Navabharat Press Vs Nagpur Union Working Journalists and Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: July 21, 1989

Acts Referred: Constitution of India, 1950 â€" Article 226
Payment of Bonus Act, 1965 â€" Section 2(14), 6

Citation: (1989) 59 FLR 850 : (1995) 3 LLJ 103

Hon'ble Judges: W.M. Sambre, J; H.D. Patel, J

Bench: Division Bench

Advocate: S.G. Aney, Anand Parchure and K.H. Deshpande, for the Appellant; S.D. Thakur, for R-1, for the Respondent

Final Decision: Dismissed

Judgement

Patel, J.
The above three petitions under Article 226 of the Constitution of India are directed against an Award dated 29th November,

1978 made by Industrial Tribunal, Nagpur in connection with disputes relating to payment of bonus arising from three separate references made by

the Government of Maharashtra under Sections 10(1)(d) read with Section 12(5) of the Industrial Disputes Act, 1947 between the petitioner

Navabharat and the workmen employed under them.

2. The petitioner Navabharat is a partnership firm duly constituted under the Partnership Act. The management of Navabharat Press publishes a

Hindi daily called "Navabharat". The Nagpur Union of Working Journalists claimed bonus at the rate of 20% for Working Journalists employed

under the petitioner Navabharat for the years 1969 and 1970 in reference (IT.) No. 1/72 and for the year 1971 in reference (IT.) No. 2/73. The

third dispute i.e., Ref. (IT.) No. 3/73 was for payment of bonus for the years 1965 to 1971 at the rate of 20% in respect of employees other than

working journalists. All the three References were heard and decided together because the parties were the same and practically common set of

facts and law were involved therein.

3. The learned Industrial Tribunal upon adjudication of the dispute computed bonus in each of the three References as detailed below:-

Ref. (TT) No. Accounting Year Rate of Bonus Rate at which Rate at which

found Payable Bonus was paid Balance was due

balance was due

1/72 1969 12% 5% 7%

1/72 1970 9% 5% 4%

2/73 1971 3% 8.33% Nil

3/73 1965 10% 4% 6%

3/73 1966 8% 4% 4%

3/73 1967 14% 4% 10%

3/73 1968 12% 5% 7%

3/73 1969 12% 5% 7%

3/73 1970 9% 5% 4%

3/73 1971 3% 8.33% Nil

An award was made in the above terms. Aggrieved thereby, the petitioner Navabharat filed Writ Petition No. 1989/79 against the Award in Ref.

(IT) No. 1772, Writ Petition No. 1421/79 against the Award in Ref. (IT) No. 2/73 and Writ Petition No. 2101/79 against the Award in Ref. (IT)

No. 3/73. It is really surprising what prompted the petitioner Navabharat to file the Writ Petition No. 1421/79 when the learned Industrial Tribunal

answered the Ref. (IT) No. 2/73 in favour of the petitioner by holding that the Working Journalists are not entitled to any additional bonus than

what has been already paid to them. No doubt, the same norm of computing the bonus for the year 1971 was adopted by the learned Industrial

Tribunal as in the cases of other years but that by itself will not give a right to the petitioner Navabharat to challenge the Award because they were

required to pay additional amount towards bonus to their workmen. Therefore, in our opinion, Writ Petition No. 1421/79 is not tenable and is

liable to be rejected. Two other Writ Petitions are, however, disposed of by this judgment.

4. Admittedly, the petitioner Navabharat is a partnership firm. Under the Income Tax Act, the partnership firm though not a legal entity, is liable to

pay tax on the profits earned. The partners individually are also liable to pay Income Tax on the profits falling to the share of each of them after

deduction of the firms Income Tax. Section 6(c) of the Payment of Bonus Act, 1965 provides that any direct tax which the employer is liable to

pay for the accounting year in respect of his income, profits and gains during the year is liable to be deducted from the gross profits as prior

charges, The direct tax has been defined to mean any tax chargeable under the Income Tax Act, Super Profit Tax Act, 1963. The Companies

