PETITIONER:
THE WORKMAN OF M/S. BINNY LTD.

Vs.

RESPONDENT:
THE MANAGEMENT OF BINNY LTD. & ANOTHER

DATE OF JUDGMENT22/08/1985

BENCH:
KHALID, V. (J)
BENCH:
KHALID, V. (J)
REDDY, O. CHINNAPPA (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1986 AIR 509 1985 SCR Supl. (2) 652
1985 SCC (4) 325 1985 SCALE (2)329

ACT:
Payment of Bonus Act, section 3 scope of, - Undertakings of five companies get amalgamated with another in accordance with the scheme of amalgamation sanctioned by the High Courts providing for preparation of a separate profit and loss account for the year of amalgamation and also safeguarding the interest of workmen of a particular company and in particular their rights under the payment of Bonus Act and Industrial Disputes Act - Whether the new company take refuge under section 3 and refuse to pay higher bonus as per the profit and loss account on the specious plea that balance sheet has not been prepared - Construction of welfare legislation laws - Whether the adjudicating authority has powers to direct the employers to prepare and submit a regular balance sheet, on being satisfied that such balance sheet was not prepared to defeat the claims of the employees.

HEADNOTE:
The first respondent is a company incorporated on 30th June, 1969, which commenced its business in the name and style of Binny Limited on ant from Ist November, 1969. The appellants were formerly employed by Binny & Co. Ltd., and are now employed in the Finance, Trading ant Agency Division of the respondent Company. Messrs Binny & Co. Limited in which the appellants were formerly employed, was a well established British Company of a standing of more than 170 years with branch. all over India and had accumulated huge reserves and was able to acquire interest in various other companies namely, Messrs Buckingham and Carnatic Co. Ltd., The Bangalore Woollen, Cotton ant Silk Mills Co. Ltd., Binny Engineering Works Ltd, Gange Transport and Trading Company Ltd., and Madura Company Private Limited. All these five companies were amalgamated in accordance with the scheme of amalgamation sanctioned by different High Courts with the respondent Company. The scheme of amalgamation made provisions for various matters. Clause 12 of the scheme provided that "all the employees of the amalgamating companies will become employees of the new company without interruption in service and on terms no less favourable to them." Clause 13 provided that "a separate

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profit ant 1088 account would be prepared for each of the amalgamating companies for the financial year 1969." The High Court while sanctioning the scheme, included in paragraph 11 of the order "In the result, the scheme of amalgamation is sanctioned without prejudice to the rights of the employees of Binny and Company Limited in working but their existing rights under the aforesaid Acts (Payment of Bonus Act and Industrial Disputes Act) as against the w company, if they are 80 entitled."

Till the year 1968, the employees of Binny & Co. Limited namely, the appellants, had been getting the maximum bonus of 20 per cent of their gross salary every year in view of the huge profits earned by the said company. However, in the financial year 1969, the respondent Company declared and paid the minimum bonus of four per cent of the gross salary to the appellants alongwith other employees of the respondent company, who were formerly the employees of the remaining five amalgamating companies on the basis of a consolidated profit and loss account of the respondent company for the said year. The appellants objected to this ant raised a claim that they were entitled to receive bonus at 20% of their gross salary on the basis of the separate profit and 1088 account for the company formerly known as Binny & Company Limited prepared under clause 13 of the scheme of amalgamation and which showed a profit of Rs.26,01,272 during the financial year 1969 in addition to a further sum of more than Rs.. 10 Lakhs lying to the credit of the appellants as on 31st December, 1968. This claim was referred to the Industrial Tribunal, Madras by a reference order dated l9th May, 1971, directing the question of fixation of the quantum of bonus for the year 1969 for adjudication. The Tribunal considered the evidence before it ant also referred to the relevant provisions of the law governing the question and came to the conclusion that no separate balance sheet was prepared for this company and the quantification of the bonus payable and to be made on the consolidated surplus available taking into account the balance sheet of the amalgamating companies under section 3 of the payment of the Bonus Act. Hence the appeal by special leave.

