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**SooperKanoon Citation** : sooperkanoon.com/370714

**Court** : Karnataka

**Decided On :** Oct-28-1965

**Reported in** : (1966)IILLJ471Kant

**Judge** : K. Bhimayya and ;K.S. Hegde, JJ.

**Acts** : Payment of Bonus Act - Sections 33; Industrial Disputes Act, 1947 - Sections 10A, 17(2), 17A(1), 23 and 33

**Appeal No.** : Writ Petition No. 1058 of 1965

**Appellant** : Omprakash and anr.

**Respondent** : Workmen of Indra Bhavan (Boarding and Lodging) Mysore and anr.

**Judgement** :

**Hegde, J.**

1. In the petition, under Arts, 226 and 227 of the Constitution, the petitioners pray that this Court may be pleased to quash the award made by respondent 2 in Arbitration Case No. 2 of 1964 on his file for the reasons mentioned in the affidavit filed in support of the petition.

2. The petitioners are partners of a firm known as Indra Bhavan. It is a boarding and lodging establishment. For the year 1962-63, there was a dispute between the management and the employees of that establishment as to the quantum of bonus payable to the employees. The management paid the employees two month's wages as bonus. But the employees were not satisfied with that payment. Thereafter, the management and the workmen entered into an agreement on 13 November, 1963, agreeing to refer that dispute, under S. 10A of the Industrial Disputes Act to be hereinafter referred to as the 'Act' to the presiding officer of the labour court, Bangalore, for decision. In that agreement, they agreed to abide by the decision of the arbitrator. The arbitrator made his award on 27 November, 1964. Under that award, he directed the management to pay an additional bonus to its workmen equivalent to two months' wages. The award in question was published in the Mysore Gazette on 13 May, 1965. Aggrieved by that award, the petitioners have come up to this Court challenging its validity.

3. From the arguments advanced on behalf of the management, the question that falls for decision is whether the impugned award suffers from errors of law apparent on the face of the record.

4. In support of the his contention that the impugned award is an invalid award, Sri Rangaswami Ayyangar, the learned counsel for the petitioners, urged that the additional bonus granted under the award not being in consonance with the terms of the bonus Act, the award is liable to be struck down. As seen earlier, the award in this case was made on 27 November, 1964, and the same had been published on 13 May, 1965. The payment of Bonus Ordinance, 1965, was gazetted on 29 May, 1965, i.e., sixteen days after the impugned award was published in the gazette. The Payment of Bonus Act, 1965, came into force on 25 September, 1965. From these it follows that both the Bonus Ordinance as well as the Bonus Act came into force after the impugned award was made and published. It was urged on behalf of the management that in view of S. 33 of the Bonus Act, the award is liable to be revised by us is this contention correct The main part of S. 33 of the Bonus Act says :

'Where, immediately before 29 May, 1965, any industrial dispute regarding payment of bonus relating to any accounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate Government or before any tribunal or other authority under the Industrial Disputes Act, 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in a State, then, the bonus shall be payable in accordance with the provisions of this Act in relation to the accounting year to which the dispute relates and any subsequent accounting year, notwithstanding that in respect of the subsequent accounting year, no such dispute was pending.'

5. According to Sri Rangaswami Ayyangar, in view of Ss. 23, 17(2) and 17A(1) of the (sic) Act, the dispute in this case must be deemed to be pending till 12 June, 1965; before that date the Bonus Ordinance had not come into force and therefore we should hold that the arbitrator was incompetent to award bonus excepting in accordance with the terms of the Bonus Act. Sri Ayyangar asserts that impugned award became an invalid award because of the subsequent promulgation of the Bonus Ordinance. Prima facie, this contention is untenable. The arbitrator could not have know about the provisions of the Ordinance when he made the award. Hence, there was no possibility for him to conform to the provisions of the Ordinance.

6. There is no provision in the Bonus Ordinance and there is no provision in the Bonus Act providing for reopening an award already made. The award made had become final on the date it was published in the gazette. This Court is merely considering whether the arbitrator committed an error of law apparent on the face of the record in making the award. By no stretch of imagination, we could say that the arbitrator committed an error of law in making the award merely because his award is not in accordance with the provisions of a statute which came to be enacted subsequently. In considering the legality of an award, we have merely to take into consideration the state of law as it existed on the date the award was made and not the law which came to be enacted subsequently. If it was the intention of the Parliament that even awards made earlier should be brought into conformity with the provisions of the Bonus Act, quite certainly the Parliament

would have made provision in the Bonus Act for reopening those awards As mentioned earlier, there is no such provision in the Bonus Act.