(Profits)Surtax Act, 1964, the Agricultural Income Tax law and any other tax which, having regard to its nature or incidence, may be declared by

the Central Government, by notification in the Official Gazette to be a direct tax for the purposes of the Payment of Bonus Act. It is only the direct

taxes which are deductible for calculating the available surplus which the employer is liable to pay for the accounting year in respect of his income,

profits and gains during the year. It appears that the Industrial Tribunal deducted only the registered firms tax that was leviable under the Income

Tax Act and then calculated the ''available surplus'' probably under the impression that the partnership firm is the owner and hence, the employer

as defined u/s 2(14) of the Payment of Bonus Act. According to the submissions made on behalf of the petitioner Navabharat, the direct tax to be

deducted will also include the tax paid by its Partners. Therefore, it was incumbent upon the Industrial Tribunal to have deducted not only the

registered firms tax but also the tax paid by the partners from the gross profit for arriving at the figure of ''available surplus'' and hence, it was

further urged that the award suffers from non-application of mind and the error which has crept in in computing the rate of bonus has to be

corrected.

5. On behalf of the Respondent Union, the aforesaid argument was repelled by contending that as per the observations appearing in the decision of

Supreme Court in the case between Tulsidas Khimji Vs. Their Workmen, , it would not be right to give the employers the double benefit of

granting deduction on the basis of Income Tax payable by each partner in respect of his share in profits of the firm and at the same time adding the

registered firms tax which is also paid by the firm. In this context, it was also further submitted that the Income Tax in its discretion allowed the

deduction of the firms tax and hence this, Court should not interfere in that discretion by allowing double benefits to the petitioner and thereby

further reducing the quantum of the rate of bonus payable to the workmen. An attempt was also made to justify the award by submitting that the

partnership firm alone is the owner and hence, an employer within the meaning of Section 2(14) of the Payment of Bonus Act, 1965.

6. In the Supreme Court case the Union had claimed profit sharing bonus and also customary or traditional bonus on the occasion of Diwali. The

Tribunal while computing the rate of bonus deducted only the amount of tax paid by the firm as such and not as claimed by the employer. This very

question was agitated before the Supreme Court and the following observations relied upon on behalf of the respondent would be relevant:

Page 441....The last alternative of allowing deduction under this head of calculating Income Tax on the actual figures of the profits of each of the

partners separately appears to be reasonable, because the figures are known and the tax of each constituent member of the firm can be easily

calculated on the basis of his share. But it has been argued on behalf of the respondents that the amount of Income Tax payable by the firm as

such, viz., about Rs. 10,000 should be permissible deduction and not what each partner had to pay on his share of the profits, because it is the firm

which is the employer and which can claim deduction under this head. But this contention cannot be pushed to its logical conclusion, because a firm

is not a legal person within the meaning of the Industrial Disputes Act. It is the partners of the firm who are the employers. It is that fact that has to

be taken into account in considering the question of Income Tax, even as in other matters like remuneration, etc., that is the amount of tax payable

by each partner, qua the business of the firm, irrespective of their other sources of income or loss, because notional is quite different from the

actual, though not wholly dissociated from it. But the question still arises whether the registered-firm tax can also be added to the figure of Income

Tax arrived at by the process just indicated. In our opinion, it would not be right to give the employers the double benefit of granting deduction on

the basis of Income Tax payable by each partner in respect of his share in the profits of the firm, and at the same time adding the registered-firm-

tax, which is paid by the firm in order to obtain certain reliefs under the Income Tax Act, which they would not otherwise have obtained.....''".

From the above observations, it appears that only the tax payable by the partners on their respective share of profits of the firm was made liable to

be deducted from gross profits by way of prior charge and the registered firms tax came, to be excluded and it was in this context the Supreme

Court observed that the double benefit should not flow to the employer. In any eventuality, when the law was laid down by the Supreme Court, the

Payment of Bonus Act was not in force. Despite this position, it was contended on behalf of the respondent that the same principle should be

followed in respect of calculating the direct tax in case of partnership firm for the year to which the Payment of Bonus Act is applicable. This

contention was sought to be repelled on behalf of the petitioner by drawing our attention to the discussion made in the Bonus Commission Report

in Chapter IX and its recommendations in paragraph 9.11 which reads as under:-

In the case of partnership concerns the tax to be deducted as a prior charge should be the aggregate of the tax payable by the partners on their

shares of the profits from the concern, as if it was their sole income, plus the Income Tax and super tax payable by the firm''".

