

of its powers under s. 115 of the Code.

The appeals must therefore fail and I agree with the order proposed by my learned brother Shah, J.

Appeals dismissed.

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ALUMINIUM CORPORATION

v.

THEIR WORKMEN AND ORS.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO AND K. C. DAS
GUPTA, JJ.)

Industrial Dispute—Award of bonus—Full Bench Formula—Allowance under rehabilitation charges—Burden of proof—Evidentiary value of statements in balance sheets.

The appellant is a manufacturer of aluminium, having two factories one near Asansol and another in Asansol. A dispute having arisen between the appellant and the respondent on the question of bonus for the year 1957-58 it was referred to the Industrial Tribunal by the Government of West Bengal. A similar dispute arose between the appellant and its workmen in the second factory and this also was referred to the same tribunal. In the second dispute the parties submitted joint petitions before the tribunal agreeing to abide by the award on the bonus question in the first dispute and requesting that similar award be made in the second dispute also. In the first dispute the Tribunal awarded a bonus equivalent to three months basic wages inclusive of the amount that had already been paid by the company voluntarily. An award was made in the second dispute also in similar terms. In determining the amount of available surplus the Tribunal applied the rules embodied in the Full Bench Formula which was approved by this Court in *Associated Cement Co. Ltd. v. Its workmen*, [1959] S.C.R. 925, and allowed Rs. 43 lacs as return on reserve used as working capital and allowed nothing under the head rehabilitation charge. The appellant appealed against both the awards by way of special leave granted by this Court.

On behalf of the appellant it was contended that there was no justification in rejecting the claim under the head rehabilitation charge. It was urged that the balance sheet of the company would by itself show what part of reserve was used as working capital and a correct way of reaching at the figure of reserve

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used as working capital would be by deducting the current liabilities of the company in the balance sheet from the current assets as shown therein.

Held: (i) The burden to prove any prior charge under the head of rehabilitation lies on the employer and that unless the employer has by proper evidence established its claim to some amount as rehabilitation charge the claim must be rejected. In the present case the materials on the basis of which the multipliers and devisers have been arrived at have not been established by proper evidence and therefore the tribunal was justified in rejecting the claim under the head rehabilitation charge.

(ii) Regarding the claim of prior charges under the head "return on reserve used as working capital" the appellant gave widely different estimates and this fact gives some justification in refusing to accept any of these as correct. The mere statements in the balance sheet as regards current assets and liabilities cannot be taken as correct. They have to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. This has not been done in the present case.

Petted Turkey Dye Works v. Dye and Commercial Workers Union [1960] 2 S.C.R. 906, *Khandesh Spg. and Wvg. Mills Co. Ltd. v. Rastriya Girni Kamgar Sangh, Jalgaon*, [1960] 2 S.C.R. 841, *Bengal Kagazkal Mazdoor Union v. The Titagarh Paper Mills Co.* [1964] 3 S.C.R. 38, referred to.

(iii) The practice on the part of employers to show the entire amount of reserve available for use as working capital as the actual amount used was wrong.

(iv) For deciding what part of the available surplus should be paid to the workmen as bonus the wage bill of the workmen only has to be considered and the Tribunal is not concerned with what is paid by the company to its officers.

The Tribunal has not committed any error in fixing the bonus figures and the appeals are therefore dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 238 and 818 of 1962.

Appeals by special leave from the awards dated October 21, 1960, and May 17, 1961 of the Fifth Industrial Tribunal, West Bengal in Cases Nos. VIII-77 of 1959 and VIII-93 of 1959 respectively.

A. V. Viswanatha Sastri and *B. P. Maheshwari*, for the appellant (in both the appeals).

Janardhan Sharma, for the respondents (in the both appeals).

