Supreme Court of India
Binny Ltd vs Their Workmen on 15 February, 1972
Equivalent citations: 1973 AIR 353, 1972 SCR (3) 462
Author: C Vaidyialingam
Bench: Vaidyialingam, C.A.

PETITIONER:
BINNY LTD.

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT15/02/1972

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
DUA, I.D.
MITTER, G.K.

CITATION:
1973 AIR 353 1972 SCR (3) 462

ACT:
The Payment of Bonus Act, 1965. ss. 17 and 19--Direction to pay half yearly bonus--If justified--Payment of additional bonus--Method of calculation.

HEADNOTE:
The appellant company was making two payments of bonus every year one for the half year ending 30th June and the other for the half year ending 31st December. The payment was on the basis of profits earned by it and the payment was not a condition of service and had nothing to do with any custom or festival. When the Payment of Bonus Act, 1965 came into force, the appellant issued a circular that as bonus was payable under law only within a period of 8 months from the end of the, accounting year (the appellant's accounting year was the calendar year), no bonus was payable for the accounting year 1965 until the accounts for the year are closed, and the announced payment of one month's basic wages as advance against wages for the half year ending 30th June 1965.
The questions, (1) whether the appellant was justified in announcing the payment as advance against wages instead of as advance bonus, and (2) whether the respondents were justified in claiming bonus for the years 1962 and 1963, in

addition to what had already been paid by the appellant were referred to the Industrial Tribunal.

On the first question the Tribunal held. that the appellant was not justified in announcing the payment towards advance wages and directed the appellant to pay profit bonus in two installments one as advance against the final declaration of bonus, and the balance, if any, as the second instalment. On the second question the Tribunal held that the question of bonus payable was to be calculated in accordance with the Labour Appellate Tribunal Full Bench Formula approved in Associated Cement Companies Ltd. v. Workmen, r 19591 S.C.R.25; that in calculating the return on Reserves the claim of the appellant to include in the working capital the amounts sunk in (a) fixed assets and (b) capital work in progress should be disallowed; and that the claim of the appellant for a provision for rehabilitation should be rejected.

In appeal to this Court.

HELD : (1) (a) Under the Act, bonus for a particular accounting year will have to be computed in accordance with the provisions of the Act on the basis of the gross profits determined at the close of the accounting year. The Act makes provision as to how the gross profits, available and allocable surplus are to be calculated, and s. 19 prescribes 8 months from the close of the accounting year as the period within which the bonus was to be normally paid. The scheme of the Act shows that a claim for bonus can be made only after the close of-the accounting year, because., gross profits and the available and allocable surplus can be worked out only at the end of the accounting year and not earlier, whereas the direction given by the Tribunal requires the employer to make two computations at the end of each half year. [469 E-H; 470 A-B]

463

(b) The direction given by the Tribunal making it obligatory on the management to make half yearly payments of bonus apart from being opposed to the scheme of the Act, runs counter to s. 19. Under the section, whether it is the minimum bonus of 4% under s. 10 or the maximum bonus of 20% under s. 11, they have to be paid only within a period of 8 months from the closing of the accounting year. [470 C-E]

(c) Section 17(b) is an enabling section in favour of the employer in that it visualizes a situation when he may have paid during the accounting year a part of the bonus payable under the Act, before the date on which such bonus becomes payable. If the payment was by way of profit bonus, he is entitled to deduct it from the final amount that may be payable under the Act. But that provision does not give a right to an employee to claim payment of bonus by way of part payment during the currency of the accounting year. Therefore, the mere fact that the appellant has been making payments on previous occasions half yearly, does not confer a right on the employee to have such payments by way of

bonus in the same manner after the Act has come into force. Hence, the Tribunal had no jurisdiction to give a direction to the appellant to, pay bonus at the end of each half year. [471 A-C]

(2) (a) In considering the claim for return on working capital two questions have to be kept in view : (i) whether Reserves were available, and (ii) whether they were used as working capital, and if so, what was, the amount used. 1477 GI

In the present case, the Tribunal has correctly kept the two principles in view in arriving at the amount of Reserves used as working capital and on which a return is to, be allowed. The balance sheets of the appellant do not have any figures from which the Tribunal would be able to, draw a conclusion. The Tribunal, therefore, while accepting the statements. of account filed by the appellant for the two years, for showing how it had calculated the amount of Reserves utilized as working capital, held, that the two items should be deducted; because, working capital represents the funds required for day-to-day Work of the company and cannot include,, fixed assets, and the capital works in progress. [477 G-H; 478 A-C]

Workmen of M/s. Hindustan Motors Ltd. v. M/s. Hindustan Motors Ltd. & Anr. [1968] 2 S.C.R. 311 and M/s. Aluminium Corpn. of India v. Workmen, [1969] 3 S.C.R. 832, referred to.

Therefore, the contention that the Tribunal had committed a mistake in calculating the amount of Reserves used as working capital cannot be accepted. [478 D-E]

(b) A company should build up rehabilitation reserve taking into consideration the increase in price in plant and machinery which has to be replaced at a future date. But since it is a substantial item which goes to reduce the available surplus and as a result, affects the right of the employees to bonus, the employer will have to place all relevant material, before the Tribunal for its scrutiny. The burden of proof is on the employer to prove the price of the plant and machinery, its age, the period during which it requires replacements, the cost of replacement, the amount standing in the Debenture and Reserve Funds and to what extent the funds at its disposal would meet the cost of replacement. If the employer fails to lead satisfactory evidence on these points his claim for rehabilitation will be rejected. Also, if a company has no scheme for rehabilitation then its claim on that bead must be rejected. [479 A-E; 481 B-C]

464

Azam Jahi Mills Ltd. v. Workmen, [1967] 2 L.L.J. 18 and National Engineering Industries Ltd. v. Workmen, [1968] 1 S.C.R. 779, referred to.

