
(1969) 09 MAD CK 0030

Madras High Court

Case No: None

K.C.P., Ltd., Central
Workshop

APPELLANT

Vs

K.C.P. Employees'
Association (by
Secretary) and Others

RESPONDENT

Date of Decision: Sept. 26, 1969

Acts Referred:

- COMPANIES ACT, 1956 - Section 211
- Payment of Bonus Act, 1965 - Section 25, 3, 4, 5, 6

Hon'ble Judges: K. Veeraswami, C.J; Gokulakrishnan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

K. Veeraswami, C.J.

This is an appeal from a judgment of Kailasam, J., declining to quash an award of the industrial tribunal, Madras. The issue for adjudication was to fix the quantum of bonus payable for the year 1964-65. The appellant which is the management of K.C.P., Ltd., Central Workshop, Madras, is a limited liability company, registered under the provisions of the Companies Act. It owns a sugar factory, a confectionery and distillery at Vayyuru, in Krishna district from 1938, a central workshop at Tiruvottiyur engaged in the manufacture of heavy machinery from 1955, and a cement factory at Macheria in Guntur district from 1958. The accounting year adopted by the management is the year ended 30 June. It claimed that it had prepared and maintained separate balance sheet and profit and loss account for the year 1964-65 for the central workshop and it should be treated as a separate unit for a computation and payment of bonus. The tribunal rejected the claim, and made an award that the workers were entitled to the maximum of 20 per cent of their total earning in the establishment during the bonus year. This was upon the view that the balance sheet, and the profit and loss account produced for the central workshop

were not self-contained in details as to the proportionate share capital, expenses, managing agent's remuneration, loans taken, and investment made, referable to that work shop so as to arrive at the net profit from it for the year. Kailasam, J., held that the benefit of the first part of the proviso to Section 3 of the Payment of Bonus Act, 1965, was not available to a company, and the proviso could only apply to other categories of employers. The reasoning of the learned Judge is that a balance sheet could only be of a company and not of separate units, and that if the meaning, as was applicable to the Companies Act, was given to the words "balance sheet and profit and loss account," no department or undertaking or branch of a company, could have a separate balance sheet or profit and loss account, and that the consequences of giving such a meaning would be that the departments, undertakings, and branches of a company, would never be treated as separate units.

2. We are unable either to share the view of Kailasam, J., as to the scope and effect of the proviso to Section 3, or to accept the tribunal's approach as to the precise requirements of a balance sheet, and profit and loss account for purposes of the proviso. Before the Payment of Bonus Act, 1965, the law relating to it had not been codified. This branch of the law had been developed by judgments of various tribunals, and of the Courts of the land. Whether a department, undertaking or a branch was to be considered as part of an establishment for purposes of computation and payment of bonus depended on facts in each case, tested, as pointed out in *Western India Match Co., Ltd. v. their workmen* 1963 I.L.J. 459 by functional integrality, interdependence, community of financial control and management, community of man power and of its control, recruitment and discipline, the manner in which the employer had organized the different activities, whether he had treated them as independent of one another, or as interconnected and interdependent. While these were the major tests, they were, of course, not exhaustive. Also, whether all these tests or some of them only would be applicable, depended on the nature of industrial activities and on the context of the industrial disputes and their nature. The Payment of Bonus Act, by Section 3 has, in respect of every factory, or other establishments to which the Act applies, dispensed with the need to apply those tests and principles, and has provided that different departments, undertakings or branches of an establishment shall be treated as part of it for the computation of bonus under its provisions. The proviso to the section, however, makes an exception in that such a department, undertaking or branch shall be treated as a separate establishment for that purpose, if for any accounting year a separate balance sheet and profit and loss account are prepared, and maintained for it. But the exception will not apply, if immediately before the commencement of the accounting year such department, undertaking or branch had been treated as part of the establishment for the purpose of computation of bonus. There can be no doubt that the main part of Section 3 does include a company. The applicability of the Act is to a factory, or other establishment, which may be a company, co-operative society, corporation, a firm of partnership, or an individual. An establishment mentioned in Section 3 may, therefore, be any one of them. This is also clear from the definition of "employee" and of "employer." The last term includes, in

