

(1991) 01 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 17 of 1985

Electric Construction and Equipment Co. Ltd.	APPELLANT
Vs	
Hukam N. Sharma and Others	RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

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

Citation : (1993) 3 LLJ 312

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Meena and H. Dosai, for the Appellant; P.M. Patel, for R1, for the Respondent

Final Decision : Partly Allowed

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution questions the legality of respondent 2's order directing petitioner to pay respondent 1 a sum of Rs. 1,080/- representing bonus for the accounting year 1981-82.

2. Respondent 1 was in the employ of the petitioner as a Chief Cashier. In that capacity he was attending to withdrawals from banks and payment of salaries and wages etc. Accounts showing the receipts and disbursements were being maintained by him. Suspecting malpractices, an investigation was carried out and the same revealed misappropriation of Rs. 85,058.00 accompanied by fabrication of documents on the part of respondent 1. By virtue of an accord vide Ref. No. 47/1979 in terms of a Settlement the petitioner was paying bonus to its workmen. Employees not being workmen though not covered by the Settlement or Award were also being paid bonus. For the accounting year 1981-82, a bonus of 12% of annual earnings was paid to the workmen as also non-workmen employees, but not the 1st respondent. This was because of an enquiry commenced against him. The petitioner on 11.6.1984 accepting the Enquiry Officer's report passed an order dismissing respondent 1. The report found respondent 1 guilty of (i) fraud and dishonesty in connection with the

petitioner's business, property and finance and (ii) committing an act subversive of discipline and good behaviour on the business premises.

3. While the enquiry was in progress, respondent 1 on 7.9.1983 moved the second respondent u/s 33-C(2) of the Industrial Disputes Act, 1947 (I.D. Act). In his application, respondent 1 referred to the practice of the petitioner to pay bonus to non-workmen employees, his not getting the bonus for 1981-82 and his entitlement to the same plus compensation. Respondent 1 prayed for a determination of the sum payable and a direction in accordance therewith. The petitioner filed a written statement refuting respondent 1's claim. The principal defences raised were:-

(i) Section 33-C(2) I.D. Act could not be invoked by respondent 1 as he was not governed by the Settlement or Award whereunder bonus was paid to workmen.

(ii) In regard to non-workmen employees, payment of bonus by petitioner was discretionary, gratuitous and as a reward depending on the merits of each case.

(iii) Disqualification incurred by petitioner in the matter of entitlement to receive bonus vide Section 9 of the Payment of Bonus Act, 1965 (P.B. Act).

The second respondent in his order passed on 27.8.1984 negated the defences and directed petitioner to pay Rs. 1,080/- as bonus to respondent 1. That order is questioned in the instant petition.

4. Counsel for parties reiterate the stands taken by their clients in the Labour Court, The two points arising for decision and discussed below in the order given, are:-

I. Whether in the facts of the case respondent 1 was precluded from taking recourse to Section 33-C(2) of the I.D. Act ?

II. Whether respondent 1 was disqualified from being paid bonus for the accounting year 1981-82?

5. Petitioner argues that respondent 1 had no right to take recourse to Section 33-C(2) of the I.D. Act. He was not a "workman" who alone were the beneficiaries of the Award flowing from a Settlement. Even assuming that the practice somehow had become part of the Settlement, it did not follow that every non-workman employee became entitled to invoke Section 33-C. This was more so in view of the pleas of disqualification set up by petitioner as also that entitlement to bonus depended on good conduct and awarding it was in the discretion of the employer. The pleas required a substantive investigation possible only, upon a reference u/s 10 of the I.D. Act. Some part of the second respondent's reasoning on this point may seem to be at variance with this conclusion that Section 33-C(2) covered the application moved by respondent 1. That apart, the issue so far as this High Court is concerned, is no longer *res integra*. In *Allahabad Labour Supply Agency v. First Labour Court, Nagpur* and *Ors.* I.L.R (1970) Bom 490 , a Division Bench held Section 33-C(2) I.D. Act in-

evocable for the recovery of statutory bonus payable under the P.B. Act. As some conflict was perceived between that decision and D.P. Kelkar Vs. Ambadas Keshav Bajaj and Others, , a Full Bench was constituted. That Bench's decision is reported in Kohinoor Tobacco Products Pvt. Ltd. Vs. Presiding Officer, Second Labour Court and Others, . A large number of decisions including The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and Ramkrishna Ramnath v. State of Maharashtra 1975 Mah.L.J. 212 were considered. Also considered was precedent relating to the applicability of Section 33-C(2), vis-a-vis a claim for gratuity under the Payment of Gratuity Act, 1972. The Full Bench considered the scope of Section 33-C(2) and observed

"Scope and ambit of Section 33-C(2) may be considered at this stage. This provision contains legislative recognition of the right of individual workman to a speedy remedy to enforce his existing individual right without having to seek recourse to the time consuming process u/s 10 of the I.D. Act or without having recourse to depend on the Trade Union to espouse his case. No doubt it is a machinery provision but considering the wide language used there, as compared to the language used in Section 33-C(1) and the special beneficial object of this provision it is plain that any benefit arising on the basis of existing right - factual or legal - can be computed. If while computing that benefit any incidental question or questions arise, their determination would be inevitable, for without conceding such a power under this provision even the rightful claim can be defeated by mere denial - howsoever dishonest, mala fide or ex facie bogus and unsustainable it may be. Thus the jurisdiction u/s 33-C(2) is not merely confined to simple arithmetical calculation. That according to the employer even this calculation cannot be made in respect of bonus is yet altogether a different question. How wide the remedy is made can also be seen from the circumstances that it is unlike other remedies not subjected to any limitation".