in the present case, the averment in the written statement of the respondents, that the appellant's machinery was among the most modern and no provision for rehabilitation was

necessary, was not controverted by the appellant. The balance sheets for the two years showed that some amounts were spent on machinery. But when the respondents were contesting the claim of the appellant on the ground that it had no scheme of rehabilitation and that it had not spent any amount by way of replacement, it was the duty of the appellant to have made a proper claim and to adduce evidence regarding that aspect. Mere production of balance sheets and profit and loss accounts and adding a note in the statements, of account filed that the figure is 'subject to claim for rehabilitation' will not entitle the appellant to sustain its claim for rehabilitation. Moreover, the appellant had large Reserves to meet rehabilitation expenses. It had also 'Boated a debenture for buying new machinery. [481 G-H; 482AC, D]

Further, in determining the claim of an employer far rehabilitation, two, factors are essential to be ascertained, namely, (i) the multiplier, which has to be done by reference to the purchase price of the machinery and the price which has to be paid for replacement; and (ii) the divisor, which has to be done by deciding the probable life of the machinery. [479 E-F]

Honorary Secretary, South India Millowners' Assn. v. Secretary Coimbatore District Textile Workers' Union, [1962] Supp. 2 S.C.R. 926 and M/s. Gannon Dunkerley & Co. v. Their Workmen, A.I.R. 1971 S.C. 2567, referred to.

In the present case no material was placed before the Tribunal by the appellant from which the multiplier and divisor can be properly worked out. [481 E-F]

Therefore, the Tribunal was justified in holding that the appellant had not made out its claim for making provision for rehabilitation. [482 C-D]

(c) The equitable method of allocating the available surplus between the company and its workmen is to distribute 60% as bonus to the workmen leaving the remaining 40% to the company. In the present case, the method of calculation adopted for 1962, by the Tribunal, shows that the amount of bonus awarded by the Tribunal together with the amount already paid by the appellant exceeded 60% and the award of the excess was not justified. [484 A-C]

M/s. Gannon Dunkerley & Co. v. Their Workmen, A.I.R. 1971 S.C. 2567. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1291 and 1292 of 1967.

Appeals by special leave from the award dated June 30 1967 of the Additional Industrial Tribunal, Bangalore in A.I.D. Nos.6 ',and 8 of 1966.

O. P. Malhotra and D. N. Gupta, for the appellant. I. N. Keshava and K. Rajendra Chowdhary, for respondents Nos.2 and 3.

Vineet Kumar, for respondents Nos. 4 to 10.

The Judgment of the Court was delivered by Vaidyalingam These two appeals, by special leave, are directed against the common Award,, dated June 30, 1970 of the Additional Industrial Tribunal, Bangalore, in two References, A.I.Ds. 6 and 8 of 1966.

On December 8, 1965, the Government of Mysore referred to the Industrial Tribunal for adjudication the following question "Is the Management of the Bangalore Woollen, Cotton and Silk Mills Company Limited, Bangalore, justified in announcing payment of one month's basic wages as advance against wages for the half-year ending June 1965 instead of declaring this payment as an ad- vance against payment of bonus as was being, done all these years ?

If not, what other relief the workers are entitled to. This was numbered as Reference No. A.I.D. 6 of 1966. Civil Appeal No. 1291 of 1967 is directed against that part of the order of the Tribunal regarding this Reference.

On March 5, 1966, the Government of MysorE referred to the same Tribunal for adjudication the following question "Whether the demand of the workers of Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore, for additional bonus for the year 1962 and 1963 at the rate of 2 months additional bonus and4 months additional bonus on total wages respectively is justified.

If not, to what other relief or reliefs are the workmen entitled ?"

This Reference was numbered as A.I.D. 8 of 1966. Civil Appeal No. 1292 of 1967 is directed against that part of the order of the Tribunal regarding this Reference. Both the appeals are by the Company.

We will first take up Civil Appeal No. 1291 of 1967. appellant was making two payments of bonus every year, one for the half-year ending 30th June and half-year ending 30th December. The accounting year is the Calendar year. The half yearly payments were unilaterally declared by the appellant and not on the basis of any agreement between the parties. The quantum of bonus that was paid for each half- year was also not constant. Half-yearly payments were made at the end of the half-year when the working result of the said year was known and if there was sufficient profit to pay bonus. The payment of bonus for the half years also depended upon the approximate estimate that the Directors used to make about their prospective future earnings for next half-year. According to the appellant the bonus amounts were paid out of profits. As the Payment of Bonus Act, 1965 (hereinafter to be referred as the Act) had come into force on August 28, 1965, the appellant issued a circular to the effect that for the half-year ending June 30, 1965, payments will be made as advance of wages equivalent to 1/6th of the basic earnings of the employees. In this circular there is a reference to the Payment of Bonus Ordinance 1965, promulgated on May 29, 1965 and that under the terms of the Ordinance, bonus is payable only within a period of 8 months from the end of

the-accounting year. The circular further states that no bonus is payable for the accounting year 1965 until the accounts for the year are closed. It was further mentioned that the amounts are paid as advance wages in view of the representations made by the employees. The circular further mentioned that the amounts paid as advance wages will be set off against the bonus that may be found payable for the ac- counting year 1965 and that if no bonus is payable, the amount paid will be adjusted against the wages due for any month after March, 1966.

The issue of the above circular led to the Unions concerned raising a dispute with the Management that the payment of bonus at the end of each half-year has become a condition of service of the workmen as the same was being paid for several decades without any relation to profits. The appellant was charged by the Unions of having changed the conditions of service by offering to make payments as advance against wages instead of payment by way of bonus. As conciliation proceedings failed, the workmen resorted to a strike in December 1965, which led to the Reference being made by the State Government on December 8, 1965, No. A.I.D. 6 of 1966.

The short stand taken by, the appellant before the Tribunal was that the payments were being made as bonus at the end of each half-year on the basis of the profits earned by the Company. Such payment was a voluntary act of the appellant and related to profit and it had not become a condition of service of the employees. The further case of the appellant is that as the Act had come into force, bonus is governed by the provisions of the Act and that bonus is to be paid only within eight months after the close of the year of account, i.e., December 31, 1965.