August 14, 1963. The Judgment of the Court was delivered by

DAS GUPTA J.—These appeals by special leave are against an award of the Fifth Industrial Tribunal, West Bengal, on the question of bonus for the year 1957-58 to workmen of the appellant-Company. The appellant which is engaged in the manufacture of aluminium from basic material has its factory at J. K. Nagar near Asansol in West Bengal. A dispute having arisen between the appellant and some of its workmen on the question of bonus for the year 1957-58 it was referred to the Fifth Industrial Tribunal, West Bengal, by an order of the Government of West Bengal. In another reference made by that Government to the same Tribunal on May 2, 1959 a dispute between the Company and its workmen employed at its factory at J. K. Nagar, Asansol, on the question of bonus for the year 1957-58 was one of the matters referred. In the first reference the Tribunal has awarded in favour of the workmen bonus equivalent to three months' basic wages inclusive of the amount (equivalent to half a month's basic wages) that has already been paid by the Company voluntarily. In the second reference the parties filed joint petitions before the Tribunal agreeing to abide by any decision or award whatsoever passed by the Tribunal regarding the bonus issue in the first reference and requesting that similar award be made regarding the issue of bonus in both references. The Tribunal accordingly passed an order in the second reference that the workmen would get the same bonus as awarded in the first reference. The result of this is that the workmen covered by the second reference would also be entitled to three months' basic wages as bonus for the year 1957-58.

Applying the rules embodied in what is known as the Full Bench Formula evolved by the Labour Appellate Tribunal in 1950 and approved by this Court in *Associated Cement Companies Ltd., v. Its Workmen*⁽¹⁾ for calculation of profit bonus the Tribunal held that the available surplus was Rs. 4.63 lacs. It pointed out that if bonus equivalent to three months' basic wage was given to workmen, still the Company will have Rs. 3.91 lacs as the available surplus inclusive of the refund of income-tax on account of bonus, which meant an expenditure of

(1) [1959] S.C.R. 925.

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only Rs. 0.72 lacs on this head by the Company. In reaching this figure of Rs. 4.63 lacs as the available surplus the Tribunal allowed Rs. 0.43 lacs as return on reserves used as working capital and allowed nothing under the head rehabilitation charge. In support of the appeals Mr. Vishwanatha Sastri has vehemently challenged the Tribunal's view on both these matters.

On the question of rehabilitation charge Mr. Sastri contended that there was no justification whatsoever for rejecting the claim on this head altogether. It has to be remembered in this connection that by a series of decisions of this Court it is now well settled that the burden to prove any prior charge under the head rehabilitation lies on the employer and that unless the employer has by proper evidence established its claim to some amount as rehabilitation charge the claim must be rejected. The appellant adopted a curious procedure. It examined its Manager and through him put in statements showing its calculations of available surplus. A number of statements were put, in each showing the available surplus as nil. While however in statements I and II the rehabilitation charge is shown as Rs. 6,27,234.00 it is shown as Rs. 5,84,534.00 in statements III and IV, and in statements V and VI the figure is Rs. 10,25,021.00 How such different figures could be arrived at has not been sought to be explained by its only witness, the Manager. The witness stated that the assets of the Company were revalued in 1956 by a Committee of which he was one of the members. He had added that each of the assets was ascertained with reference to the Company's registers and they were divided in blocks according to their date of acquisition. A portion of the report made by the Revaluation Committee was put in. There is nothing however in this or in the witness's evidence that throws any light on the important question of multiplier and divisor. On the question of multiplier the witness says that the multiplier was worked out according to the procedure as detailed in the Revaluation Report itself. He has not tried himself to explain this basis. It is by no means clear that he has special knowledge and skill in the matter of replacement of the different machinery. The report was signed also by two other members, neither

of whom has been examined. The materials on the basis of which these multipliers were arrived at have also not been established by any evidence.

When we turn to the question of divisor the position is even more unsatisfactory. The witness has not vouchsafed a word as to how the divisor was arrived at. It is hardly necessary to point out that the mere submission of a statement prepared in the Company's office showing a certain divisor cannot meet the requirements of law unless and until the basis of this calculation is explained by testimony on oath which can be tested by cross-examination. The Tribunal was therefore wholly justified in rejecting the claim for rehabilitation.

On the claim of prior charge under the head "return on reserves used as working capital", the Tribunal, as already stated, has allowed Rs. 0.43 lacs. What the Company claims under this head is difficult to understand. For, as in the case of rehabilitation charge so also under this head, different figures have been shown in different statements. Statements Nos. I, III and V show the reserves employed in business as Rs. 111,74,162.00, while in statements II, IV and VI the amount is shown as Rs. 199,56,718.00. The difference is due to the fact that while in statements I, III and V, the depreciation reserves is shown as Rs. 86 lacs, the corresponding figure in statements II, IV and VI is more than double of this, being Rs. 173,82,556.00.

