
(1980) 10 KL CK 0024
In the High Court Of Kerala

Alind Supervisory Staff Association

APPELLANT

Vs

Aluminium Industries Limited

RESPONDENT

Date of Decision : 08-10-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 18, 2

Citation : (1980) 10 KL CK 0024

Hon'ble Judges : Kochu Thommen, J

Bench : Single Bench

Judgement

Kochu Thommen, J.—The Alind Supervisory Staff Association, Kundara (the "Association"). of which the petitioner is the General Secretary, represents the supervisory personnel of the Aluminium Industries Ltd., Kundara, the 1st respondent (the "company"). The supervisory personnel consist of various categories, such as Supervisors, Foremen, Asst. Accountants, Asst. Superintendents and Office Assistants. They came to be represented by the Association sometime in 1973.

2. Between 1963 and 1968 the company extended to the supervisory personnel the benefits of certain agreements which it had entered into with the unions representing the workmen of the company for payment of bonus linked with productivity. It would appear that during those years very few employees categorised as supervisory personnel received wages in excess of Rs. 500. It was in 1968 that a number of them began to receive salary far in excess of that limit. The company realised that the benefits of the agreements with the workmen could not be extended to persons receiving salary in excess of Rs. 500 without taking into account the limit under the Payment of Bonus Act, 1965 (the "Bonus Act"). The company for the first time in 1968 refused to grant to the supervisory personnel bonus otherwise than in terms of the Bonus Act. From 1968 onwards bonus was accordingly paid to the supervisory personnel. These facts are borne out by documents, such as Exts.W17 to W24 relating to the years when bonus under agreements with the workmen was paid to the supervisory personnel, and

Exts.M27 to M31, M34 and. M54 series, relating to the period when such benefits were not extended to the supervisory personnel. It was, however, only in 1973 that the supervisory personnel, organised under the banner of the Association, took up the claim that they were entitled to the benefits of the relevant agreements with the workmen. It may be stated at this stage that the comparative figures concerning bonus paid to the workmen and the supervisory personnel of the company as well as those of its branches in various other places are shown in Ext.M72. These figures relate to the years 1968-69 to 1974-75. They show that the rate of bonus paid to the supervisory personnel was less than what was paid to the workmen under the various agreements with them, although the supervisory personnel were not far behind the workmen, if the percentage of bonus paid is taken into account, for they appear to have been paid the maximum recognised under the Bonus Act.

3. The Association contended in 1973 that it was not sufficient for the company to pay the supervisory personnel bonus on the basis of the Bonus Act, but that they were entitled to receive bonus in terms of the agreements which the company had entered into with the workmen. The dispute which arose as a result of that contention was referred to the Industrial Tribunal, Alleppey, u/s 10(1) of the Industrial Disputes Act, 1947 (the I.D. Act). The Tribunal by Ext.P1 award in I.D. No. 14 of 1974 upheld the company's contention that the supervisory personnel were not workmen within the meaning of the I.D. Act and rejected the contention of the Association to the contrary. The Tribunal, therefore, held that the dispute was not capable of being resolved by it.

4. The petitioner's counsel, Shri Mathew Zachariah, in his extremely well prepared arguments, has raised several contentions. He says that the Tribunal erred in law in coming to the conclusion that the supervisory personnel were not workmen. He further contends that, in the light of the provisions of the Bonus Act read with those of the I.D. Act, the supervisory personnel, even if they are not workmen within the meaning of Section 2(s) of the I.D. Act, are entitled to receive the same bonus as is payable to workmen under certain conciliation agreements.

5. As regards the first contention, it has to be stated that the Tribunal, on the basis of the evidence on record, found that the supervisory staff were doing the work of a supervisory and administrative character and that they exercised certain executive powers. The Tribunal relied upon the evidence of W.Ws.1 to 4 as well as that of M.Ws.1 and 2. The Tribunal also referred to a number of documents produced by both sides. After an elaborate discussion of the deposition of witnesses, particularly that of W.Ws. 1 to 3 who are members of the Association and of the various documents, the Tribunal came to the conclusion that by no stretch of imagination could the members of the Association be regarded as workmen within the meaning of Section 2(s) of the I.D. Act. This is a finding of fact which is, in my view, reasonably based on evidence, and is not vitiated by any error of law. This finding is, therefore, not

liable to be interfered with in the present proceedings.

6. According to the petitioner's counsel, the matter does not end there, for, he says that all employees within the meaning of Section 2(13) of the Bonus Act are entitled to have their dispute regarding bonus payable under that Act resolved as if they are industrial disputes within the meaning of the I.D. Act. Admittedly the supervisory personnel are employees within the meaning of the Bonus Act and their dispute relates to bonus payable under that Act. Counsel, therefore, referring to Section 22 of the Bonus Act, contends that these employees are entitled to all remedies available under the I.D. Act even if they are not workmen within the meaning of the latter Act. Counsel refers to Section 31A of the Bonus Act to contend that the employees are entitled to, in lieu of profit bonus payable u/s 10 of the Bonus Act, productivity bonus in terms of agreements entered into between the company and the workmen. This argument is sought to be fortified by reference to Section 18(3)(d) of the I.D. Act which says that where there is a settlement arrived at in the course of conciliation proceedings between the employer and the workmen of an establishment, all persons employed in that establishment are bound by such settlement. Admittedly there have been conciliation agreements relating to productivity bonus with the workmen of the company, and, therefore, counsel submits that the supervisory personnel are entitled to such productivity bonus.

7. These contentions are refuted by the company's counsel, Shri K.A. Nayar, with much learning and thoroughness. Counsel submits that the supervisory personnel are entitled to bonus only in terms of the Bonus Act, and secondly, they are not entitled to any substantive right in regard to bonus other than what is recognised under that Act. He says that the fact that the machinery of the I.D. Act is available to resolve disputes regarding bonus payable under the Bonus Act does not entitle the claimants to any substantive right under the I.D. Act.