Allowing the appeal, the court,

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HELD: 1. It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts ant the provisions of law should be liberally construed in favour of the week. [658 H, 659 A]

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2.1 Where an amalgamating unit can prepare a balance sheet, when a trial balance sheet and profit and loss account are avail able, omission to do 80 deliberately and without any valid reason would amount to denial of the benefit of the proviso to section 3 of the Payment of Bonus Act to the employees of such as amalgamating unit. [659 F-G]

2.2 When evidence and facts made available before the Court show that the claim of the employees (on the strength of profit and loss account and trial balance-sheet) is justifiable, it would be not only improper but unjust for the Courts and Tribunals to deny to themselves the jurisdiction to direct a company to prepare a balance-sheet in terms of the profit and 1088 account and the trial balance-sheet. To say that Tribunals or Court cannot even in such exceptional situations direct the employer company to prepare the balance-sheet would create undesirable results, adverse to the employees. [659 B-C, F-G]

3.1 Section 3 is an enabling provision in favour of the employers. When an establishment consists of different departments, undertakings or branches, all such departments, under takings or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the Act. This means that the employees will be entitled to bonus on the basis of the surplus available from all the units put together. The proviso speaks of separate balance-sheet and profit and 1088 account being prepared and maintained for any accounting year in respect of one of the units of the whole undertaking. In such cases, the computation of allocable surplus for the payment of bonus should be on the basis of such separate profit and loss account and balance-sheet thus prepared and the employees will be entitled to claim bonus on this basis. The claim of the employees on this basis can be defeated only if this separate unit was treated as part of the establishment for the computation of bonus immediately before commencement of the accounting year in question. In this case the company has not put forward a plea that for the previous year, Binny and Company Ltd., was treated as part of the respondent company for the purpose of computation of bonus. The only plea put forward is that no separate balance- sheet was prepared for this unit. [659 H, 660 A-D)]

3.2 The mere ommission to prepare a separate balance sheet for one of the amalgamating units will not by itself help the company to deny bonus to the employees of such a unit. When profit and loss account and trial balance-sheet are prepared there should be / difficulty in preparing the regular balance sheet. [660 DEL
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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.440 of 1973.

From the Award dated 2O.5.1972 of the Industrial Tribunal Madras in I.D. No. 35 of 1971.

M.K. Ramamurthi and J. Ramamurthi for the Appellant.

G.B. Pai and Rameshwar Nath for the Respondents.

The Judgment of the court was delivered by

KHALID, J. This is an appeal, by special leave, filed by the Binny Employees Association, a registered trade union, against the award dated 20th May, 1972, made by the Industrial Tribunal, Madras, I.D. No. 35/71.

The first respondent is a company incorporated on 30th June, 1969, which commenced its business in the name and style of Binny Limited on and from 1st November, 1969. The petitioners were formerly employed by Binny & Co. Ltd., and are now employed in the Finance, Trading and Agency Division of the respondent company. Messrs Binny & Co. Limited in which the petitioners were formerly employed, was a well established British company of a standing of more than 170 years with branches all over India. The company had accumulated huge reserves and was able to acquire interest in various other companies. Such companies are Messrs Buckingham and Carnatic Co. Ltd., The Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Binny Engineering Works Ltd., Gange Transport and Trading Company Ltd. and Madura Company Private Limited.

Pursuant to orders passed in company petitions in various High Courts and in accordance with the scheme of amalgamation sanctioned by the High Courts, the undertakings of all the five companies referred to above were amalgamated

with the respondent company. The scheme of amalgamation made provisions for various matters. Clause 12 of the scheme provided that all the employees of the amalgamating companies will become employees of the new company without interruption in service and on terms no less favourable to them" Clause 13 provided that "a separate profit and loss account would be prepared for each of the amalgamating companies for the financial year 1969" m e six companies filed company petitions in the high Court of Madras for sanction of the scheme of amalgamation. Notices as required under the Companies Act were Published. The Secretary of the Employees' Union opposed
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to the unconditional grant of approval to the scheme of amalgamation and wanted to get rights of the employees safe guarded and for the purpose requested the Court for incorporation of certain conditions in the order of sanction. The High Court while sanctioning the scheme included the following paragraph 11 of the order:

> In the result, the scheme of amalgamation is sanctioned without prejudice to the rights of the employees of Binny and Company Limited in working out their existing rights under the aforesaid Acts (Payment of Bonus Act and Industrial Disputes Act) as against the new company, if they are so entitled.

