

(2000) 09 MAD CK 0053

In the Madras High Court

Case No : W.A. No's. 1268 and 2365 of 1999 and C.M.P. No. 12609 of 2000

Ashok Leyland Employees Union

APPELLANT

Vs

Ashok Leyland Limited and Another

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)

Payment of Bonus (2nd Amendment) Ordinance, 1985 — Ordinance 8

Payment of Bonus (Amendment) Act, 1985 — Section 10, 11, 12, 2(13), 34

Citation : (2001) 1 LLJ 1388

Hon'ble Judges : R. Jayasimha Babu, J; K.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A.L. Somayajee, for K.M. Ramesh, for the Appellant; Sanjay Mohan, for S. Subramanian and Associates, for the Respondent

Judgement

R. Jayasimha Babu, J.—A settlement had been arrived at between the Ashok Leyland Limited and the Employees represented by Ashok Leyland Employees" Union in respect of the quantum of bonus payable for the financial year 1984 on the terms set out in settlement between the parties u/s 10(1) of the Industrial Disputes Act, 1947. The interpretation of that settlement was the subject matter of the industrial dispute in ID No. 13/1998. The Tribunal having held in favour of the workmen that award so rendered was challenged by the management in W.P. No. 7072/1993 which came to be allowed on July 9, 1999 by the learned single Judge of this Court. The management as also the union being aggrieved by the judgment these two writ appeals are before us.

2. It is necessary at this stage to set out the terms of that settlement. The settlement after setting out the names of the parties, the persons representing the employer, the number of and description of the workman covered by the settlement, their number being 7300 excluding the temporary "and daily and monthly rated employees in the factory at Ennore, sets out the following.

"Terms of Settlement:

1. Having regard to the whole-hearted and unstinted co-operation extended by the union in achieving the various production levels by adhering to the productivity standards and their assured co-operation to increase it further, the company hereby agrees to pay all eligible employees as referred to in the preamble about the number and broad description of the workman covered by the settlement. 20% of basic wages, dearness allowance etc. as bonus as per the provisions of the Payment of Bonus Act, 1965 as in force on date of this agreement.

2. The Union hereby agrees to accept this payment in full and final settlement of all its claim towards bonus for the year 1984 and further assures full co-operation to the Management in enhancing production.

3. The Company hereby agrees to make the payment referred to above on April 12, 1985."

3. It is noteworthy that in the recitals the firm commitment of the company to abide by law has been declared by stating that the payment of bonus has always been in accordance with the ceiling on pay and as per other provisions of the Payment of Bonus Act and that there is a specific provision to this effect in the Wage Settlement in force. After having so stated that the bonus is to be paid in accordance with the ceiling of pay and as per other provisions of the Act, it is set out in the terms of the settlement that the management has agreed to pay "all eligible employees" as referred to in the preamble, 20% of the basic wages and Dearness Allowance etc. as bonus as per the provisions of the Payment of Bonus Act, 1965 as in force on the date of the agreement. It is not in dispute that the Bonus was in fact disbursed on April 12, 1985 shortly thereafter.

4. The union having become aware of the fact that Payment of Bonus Act was to be amended, a fact which also must have been within the knowledge of the employer wrote to the Management on April 19, 1985 stating that in case the proposed amended provisions have retrospective effect, the same will have overriding effect in the settlement, as well.

5. The Payment of Bonus Act was amended on May 22, 1985 by which Section 12 of the Act was deleted. Such deletion was given retrospective effect, with effect from the accounting year "commencing on any day in the year 1984 and on every subsequent accounting year". On November 7, 1985 the Payment of Bonus (Second Amendment) Ordinance 1985 was promulgated. That Ordinance also was given retrospective effect commencing from the accounting year "commencing on any day in the year 1984 and in respect of subsequent accounting year." This Ordinance brought about significant changes in the extent of coverage and the amount on which bonus was to be calculated. In Section 2 Clause (13) of the Act, the words Rs. 2500/- were substituted in the place of Rs. 1600/-. The effect of this amendment was to enable persons drawing a salary upto Rs. 2500/- per month to receive bonus. The other amendments brought about by the Ordinance was insertion of a new Section 12 which provided that

where the salary or wage of an employee exceeds Rs. 1600/- p.m. bonus is payable to such employee u/s 10 as the case may be u/s 11 shall be calculated as if the salary or wage is Rs. 1600/- p.m.

6. After this amending Act and subsequent Ordinance, as has only to be expected, the union may demand on the management for payment of bonus in accordance with the terms of the law as amended by the amending Act and the Ordinance as the bonus that had been paid earlier in April, 1985 was only in respect of persons whose salary or wage did not exceed Rs. 1600/- p.m. calculating the amount of bonus on the sum of Rs. 750/-. Under the amended law, it was the stand of the workmen that they were entitled to the paid the agreed percentage of bonus on the salary of Rs. 1600/- p.m. in place of Rs. 750/- p.m. on basis of which payment had been made earlier, and that shall include workmen drawing a salary of Rs. 2500/- or less were entitled to bonus.

