
(1986) 03 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2249 of 1985

Haryana Housing Board

APPELLANT

Vs

Haryana Housing Board's Employees' Union and Another

RESPONDENT

Date of Decision : 31-03-1986

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3(31)
Haryana Housing Board Act, 1971 — Section 11, 18(1), 20, 23, 3(2)
Payment of Bonus Act, 1965 — Section 32

Citation : (1987) 1 ILR (P&H) 303

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : M.R. Agnihotri and V.K. Vashisht, for the Appellant; Rajinder Sachar, R.L. Batta and G.C. Tangri, for the Respondent

Judgement

I.S. Tiwana, J.—The same very award dated March 6, 1985, of the Industrial Tribunal, Chandigarh, is impugned in these two Civil Writ Petitions Nos. 2249 and 3436 of 1985 -- the first one by the employer Haryana Housing Board and the latter by its employees' Union -- though on different grounds and the different extent. As the parties are not at variance so far as the factual matrix is concerned, these are being disposed of through this common judgment. Facts as detailed in the first petition, i.e., No. 2249 only are adverted to for purposes of this judgment.

2. The Union through its Chairman, submitted a demand notice to the Haryana Housing Board listing the following three demands:

(i) The employees be paid bonus at 20 per cent for the years 1974-75, 1975-76, 1976-77 and 1977-78;

(ii) Every one of them be paid medical benefit at the rate of Rs. 60/- per month; and

(iii) Rules governing their employment be framed at the earliest.

Since neither of the demands was acceded to by the Board nor could a conciliation be brought about between the parties, the Administration made a reference to the Industrial Tribunal, Chandigarh, for the adjudication of the same. As a result of the trial that followed, the Tribunal accepted the first demand of the employees and directed the Board to pay the bonus to them at the minimum rate of 8.33 per cent for the years mentioned above, but it declined to record any categorical conclusion on the other two demands as according to the impugned award these were not pressed by the employees' counsel. While the Board makes a grouse of this award on the ground that it being a local authority within the meaning of Clause (iv) of Section 32 of the Payment of Bonus Act, 1965 (hereinafter referred to as the Bonus Act) it is not liable to pay any bonus, the employees challenge its validity on the ground that they are entitled to the payment of bonus at the pleaded rate of 20 per cent instead of 8.33 per cent as allowed by the Tribunal. It is thus manifest that what needs to be settled first in these petitions is the prestinely legal issue as to whether the Haryana Housing Board is a local authority within the meaning of Section 32(iv) of the Bonus Act. The relevant part of this section reads as:

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 the State Government or a local authority.

To take advantage of this provision, twin argument raised on behalf of the Board is that firstly Section 3(3) of the Haryana Housing Board Act, 1971 (hereinafter referred to as the Act) itself lays down that for the purposes of the Act and the Land Acquisition Act, 1894, the Board shall be deemed to be a local authority, and secondly, even if this provision of the Act is held to be inapplicable to the facts of the case in hand, still it has the traits of a local authority as defined in Section 3(31) of the General Clauses Act (10 of 1897). This very plea raised by the Board before the Tribunal has, however, been rejected and, to my mind, for good reasons.

3. The very provision, i.e., Section 3(3) of the Act on which the learned Counsel for the Board places firm reliance to advance his case to my mind, defeats the argument. This sub-section reads as follows:

For the purposes of this Act and the Land Acquisition Act, 1894, the Board shall be deemed to be a local authority.

The very fact that the Board has to be deemed to be a local authority implies that in the absence of this sub-section the Board would not have been a local authority. When a person or a thing is "deemed to be" something, the only meaning possible is that whereas he or it is not in reality that something, the Act

requires him or it to be treated as if he or it were. (See Commissioner of income tax Bombay Presidency v. Bombay Trust Corporation AIR 1930 P.C. 54). Again as per this provision, the Board has to be deemed to be a local authority for purposes of the Act, and the Land Acquisition Act only and not for purposes of any other Act including the Bonus Act. In somewhat similar situation while interpreting Section 3(3) of the Mysore Housing Board Act, 1955, which provision is in pari materia with Section 3(3) of the Act, a learned Single Judge of the Mysore High Court in The Official Liquidator of the Mysore Spun Silk Mills Ltd. Channapatna v. The Mysore State Electricity Board and Ors. ILR 1961 Mys 434, opined as follows:

The fact that the Board has been deemed to be a local authority for certain purposes, namely, for the purpose of the Mysore Housing Board Act, 1955, and the Mysore Land Acquisition Act, 1894, is a complete answer to the contention that it is a local authority as defined in the General Clauses Act. If really the Board is a local authority as defined in the General Clauses Act, there was absolutely no need for the Legislature to enact Sub-section (3) of Section 3 of the Mysore Housing Board Act, 1955 and mention in it the Board shall be deemed to be a local authority for the purpose of certain acts. It is by legal fiction that the Board is treated as a local authority for the purpose of the Mysore Housing Board Act, 1955 and the Mysore Land Acquisition Act, 1894, and it means that it is not a local authority for any other purposes. The claim of the Board is, therefore, clearly untenable.

I am in respectful agreement with this statement of law. As per Loreburn L.C. in Macbeth & Company v. Chislett 1910 A.C. 220. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense, because in some Act which is not incorporated or referred to, such an interpretation is given to it for the purposes of that Act alone. Thus, manifestly the Board cannot be treated to be a local authority for purposes of the Bonus Act in the light of Section 3(3) of the Act.