7. Though a proceeding before an arbitrator would be deemed to be pending till thirty days have elapsed after the publication of the award, it cannot be said that the dispute which culminated in the award should also be deemed to be pending till that date. At any rate, for the purpose of S. 33 of the Bonus Act, it is proper to hold that that dispute had come to an end as soon as the award was made. This conclusion is irresistible in view of the fact that there are no provisions in the Bonus Act for reopening the awards already made. For the above reasons, we are unable to accept the contention of Sri Rangaswami Ayyangar that the impugned award is liable to be struck down on the ground that its terms do not accord with the provisions of the Bonus Act.

8. The next ground of attack of Sri Ayyangar was that the arbitrator erred in arriving at the available surplus for the purpose of determining the bonus payable. On this branch of his argument, he advanced the following contentions :

(a) that the arbitrator should have deducted from the gross income Rs. 5,000 and odd as incometax paid by the partners of the firm;

(b) he should have also deducted Rs. 4,000 contributed towards the National Defence Fund;

(c) he should not have added back a sum of Rs. 4,426.61 deducted for the payment of sales tax;

(d) the remuneration provided for the partners is inadequate, and;

(e) 6 par cent return provided for the capital invested is inadequate.

9. Now, coming to the question of Incometax deduction, the arbitrator only deducted a sum of Rs. 830.94, the incometax levied on the partnership firm from the gross income. He refused to deduct the Incometax of Rs. 3,336.57 levied on petitioner 1.

10. Similarly he refused to deduct the incometax of Rs. 2,020.76 levied on petitioner 2. Sir Ayyangar contended that the view taken by the arbitrator that the incometax levied on the partners is not liable to be deducted, in arriving at the available surplus is incorrect. In support of that contention he relied on the decision of the Supreme Court in Tulsidas Khimji v. Their workmen [1962 - I L.L.J. 435]. Thus far Sri Ayyangar was on solid ground. But, in this case, there is no evidence on record to show that the income of the petitioners, which was subjected to tax, was exclusively earned from their business with which we are concerned in this case. It is not known whether they had other source of income. The petitioners had merely produced certificates from the incometax officer to show that they have paid the taxes mentioned therein. These certificates must be held to refer to the tax paid by them on their total income. As mentioned earlier, it is not known whether that income is exclusively made up of the profits of the partnership firm. Even if we deduct that sum from the gross income it would not make any appreciable difference in the matter of additional bonus to be granted.

11. Now, coming to the question of payment of Rs. 4,000 to the national Defence fund the arbitrator has observed as follows :

'In the trading and profit and loss account for the year ending 31 March, 1963 (Ex. M. 2) the management has shown that a sum of Rs. 4,000 had been paid by way of donation to the national Defence Fund. The Supreme Court held, in the case of Textile Machinery Corporation, Ltd. v. Their workmen [1960 - I L.L.J. 34], that donations cannot be treated as a prior charge under the bonus formula. Therefor, the said sum of Rs. 4.000 has got to be added back.'

12. We are unable to hold that this conclusion of the tribunal is a patently erroneous one. It is true that any contribution made to the National Defence Fund is entitled to be deducted for the purpose of Income-tax. But that is not a relevant circumstance while deciding the question of bonus. It is also true that the bonus Commission had recommended that contributions made to the National Defence Fund should be permitted to be deducted in arriving at the available surplus for the purpose of determining the bonus and that recommendation had been accepted by the Government and incorporation in the Bonus Act. As seen earlier, the Bonus

Act came into force long after the impugned award was made. As mentioned earlier, this Court's function is to see whether the impugned award suffers from errors of law apparent on the face of the records.

13. Now, coming to the question of adding back of the sales tax, it was the case of the petitioners that had collected sales tax from their customers. No reason was given why the sum of Rs. 4,421.61 was not collected from the customers. The arbitrator did not accept the version of the petitioners that they did not collect from their customers that sum. This is essentially a finding of fact and that finding is not open to be reviewed by this Court.

14. In the matter of the remuneration to the partners, the finding of the arbitrator is essentially a finding of fact. The concern, admittedly, has a paid manager who gets a remuneration of Rs. 335 per month. This is inclusive of dearness allowance. Each of the partners has claimed a sum of Rs. 1,000 per month as their remuneration. Taking all the facts of the case into consideration, the arbitrator has come to the conclusion that Rs. 500 per month per partner would be reasonable remuneration. We are unable to say that this conclusion suffers from any error of law, much less an error of low apparent on the face of the record. The fact that a higher remuneration is provided under the bonus act is an irrelevant circumstance.

15. The only remaining contention is that the arbitrator should have allowed a 10 per cent return on the capital invested. In the view of the arbitrator, 6 par cent return on the capital invested is a reasonable return. His view in this regard is supported by numerous decisions. Therefore, it cannot be said that it is an erroneous view, Sri Ayyangar told us that the bonus Act provides for return of 8 1/2 per cent. But that provision would not apply to the case before us.

16. For the reasons mentioned above this petition fails and the same is dismissed. No costs.

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