7. Management having resisted the demand of the Union, a reference came to be made. The questions referred for adjudication as set out in the Award made by the Tribunal were the following:

"Whether the contention of the Management that bonus for the year 1984 paid as per the settlement u/s 18(1) of the Industrial Disputes Act, 1947 dated April 10, 1985 with reference to the provisions of the Payment of Bonus Act as in force on the date of agreement is full and final is justified.

Whether the demand of the workmen that bonus for 1984 should be calculated and. paid in terms of the Payment of Bonus (Second Amendment Ordinance 8 of 1985 relating to amendments to Section 2(13)) (revised ceiling in wages) and Section 12 of Payment of Bonus Act (regarding cover of employees) is justified and if so to give suitable directions."

8. The Tribunal held that the management's contention was not justified that the claim of workman was justified and directed the management to fix the number of workmen who were eligible to get bonus and then calculate the quantum of bonus at 20% in accordance with the interpretation and directions given by the Tribunal and pay the correct amount of bonus afresh or the difference between such correct amount of bonus to be arrived at and the amount of bonus already paid, as the case may be. The directions given in the Award which were to the effect that every workman whose salary or wage did not exceed Rs. 2500/- p.m. shall be paid bonus for 1984 u/s 2(13) and the quantum of bonus at the settled rate of 20% shall be arrived at in respect of the workers drawing upto Rs. 2500/- p.m. by notionally fixing the salary limit to Rs. 1600/- p.m. u/s 12 of the Payment of Bonus Act.

9. We must note here that the Award was passed after considering the documents produced by the workmen which were marked as Exhibits W. 1 to W. 7 and after hearing the oral arguments and no doubt, after examining the pleadings of both, no oral evidence was let in by the parties. Management did not file any document before the Tribunal.

10. That award having been challenged before this Court, the learned single Judge who heard the matter allowed the writ petition partly by virtually setting aside the settlement, and directing the Tribunal to determine the rate of bonus payable to the workmen in the light of the amended provisions u/s 2(13) and 12 of the Payment of Bonus Act, after determining the amount of allowable surplus. Neither the management nor the workmen had challenged the settlement. What was in issue before the Tribunal and also before the Court was only the interpretation thereof. The management's argument that the settlement was inconsistent with Section 34 of the Payment of Bonus Act was found favour with by the learned single Judge, on the ground that the settlement cannot be partially acted upon and partially ignored.

11. It was submitted by the learned senior counsel for the workmen that the plain language of the settlement leaves no room for doubt that where parties had intended on the settlement that was arrived at was that the payment of bonus at 20% was to be made to all the employees who are eligible in terms of the Payment of Bonus Act, 1965 and that such payment was to be made subject to the ceiling contained in the enactment. Counsel referred to the language employed in the terms of the settlement in para (1) which inter alia states: " the Company hereby agrees to pay all eligible employees as referred to in the preamble about the number and broad description of the workmen covered by settlement, 20% of basic wages, Dearness allowance etc. as bonus as per the Provisions of the Payment of Bonus Act 1965 as in force on date of this agreement. The words "as in force on the date of the agreement" it was submitted, are un-ambiguous. It refers to the law which was unenforceable as on the date of the agreement. What was enforceable as on the date of the settlement, in the light of the retrospective amendment effected thereto, by the Act and Ordinance referred to earlier, was the law which provided that the ceiling for eligible workmen for being paid bonus under the Act was the drawal of the salary not exceeding Rs. 2500/- per month and the ceiling on the quantum of bonus was subject to the monthly salary at the maximum of Rs. 1600/-. The settlement requires the management to pay the maximum permissible bonus under the Act to all those to whom bonus could be lawfully paid in terms of that Act. The fact that the amendment to the law was subsequent to the date of the agreement was of no significance as the amendment was intended to be and was in fact retrospective in operation.

12. Learned counsel for the Management contended that the settlement is in the nature of contract and that contract has been executed and the retrospective effect of the legislation cannot have any impact on such executed contract. Counsel also submitted that what he termed as a contract, though, it is in fact a settlement u/s 18(1) of the Industrial Disputes Act, has to be understood in the light of what parties intended that the settlement should be read as a whole and all its parts given effect to, or that the justness and fairness of the settlement must be judged with reference to the conditions prevailing at the time the settlement was entered into. Counsel also high-lighted the fact that settlement

under the Industrial Disputes Act is the result of collective bargaining and the result of that collective bargaining should be respected and given full effect. Counsel submitted that in the light of the factors stated by him, the settlement was incapable of being construed as one providing for payment of bonus at the rate of 20% of wages, subject to the ceiling which had prevailed in Section 10 of the Payment of Bonus Act, subject to the eligibility criteria set out in Section 2(13) of the Act, prior to their, retrospective amendment effected thereto in the year 1985.

