

Workmen of Modern Mills Vs. General Manager

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Court : Karnataka

Decided On : Dec-18-1985

Reported in : ILR1986KAR1302; (1986)IILLJ329Kant

Judge : P.P. Bopanna, J.

Acts : Payment of Bonus Act - Sections 3, 31A and 34

Appeal No. : Writ petition No. 37004/82

Appellant : Workmen of Modern Mills

Respondent : General Manager

Judgement :

ORDER

1. An interesting question arises on the proper interpretation of S. 3 of the Payment of Bonus Act (Act). Though this point is no more res integra in the light of the decisions of the Supreme Court Workmen of Binny Ltd. v. Management of Binny Ltd. & another, : (1985)IILLJ564SC and Workmen of HMT Ltd. v. National Tribunal [1973-II L.L.J. 100], the applicability of the provisions of that Section to a given set of facts arises for consideration.

2. The petitioners in this petition are the workmen of Modern Mills Limited. It is not in dispute that prior to the order of amalgamation made by the Bombay High Court amalgamating the company known as Sundatta Food and Fibres Division

(Sundatta Company) with Modern Mills Ltd. Sundatta Company was functioning as a separate legal entity and the petitioners were workmen of Sundatta Company. This amalgamation took place on 12th October, 1977. The order of amalgamation provided that the assets and liabilities of Sundatta Company had been transferred to the Modern Mills on the appointed date, i.e., 1st January, 1976. The accounting year of Sundatta Company which was calendar year stood altered to 'April to March' in consonance with the accounting year of Modern Mills Ltd. It is not in dispute that 20% bonus was paid to the workmen of Sundatta Company for the calendar year 1976 on the trading results of that Company. However, the 1st respondent management paid the minimum bonus at the rate of 8.33% for the accounting year 1977 plus an ex gratia of 9.17% of the total annual emoluments as per the agreement dated 11th November, 1978. There was another settlement between the parties on 31st October, 1979 pertaining to bonus for the accounting year 1978. It is averred in the Writ Petition that the settlement was contrary to the provisions of the Act and therefore it was terminated by the petitioners by giving the necessary notice. There was a further settlement dated 18th November, 1980 pertaining to the accounting year 1979 and according to the petitioners, it was accepted under protest without prejudice to the rights of the parties, if any. The petitioners received the bonus as stipulated under that settlement (which is produced as Ex. M-7 before the Industrial Tribunal) under protest and raised a dispute claiming bonus at the rate of 20%, i.e., the maximum permissible under the Act. Though their claim was for 40% bonus, in the course of their negotiations with the management, they limited their claim to 20% since the Act does not provide for payment of more than 20% bonus. This settlement Ex. M-7 was followed by another settlement dated 17th February, 1981 (Ex. M-8) under which the parties had agreed that they would not reopen the claim for bonus and the settlement Ex. M-7 was binding on all the parties.

3. In the dispute before the Tribunal, the defence of the 1st respondent was that bonus paid under the settlement Ex. M-7 was on the basis of the consolidated balance sheet of Modern Mills and that the available surplus which was worked out on the basis of the consolidated balance sheet did not permit the management to pay more than 8.33%. This contention was based on the fact that though Sundatta Company was making considerable profits, Modern Mills was incurring

heavy losses and therefore the overall performance of the Modern Mills also included the trading result of Sundatta Company. The management could have taken that stand if it had satisfied the requirement of S. 3 of the Act. Section 3 reads as under :

'Establishment of include departments, undertakings and branches. - Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or under takings or branches shall be treated as part of 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 of undertaking or branch, then, 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.'

4. On the plain language of the first paragraph of S. 3, it was open to the management to treat Sundatta Company at Hubi as part of its establishment for the purpose of computation of bonus under the Act. But that was subject to the proviso following the main part. What the proviso says is that if for an accounting year a separate balance-sheet and profit and loss account is prepared and maintained in respect of such departments or undertakings or the branch, such department or undertakings or branch should be treated as separate establishment for computation of bonus under the Act for that year unless such department undertaking or branch was immediately before the commencement of the accounting year treated as part of the establishment for the purpose of computation of bonus. So, if the management wanted to take the benefit of the first part of S. 3 it ought to satisfy the second proviso to S. 3. That is to say, that Sundatta Company should have been treated before the commencement of the accounting year as part of the establishment of the Modern Mills for the purpose of computation of bonus. With this statement of law in the background the facts as placed before the Tribunal should be examined.

