. The appellant will pay half Costs of the respondents in this appeal. The appeal is disposed of accordingly.