The Unions pleaded that the payment of bonus at the end of each half-year, which was being done for a long number of years, has become a condition of service and the amounts paid were not related to the profits earned by the Company. The Unions further contended that the Act has not in any manner affected the right of the employees getting bonus in the manner paid by the appellant namely , at the end of every half-year.

The Tribunal has recorded the following findings : The pay- ment of bonus was not a settled condition of service, but is dependent upon the profits earned during the half-year. Payments made by the appellant at the close of the half-year cannot be considered as customary or festival bonus and that the appellant has made no change in the conditions of service of the workmen by altering the quantum of bonus. Though bonus was paid at the close, of each half-year, the quantum of such bonus varied depending upon the profits earned by the Company. The Company has no doubt been paying for a long time profit bonus in two instalments, namely, in the month of August for the half year ending 30th June and in the month of March or April of the succeeding year for the half-year ending 31st December. The coming into force of the Act has, not created any right in the appellant to withhold the payment for each half-year as it used to do. The appellant will be entitled to deduct the amount of bonus paid for the first half year from the amount of bonus payable to its, employees under the Act in respect of the accounting year and the employees will be entitled to receive only the balance for the second half-year. On these findings the Tribunal held that the appellant was not justified in announcing the payment of the amount towards advance wages under the circular dated August 28, 1965. In the end the Tribunal gave a direction to the effect that the appellant is liable to pay profit bonus in two instalment as advance against the final declaration of bonus to be paid

during the last week of August or first week of September and the balance, if any, was to be paid in the month of March or first week of April of the succeeding year. It further gave a direction that the first payment that is to be paid is to be as advance against payment of bonus and not as against wages.

Mr. Malhotra, learned counsel for the appellant, has chal- lenged the above directions given by the Tribunal. The counsel pointed out that after the coming into force of the Act, the rights and liabilities of the parties, regarding bonus, are governed by its provisions. Under the Act, the computations of the available and allocable surplus have to be made on the basis of the gross-profits ascertained at the end of the relevant accounting year and the payment of bonus has to be made within eight months of the close of the accounting year. As the Act envisages payment of only one bonus, at the end of the accounting year, after computation of the amount as per the Act, the direction given by the Tribunal regarding payment of half-yearly bonus is illegal and contrary to the provisions of the Act. This direction, the counsel pointed-out, given by the Tribunal, will apply not only to the year 1965, but also to all succeeding years. On the other hand, Mr. H. K. Puri, learned counsel for the respondents Nos. 2 and 3, whose contentions have been accepted by the, counsel for the other respondents, urged that the Act does not prohibit an employer from paying bonus at the end of each half-year. The appellant has been paying bonus in two installments, namely, at the end of each half- year. It is always open to the appellant, both by virtue: of the provisions of the Act and the direction given by the Tribunal to deduct when paying final bonus at the end of the accounting year, any amounts that may have been paid for the first half-year. Therefore, according to Mr. Puri, the directions given by the Tribunal are neither illegal nor contrary to the provisions of the Act.

We are not inclined to accept the contention of Mr. Puri. We have already referred to the findings of the Tribunal to the effect that the amount that was paid by the appellant as bonus at the end of each half-year was on the basis of the profits earned by it The Tribunal has rejected the claim of the Unions that the payment of bonus, in the manner claimed by them, was not a condition of service and that the payment had nothing to do with any custom or festival. These findings have not been and in fact could not be challenged by the respondents. There is also no controversy that payment of bonus for the accounting year 1965 is governed by the provisions of the Act. If so, the question is whether the directions given by the Tribunal and referred to above, can be supported by the provisions of the Act. The Act has come into force with effect from August '-IS, 1965. As provided under sub-section (4) of section 1, it applies to all accounting years commencing on any day in the year 1964 and in respect of every subsequent accounting year. Section 2 defines amongst others the expressions, "accounting year", "allocable surplus", "available surplus" and "gross profits" Section 4 deals with the computation of gross-profits. So far as the appellant is concerned; under s. 4, cl. (b) the gross-profits are to be calculated in the manner specified in the Second Schedule. Section 5 provides for computation of available surplus. It is to be ascertained after deducting from the gross-profits the various items, referred to in S. 6. Section 6 deals with the items to be deducted as prior charges from the gross- profits. Section 10 makes it obligatory on an employer to pay minimum bonus to the employees in an accounting year of 4% of his salary or wages or Rs. 40/- whichever is higher. This payment is irrespective of the fact whether a Company has or has not earned profits in an accounting year. But this provision is subject to the provisions of ss. 8 and 13. Section 11 provides for payment of bonus subject to a maximum of 20% of the salary or wages, if the

conditions mentioned therein are satisfied. Section 17 enables an employer, who has paid during any accounting year Puja Bonus, or other customary bonus or a part of the bonus payable under the Act before the due date, to deduct the amount so paid from the amount of bonus payable by him to an employee under the Act in respect of that accounting year. It further provides that under such circumstances the employee will be entitled to receive only the balance. Section 19 fixed the time limit for payment of bonus. If there is a dispute regarding payment of bonus pending before any authority, the bonus will have to be paid within a month from the date, on which the Award becomes enforceable or the settlement comes into operation. In any other case the bonus will have to be paid within a period of eight months from the close of the accounting year. Under the proviso to s. 19, power is given to the appropriate Government to extend the period of eight months in accordance with the provisions contained therein. Section 34 provides that the Act except as otherwise provided in the section, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any Award, agreement, settlement or contract of service made before May 29, 1965.

We have referred to some of the relevant provisions of the Act. From a perusal of the scheme of the Act, it is clear that the bonus for a particular accounting year will have to be computed in accordance with the provisions of the Act on the basis of the gross-profits which are determined at the close of the accounting year. The Act itself provides as to how the gross-profits are to be calculated and the available and allocable surplus arrived at The Act also provides the outer limit, the period within which bonus has to be paid. It further gives the employer a right to deduct any amount that any have been paid during the accounting year as part of the bonus payable under the Act.

