# Textile Machinery Corporation Ltd. vs Its Workmen on 13 January, 1960

## Equivalent citations: AIR1960SC1025, [1960(1)FLR523], (1960)IILLJ34SC, AIR 1960 SUPREME COURT 1025, 1960 -61 18 FJR 77 1960 2 LABLJ 34, 1960 2 LABLJ 34

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## Bench: P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta

JUDGMENT

P.B. Gajendragadkar, J.

1. This appeal by special leave arises from an industrial dispute between the Textile Machinery Corporation Ltd., (hereinafter called the appellant) and its workmen (hereinafter called the respondents). It appears that the respondents made certain demands regarding the payment of Puja Bonus in 1955. On 14-10-1955, an agreement was reached between the parties that the said demands should be referred for adjudication, to the Industrial Tribunal. It was also agreed that certain sum should be advanced towards the Puja Bonus by the appellant to the respondents to obviate the hardship to the respondents on the occasion of Puja. Accordingly a sum of Rs. 35 that is equivalent to 17 days' average basic wages was paid to each of the workers to be treated as advance against the Puja Bonus. Thereafter, on 21-3-1956, the Government of West Bengal made the present reference for adjudication to the Second Industrial Tribunal. The reference was in regard to the respondents' claim for bonus for the year 1955. The tribunal has awarded to the respondents two months' basic wages by way of bonus for the relevant year and it is this award of bonus that has given rise to the present appeal. This award is in addition to the Puja Bonus which has been paid by the appellant to the respondents.

2. In determining the amount of bonus awardable to the respondents the tribunal has purported to apply the Full Bench formula. It is, however, urged before us by the learned Solicitor-General on behalf of the appellant that in working out the Full Bench formula the tribunal has erred in not considering the material and relevant evidence led by the appellant in respect of its claim, for rehabilitation and replacement charges. It is also argued that the tribunal was wrong in not allowing 4 per cent interest as a prior charge on the whole of the reserve fund as claimed by the appellant. Similarly the tribunal was in error, it is said, in adding back to the profits an item of Rs. 2.50 lakhs which had been donated by the appellant as well as an item of Rs. 2.35 lakhs which has been reserved by the appellant in respect of disputed claims. It will be convenient to deal with the, latter argument first.

3. In regard to the claim for interest of 4 per cent on the reserves on the ground that they had been used as working capital, the tribunal has found that there was no evidence to show that the said reserve had been either partly or wholly used as working capital during the relevant year. The appellant sought to rely on the balance-sheet in support of this claim but the tribunal took the view that the entries in the balance-sheet were of no assistance because the balance-sheet in question that is for the year 1955 was prepared and published in the month of August 1956 and so the tribunal held that it was obvious that the items in question were not and could not have been employed in the business for the year 1955. It is not disputed that some of the material items in the balance-sheet had been introduced for the first time and there was no corresponding entry in the balance-sheet for the previous year, and so the finding of the tribunal that the subsequent balance-sheet cannot be used for the purpose of showing what, if any, amount of the reserve was utilised as working capital during the relevant year cannot be successfully challenged. Having found that there was no evidence to show that any part of the reserves had been used as working capital the tribunal has nevertheless purported to adopt what it calls the broad and sensible view of the matter and has in the end allowed to the appellant interest at the rate of 4 per cent on the amount of general reserves only which was Rs. 3,51,406 as on 31-12-1954. If the finding of the tribunal that no evidence had been adduced to show that any part of the reserve had been used as working capital is correct then the amount of interest allowed by it on the said amount of general reserves may strictly not be justified, but no complaint has been made against this part of the award by the respondents and so it is not necessary to pursue that matter any further.