relation to an establishment which is a factory, the owner or occupier of the factory. The whole purpose of Sections 4 to 6 to which the schedules to the Act are related, is to ascertain the gross profits of a factory or establishment, which need not necessarily be a company, and to deduce from it the available surplus and allocable surplus. The inevitable result is that preparation and maintenance of balance sheet and profit and loss account for purposes of the Act, is not to be understood only as confined to companies and corporations. There can be balance sheets and profit and loss accounts prepared and maintained even for an establishment which is not a company, or a corporation, or even a co-operative society. It is true that a company's balance sheet and profit and loss account for the purpose of the Payment of Bonus Act should be prepared and maintained in the light of the requirements of Section 211, Companies Act, and of the forms as far as may be set out in Schedule VI to that Act. It may also generally be accepted that balance sheet and profit and loss account of a factory, or an establishment which is not a company should reflect its true state of affairs, and may follow the pattern of the balance sheet and profit and loss account prescribed by the Companies Act. There is, however, no inhibition of the law to preparation of balance sheets and profit and loss accounts of establishments which are not companies. The only requirement is that for purposes of computation of bonus, the balance sheet and profit and loss account should give the true state of affairs of the establishment or the unit concerned.

3. Farther, if the main part of the section, as we think, embraces all establishments comprehensively, including companies, co-operative societies, corporations, partnerships and private ownership, it is obvious to us "such department, undertaking or branch" in the proviso to the section must be related to the main establishment, whether a company or not. There is nothing in the schedules to the Act, more particularly the section and Schedule III, which compels a different construction of the proviso. So far as the share structure and common items of asset and liability of the establishment are concerned, it will have a bearing on the computation of the gross profits of its department, undertaking, or branch. That is a matter for proportionate allocation in the light of the relevant figures and considerations exhibited by the relative balance sheet and profit and loss account of the establishment, as well as of the separate balance sheet and profit and loss account prepared and maintained in respect of any such department, undertaking or branch. In our view, therefore, the proviso to Section 3 does include a department, undertaking or a branch of an establishment which is a company, and in respect of which a separate balance sheet and profit and loss account are prepared and maintained. Such a department, undertaking, or branch shall be treated as a separate establishment for purposes of computation of the bonus under the Act.

4. On the other question, we do not agree as we said, with the tribunal that the balance sheet and profit and loss account prepared and maintained for the accounting year in question for central workshop cannot, for reasons given by it, be regarded truly as such. The balance sheet for the central workshops produced figures on the liabilities side for secured loans, unsecured loans, and current liabilities and on the side of assets under the

head fixed assets and current assets and loans and advances, in the light of all of which a balance has been arrived at. In the profit and loss accounts for the same central workshops, practically all the details are given, including the proportionate administrative expenses, referable to the central workshops. The accuracy of the figures under each head in the balance sheet, as well as the profit and loss account, is a matter of detail which is open to scrutiny by the tribunal in the presence of all the parties concerned. In doing so, considering the fact that they relate only to a department of the establishment which is a company, the tribunal should undoubtedly bear in mind the provisions of Section 25 of the Act. It is true, as the tribunal has pointed out, the balance sheet for the central workshops does not show the share capital, and reserves and surplus, as well as the investments with the corresponding details. Equally so, some of the details which should appear in the profit and loss account, have not been given in the profit and loss account of the central workshops. But it should be remembered that the balance sheet and profit and loss account of the central workshops do not give those details because they relate but to a department of the company, whose balance sheet and profit and loss account contain those details necessary, that they have been placed before the general body and required by the provisions of the Companies Act, and that it is but a question of working of the proportionate details pertaining to the central workshops. We do not think that the failure to show in the central workshops balance sheet and profit and loss account the said details which do appear in the balance sheet and profit and loss account of the company, would necessarily rob them, in the nature of things and circumstances, of their character as the balance sheet and profit and loss account of the department of the central workshops.

5. The appeal is allowed, and the award of the tribunal is set aside. It will dispose of the reference afresh in the light of this judgment and according to law. The employees' association as well as the management will be heard by the tribunal, on the accuracy of the entries in the balance sheet and profit and loss account of the central workshops, and will have an opportunity to give and ascertain proportionate figures referable to the central workshops in the light of the details found in the balance sheet and profit and loss account of the company. The parties will bear their costs in the writ petition, as well as in the appeal.

[Writ Petition No. 76 of 1969, dated
26 September 1969.]

6. In view of the Judgment in Writ Appeal No. 350 of 1968, this petition is also allowed, and, the direction given in Writ Appeal No. 350 of 1968 will apply to the year covered by the writ petition as well *mutatis mutandis*.