It will be seen from the scheme of the Act that the claim for bonus can be made only after the close of the accounting year and in accordance with the provisions of the Act. The gross-profits can be calculated only at the end of the accounting year and the available and allocable surplus can also be worked out only at the end of the accounting year. There is no question of an employer computing the gross- profits,, available and allocable surplus in the middle of an accounting year or at any time before the close of the relevant accounting year. The direction given by the Tribunal really amounts to the employer having to make, two 831 Sup CI/72 computations at the end of each half-year. No doubt the Tribunal has given a direction to the effect that any amount paid for the first half-year can be deducted when the final bonus is paid at the, end of the accounting year.Even without any such consideration being shown by the Tribunalallowing an employer to so deduct section 17gives such a right to an employer. We are not impressed with thecontention of Mr. Puri that as there is no prohibition in theAct against an employer making the payment by way of bonus at the end of a half year, the direction given by' the Tribunal can be sustained.

Mr. Puri referred us particularly to the provisions contained in s. 17 of the Act. He pointed out that though a time limit is fixed by s. 19, the Act itself as is evident from s. 17, clearly envisages payment of bonus at the end-of each half year. We are not inclined to accept this contention of Mr. Puri. The direction given by the Tribunal making it obligatory on the Management to make half yearly payment of bonus apart from being opposed to the scheme- of the Act, also runs counter to the provisions of s. 19. Whether it is the minimum bonus of, 4% under s. 10 or' the maximum bonus of 20 % under s. 11, they have to be paid, as, is made clear by s' 19, only within the period mentioned

therein.' It may be that an employer voluntarily pays amount during the accounting year by way of part bonus which he is entitled to take into account and adjust when making final payment at the close of the accounting year. It is one, thing to say that an employer can make voluntary payment, but it is- a different thing for the Tribunal to give a direction to that effect.

Section 17 on which reliance, is placed by Mr. Puri is as follows:

"Where in any accounting year--

(a) an employer has paid any paid bonus or other customary bonus to an employee; or

(b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the; balance.

Clause (a)has no application as the Tribunal has categori- cally held that there is question of any payment by way of puja bonus, or other customary bonus. Even then if any such bonus has been paid the employer is entitled to deduct the same from the amount of bonus payable under the Act. Clause (b) is an enabling section in favour of the employer in that it visualizes a situation or contingency where he may have paid during the accounting year a part of bonus payable under the Act "before date on which such bonus becomes payable". If an employer has paid any amount during an accounting year by way of part of the bonus, he, is entitled lo deduct the same from the final amounts that may be payable under the Act. That provision does not give a right to an employee to claim payment of bonus even by way of part payment during the currency of the accounting year. If so, the Tribunal has also no jurisdiction to give a direction to an employer to pay bonus at the end of each half-year.

In this case,it is no doubt, seen that the appellant has been paying bonus atthe end of each half-year. But the Tribunal has found that suchpayment has not become a condition of service. Therefore by the mere fact that the appellant has been making payments on previous occasions every half-yearly, does not confer a right on the employee to have such payments by way of bonus in the same manner even after the Act came into force,..

From the above discussion it follows that the directions given, by the Tribunal in A.I.D. No. 6 of 1966 have to be set aside.

Now coming to Civil Appeal No. 1292 of 1967, as mentioned earlier, it is against that part of the Award of the Tribunal in A.I.D. No. 8 of 1966. The question that was referred to the Tribunal has also-been extracted in the earlier part of the judgment. That relates to a claim for additional bonus for the years, 1962 and 1963, There is no controversy that the appellant has already paid for the year 1962, three months basic wages as bonus. Similarly for the year 1963 also four months basic wages as bonus has already been paid. The claim was for, two months total wages as additional bonus for the year 1962 and four months' total wages as additional bonus for the year 1963. The findings

recorded by the Tribunal in A.I.D. No. 6 of 1966 regarding the nature of bonus paid to the employees have been adopted for this reference also. The respondents-Unions do not challenge those findings. Therefore, even in respect of the years 1962 and 1963, what is payable is only profit bonus. There is also no controversy that for these two years the quantum of bonus payable has to be calculated in accordance. with what is known as the Labour Appellate Tribunal Full Bench Formula, which has been approved by this Court in The Associated Cement Companies Ltd. Dwarka Cement Works, Dwarka v. Its Workmen and Another(1). Both the parties have filed statements of calculations according to (1) [1959] S.C.R. 925.

the said Formula. The statements Exs. M. 1 and M.2 filed by the Management represent the computation of available surplus for the years ended December 31, 1962 and 1963 respectively. Ex. M. 1 is as follows-:

"THE BANGALORE WOOLLEN, COTTON & SILK MILLS CO. LTD. Statement showing the computation of available surplus for the year ended 31st December, 1962 (Under L.A. T. Formula) Profit as per profit and loss Account6801756 Add:

```
     Provision for Bonus                      1614000
     Depreciation on Fixed Assets             1696481
     Donations                                107362
     Additional Bonus for    1961        146000
3563843
                             ----------
                                    10365599
     .Less:
     Profit on sale of assets    1745426
                             8620173
     Less
```

Normal Depreciation and Shift Allowance1465812 7154361 Less:

```
     Tax Liability
     Profit as above                        7154361
     Less
     -Development Rebate                     586415
                                            6567946
     Income-tax Liability at
     50 Y. on Rs.                       65534083276704
     Income-Tax at
     25 % on Rs.145383635
                                  65679463280339
```

Super Profits Tax on Rs. 6553408409158 3689497 Return on Capital employed Preference Share Capital 78 %. on Rs. 60000046800 ordinary Share Capital 729000 6% on Rs. 12150000 Reserves employed in the business 4% on Rs. 469379 471787 3325545336244030 Available Surplus.Rs. 910331 Subject to claim for rehabilitation.