5. The workmen examined one Vasudeva Rao who was working as Joint-Accountant on a salary of Rs. 350 per mensem since 1972. He had stated that since the 1975 there were bonus disputes; that every year there used to be a dispute; that he had produced a balance-sheet of Sundatta Company for the year 1976; that Modern Mills was a limited Company; that Sundatta factory is at Karwar Road, Hubi; that it produce cotton seed oil, soap, cattle feed etc.; that there is no other factory of Modern mills manufacturing these goods; that there is a Works Manager and Accountant for this factory; that the main book of accounts are maintained at Hubi itself; that separate accounts of Sundatta Company had been published in Ex. W-2; that till 1976 bonus was paid on the basis of the balance sheet and the working results of Sundatta Company only, but after 1976 the management has stated that they had amalgamated both the companies. He had further deposed that Sundatta Company is a different industry and if had no connection with Modern Mills; that raw-materials of both the factories were collected in karnataka and Tamil Nadu; that the products of this company were directly sent to dealers and consumers. The other evidence of this witness relates to the disputes raised by his union and the agreements entered into by the parties regarding bonus to which I have made a brief reference. So, according to this witness, though Sundatta Company was amalgamated with Modern Mills it was working as a separate entity and it was also maintaining separate accounts.

6. The management examined one Devidas. an internal Auditor of Modern Mills. He had stated that he was a chartered Accountant and internal Auditor; that the accounts were maintained at Sundatta Company and brought up to the stage of trial balance-sheet at Hubi to the extent of 75%; that the Bombay office expenses regarding administration are finalised at Bombay; that up to 1976 before the amalgamation, Sundatta company was a separate company under the Companies Act. One more significant piece of evidence that has come in his cross examination is that the management had not given any notice to the workmen regarding changing of the accounting year; that he was not aware whether the management had given any notice under the Act for change of the accounting year from Calendar year to financial year. He had also stated that up to 1976 Sundatta Company had earned more profits than Modern Mills; that he could not say whether after 1976 the profits made by Sundatta company were appropriated

towards losses of Modern Mills.

7. On this evidence of the parties, the point for consideration was whether the management could claim the benefit of the first part of S. 3 of the Act read with the second proviso to the said section. The first part of Section 3 is easily satisfied since that part enables the main establishment, i.e., Modern Mills to treat Sundatta company as part of its establishment for the purpose of computation of bonus. But the second proviso should also be satisfied. But in this case the evidence is that Sundatta Company was maintaining a trial balance sheet up to the extent of 75% and the rest of the figures were audited in Bombay for the purpose of preparing the final balance-sheet and those figures are only in relation to the Bombay office expenses regarding administration etc., and not the trading results of Sundatta Company at Hubi. Therefore, prima facie the first proviso to S. 3 is attracted in this case unless the management proves that it had treated Sundatta Company immediately before the commencement of the accounting year as part of Modern Mills for the purpose of computation of bonus.

8. The Learned Counsel for the workmen Mr. Subba Rao submitted that though by virtue of amalgamation order passed by the learned Company Judge of the Bombay High Court, Modern Mills and Sundatta Company had become one company, it was of no consequence for the payment of bonus in view of S. 3. According to him, though the first proviso says that a separate balance-sheet and profit and loss account should be prepared and maintained in respect of Sundatta Company, the literal meaning of those words is not contemplated for the purpose of payment of bonus in the light of the decision of the Supreme Court in Binny Limited (supra). That was a case where the management of Binny Ltd., relying on the first part of S. 3 contended that the workmen employed by it in some of its amalgamating companies were not entitled to 20% bonus on the ground that no separate balance-sheet was prepared for those companies during the relevant accounting year. The Supreme Court dealing with this contention observed :

'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 20% bonus as claimed by the petitioners. It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the 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 S. 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.'

9. In the light of this decision of the Supreme Court. the workmen can contend successfully that the trial balance-sheet prepared by Sundatta Company was sufficient for the purpose of calculating bonus to the workmen under the Act after working out the allocable and available surplus.