13. Counsel for the Management in this context referred to a number of decisions of the Apex Court- Reference was made to the case of *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, and in the case of *New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others*, in support of his submission that the justness and fairness of a settlement must be adjudged with regard to the conditions then prevailing; that the settlement is the result of give and take policy and that the settlement is intended to be given effect in whole and not in parts. Reliance was placed by counsel on the decision of the Apex Court in the case of *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, , which refers to the needs for regarding the settlement as being on a higher pedestal than an award as it was the result of collective bargaining and voluntarily entered into between the parties. Counsel also relied on the case of *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, in support of his submission that the settlement is not to be weighed in any golden scale and is not required to be examined minutely. In support of his submission that the executed contract cannot be re-opened, counsel referred to the decision of the Apex Court in the case of *Smt. Sushila Devi and Another Vs. Hari Singh and Others*, The impact of subsequent events on an executed contract, it was submitted, could be little or nothing as the contract itself, according to the counsel, ceases to exist after it is performed. In this context, distinction between a complete conveyance and an executory contract was sought to be stressed by relying on the decision of the Apex Court in the case of *Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another*, .

14. The settlement arrived at by the parties u/s 18(1) of the Industrial Disputes Act, is no doubt the result of a collective bargaining and is required to be given due regard and consideration while making it enforceable. There can be no doubt that the settlement is required to be given effect to as a whole and the settlement should be so interpreted in order to effectuate the intention of the parties.

15. We must take note of yet another submission made by the learned counsel for the management namely that Section 34 of the Payment of Bonus Act, which deals with the effect of laws and agreement inconsistent with the Act is attracted here as according to him, the words "for the time being in force" in the Section is applicable to a settlement also and there was no settlement in force after the disbursement of the bonus in accordance with the settlement.

6. The real question in this dispute between the parties is only the proper interpretation of the terms of the settlement and nothing more. The intention of the parties has to be gathered from the language employed in the settlement itself as also the background and the subject matter of the settlement. The settlement is one between the employer on the one hand and the workmen on the other represented by office bearers of the union. The settlement is meant to govern the employees in bargainable category (daily rated and monthly rated) numbering about 7300 employed in the factory at Ennore, Chennai. The subject matter of the settlement is bonus for the year 1984. No other matter is dealt with in the settlement. The settlement is the outcome of the discussion held between the management and the employees' union which was held between March 23, 1985 and April 6, 1985 after a demand had been made by the Union for 20% without any ceiling and as ad hoc payment of Rs. 2000/- per head additionally. The company offered to pay bonus of 15% as per the Payment of Bonus Act but accepted the employees' plea for further payment of 5%, the plea of the Union having been based on the general improvement in the working atmosphere in 1984 and the continued gains in production.

17. The employees' demand for payment of that rate of bonus at 20% without any ceiling was not accepted by the Management. Management declared and reiterated its commitment to following the provisions of the Payment of Bonus Act in matters relating to ceiling of pay and other provisions. The Management reiterated that specific provisions requiring the parties to conform to the Payment of Bonus Act as also contained in Wage Settlement which was then in force.

18. The parties thereafter recorded their terms of settlement. They agreed to the rate at 20% incorporated in Clause (1) of the Settlement and declared that the Management was only to abide by what the Payment of Bonus Act required it to do so far as the ceiling on pay and eligibility criteria, are concerned. That was also incorporated in Clause (1) of the settlement. The Payment of Bonus Act, was specifically referred to in Clause (1) with the further words "as in force on the date of the agreement". The intention of the parties therefore was to pay bonus at 20% for the year 1984. Such payment was to be made to the persons who were eligible to receive bonus under the Payment of Bonus Act subject to the ceiling on the quantum payable to individual workman as prescribed in that Act. Thus, for the purpose of ascertaining the eligibility criteria and the ceiling, the documents which were required to be looked into was the Payment of Bonus Act as in force on the date of agreement. The parties intended that statute was to be for their common guidance in these matters. The law to be applied was not to be the law as it prevailed at some point of time in the future such as the date on which payment of bonus was actually made or the date on which the workmen came forward to collect the amount. The law as it prevailed on the date of the agreement was to be the law to be referred for the purpose of determining the eligibility criteria and the ceiling on the quantum to be paid to individual workman.