We have prepared the above statement from the audited accounts of the Company and is in accordance therewith. The return on Capital and Reserves is as claimed by the Company. Sd/Illegible Chartered Accountants."

Similarly Ex. M2 regarding the year 1963 is as follows : "THE BANGALORE WOOLLEN, COTTON & SILK MILLS CO. LTD. Statement showing the computation of available surplus for the year ended 31st December 1963 (Under L. A. T. Formula) Profit as per Profit and Loss Account 5239220 ADD :

Provision for Labour Bonus		2245000
Depreciation on Fixed Assets		1733719
Donations		8804
Provision for Taxation	8110000	12097523

		17336743
LESS:		
Profit on Sale of Assets		83093

Excess Provision of Electricity charges and interest written back 675184 758277 16578466 LESS:

Normal depreciation and Shift Allowance 1647555 14930911 LESS Tax Liability Profit as above 14930911 Less Development Rebate 460548 14470363 Income-tax Liability at 50% on Rs. 14455825 7227912 25 % on Rs. 145383635 Dividend-tax 164025 Companies (Profit) Surtax Liability on Rs. 1445582 51786212 9181784 Return on Capital Employed Preference Share Capital 7 .8 % on Rs. 600000 46800 Ordinary Share Capital 6 Y. on Rs. 12150000 729000 Reserves employed in the business 4 % on Rs. 46937947 .1877518265331811835102

Available surplus 3095809 Subject to claim for rehabilitation.

We have prepared the above statement from the audited accounts of the company and certify that it is in accordance therewith. The return on capital and reserves is, as claimed by the company.

Sd. illegible Chartered Accountants.

The Tribunal has accepted as correct the gross-profits as given by the appellant in these, two exhibits for the two years in question. Even though the Unions contested the return on Preference Share Capital at 7.8%, the Tribunal has rejected their objections. it has held that under the Preference Share Regulations Act, the Company is bound to pay 7.8% on Preference Share Capital. Ile Workmen did not raise any controversy regarding the return on Ordinary Share Capital at 6%. The Tribunal, therefore, accepted the figures given in both Exs. M. 1 and M. 2 and to the return of Ordinary Share Capital. But the controversy arose about the claim made by the appellant regarding return on Reserves employed during the two years. It will be noted that neither in Ex. M. 1 nor in Ex. M. 2 the appellant has made any claim for rehabilitation excepting adding a note to the statement that they are subject to a claim for rehabilitation.

The two points in controversy between the parties regarding these two years were (1) The claim for Return on Reserves and (2) Provision for Rehabilitation.

We will first take up the question regarding the claim of the appellant for return on Reserves. In Ex. M. 1, the appellant has claimed a sum of Rs. 178733.00 as 4% return on Rs. 44468315.00 being the amount employed in business. Similarly in Ex. M.2, for the year 1963, it had claimed Rs. 1877518.00, being 4% return on Reserves on Rs. 46937947.00, employed in the business. The Unions contested the claim of the appellant on the ground that they are not entitled to any return on Reserves. The appellant had filed two statements Exs. Ml (a) and M.2(a) for the years 1962 and 1963 respectively, showing how the amounts claimed as Reserves employed in business have been arrived at Ex. M. 1

(a). for the year 1962 is as follows THE BANGALORE WOOLLEN, COTTON & SILK MILLS CO. LTD. Year ended 31st December 1962.

Reconciliation of Capital employed in the business during the year ended 31st December. 1962.

"As at 31-12-1961:

> Fixed Assets and Capital Works 43139570 in Progress Investments 595216 Interest accrued on Investments 17477 Stores and Spare parts 6179042 Raw Materials 6886058 Process Stocks 5053558 Finished Stocks 1381082 Sundry Debtors 2473722 Advances 2768233 Balance with Railway and Excise Authorities 292529 Deposits 18993 68806470
>
> ---
>
> LESS
> Sundry Creditors 7077709
> Due to Directors 63744
> Unclaimed Dividends 18257
> Provision for Taxation 1057850
> Proposed Dividends 1481400
> Provision for Gratuity 1860431
> Officer's Retiring Fund 26764
> (Fund loss investments) 11588155
> ---
> 57218315
> LESS:
> Share Capital
> 12750000
> Rs. 44468315"

Exhibit M.2(a) for the year 1963 is as follows "THE BANGALORE WOOLLEN, COTTON & SUR MILLS CO. LTD.

Year ended 31st December, 1963.

Reconciliation of Capital employed during the year ended 31- 12-1963.

As at 31-12-1962	45229453
Investments	548575

Interest accrued on Investments 8703 Stores and Spare Parts 6553343 Raw Materials 4701434 Process Stocks 7285534 Finished Stocks 1688931 Sundry Debtors 3429299 Advances 3165324 Balances with Railway and Excise Authorities 346450 .Deposits 24234

729811280 LESS:

Sundry Creditors	7686123
Due to Directors	65278
Unclaimed Dividends	22837
Provision for Taxation	2305645
Proposed Dividends	1481400
Provision for Gratuity1	706251
Officers Retiring Fund	25799
(Fund less investments)	13293333
	59687947
Less Share Capital	12750000
Rs.	46937947"

It will be seen that the last figures shown in both the statements have been claimed by the appellant as Reserves employed in business for each of these two years. The Tribunal after a reference to the evidence of the Char- tered Accountant,, M.W.1, has held that the amounts which should have been used as Working Capital are those mentioned in Exs. M.1(a) and M.2(a), less the fixed assets and capital works in progress. The Tribunal has further held that the working capital cannot include fixed assets nor the capital works in progress, as they represent the funds required for day to day work of the Company. According to the Tribunal these fixed assets have been accumulated over years and they cannot form part of-the working capital. However, the Tribunal accepted the claim of the appellant that the other items in Exs. M.1(a) and M.2(a), namely, investments, interest accrued on investments, stores and spare parts, raw materials, process stocks, finished stocks, sundry debtors, advances etc. are the amounts available to be used as working capital. On this reasoning the Tribunal held that in calculating the return on working capital, the amounts mentioned in Ex.M.1(a) and M.2(a) less the amount sunk in fixed assets and working capital in progress, have to be deducted. On this basis it deducted from Rs. 44468315, a sum of Rs. 43139570, and fixed a sum of Rs. 1328745, as Reserves employed in business during the year ended December 31, 1962. On this amount it allowed a sum of Rs. 53150/- as return on Reserves at 4% for the year 1962. Similarly, for the year 1963, it deducted from Rs. 46937947 a sum of Rs. 45229423, and fixed a sum of Rs. 1708524/- as Reserves employed in business during that year. On this amount it allowed Rs. 68340/- as return on Reserves at 4%. Mr. Malhotra, learned counsel for the appellant, while accepting that the principle adopted by the Tribunal in this regard is correct, contended that it had made a mistake incalculation. According to the learned counsel, the claim musthave been allowed in