10. However, it was contended by the Learned Counsel for the management, firstly, that the evidence on record does not show that there was a separate profit and loss account and balance-sheet for the Sundatta company. I would have accepted his statement if he had produced the consolidated balance-sheet of Modern Mills for the relevant year and proved that right from the beginning of the accounting year the accounts of Sundatta Company were kept at the Head Office in Bombay and both the units were treated as one unit for all purposes and not just for the purpose of drawing up a consolidated balance-sheet with a view to avoid the contingency of paying the maximum bonus to the workmen, who it is not in dispute, were earning 20% bonus under the Act prior to the order of amalgamation. The fact that these workmen were getting maximum bonus prior to 1976 would be a pointer for taking the view that this consolidated balance-sheet was drawn up by the management with a view to avoid payment of bonus to these

workmen at the rate of 20%. That is why they paid 8.33% bonus plus another 9.17% as ex gratia for the year 1977.

11. The second contention of the Learned Counsel for the management is that even assuming the workmen are entitled to the benefit of the 1st proviso to S. 3, they had expressly agreed in the settlements Exs. M-7 and M-8 that they would accept the bonus as provided for in those settlements and that they would not reopen the claim for bonus and they had also further agreed that they would be bound by the terms of the said settlement. No doubt under Ex. M-7 the parties had agreed to the following terms :

'The workmen and the graded staff have agreed to accept under protest 8.33% bonus and 2.67% ex gratia for the accounting year 1979-80, based on the total earnings for the calendar year 1979, as already declared by the management, without prejudice and rights of either of the parties, if any.'

Though this term shows that the workmen had received the bonus for the relevant year under protest, under Ex. M-8 they had agreed that in respect of the bonus for the financial year ending 31st March, 1980 the settlement dated 18th November, 1980 was binding on them and they would not reopen the issue for negotiation with the management. Assuming such an agreement had been entered into, the point for consideration would be whether such an agreement would be consistent with rights of the workmen under the Act. It is not in dispute that what was claimed by the parties is profit sharing bonus and not bonus linked with productivity or production and therefore S. 34 of the Act comes into operation on the facts of this case. S. 34 reads as under :

'Effect of laws and agreements inconsistent with the Act-Subject to the provisions of S. 31A. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement, or contract of service.'

It is not the case of the management that bonus claimed by the workmen comes under the provisions of S. 31A of the Act and therefore the provisions of S. 34 of the Act would override any terms of the settlement which would be inconsistent

with the provisions of the Act. The implication of S. 34 is clear; it is on lines with S. 22 of Payment of Wages Act. S. 34 confers protection to the workmen to enable them to workout their rights under the Act even if they sign a settlement giving up their rights under the Act and therefore the term in Ex. M-8 prohibiting the workmen from raising any dispute regarding the claim in question is of no avail to the management. That apart, the workmen themselves have averred in the writ petition that settlement had been terminated by a proper notice. There is no contrary evidence to take the view that settlement was in force at the time of adjudication. Though this point was not taken by the workmen before the Tribunal, this being a legal issue based on the provisions of S. 34 which does not require any further evidence for its consideration it is open to the workmen to contend that terms in Ex. M-8 is inconsistent with the provisions of S. 34 of the Act.

12. The learned Counsel for the management relied on the decision of the Division Bench of the Madras High Court in K. P. C. Private Limited v. Its Workmen. [1969-II L.L.J. 817] The Madras High Court upheld the decision of the management to pay bonus on the basis of separate balance-sheet and profit and loss account and not on the basis of consolidated balance sheet. That decision instead of helping the management answers the question in favour of the workmen. As noticed earlier, the law is settled by the Supreme Court in Binny Mills (supra) and therefore the claim of the workmen for payment of bonus on the basis of the trading results of Sundatta Company, Hubi will have to be worked out by calculating the allocable and available surplus on the basis of the figures available in the trial balance-sheet maintained by Sundatta Company and if necessary by directing the Company to prepare a new balance sheet on the basis of the trial balance-sheet of Sundatta Company.

13. Accordingly this petition is allowed, the impugned order is quashed and the matter is remitted to the Additional Industrial Tribunal, Bangalore. With a direction to consider the claim of the petitioners for bonus in the light of the above observations and in the light of the decision of the Supreme Court in Binny Limited (supra).

14. It is open to the parties to lead additional evidence in support of their respective contentions.

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