The very fact that such widely different estimates have been given is some justification for refusing to accept any of these as correct. Indeed, the way the Company has approached the calculations of reserves used as working capital makes one think that those responsible for these calculations did not treat the matter seriously at all and felt that by putting arbitrary figures under this head they could play havoc with the Full Bench Formula. This deserves strong condemnation.

Mr. Sastri made no attempt to justify these calculations of reserves used as working capital. He tried to persuade us however that the balance-sheet of the Company would by itself show what part of reserves was used as working capital. Learned counsel submitted that an easy and safe way of ascertaining the correct figure under this head is

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by deducting the current liabilities of the Company in the balance-sheet from the current assets as shown therein. There is undoubtedly support in standard books on accountancy for the proposition that the excess of the readily realisable, liquid, or current assets of a concern over its current liabilities is the proper measure of the working capital. (See Cropper's Higher Book-Keeping and Accounts 7th Edition, p. 301 and Pickles on Accountancy, 2nd Edition p. 1325).

There are however two difficulties in the way of accepting Mr. Sastri's contention. The first is that the mere statements in the balance-sheet as regards current assets and current liabilities cannot be taken as sacrosanct. As has been emphasised in more than one case by this Court, the correctness of the figures as shown in the balance-sheet itself are to be established by proper evidence in Court by those responsible for preparing the balance-sheet or by other competent witnesses. (*Petlad Turkey Dye Works v. Dyes and Chemical Workers' Union*⁽¹⁾ and *Khandesh Spg. and Weaving Mills Case*⁽²⁾). This was recently emphasised again in *Bengal Kagabkal Mazdoor Union v. The Titagarh Paper Mills Co. Ltd.*⁽³⁾.

The second difficulty is that the task here is not to ascertain the total working capital of the concern, but to find out what portion of the reserves has been used as working capital. It may often happen that the whole of the working capital is provided from what remained of the subscribed capital after the acquisition of the fixed assets. There may be other cases where a portion of the working capital is provided from the subscribed capital and the remainder is met from the reserves. There appears to be a tendency on the part of some employers to show the entire amount of reserves available for use as working capital as the actual amount used for that purpose. This is obviously wrong.

It would be improper and indeed impossible in most cases to come to a correct conclusion on these matters by scrutiny of the balance-sheet itself. Whenever a Company claims deductions from the gross profits under the head

(1) [1960] 2 S.C.R. 906.

(2) [1960] 2 S.C.R. 841.

(3) [1964] S.C.R. 38.

“return on reserves used as working capital,” as prior charge, for ascertaining the available surplus under the Full Bench Formula it is necessary and proper that the accountant or other competent officers of the Company should come into the witness-box and assist the Tribunals in coming to a satisfactory conclusion on the question.

No such attempt was made in this case and we find it impossible to say from the evidence on the record as to what portion, if any, of the reserves was actually used as working capital. The tribunal would have been justified in rejecting *in toto* the Company's claim under this head. The allowance of Rs. 0.43 lacs as prior charge on return on reserves used as working capital was therefore an error in favour of the appellant. There is no reason therefore for reducing the figure as found by the Tribunal as the available surplus.

Lastly it was suggested by Mr. Sastri that in deciding what should be allowed as bonus out of this available surplus the Tribunal should have proceeded on the basis that one month's basic wages amount to Rs. 90,000 and not Rs. 50,00 as mentioned by the Tribunal. This figure of Rs. 90,000/- has been given by the Company's Manager as the total wage of the workmen and the employees, including officers. We are told that the officers were also paid bonus and that also has to come out of the available surplus. So Mr. Sastri argued, though rather faintly, that the bonus should have been fixed on the basis of Rs. 90,000 wage bill. We do not think that to be the correct approach. The Industrial Tribunal is not concerned with what is paid by the Company to its officers. It is concerned only with the workmen's claim of bonus. For deciding therefore what part of the available surplus should be paid to the workmen as bonus the wage bill of the workmen only has to be considered. It is not disputed that the wage bill (basic wage) of the workmen, excluding the officers, was Rs. 50,000. The Tribunal has therefore committed no error in fixing the bonus figures on this basis.

We wish to make it clear that what we have said in this judgment will not stand in the way of the employer substantiating a claim for rehabilitation charge by proper evidence, in any future dispute on that question.

As all the points raised in the appeals fail, they are dismissed with costs.

Appeals dismissed.

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