the manner calculated by the appellant.In this connection, the learned counsel pointed out that even in cases where the evidence regarding the utilization of Reserves as Working Capital as claimed by the Company, is not very satisfactory, this Court,, on the basis of the balance sheets, which indicated that some amount must have been used as working capital has allowed such a claim. In this connection, he relied on Workmen of M/s Hindustan Motors Ltd. v. M/s Hindustan Motors Ltd., and Another(1) and Messrs. Aluminium Corporation of India v. Their Workmen (2).

We may straightaway say that these decisions do not assist the appellant. In the case before us it is not necessary to do any guess work as the appellants wants us to do. The appellant has filed statements showing how it has calculated the amount of Reserves utilized as working capital and we have to find out whether the calculations made by it are correct. In fact, Mr. Malhotra has not been able to point out from the balance sheets, as to what amount, according to the appellant, can be considerd to have been used as working capital. In the two decisions,, relied on by him, the company concerned was able to refer to the figures in the balance sheets from which this Court was able to draw a conclusion regarding the approximate amount that would have been utilized as working capital. The position before us is entirely different.

On the other hand, Mr. Puri" learned counsel for the respon- dents, referred us to the balance sheets for the years in question regarding the share capital of the company being shown as Rs. 12750000/-. The counsel further pointed out that the said share capital must have been sunk in acquiring the fixed assets and for capital works in progress and, therefore, the Tribunal was justified in deducting the amount of fixed assets and capital works in progress shown in Exs. M. 1 (a) and M.2 (a) from the total shown by the appellant in those statements. The counsel further urged that in considering the claim for return on working capital two questions have to be kept in view: (1) Whether the Reserves were available, and if they were (2) whether they were used as working capital and if so what is that amount. The Tribunal in our opinion, has correctly kept these two principles in view in arriving at the amount of Reserves used as working capital and on which a return is to be allowed. We see no error committed by the Tribunal in the calculation made for arriving at the, Reserves which must have been used as working capital, especially as the evidence on the side of the appellant was very unsatisfactory. Even the appellant has deducted the amount of share capital before (1) [1968] 2 S.C. R. 311.

(2) [1969] 3 S.C.C. 832.

arriving at the final figures mentioned in Exs. M.1(a) and M.2 (a). But the appellant was claiming the whole of the final amount shown in these two statements as Reserves used as working capital, which it was not certainly entitled to in law.

We have already pointed out that the Tribunal has held that the working capital cannot include fixed assets nor the capital works in progress as it represents 'the funds required for day to day running of the Company. The, Tribunal has further held that the appellant is entitled to deduct investments, interest accrued on ,investments etc. which have been shown in Exs. M 1 (a) and M.2(a) on the ground that they must be considered to be the amounts available to be used as working capital. These findings have not been challenged by the learned counsel for the appellant. The appellant has

also filed details of Reserves employed in the business during the years ended 31st December, 1962 and 1963 as shown in Exs. M. 1 (b) and M.2(b) respectively. Even ,there the appellant has deducted the share capital before giving final figures. Therefore, the contention of Mr. Malhotra that the Tribunal 'has committed a mistake in calculating the amount of Reserves used as working capital for these two years, cannot be accepted. If so, it follows that the amount fixed by the Tribunal as return 'at 4% on Reserves used as working capital for these two years, is correct. The second question that arises for consideration is the claim made by the appellant for provision for rehabilitation for the two years and which claim has been rejected by the Tribunal. The claim made by the appellant for provision for rehabilitation for the year 1962 was Rs. 18030871.00 and for the year 1963 Rs. 18062336.00. Thus the appellant was claiming for each year provision being made of more than a crore of rupees for rehabilitation. The appellant has filed a chart Ex. M.8 giving the calculations for the year 1962, its claim for rehabilitation for Rs. 18030871.00. If the claim for rehabilitation is accepted, then the result will be that there will be no profits at all from and out of which any bonus can be paid for the years in question. The claim of the appellant has been opposed by Mr. I. N. Keshava, learned counsel for the first respondent and his contentions have been adopted by the counsel appearing for the other respondents-Unions. The claim of the appellant is opposed mainly on two grounds, namely, (1) that the appellant has no scheme for rehabilitation for the relevant years and (2) in any event there were huge Reserves available from which the, claim for rehabilitation can be easily met. The Tribunal has rejected the claim for rehabilitation both on the grounds that the appellant has no scheme for rehabilitation and that the rehabilitation claim can be adequately met with from the huge Reserves of nearly four crores of rupees that the appellant had. It must be noted that Rehabilitation Reserve is a substantial item which goes to reduce the available surplus and as a result affects the right of the employees to receive the bonus. Hence the employer will have to place all relevant materials and the Tribunal will have to scrutinize them carefully and to be satisfied that the claim is justified. It is no doubt true that it is but proper in the larger interest of the industry as well as the employees that proper rehabilitation Reserve should be built up taking into consideration the increase in price in plant and machinery which has to be replaced at a future date and by determination of multiplier and its deviser. It is also clear from the decisions of this Court that if a Company has no scheme for rehabilitation, then of course, its claim on that head must be rejected. [vide Azam Jahi Mills, Ltd. v. Their Workmen(1)]. Further, since it is the employer who seeks replacement costs, it is for him to satisfy the Tribunal as to what will be the overall cost of replacement and in doing so, it is he who has to discharge, this burden by adducing proper evidence and giving other party an opportunity to test the correctness of that evidence by cross-examination. [vide National Engineering Industries Ltd. v. Its Workmen(2)].

