

(1971) 08 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 1337 of 1970

A. Munivenkataiah and Others	Vs	APPELLANT
General Manager, Government Soap Factory and Another		RESPONDENT

Date of Decision : 03-08-1971

Acts Referred:

Industrial Disputes Act, 1947 — Section 1 (3), 33 C, 33 C (2), 34, 34 (1)

Citation : (1972) 1 LLJ 355 : (1972) 1 MysLJ 8

Hon'ble Judges : E.S. Venkataramiah, J;B. Venkataswami, J

Bench : Division Bench

Judgement

Per E.S. Venkataramiah, J.—This writ petition is filed by some of the workman of Government Soap Factory, Bangalore, for quashing the order dated 10-12-1969 passed on Appln. 117 of 1969 by the Presiding officer Labour Court, Bangalore.

2. The petitioner filed an application under S. 33C(2) of the Industrial Disputes Act before the Labour Court against the General Manager, Government Soap Factory, Bangalore, for recovery of ascertain sum of money which they were entitled to by way of profit bonus due to them under a memorandum of settlement entered into between the parties on 30-3-1964. The relevant part of the settlement is extracted below.

"7. Profit Bonus : It is agreed that the concern will pay profit bonus for the year on the annual financial results of the concern as set forth below -

(a) For profits No bonus. below 5% (b) For profits of 5% 1/12th of the total earnings for the year and above but not on account of basic pay/wages exclusive of exceeding 8% allowance of any kind and bonus but including acting or charge allowance. (c) For profits above 1/6th of the total earnings for the year 8% but not exceeding on account of basic pay wages exclusive 12 1/2% of allowance of any kind and bonus but including acting or charge allowance. (d) For profits above 1/4th of the total earnings for the year 12 1/2% but not on account of basic pay wages exclusive exceeding 16% of allowance of any kind and bonus

but including acting or charge allowance. (e) For profits exceeding 1/3rd of the total earnings for the year 16% on account of basic pay wages exclusive of allowance of any kind but including acting or charge allowance.

The above profit bonus schedule will take effect from the financial year commencing from 1-4-1963."

3. According to the said settlement the management had to pay profit bonus equivalent to one-third of the total earnings for the year in which the profits exceeded sixteen per cent. Accordingly the management paid four months basic wages as profit bonus during the years 1964-65, 1965-66 and 1966-67, but for the year 1967-68 even though the profits of the concern exceeded sixteen per cent, the management paid by way of bonus three months' wages instead of four months' basic wages. For the year 1968-69, however, the bonus was paid at the rate of four months' basic wages. The petitioners' grievance was that the management had wrongly withheld one month's basic wages which was payable to them for the year 1967-68 in addition to what had already been paid. The petitioners, therefore, approached the Labour Court which had jurisdiction under S. 33C(2) of the Industrial Disputes Act to make a computation of the said monetary benefit and to direct payment of the same in accordance with the settlement dated 30-3-1964 referred to above.

4. On behalf of the management, it was contended that on the coming into force of the Payment of Bonus Act, 1965 (hereinafter referred to as the Act) the settlement referred to above had become inoperative, and, therefore, no bonus was payable under the settlement to the employees.

5. After hearing the parties, the Labour Court passed the impugned order holding that in view of S. 34(1) of the Act, the settlement which was entered into between the parties before 29-5-1965 was ineffective, and, therefore, no relief could be granted on the basis of the said settlement. In that view of the matter, the application filed under S. 33C(2) of the Industrial Disputes Act was held to be not maintainable and it was rejected.

6. Aggrieved by the aforesaid order of the Labour Court, Bangalore, the workmen have filed the above writ petition.

7. The fact that there was a valid settlement between the management and the workmen regarding payment of bonus on 30-3-1964 is not in dispute. But the question raised in this case is whether the said settlement is unenforceable in respect of the bonus agreed to be paid by the management in view of S. 34(1) of the Act. The relevant part of S. 34 of the Act is set out below :

"34. Effect of laws and agreements inconsistent with the Act. - (1) Save as otherwise provided in this section, 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 made before the 29th May, 1965."

(Sub-section (2) is held to be unconstitutional by the Supreme Court - vide *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*,

"(3) Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under formula which is different from that under this Act :

Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under S. 10 shall be null and void in so far as it purports to deprive them of such right."

8. Shri S. Krishnaiah, the learned counsel for the workmen, contended that S. 34 of the Act is inapplicable to the employees involved in this case in view of S. 32(iv) of the Act. The relevant part of S. 3 of the Act is extracted below :-

"32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to -

* * * (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;"

His submission was that when the whole Act is not applicable to the parties, the establishment in this case being a department under the Government of Mysore, S. 34 of the Act which is one of the sections of the Act was also inapplicable, and, therefore, the settlement could not become unenforceable.

9. Sri S. G. Doddakale Gowda, the learned Government Pleader, tried to meet the argument of the petitioner by relying upon the decision of the supreme Court in *Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union and Another*, in which it was observed by the Supreme Court as follows :

"Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and the scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to exclusion or exception to raise a dispute with regard to bonus through industrial adjudication under the Industrial Disputes Act, or other corresponding law."