A reading of the above paragraph will clearly show that the Bonus Commission recommended not only the continuance of law established by the

Supreme Court but proceeded further to recommend that deduction of registered firm tax as well from the gross profits for calculating the available

surplus. This very principle was also emphasized in the resolution dated 2nd September, 1964 of the Government of India while accepting the

majority of the recommendations with certain modifications, one of which was that ""all direct taxes for the time being in force should be deducted

as prior charges in calculation of ''available surplus'' for the purpose of bonus."" Therefore, no doubt is left in our mind that the registered firms tax

payable by the firm as such should be added to the tax payable by the individual partners on their share of the profits of the firm for the purposes of

deduction from the gross profits in order to ascertain the ''availame surplus''. We are also supported in our view by the decision of this Court in the

case of Mumbai Mazdoor Sangh v. P.M. Lalla and Ors. 1975 ILR Bom 1339.

7. On behalf of the respondent No. 1, a desperate attempt was also made to suggest that the partnership firm alone is the employer for the

purposes of Payment of Bonus Act, 1965 and the tax paid by registered partnership firm is liable to be deducted as such. In this connection,

reliance was placed on second proviso to Item No. 5 of the Third Schedule which reads as follows:

.....Provided further that where such employer is a firm, an amount equal to 25 per cent of the gross profits derived by it from the establishment in

respect of the accounting year after deducting depreciation in accordance with the provision of Clause (a) of Section 6 by way of remuneration to

all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether

oral or written, provided for the payment of remuneration to any such partner, and....""

At a first glance, it does appear that a firm has been described as an employer but if that item is properly read, it does not convey such meaning.

The words ""where such employer is a firm"" are used only to distinguish this establishment from others falling under this Item. No advantage can be

derived therefrom by the respondent Union and particularly when it is made clear even in the case of Tulsidas Khimji (cited supra) that the firm is

not a legal person within the meaning of the Industrial Disputes Act.

8. In the view which we have taken, it is necessary to compute the rate of bonus amount for each of the years from 1965 to 1970 and the normal

procedure would be to remand the case back to the Industrial Tribunal, Nagpur after quashing the Award but either of the parties expressed fear

that the matter has become too old and it will take years before the dispute is finally adjudicated. We have hence taken upon ourselves to calculate

the rate of bonus for each of the years stated above. The details of the calculations are given in the Schedule (''A'' to ''F'') (Schedule not

materialised for the law points involved hence not printed) annexed herewith. Accordingly, the rate of additional bonus to be paid to the workmen

employed under the petitioner firm will be as under:-

Ref. (IT) No. Accounting Year Rate of Bonus Rate at which Rate at which the

Bonus was paid balance is due

found payable

1/72 1969 5.27% 5% 0.27%

1/72 1970 3.46% 5% Nil

3/73 1965 5.83% 4% 1.83%

3/73 1966 4.10% 4% 0.10%

3/73 1967 6.39% 4% 2.39%

3/73 1968 5.38% 5% 0.38%

3/73 1969 5.27% 5% 0.27%

3/73 1970 3.46% 5% Nil

9. In the aforesaid circumstances, the Writ Petitions No. 1989/79 and 2102/79 are allowed. The common award impugned therein is quashed.

The petitioner firm is directed to pay the bonus for the years in question as per the rates computed above. The said payment should be made within

a period of six weeks from today. The parties shall bear their respective costs in these two petitions. Rule is made absolute in the above terms. The

Writ Petition No. 1421/79 is, however, rejected with costs. Rule stands discharged in Writ Petition No. 1421/79.