Till the year 1968, the employees of Binny & Co. Limited viz., the petitioners, had been getting the maximum bonus of 20 per cent of their gross salary every year in view of the huge profits earned by the said company. However, in the financial year 1969, the respondent company declared and paid the minimum bonus of four per cent of the gross salary to the petitioners along with other employees of the respondent company, who were formerly the employees of the remaining five amalgamating companies on the basis of a consolidated profit and loss account of the respondent company for the said year. The petitioners objected to this and raised a claim that they were entitled to receive bonus at 20 per cent of their gross salary on the basis Of the separate profit and loss account for the company formerly known as Binny & Company Limited. This claim was referred to the Industrial Tribunal, Madras, by a reference order dated l9th May, 1971, directing the question of fixation of the quantum of bonus for the year 1969 for adjudication. The Tribunal considered the evidence before it and also referred to the relevant provisions of the law governing the question and came to the conclusion that no separate balance-sheet was prepared for this company and the quantification of the bonus payable had to be made on the consolidated surplus available taking into account the balance-sheet of the amalgamating companies. Hence this appeal.

The case of the appellant before the Tribunal and repeated before us is that the amalgamating; companies maintained separate profit and loss accounts notwithstanding their amalgamation into the respondent company. They also stated that the provident fund account of the employees of each amalgamated unit was also separately maintained. The petitioners relied upon clause 13 of the scheme which provided that in so far as the financial year
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1969 is concerned a separate profit and loss account for each of the amalgamating companies would be prepared and that, in fact, a separate profit and loss account was prepared accordingly for that year. This profit and loss account shows that Binny & Company Ltd., of which the

petitioners were originally employed, had earned a profit of Rs. 26,01,272 during the financial year 1969 in addition to a further sum of more than Rs. 10 lakhs lying to the credit of the petitioners as on 31st December, 1968. If the profit mentioned above is taken into account, the petitioners contend, that they would be entitled to the maximum bonus of 20 per cent of their gross salary for the year 1969.

The respondent company pleaded in their return that consequent to the amalgamation, the respondent company (Binny & Company Limited) became a single unit and all the employees were covered by the same terms of the Payment of Bonus Act. They denied that the business activities of the former Binny & Co. Limited constituted a separate department or undertaking as envisaged in the Payment of Bonus Act. According to them there was only a single balance-sheet for the whole Binny Limited. They admitted that separate profit and loss account was prepared for the year 1969 for the finance, trading and agency division and the garment factory (former Binny & Company Limited) as required in the scheme of amalgamation, but no separate balance-sheet was prepared. The company relied upon Section 3 of the Payment of Bonus Act which stated that the various companies which have been amalgamated should be treated as part of the same establishment under the Act for the purpose of computation of bonus.

It is against these facts, that the controversy in this appeal has to be decided. The only question that is involved in this appeal is as to which is the undertaking whose trading profits have to be taken into consideration for computing the bonus for the year 1969: the employees' union contending that it is the trading profits of the former Binny & Company Limited and the respondent company contending that it is the total profits of the six units put together.

Before proceeding further, we may usefully quote Section 3 of the Payment of Bonus Act:

> Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such
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> departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:
> Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus."

This section provides that different departments or undertakings or branches of an establishment should be treated as part of the same establishment for the purpose of computation of bonus under the Act. For our purpose, the proviso is important. The proviso deals with situations where in any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department of an establishment. It is not disputed that the profit and loss account for the Binny & Company Limited was, in fact, prepared. Nor is it disputed

that a trial balance-sheet was also prepared for this unit. But the company takes refuge in the plea that a separate balance-sheet was not prepared for this unit, to opt out of the proviso to Section 3. To reinforce this plea, the company relies upon clause 13 of the Scheme which reads as follows:

> "Separate Profit and loss account will be prepared for each of the amalgamating companies for the financial year 1969.