It is also now well-settled that in determining the claim of the employer for rehabilitation, two factors are essential to be ascertained, namely, (1) the, multiplier, and that has to be done by reference to the purchase price of the machinery and the price which has to be paid for rehabilitation or replacement; and (2) the determination of the deviser and that has to be done by deciding the probable life of the machinery. [vide The Honorary Secretary, South India Millowners' Association and others v The Secretary Coimbatore District Textile Workers' Union(3) and M/s Gannon Dunkerley and Co. Ltd. and another v. Their Workmen(4)].

Mr. Malhotra, learned counsel for the appellant, very strongly relied on the statement Ex. M.S. as well as the evidence of M.W. 2, the Mill Manager and M.W. 3, the Assistant Officer, Efficiency Section of the Mill, in support of his contention that the appellant has a scheme for rehabilitation and that the claim made by the appellant for making provision for rehabilitation is proper. The counsel also pointed out that the evidence of these two witnesses clearly establishes that most of the items of machinery have long out lived, their normal age of 25 years and (1) [1967] 2 L.L.J. 18.

(2) [1968]1 S.C.R. 779.

(3) [1962] Supp. 2 S.C.R (4) A.I.R. 1971 S.C. 2567.

therefore they require replacement in order to ensure proper production. The counsel further pointed out that the rejection by the Tribunal of the claim made by the appellant, on the basis that the life of the textile machinery is only 25 years, is not correct and that the view of the Tribunal that the normal age is more than 25 years is opposed to the decisions of this Court.

So far as the age of the machinery is concerned, it is no doubt true that in The Honorary Secretary, South India Millowners' Association and others v. The Secretary Coimbatore District Textile Workers' Union(1), this Court, after a reference to the evidence adduced confirmed the findings of the Tribunal that the estimated life of the textile machinery in question should be taken to be 25 years, but in the said decision itself it is observed ,is follows "We are not prepared to accept either argument because, in our opinion, the life of the machinery in every case has to be determined in the light of evidence adduced by the parties."

But it is unnecessary for us to pursue this aspect further as we are disallowing the entire claim for rehabilitation. Mr. Malhotra, also criticized the view of the Tribunal that in this case the evidence of the witnesses on the side of the appellant clearly shows that the machines are working very efficiently though they have been running for over 50 years. On the other hand, the counsel urged that the principle to be borne in mind, when considering the claim far rehabilitation, is that the life of the machinery is the period during which it is estimated to work with reasonable efficiency and not the period during which it has actually been operated, that is, till it becomes too deteriorated for use. No doubt the last proposition enunciated by the counsel in the abstract is correct; but the question is whether the appellant has discharged its burden of satisfying the Tribunal that it had a scheme for rehabilitation and whether it had placed the necessary mate- rials for the purpose of working out the multiplier and the deviser.

Mr. Keshava, learned counsel for the first respondent, referred us to the written statement filed by one of the Unions, Benny Mills Labour Association, wherein it has specifically stated that the plant and machinery owned by the Mills are amongst the most modem, machineries and that no provision for rehabilitation is necessary. The appellant, it is pointed out, in its reply statement did not controvert these averments. EN-en in the statements Exs. M. 1 and M. 2, filed by the appellant, no claim for rehabilitation has been made. He also referred to the evidence or (1) [1962] Supp. 2. S.C. R. 926.

M.Ws. 2 and 3 and pointed out that their evidence does not show that the Company had any scheme for rehabilitation. On these grounds, the counsel pointed out that the appellant has not placed sufficient materials before the Tribunal to sustain its claim for rehabilitation.

It must be emphasized that in dealing with the claim of an employer for rehabilitation, as pointed out earlier, the onus of proof is on the employer. He has to prove the price of the plant and the machinery, its age, the period during which it requires replacement, the cost of replacement, the amount standing in the Debentures and Reserve Funds and to what extent the funds at its disposal would meet the cost of replacement. If the, employer fails lo lead satisfactory evidence on these points, the result will be that the claim for rehabilitation will have to be totally rejected. It is no doubt true that a chart Ex.M. 8 has been filed by the appellant and M.W. 3, the Assistant Officer, Efficiency Section, has spoken regarding the same. But he has admitted that the original quotations received from the dealers regarding the price of new machinery for the purpose of replacement have not been produced before the Tribunal. He has further admitted that the appellant has not produced the letters written by it calling for quotations regarding the price of the machinery. He has further admitted that no charts have been produced to show the value of the machineries in 1962. The multipliers, according to this witness, have been adopted as advised by the appellant's Legal Adviser.

It is clear from the above answers of the witness that there is no material placed before the Tribunal by the appellant from which the multiplier and deviser can be properly worked out for the purpose of considering the claim for rehabilitation. In fact the Mill Manager, M.W. 2 has stated that the company has floated a debenture for 1 1/2 crore for buying new machinery. This clearly shows that the appellant had no scheme for rehabilitation and that explains the reason why it had not made any provision for rehabilitation. Mr. Malhotra, then urged that at any rate the Tribunal itself has proceeded on the basis that some amount for rehabilitation is necessary to be provided for each year. Based on this observation of The Tribunal, the counsel pointed out that the appellant should be allowed at least the amount that it has actually spent for replacement of machineries in the years 1962 and 1963. According to him a sum of Rs. 2619608 and Rs. 2124102 have been spent in the years 1962 and 1963 respectively for machinery and plant installed in those years. In this connection he referred us to the balance sheet and profit and loss accounts for these two years and stressed that the Tribunal has committed an error in not allowing at least these amounts by way of provision for rehabilitation.

it is no doubt true that these amounts are shown in the schedules to the balance sheets for the years concerned. Admittedly, there is, no such claim made in the written statement filed by the appellant before the Tribunal. When the Unions were contesting the claim of the appellant on the ground that it has no, scheme for rehabilitation and that it has not spent any amount by way of replacement of old machinery, it was the duty of the appellant to have made a proper claim and it should have adduced evidence regarding that aspect before the Tribunal. Mere production of balance sheet and profit and loss accounts by themselves will riot entitle the appellant to sustain its claim for rehabilitation.