4. The question then which needs an answer is whether the tribunal was right in holding that there was no relevant evidence on the point. The learned Solicitor-General has invited our attention to the affidavit made by Mr. Radhey Shyam Sharma, the Finance Officer of the appellant, in which it is averred that the details showing that the reserves were fully utilised in the business under the heads mentioned were as shown in the audited balance-sheet which had been tendered. Then follow the details about the reserves. A similar statement is found in the statement of the case filed on behalf of the appellant. We are unable to hold that the statement made in the affidavit can be treated as evidence of the fact that the reserves in question had in fact been used as working capital. What the statement purports to do is merely to collate the relevant figures and set them out as deduced from the balance-sheet and nothing more. It has been held by this Court that before an employer can claim any return on liquid reserves by way of interest, he must lead evidence to show that the reserves in question have been used as working capital during the relevant period. We are satisfied that the tribunal was right in holding that no evidence in fact had been adduced before it by the appellant in that behalf. Therefore, the appellant is not justified in making any further claim in respect of this item.

5. Then in regard to the amount of Rs. 2.50 lakhs donated by the, appellant to the West Bengal Engineering Foremen's College, it may be conceded that the grant is charitable but the point which the tribunal had to consider was whether in determining the available surplus this amount should be debited. On this point the tribunal followed the decision of the Labour Appellate Tribunal in the case of Sree Meenakshi Mills Ltd. v. Their Workmen, 1954 Lab AC 132 at p. 138, and held that such a donation, however charitable or philanthropic it may be, has to be added back for the purpose of arriving at the gross profit. This decision has been confirmed by this Court in Sree Meenakshi Mills

Ltd. v. Their Workmen, . Therefore, the tribunal was justified in adding back this amount for the purpose of determining the gross profit.

6. Then as to the amount of Rs. 2.35 lakhs in respect of which a reserve has been created by the appellant to meet the possible losses in future, the tribunal was clearly right in adding this amount back for determining the gross profit. It is true that some of the debts due to the appellant may not be fully realised but it is difficult to understand how the appellant can create a reserve solely for the purpose of meeting any possible losses on account of bad or irrecoverable debts, and claim a deduction of this amount while determining the available surplus. The creation of such a reserve is wholly inconsistent with the Full Bench formula in question. There is, therefore, no substance in the argument that this amount would not have been added back.

7. That takes us to the principal contention raised by the appellant and that is in respect of the rehabilitation and replacement charges. The appellant's grievance is that though it had led evidence in support of this claim and filed the necessary statements bearing on the relevant points, the tribunal has not considered the said evidence but has proceeded on the assumption that "it has become a convention of all the tribunals to multiply cost of buildings constructed prior to 1949 by 2.25 and the cost of plants and machineries installed prior to 1948 by 2.7 for the purpose of equating the requirement to the present market value. It has also been a convention of the Industrial Tribunal to assess total life at 27 to 30 years in the case of buildings and 15 years in the case of plants and machineries". No doubt the tribunal has added that it thought that these conventions were not always favourable to the industries but there was no help. It is on this view that the tribunal reached the conclusion that Rs. 12 lakhs should be allowed to the appellant by way of rehabilitation charges.

8. It is obvious that this conclusion is unsound and cannot be affirmed. The tribunal was in error in assuming that there was any convention legally established by which certain assumptions had to be made about the life of the machinery and about the price which would be needed to replace it. In fact decisions have consistently held that the amount of rehabilitation can be and should be determined only in the light of evidence adduced by the employer. This position has not been disputed by Mr. Viswanatha Sastri on behalf of the respondents. His argument, however, was that the evidence adduced by the appellant is unsatisfactory and had therefore been properly rejected. We propose to express no opinion on the merits of the evidence. We are satisfied that it was necessary for the tribunal to have considered the evidence before finally determining the amount which should be paid to the appellant by way of rehabilitation charges. The result is that the appeal must be partly allowed and the proceedings sent back to the Second Industrial Tribunal for dealing with the appellant's claim for rehabilitation charges in accordance with law. The tribunal should consider the evidence led by the parties and then apply the principles which nave been laid down by this Court in the case of the Associated Cement Companies Ltd. v. The Workmen Employed, . It would not be open to the parties to lead any further evidence. After the tribunal reaches its conclusion in respect of the appellant's claim for rehabilitation it may make its final award in regard to the bonus claimed by the respondents. No further point can be raised by the parties hereafter in the subsequent enquiry which we are now directing.

9. The result is that the appeal partly succeeds and the matter is sent back to the Second Industrial Tribunal for disposal in accordance with law and in the light of this judgment. There will be no order as to costs.