19. The intention of the parties thus being clear, all that was required to be done by the parties was to ascertain the (sic) relevant provisions of the Payment of Bonus Act which was in force on the date of the agreement. The common intention of the parties was not to be guided by the copy of the Act which they had seen or kept before them, when the agreement was signed but the law which was enforceable as such on the date of the agreement.

20. The enforceable law as on the date of the agreement has to be determined with reference to" statute and not with reference to anything done by the parties who executed the agreement, as they are not the law making body. Parliament which is empowered to enact legislation in this field chose to amend the Act with retrospective effect by passing the Payment of Bonus (Amendment) Act, 1985 which was preceded by issue of Payment of Bonus (Amendment) Ordinance, 1985. It further amended the law by issuing yet another Ordinance in the same year namely Payment of Bonus (Second Amendment) Ordinance, 1985 Ordinance 8 of 1985. The amendments so effected by the Act 30 of 1985 and Ordinance 8 of 1985 were given retrospective effect by Parliament. Such retrospective effect being given in respect of the accounting year commencing on any day in the year 1984. It was also to be applicable to every subsequent accounting year.

21. Consequent to these amendments, the law by which parties had agreed to be governed in the matter of eligibility and ceiling, was the law as amended by the Amending Act 30 of 1985 and Ordinance 8 of 1985 as it was the law so amended which was the enforceable law as on the date of the agreement. The question regarding the eligibility and ceiling for drawal of bonus were necessarily to be decided with reference to that law, and not the law that had existed prior to the amendment.

22. The argument that the management cannot be burdened with the obligation to make further payment of bonus by reason of the change in the law brought about subsequent to the date of the settlement is only superficially attractive. If the settlement had not been entered into, there could be no doubt whatsoever that the eligibility and ceiling had to be determined only with reference to the law as amended even though the amendment came after the close of the accounting year which had commenced on any date in the year 1984. The fact that in the settlement, the parties chose to record that they would be governed by the law in force as on the date of the settlement, would not make the position any different. The law to be applied is whether the settlement that had been arrived at as also in case the settlement had not been arrived is the same law.

23. That the possibility of the Ordinance being issued was known at the time when the agreement was entered into, is evident from the letter written on April 19, 1985 by the Union to the Management, which was to the effect that if retrospective effect were to be given to the amendment likely to be brought about to the Payment of Bonus Act, the benefit of such retrospective effect should be available to the workmen who were parties to the settlement. It is only subsequently, the demand was raised and reiterated and the matters went before

the Conciliation Officer and thereafter, before the Tribunal. Though the Management has stated that a reply was sent to the letter of the Union, no document was placed before the Tribunal.

24. Learned counsel for the management submitted that the settlement, is to be looked upon as an executed contract. This argument is not really relevant to the real question required to be determined in this case. Even if we were to accept the view advanced, that it is a simple contract and not a settlement, the intention of the parties is required to be given effect to. The fact that a part of the obligation required to be performed has been performed does not on that score alone, render the contract as fully executed, or render it as one incapable of being affected by the retrospective amendment in the law. This is not a case where during the pendency of reference the settlement was arrived at and that the settlement is said to be made into an award, and it is therefore unnecessary to consider whether this settlement is just and fair.

25. We see no inconsistency between the settlement and Section 34 of the Act. No question of the settlement being invalid by reason of such inconsistency arises. We must also observe that neither of the parties has raised such contention before the Tribunal. Both the parties stood by the settlement. The difference was only in the way in which they chose to understand it.

26. Learned counsel for the management submitted that at this distance of time, huge financial liability should not be imposed upon the company as according to him, the liability would exceed Rs. Seventy five lakhs. Counsel also said that if bonus for that year were to be calculated in accordance with the schedule to the Payment of Bonus Act, the allocable surplus would permit the payment of bonus at a rate, which would be less than 20%. We must observe that the management having chosen not to lead any evidence before the Tribunal, and having failed to set out any financial data, with regard to the additional burden or about the manner in which it made its calculation when it signed the settlement, it cannot be now heard to say that the settlement as now interpreted would impose an unbearable burden. Counsel for the workmen stated at the Bar that the appellant's turnover was in excess of Rs. 1,000 crores and that the additional burden was well within the financial capacity of the appellant. Be that as it may, parties being bound by the terms of the settlement and having intended to pay 20% bonus to those eligible under the Payment of Bonus Act, as is enforceable in the accounting year commencing in the year 1984 the workmen are entitled to the amounts claimed by them.

27. We, therefore, allow the appeal filed by the workmen (W.A. No. 2365 of 1999) and dismiss the appeal filed by the management (W.A. 1268/2000). We set aside the Judgment of the learned single Judge and dismiss the writ petition that had been filed by the Management challenging the award made by the Industrial Tribunal in I.D. No. 13 of 1998. Consequently, CMP is closed. Parties are directed to bear their respective costs in these appeals.