For all the reasons given above, it is clear that the Tribunal was justified in holding that the appellant has not been able to make out its claim for making provision for rehabilitation. In this view the Tribunal was justified in rejecting this claim of the appellant.

We may also state that the Tribunal is also of the view 'that the appellant has large Reserves with which it can meet rehabilitation expenses of the machinery. In this connection the Tribunal has also referred to the evidence on the side of the appellant, that even according to the appellant rehabilitation will have to be completed only within eight years from 1962 and that only a sum of rupees eighty lakhs will be required for each year. On 'this reasoning the tribunal has held that this amount of rupees eighty lakhs can be easily met with from the large Reserves available with the appellant. It is not necessary for us to consider this aspect further because we have already agreed with the findings of the Tribunal that the appellant has no scheme for rehabilitation and that it has not placed any satisfactory evidence before the Tribunal in support of its claim.

The last point that arises for consideration is regarding the available surplus for the years 1962 and 1963 as calculated by the Tribunal and the award by it of 1/3rd of the amount as additional bonus for the two years after deducting the bonus already paid by the appellant. The Tribunal, after rejecting the appellant's claim for rehabilitation and also allowing return on Reserves used as working capital in the manner, already referred to, had arrived at the available, surplus for the year 1962 in the sum of Rs. 2635914 and for the year 1963 at Rs. 4904987. The appellant filed a statement Ex. M. 4 showing the Amount of bonus already paid for the years 1962 and 1963 to all employees drawing a total of Rs. 500/- and less per mensem. From that statement it is seen that for the year 1962 it had paid a sum of Rs. 1441455 and for the year 1963 a sum of Rs. 1960795. On the basis of the available surplus worked out for the years 1962 and 1963, the balance available surplus after deducting bonus already paid will be as follows:

Rs.

Available surplus as worked out by the Tribunal2635914 Amount already paid as bonus by the appellant1441455 Balance . . . . . 1194459 Available surplus as worked out by the Tribunal4904987 Amount already paid as bonus by the appellant1960795 Balance .. . . . . 2944192 What the Tribunal has done is to distribute 1/3rd of the, amount shown as balance above, for each of the years as additional bonus. That results in the workmen getting Rs. 398153 representing 25 days basic wages as additional bonus for the year1962. Similarly, the workmen get Rs. 981397 representing two months basic wages as additional bonus for the year 1963.

Therefore, it will be seen that the total bonus thatthe workmen will get for each of the years will be as follows Rs.

1. Amount already paid by the appellant 1441455

2. Additional amount awarded by the Tribunal 398153 TOTAL . . . . . 1839608 From the available surplus of Rs. 2635914 in 1962, the work- men will get a total sum of Rs. 1839608 as bonus for that year which works out to more than 60% of the available surplus..

Similarly for the year 1963 the figures are as follows Rs.

1. Amount already paid by the appellant 1960795

2. Additional amount awarded by the Tribunal981397 TOTAL . . . . 2942192 From the available surplus of Rs. 4904987 in1963, the workmen will get a sum of Rs. 2942192 for that year which works out more or less about 60% of the available surplus, falling short by a sum of Rs. 800/-.

Mr. Malhotra, learned counsel for the appellant attacked the method of calculation adopted by the Tribunal. According to him the Tribunal should not have fixed more than 60% of the available surplus as bonus payable for a year. On the other hand, the amounts of bonus now awarded by the Tribunal and already paid by the appellant exceed 60%. In our opinion, there is considerable force in the contention of the learned counsel. The available surplus, as found by the Tribunal for the year 1962 is Rs. 2635914. Working out roughly 60% of this surplus to be distributed as bonus to the workmen, the amount of bonus will be about Rs. 1581600. The appellant has admittedly paid a sum of Rs. 1441455. The balance that the workmen will be entitled to will be Rs. 140145.00, whereas the Tribunal has directed the appellant to pay for this year by its Award a sum of Rs. 398153. The award of this amount is not-.justified. So far as 1963 is concerned, the available surplus as found by the Tribunal is Rs. 4904987. 60% of this available surplus, to which the workmen will be entitled to will be Rs. 2942992. On the other hand, the total amount that the workmen will get as per the award including the amount already paid by the appellant as bonus is Rs. 2942192. The appellant will have to pay only an additional sum of Rs. 800/- to make up 60%. There is no appeal by the Unions and therefore, the bonus awarded for the year 1963 does not require any interference.

In allocating the available surplus between the company and the workmen, it has been held by this Court that it will be equitable if roughly 60% of the surplus is distributed as bonus to the workmen and the Company is left with the remaining 40%. The Company will get in addition to this 40%, the benefit of the Income-tax rebate on the 60% bonus payable to the workmen. [vide M/s. Gannon Dunkerley and Co. Ltd. and another v. Their workmen(1)]. We have 'adopted the same principle in the case on hand.

To conclude the Award of the Industrial Tribunal in A.I.D. No. 6 of 1966 is set aside and Civil Appeal No. 1291 of 1967 is allowed. There will be no order as to costs. The Award of the Industrial Tribunal in A.I.D. No. 8 of 1966 is modified to the following extent: For the year 1962 the appellant will be liable to pay as additional bonus only a sum of Rs. 140145 instead of a sum of Rs. 398153 as directed by the Tribunal in the Award. To this extent Civil Appeal No. 1292 of 1967 is allowed in part. In other respects, it is dismissed. There will be no order as to costs. V.P.S.

(1) A.I.R. 1971, S.C. 2567