4. So far as the next aspect of the matter raised by the learned Counsel for the Board is concerned, his primary reliance in his regard is on a judgment of the Supreme Court in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, wherein their Lordships after analysing the various provisions of the Delhi Development Act, 1957, in the context of Section 32(iv) of the Bonus Act have held that the Delhi Development Authority is a local authority as it is endowed with all the usual attributes and characteristics of a "local authority" as defined in the General Clauses Act. In this judgment, their Lordships further opined that a "proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board or Body of Port Commissioners, but, possessing one essential feature, namely, that it is

legally entitled to or entrusted by the Government with the control and management of a municipal or local fund." Examining the matter further as to what are the distinctive attributes and characteristics all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority, their Lordships expressed as follows:

- (i) These authorities must have separate legal existence as corporate bodies;
- (ii) they must not be mere Governmental agencies but must be legally independent entities;
- (iii) they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area;
- (iv) they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be;
- (v) they must be entrusted by statute with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation social welfare services etc., etc. Broadly speaking they must be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions; and lastly,
- (vi) they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges or fees. This may be in addition to money provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

Keeping in mind what has been stated above, I, on scrutinising the provisions of the Act, find that the characteristics or attributes ascribable to a local authority as stated at No. (ii) to (v) are completely missing so far as the Haryana Housing Board is concerned. No doubt as per Sub-section (2) of Section 3 of the Act it is a body corporate having perpetual succession and a common seal and has also power to acquire, hold, administer and transfer property, movable or immovable and to enter into contracts in its name and can sue or be sued in that name, yet it consists of a Chairman and such other number of members but not more than twelve and less than six, as the State Government may from time to time by notification appoint. There is no element of election or representation of the residents of the area so far as the constitution of the Board is concerned. The Chairman and the members of the Board hold office "during the pleasure of the State Government" (Sub-section (7A) of Section 7). In case a vacancy occurs in the office of the Chairman or a member of the Board on account of any reason, i.e., death, resignation, removal, disqualification or otherwise, the same is to be

filled by the State Government in its discretion. Even Secretary of the Board is to be appointed by the State Government on such terms and conditions as it may deem fit (Section 11). The Board cannot enter into a contract involving an expenditure of rupees twenty lakhs or more without the previous sanction of the State Government (Sub-section (1) of Section 18). So far as the functions and duties of the Board are concerned, the Act lays down (Section 20) that "subject to the control of the State Government, the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes as it may consider necessary from time to time or as may be entrusted to it by the State Government." Section 23 requires the Board to prepare and submit its annual housing programme, budget and establishment schedule to the State Government and the latter may sanction the programme, budget and the schedule of the staff of officers and servants forwarded to it with such modification as it may deem fit. It is thus patent that the Board under the Act is a body which is completely controlled and managed by the State Government itself. Its existence and working is completely regulated by the State Government. It more or less works or functions as a Government department. It is true that as per Chapter VII of the Act the Board has a fund known as "Housing Board Fund" but this is not raised by levying any taxes, rates, charges or fees, etc. Rather it is primarily constituted of grants, donations or gifts by the Central or the State Governments or a local body or the sale of property by the Board. The accounts of the Board are auditable annually by such persons as the State Government may direct. The report of the Auditor has to be submitted to the State Government. The Board thus has hardly any independent control or management of its funds. I am thus satisfied that the Housing Board has hardly any attributes or characteristics of a local authority as envisaged by Section 3(31) of the General Clauses Act or as specified by their Lordships in the above noted judgment, i.e., R.C. Jain's case (supra). In the face of this conclusion of mine the petition filed by the Board has obviously to fail and is dismissed.

5. So far as the claim of the Union (in C.W.P. No. 3436) for a higher rate of bonus than what has been allowed by the Tribunal is concerned, I find that the Tribunal has not recorded any categorical finding about the actual profits earned by the Board during the years in question. The matter has been concluded by the Tribunal in this manner:

Now coming to the quantum of bonus, Shri Basoor has referred to the Annual Statement of Accounts of the Board from the year 1971-72 to 1977-78 which are Ex. P-2 to P-8. According to him the Board had earned huge profits so that the workmen were entitled to the bonus of at least 20 per cent. But I am unable to agree with this submission. A perusal of Ex. P-2 to P-8 would show that most of the funds of the Respondent Board came up by way of advances of loans and the amount outstanding at the end of each year is on account of those advances and not on account of the profits. Therefore, in my view the workmen are entitled only to the minimum bonus of 8.33 per cent for the year claimed by them and no more, and the Respondent Board is liable to pay the same to the workmen.

Apparently the Tribunal has not gone into the details to find out the actual amount of profits earned by the Board. In these proceedings under Article 226 of the Constitution, I cannot possibly substitute my own opinion or record a finding on reappraisal of evidence about the profits earned by the Board during the years in question. Therefore, the claim of the Union as put forth in this petition for the grant of bonus at the rate of 20, per cent instead of 8.33 per cent as has been done by the Tribunal, cannot straightway be acceded to. The matter, to my mind, deserves to be sent back to the Tribunal for decision afresh so far as this aspect of the matter is concerned. I, therefore, allow this petition to the extent that the conclusion recorded in paragraph 5 of the impugned award is set aside and the Tribunal is directed to redetermine the quantum of the actual profits earned by the Board during the years in question and then to decide the further question as to at what rate the bonus has to be paid to the employees represented by the Union. I order accordingly. For clarity's sake, it may be mentioned here that, till such a decision by the Tribunal, the bonus would be continued to be paid to the employees at the rate as ordered by the Tribunal.

6. No order as to costs is passed in either of the petitions.