10. The above decision of the Supreme Court was rendered in two appeals, viz., Civil Appeals Nos. 1630 and 1721 of 1967. The first of the above two cases was filed against the order of the Industrial Tribunal, Madras, and the second was filed against an order of the Industrial Tribunal, Bangalore. In the first case, the Tribunal had held that the Act did not apply by reason of S. 1(3) of Act and it was possible for the workmen to raise an industrial dispute regarding the adjudication

on the payment of bonus payable to them on the basis of a formula which was popularly known as "Full Bench Formula". In the second case the industry concerned was an establishment in the public sector to which S. 20 of the Act applied. It was held by the Tribunal that because by reason of S. 32, the Act was not applicable to the establishment, it was open to the workmen to raise an industrial dispute with regard to the bonus payable by the management de hors the Act. In the above cases the question for consideration, therefore, was whether after the coming into force of the Act it was open to the employees working in industries and establishments exempted by S. 1(3) and S. 32 of the Act, to raise industrial dispute regarding payment of bonus de hors the Act. But the question involved in the case before us is not whether an industrial dispute can be raised regarding payment of bonus and whether it can be adjudicated upon by an Industrial Tribunal, but whether a settlement duly arrived at by the parties on the question of bonus prior to 29-5-1965 would become void and unenforceable. The object of S. 34(1) of the Act appears to be that the employees governed by the Act should be paid bonus in accordance with the provisions of the Act, notwithstanding anything contrary therewith contained in any award, agreement or settlement made prior to 29-5-1965. The said provisions apply to industries and establishments which are governed by the Act and not to those which are exempted from its application. Sub-section (3) of S. 34 of Act authorises the employees and employers and employers to enter into an agreement in respect of payment of bonus to the employees under a formula which is different from the Act, provided the agreement does not deprive the employees of the minimum bonus payable under S. 10 of the Act. The combined effect of sub-s. (1) of S. 34 of the Act opening with the words "save as otherwise provided in this section" and the non obstante clause appearing in sub-s. (3) of S. 34 of the Act is that it is permissible for the employees and employers to enter into an agreement regarding payment of bonus provided it does not derogate from the rights of the employees under S. 10 of the Act, notwithstanding the other provisions of the Act. When this is so even in respect of establishments to which the Act applies, it cannot be said that agreements or settlements entered into by employees and employees in establishments which are exempted by the Act under S. 32 of the Act would be void by reason of S. 34(1) of the Act. In fact S. 34(1) of the Act does not say that such an agreement or settlement will be void. It only gives an overriding effect to the provisions of the Act on the agreements or settlements made before 29-5-1965 between employers and employees of establishments governed by the Act. If really the Act intended that agreements and settlements entered into by employees and employers of establishments not covered by the Act should be void, it would have said so. We do not find any provision in the Act which either expressly or by necessary implication nullifies such agreements and settlements entered into between the employers and employees of exempted establishments. We find support for other above view in another part of the Supreme Court decision relied on by the Government Pleader which is as follows Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers

Union and Another,

"Section 32(vii) exempts from the applicability of the Act those employees who have entered before 29th May 1965 into an agreement or settlement with their employers for payment of bonus linked with production or productivity in lieu of bonus based on profits and who may enter after that date into such agreement or settlement for the period for which such agreement or settlement is in operation. Can it be said that in cases where there is such an agreement or settlement in operation, though this clause expressly excludes such employees from claiming bonus under the Act during such period, the employees in such case can still resort to the Industrial Disputes Act and claim bonus on the basis of the Full Bench Formula ? The answer is obviously in the negative, for the object in enacting clause (vii) is to let the parties work out such an agreement or settlement. It cannot be that despite this position Parliament intended that those employees had still the option of throwing aside such an agreement or settlement raise a dispute under the Industrial Disputes Act and claim bonus under the Full Bench Formula."

11. The observations of the Supreme Court extracted above are based on clause (vii) of S. 32 of the Act which reads as follows :

"32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to -

* * * (vii) employees :- (a) who have entered before the 29th May, 1965, into any agreement or settlement with their employers for payment of annual bonus linked with production or productivity in lieu of bonus based on profits; or

(b) who have entered or may enter after that date into any agreement or settlement with their employers for payment of such annual bonus in lieu of the bonus payable under this Act, ..."

In substance we understand that in the decision relied on by the Government Pleader, the Supreme Court has only laid down that no industrial dispute can be raised by employees in establishments exempted under S. 1(3) and S. 32 of the Act claiming bonus and not that any agreement or settlement entered into before 29-5-1965 between employees and employers in such establishments would be unenforceable.

12. In the view we have taken, it has to be held that the impugned orders of the Labour Court should be held to be erroneous. It is not disputed that if the settlement is enforceable under S. 33C of the Industrial Disputes Act, it is permissible for the Labour Court to direct payment of any sum due under such settlement. The Labour Court has, therefore, to decide the application under S. 33C of the Industrial Disputes Act without reference to S. 34 of the Act.

13. In the result, we quash the impugned order passed by the Labour Court and send back the case to the Labour Court for disposal in accordance with law and in the light of the observations made above.

14. The writ petition is allowed, but there will be no order as to costs.