The decision of the Full Bench is said to be inapplicable to the case of a claim based upon a practice, though the same may have become hardened into a customary right. The decision of the Full Bench arose out of a claim based upon Section 10 of the PB Act. There is - so it is urged - a distinction between a right based upon a statute and that based upon a customary right. But it would not be possible to say that Section 33C(2) of the I.D. Act excludes the enforcement of a right based upon a custom. This provision speaks of "entitlement to receive from the employer any money or any benefit which is capable of being computed in terms of money". Such an entitlement can be investigated even where the entitlement is based upon a custom. A liberal interpretation has to be given and this is made clear by the Full Bench in Para 7 of the aforementioned decision. Says the Full Bench -

"In the light of this liberal and beneficial interpretation of Section 33-C(2), we find it impossible to hold that even a case of discharge of admitted liability under the Bonus Act, cannot be examined u/s 33-C(2). The liability of the employer to

pay bonus is declared by a statutory provision contained in Section 10. What is more, it has also quantified the liability. In this case, the establishment is not exempt (Section 16), the employees are eligible, (Section 8), and they are not governed by Section 32. Now, in a situation like this all that the Labour Court is called upon to do is to calculate the statutory liability against the employer. The sole object of enacting the provision so indicated earlier is to facilitate easy collection of claims of the workmen against the employers. Looked from all these angles, we see nothing either in the text or in the context to drive the employees to the money and time consuming adjudicating process and to deny the summary remedy for enforcement of statutory claim. Should we presume that for enforcement of this new and otherwise unusual right to claim bonus-profit or no profit - the Legislature intended to have only a cumbersome process of adjudication, though for enforcement of other statutory rights this summary remedy was provided. True it is that if the plain language of the statute warrants such a conclusion the words must be given effect to unmindful of the consequences. But such is not the case herein our view the plain language supports the view canvassed by the employees. We repeat that no doubt even in respect of a claim for bonus there can be many complicated controversies which cannot be summarily tried in a limited jurisdiction of Section 33-C(2) and need adjudication as contemplated u/s 22 of the Bonus Act. It is an enabling provision and the parties if they so choose may have their claims adjudicated as industrial dispute, but that does not mean that the additional summary remedy saved u/s 39 of the Bonus Act is taken away by reason of Section 22 of the Bonus Act. All really must depend upon the nature and width of the controversy and not merely on the claim of the employer irrespective of the nature of defence.

It was argued that even assuming Section 33-C(2) to be applicable to claims based upon a customary right, in the facts and circumstances of the present case, the only remedy of the petitioner was to move the Competent Authority for making a reference u/s 10 of the I.D. Act. In this connection reliance is placed upon Section 22 of the P.B. Act. The Full Bench in the above extracted passage has observed that there can be cases which cannot be summarily tried in a limited jurisdiction as contemplated u/s 22 of the P.B. Act. But in the instant case the defences raised cannot be said to be of so complicated a nature as to warrant the need for applying for a reference u/s 10 of the I.D. Act. The defences are (i) that respondent No. 1 is not covered by the Settlement or Award and therefore there is no pre-existing right which entitles him to take recourse to Section 33-C(2) and (ii) that customary bonus if payable to non-workmen employees is so payable upon good conduct and efficient working and that this is entirely within the discretion of employer. The evidence led to substantiate the second plea shows no more than the admitted position that respondent 1 was not covered by the Settlement or Award. It does not establish the other part of petitioner's defence viz. that payment of bonus to non-workmen employees was discretionary, depending upon good conduct and efficient working and that the servants concerned were not entitled as of right to get bonus. That left only

surviving the question whether Section 33-C(2) was inapplicable to the enforcement of a claim for bonus based upon a customary right ? Having regard to the admitted pre-valance of the practice it follows that non-workmen employees had a pre-existing within the contemplation of Section 33-C(2) of the I.D. Act. Therefore the application moved by respondent 1 was maintainable in law.

6. I now come to the main question, which is whether Section 9 of the P.B. Act disqualified respondent No. 1 from being entitled to receive bonus for the accounting year 1981-82. This contention has been negated by the second respondent relying upon Bankeshwardhan K. Dubey Vs. New Standard Engineering Co. Ltd., . Counsel for the petitioner relies upon Wheel and Rim Company of India Ltd. Vs. Government of Tamil Nadu and Another, . The conflict between the two decisions is clear. Gadgil J. holds that the disqualification u/s 9 of the P.B. Act loses force unless the dismissal warranting the disqualification takes place in the very accounting year to which the bonus claimed is related. Palaniswamy J. has held to the contrary. Gadgil J.'s decision has been criticised by learned Counsel for the petitioner. There is force in the criticism. Section 9 has been read by the learned Judge as if it were a Proviso to Section 8 and he has not given due weight to the difference in the language used in Sections 9 and 18. These vital aspects have been considered by Palaniswamy J. To my mind, the Madras decision is sounder in law. However having regard to the need for judicial discipline I deem this issue to be one which can be more advantageously heard by a Bench of two Judges. Therefore I direct that the papers be placed before the Hon'ble Chief Justice as required by Rule 28 of the Original Side Rules so that he shall make such order thereon as he thinks fit.