

Supreme Court of India

The Central Weaving And Mfg. Co., ... vs Mill Mazdoor Sabha, Bombay And ... on 12 March, 1969

Equivalent citations: 1969 (18) FLR 384, (1970) 3 SCC 255

Author: J Shelat

Bench: J Shelat, V Bhargava

JUDGMENT J.M. Shelat, J.

1. This appeal founded on a certificate granted by the High Court of Bombay is against its order of dismissal in limine of the appellant's writ petition against the award dated October 22, 1966 passed by the Industrial Court under the Bombay Industrial Relations Act, XI of 1947.

2. The appellant manufactures silk and art-silk cloth and is a proprietary concern owned by Macks Hard (P.) Ltd. who purchased it in 1962. In the accounting year 1964 the appellant had 60 workmen on its roll. By a letter dated September 14, 1965 the workmen made a demand for 20% bonus on their total wages for the year 1964, that being the maximum allowable under the Payment of Bonus Act, 1965. The appellant's reply to the said demand was that it was liable to pay bonus at the rate of 4% only. Conciliation between the parties having failed, the workmen referred the dispute to the Industrial Court for arbitration under Section 73-A of the Act. To their statement of claim the workmen filed an annexure showing certain calculations according to which the allocable surplus and available surplus came to Rs. 48,732 and Rs. 29,269 respectively. By the said statement of claim they also called upon the appellant to produce its duly audited and authenticated statement of accounts, their aforesaid calculations being based on a kachha statement of accounts furnished to them by the appellant. In these calculations the workmen calculated return at 8.5% on a capital shown at Rs. 5,43,774. In its written statement the appellant made a grievance that the workmen had rushed to the court basing their demand on a kachha balance sheet and profit and loss account supplied to them and that the appellant was therefore filing therewith as annexure 'A' a duly audited balance sheet and profit and loss account. The appellant submitted that according to its calculations based on the said balance sheet and the profit and loss account, the year 1964 ended in loss and therefore its liability to pay bonus could only be at the rate of 4%. In its calculations filed as Annexure 'B' to its written statement the appellant showed a net profit of Rs. 1,90,617 from which, however, it sought to deduct the two sums in dispute, namely, (1) Rs. 2,06,060 and (2) Rs. 70,589 as return at 8.5% on the capital of Rs. 8,30,460. The Tribunal accepted the figure of Rs. 1,90,617 as the net profit for the year but disallowed the deductions of Rs. 2,06,060 and Rs. 70,589 rejecting the appellant's contentions (1) that the said sum of Rs. 2,06,060 was deductible from the net profit as that amount represented customs duty which though refundable was not in fact received during the year from the customs authorities and (2) that the appellant's capital at the commencement of the accounting year was Rs. 8,30,460. The Tribunal held that though the said amount of customs duty may not have been actually received, it did not cease to be the earnings during the accounting year and therefore that amount could not be deducted from net profit. As regards capital, the Tribunal accepted the workmen's contention that it came to Rs. 3,52,457 only and a return at 8.5% on that amount only was claimable as a prior charge. The Tribunal accepted the; workmen's calculations and allowed bonus at the maximum rate of 20% as demanded by them. Aggrieved by the award, the appellant filed the writ petition which the High Court dismissed summarily presumably on the ground that the said award did not contain, any error of law apparent on the face of the record.

3. The only question therefore which counsel raised before us was that the Tribunal was in error in not deducting the said amount of customs duty refund from the net profit and in not allowing as a prior charge return at 8.5% on the whole of the said amount of Rs. 8,30,460.

4. As regards the amount of customs duty, the profit & loss account produced by the appellant before the Tribunal showed the refund amount of Rs. 2,06,060 on the credit side. On the expenditure side, the appellant had debited sundry amounts, such as excise duty, interest rent etc. Counsel for the appellant admitted that the appellant was maintaining its accounts on mercantile system and therefore amounts would be credited and debited as they accrued due and not when they were actually received or expended. The amounts debited on the expenditure side, therefore, must have been so done as and when they became due and not when they were actually paid. On the credit side also, the amounts would be credited not when they were received but as and when they accrued due. The amount of customs duty refund consequently would have to be credited as earnings when it was allowed or and became payable and not when it was actually refunded. That being the position, the Tribunal was clearly right in refusing to deduct the amount of customs duty refund from the said amount of net profit.

5. As to the return on capital, the appellant under Section 6(d) read with Schedule III would be entitled to deduct from the gross profits a return at 8.5% either on the paid up equity share capital as at the commencement of the accounting year if it were to be treated as a company, or a like return on the capital invested by its proprietors as evidenced from its books of accounts at the commencement of the accounting year. We do not, however, understand how the appellant claimed return at 8.5% on Rs. 8,30,460 as that amount was shown in the balance sheet as on December 31, 1964 and not at the commencement of the year. Besides, the said amount has been shown in the balance sheet as consisting of two items, one of Rs. 3,52,157 on which the Tribunal allowed return at 8.5% and the other of Rs. 4,78,302.62 being the loss carried forward from the previous year. One fails to understand how under Section 6(d) read with Schedule III the appellant could possibly have treated the loss carried forward from the previous year as capital invested in the establishment and claim a return thereon. Even as regards Rs. 3,52,157, Tribunal was clearly in error in permitting return at 8.5% on that amount, as assuming that it treated that amount as capital brought in the establishment, that amount was not the capital at the commencement but at the close of the year. The amount shown at the commencement of the year was Rs. 3,59,090 and if at all any return was to be allowed it would have to be on that amount. But it is clear from the balance sheet that neither the amount of Rs. 3,59,090 nor the amount of Rs. 3,52,157 could be accepted as capital on which a return at 8.5% under Schedule III has to be allowed. The reason for saying so is that the said two amounts were shown in the balance sheet as balance to the credit of the proprietors in the account headed as 'the proprietors' account' at the commencement and at the close of the accounting year. Prima facie, the heading of the account would mean that the appellant maintained a current account in the name of the proprietors. Macks Hard (P.) Ltd. That account cannot necessarily mean, unless properly proved (which was never done), that the said two amounts represented the capital brought in or invested in the establishment by the proprietors. For ought we know the said amounts might as well represent past profits due to or advances made from time to time by the proprietors. In either case the balance at the foot of the account would not mean capital. Since no attempt was made to show that the said amounts represented either paid up equity share capital or capital

invested by the proprietors at the commencement of the year, the Tribunal ought not to have allowed return at 8.5% on the said balance of Rs. 3,52,157 and its deduction as a prior charge from the gross profits. It appears that the Tribunal was misled into accepting the said amount of Rs. 3,52,157 as capital brought in by the proprietors without the appellant having produced any proof thereof and also because the workmen had shown Rs. 5,43,774 in their said calculations as capital on the basis of the kachha balance sheet supplied to them. We are, however, not in a position to revise the calculations made by the Tribunal as the workmen have not filed any appeal against that part of the Tribunal's award. In our view the appellant's contention for the deduction of the customs duty refund and for return on Rs. 8,30,460 and its deduction from the gross profits were untenable and were rightly rejected by the Tribunal.

6. The appeal, therefore, fails and is dismissed with costs.