The contention of the company is that this clause speaks only of separate profit and loss account for each of the amalgamated companies for the financial year 1969 and not of a separate balance-sheet for this year. The question before us is whether the company could be permitted to put forward such a specious plea to defeat the claim of the employees, though the profit and loss account and the trial balance-sheet disclose surplus permitting the company to pay 2() per cent bonus as claimed by the petitioners. It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and provisions of law should be liberally construed in favour of the
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weak. If only a separate balance-sheet had been prepared for this unit, the company would have had no answer to the claim made by the petitioners. It could be that a separate balance-sheet was not prepared deliberately to avoid payment of bonus to the employees of this unit under the cover of the proviso to Section 3 of the Payment of Bonus Act and clause 13 of the Scheme. When evidence and facts made available before the Court show that the claim of the employees (on the strength of profit and loss account and trial balance-sheet) is justifiable, it would be not only improper but unjust for the Courts and Tribunals to deny to themselves the jurisdiction to direct a company to prepare a balance-sheet in terms of the profit and loss account and the trial balance-sheet. We thought it necessary to make this position clear because of the observations made by the Tribunal in the award in answer to the plea raised by the Union that the Tribunal could authorise preparation of a balance-sheet under Section ;25 of the Payment of bonus Act and in the light of such balance-sheet, so prepared, the Court could proceed to award bonus on the allocable surplus. That portion of the award reads L as follows:

> "But Section 25 does not apply to a company as in this case. The section does not authorise Court to prepare a balance-sheet. Even otherwise, I cannot agree Chat the Court can order a balance-sheet to be prepared from the accounts available of Binny & Co. and act on it under Section 3 of the Act for the simple reason that a balance-sheet so drawn up cannot by any stretch of imagination be considered to be prepared and maintained by the undertaking or unit.

If this statement of the Tribunal is accepted as the correct law that would result in adverse consequences on the employees and would render them helpless in their claims for bonus, in situations like the one that we have in this case. Where an amalgamating unit can prepare a balance-sheet, when a trial balance-sheet and profit and loss account are available, omission to do so deliberately and without any valid reason would amount to denial of the benefit of the proviso to the employees of such an amalgamating unit. To say that Tribunals or Court cannot even in such exceptional situations direct the employer company to prepare the balance-sheet would in our opinion, create undesirable

results, adverse co the employees.

It is necessary to bear in mind the scope of Section 3 and its proviso. Section 3 is an enabling provision in favour of the

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employers. When ah establishment consists of different departments, undertakings or branches, all such departments, undertakings or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the Act. This means that the employees will be entitled to bonus on the basis of the surplus available from all the units put together. The proviso speaks of separate balance-sheet and profit and loss account being prepared and maintained for any accounting year in respect of one of the units of the whole undertaking. In such case, the computation of allocable surplus for the payment of bonus should be on the basis of such separate profit and loss account and balance-sheet thus prepared and the employees will be entitled to claim bonus on this basis. The claim of the employees on this basis can be defeated only if this separate unit was treated as part of the establishment for the computation of bonus immediately before commencement of the accounting year in question. In this case, the company has not put forward a plea that for the previous year, Binny & Company Ltd., was treated as part of the respondent company for the purpose of computation of bonus. The only plea put forward is that no separate balance-sheet was prepared for this unit. The mere omission to prepare a separate balance-sheet for one of the amalgamating units will not by itself help the company to deny bonus to the employees of such a unit. When profit & loss account and trial balance-sheet are prepared one fails to understand the difficulty in preparing the regular balance-sheet. It is not disputed, nor can it be disputed on the materials available before us, that the employees of Binny & Company Ltd., could get 20 per cent bonus as claimed by them. They cannot be denied this bonus merely on the ground that separate balance-sheet was not prepared for their unit when all the materials were available for preparation of such a balance-sheet.

The employees should be deemed to have foreseen the difficulties of this kind when they sought and obtained an order from the High Court about which mention has been made earlier to see that their rights were safeguarded and the scheme of amalgamation was not permitted to work tc their detriment.

We do not think it necessary to consider the various authorities on this point in detail because the dispute falls within a short factual compass which we have indicated above. We would like to make it clear that in situations like this where the second part of the proviso to Section 3 is not attracted, the

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adjudicating authority has powers to direct that the employers to prepare and submit a regular balance-sheet, on being satisfied that such balance-sheet was not prepared to defeat the claims of the employees. In our opinion, the appeal has to succeed. We, therefore, set aside the order of the Industrial Tribunal, Madras, allow this appeal and uphold the claim of the petitioners for 20 per cent bonus. The first respondent is directed to pay the cost of the petitioners.

S.R. Appeal allowed.

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