8. I shall refer to the relevant provisions. An employee is defined under the Bonus Act much more widely than under the I.D. Act. Section 2(13) of the Bonus Act says ;

"employee" means any person (other than an apprentice) employed on a salary or wages not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

Admittedly the supervisory personnel are employees under the Bonus Act and are entitled to bonus in terms of that Act. Profit bonus is payable u/s 10 subject to a maximum of 20% of the salary or wage. For the purpose of computing the bonus u/s 10, salary or wage in excess of Rs. 750 p.m. has to be disregarded, as required u/s 12. This bonus is computed on the basis of the available surplus in any accounting year. However, in lieu of such profit bonus, the employees are entitled to bonus linked with production or productivity provided they have

entered into an agreement or settlement with their employer for such purpose. This is provided u/s 31A which reads as follows ;

31A. Special provision with respect to payment of bonus linked with production or productivity,-Notwithstanding anything contained in this Act.-

(i) Where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976, or,

(ii) Where the employees enter into any agreement or settlement with their employer after such commencement,

for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement as the case may be:

* * *

* * *

(emphasis supplied)

This provision is applicable only when there is an agreement or a settlement with the concerned employees. The object of the section is to honour such pact.

9. Section 22 of the Bonus Act is the deeming provision. It says that any dispute relating to the bonus payable under that Act is deemed to be an industrial dispute. It reads:

22. Reference of disputes under the Act.- Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act... then such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947)....

The Bonus Act does not provide for any machinery to resolve disputes relating to bonus. It is only by recourse to the machinery provided under the I.D. Act that such disputes can be resolved, for this purpose the I.D. Act is available even if the persons claiming bonus are not workmen within the meaning of the I.D. Act, provided they are employees within the meaning of the Bonus Act. But for this deeming provision, the I.D. Act would not be applicable in respect of such persons. The question is, whether an employee, who is not a "workman" claiming bonus under the Bonus Act, is entitled to any substantive benefit other than what is recognised under that Act. According to the petitioner's counsel, Section 18(3) (d) of the I.D. Act extends to him such benefits. The relevant provisions of Section 18 read as follows:

18. Persons on whom settlement and awards are binding.-(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the

agreement.

(2) * * * *

(3) A settlement arrived at in the course of conciliation proceedings under this Act.... shall be binding on-

(a) all parties to the industrial dispute ;

(b) * * * *

(c) where a party referred to in Clause (a).... is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates ;

(d) where a party referred to in Clause (a).. is composed of workmen, all persons who were employed in the establishment, or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

This section draws a distinction between settlements simpliciter and settlements arrived at in the course of conciliation proceedings. The former is binding only on parties to it. The latter binds not only the parties, but certain other persons as well. One category of such persons is contained under Clause (d) of Sub-section (3) which refers to all persons employed in the concerned establishment or who become subsequently employed in that establishment. Assuming that, as contended by the petitioner's counsel, even persons who are not workmen are bound by conciliation agreements, so long as they are persons in whom the workmen have a legitimate interest, the question is whether the supervisory personnel can, on the strength of this provision, claim bonus in terms of the conciliation settlements arrived at between the company and their workmen.

10. Shri Nayar contends that in the first place the supervisory personnel are not persons coming within the meaning of Sub-clause (d) of Section 18(3). He says that the Tribunal has categorically found that they are persons who belong to a class totally different from workmen. They are supervisors engaged in supervisory, administrative or executive work. They are not persons in whom the workmen can have any legitimate interest and whose cause the workmen are entitled to espouse, (see *Workmen of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, Shri Nayar further submits that no dispute has arisen in regard to bonus which is capable of being resolved in terms of the substantive rights available under the I.D. Act. The workmen with whom there is an agreement for payment of productivity bonus have no complaint and no dispute has been raised by them. The complaint is only that of employees who are not workmen and their claim for bonus has to be settled strictly in terms of the Bonus Act and with the aid of the machinery incorporated for such purpose by means of the deeming provision in Section 22 of that Act. There is much force in these contentions.

11. I have already stated that there is no agreement with the concerned employees. In the absence of such agreement the provisions of Section 31A of the Bonus Act can be of no avail. If that is so, the only substantive right for bonus is that which is recognised under the other provisions of the Bonus Act, namely, profit bonus. Whatever be the substantive rights available to workmen under the I.D. Act, those rights cannot be enforced or vindicated by employees other than workmen. Their claim for bonus can only be agitated or enforced strictly in terms of the Bonus Act, albeit in accordance with the procedural provisions of the I.D. Act. That is the purpose of Section 22 of the Bonus Act, It is not intended by the Legislature that bonus payable in terms of the Bonus Act can be enlarged or varied on the basis of any claim based on lights alien to that Act. The fact that Section 18 of the I.D. Act extends the benefit of conciliation settlements to all persons working in an establishment does not mean that by recourse to that provision an employee who is not a workman, claiming bonus under the Bonus Act, can enforce a claim which has no basis under the Bonus Act. All that Section 22 of the Bonus Act seeks to achieve is the enforcement of the substantive right under that Act by means of the machinery under the I.D. Act.

12. In the circumstances, the contention that, even if the supervisory personnel are not workmen within the meaning of the I.D. Act, they are entitled to enforce claims based on conciliation agreements with the workmen is unsustainable.

13. In addition to bonus, the question of promotions was also referred to the Tribunal. In the light of what I have stated above, I hold that the Tribunal did not rightly examine the two questions. The challenge against Ext. P1 fails.

14. The Original Petition is dismissed. No costs.