

(2005) 06 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 3295 of 2001

Hindustan Machine Tools Limited (HMT Ltd.) and Another

APPELLANT

Vs

Workmen of HMT Limited and Another

RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d), 9
Payment of Bonus Act, 1965 — Section 16, 16 (1), 3

Citation : (2005) 107 FLR 694 : (2005) ILR (Kar) 4656 : (2005) 4 KarLJ 606

Hon'ble Judges : P. Vishwanatha Shetty, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Joshua H. Samuel, for Cariappa and Company, for the Appellant;
M.V. Vedachala, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—The appellants in this appeal have called in question the correctness of the order dated 9th February, 2001 made in Writ Petition No. 19893 of 1994 by the learned Single Judge of this Court Workmen of Hindustan Machine Tools Ltd. Specialised Watch Case Division Vs. Hindustan Machine Tools Ltd. and Others, wherein, he has taken the view that the workers of the HMT Limited, Specialised Watch Case Division, i.e., the 2nd appellant, are entitled to receive bonus from the appellants for the year 1983-84 onwards.

2. Since the 1st respondent, though served with the notice, failed to enter appearance, we requested Sri M.V. Vedachala, learned Counsel who was present in the Court, to assist the Court in this appeal as Amicus Curiae in support of the case of the 1st respondent.

3. Facts in brief.--

The 1st respondent (hereinafter referred to as "the workmen Union") had raised a dispute with regard to their claim for monthly performances incentive and also for payment of bonus for the year 1983-84 onwards. On failure of conciliation,

the State Government referred the dispute to the Additional Industrial Tribunal (hereinafter referred to as "the Tribunal") u/s 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for adjudication. During the pendency of the proceedings, with regard to the claim of the workmen Union for monthly performance incentives, the claim was settled between the parties and as per the terms of the settlement an interim award came to be passed by the Tribunal. However, so far as the claim of the workmen Union for payment of bonus is concerned, the same was seriously disputed by the 2nd appellant on the ground that it being a separate unit having obtained separate licence of its own with separate profit and loss account, balance-sheet, etc., the workmen Union is not entitled for the benefit of bonus which were extended to the workers of the HMT Watch Directorate and other units of the Hindustan Machine Tools Limited, i.e., the 1st appellant in this appeal, as the management did not make any profit and did not have any allocable surplus. The workmen Union, in support of their claim that they were entitled for payment of bonus for the year 1983-84 onwards, examined one Sri Narendra Prakash, who was working as a Stenographer and one Sri Ramakrishna who was a Chartered Accountant attached to the office of J.J. Madan and Company as W.W. 1 and W.W. 2 respectively, in the course of the proceedings before the Tribunal. In addition to the oral evidence, the workmen Union also produced documentary evidence which were marked as Exhibits W. 1 to W. 6. The 2nd appellant, in support of its contention examined one K. Jayaraman, who was the Accounts Officer in its establishment as M.W. 1 and produced as many as 14 documents which were marked as Exhibits M. 1 to M. 14. The Tribunal, on consideration of both oral and documentary evidence placed before it, by means of its award dated 1st February, 1994, a copy of which has been produced as Annexure-F to this appeal, rejected the claim of the workmen Union for payment of bonus on par with the employees of other units of the 1st appellant for the year 1983-84 onwards on the ground that the Watch Case Division was conceived in the year 1979 and had started commercial production in the year 1983, and as such, in view of Section 16(1) of the Payment of Bonus Act, 1965 (hereinafter referred to as "the Bonus Act"), the 2nd appellant was exempted from payment of bonus for a period of six years following the accounting year in which the goods were produced were sold for the first time. The workmen Union aggrieved by the said award, filed writ petition, out of which this appeal arises before this Court. The learned Single Judge in the impugned order while disagreeing with the conclusion reached by the Tribunal, allowed the writ petition and took the view that the workmen Union are entitled for payment of bonus for the period in question. Aggrieved by the said order, this appeal is filed.

4. Sri Joshua H. Samuel, learned Counsel appearing for the appellants challenging the correctness of the impugned order submitted that the learned Single Judge on an erroneous interpretation placed by him on Sections 3 and 16 of the Bonus Act, has taken the view that the workmen Union are entitled for payment of bonus for the period in question. He pointed out that since on

consideration of the evidence on record the Tribunal has found that the 2nd appellant started the production only during the year 1983-84 and was a separate entity having separate profit and loss account and balance-sheet, the same is exempted from payment of bonus in terms of proviso given to Section 3 and Sub-sections (1) and (2) of Section 16 of the Bonus Act, the learned Single Judge has seriously erred in law in passing the impugned order. It is his submission that proviso given to Sub-section (2) of Section 16 of the said Act has no application to the facts of the present case. Sri Joshua, in support of his submission, relied upon the decisions of the Supreme Court in the case of *The Workmen of H.M.T. and Another Vs. The Presiding Officer, National Tribunal, Calcutta and Others*, , in the case of *Alloy Steel Project Vs. The Workmen*,

5. However, Sri M.V. Vedachala, while strongly supporting the impugned order, pointed out that since the learned Single Judge, on examination of the materials on record, has found that the HMT Specialised Watch Case Division being a captive division depending wholly on the main factory, i.e., the HMT Watch Directorate for its expenses, it cannot be held that the 2nd appellant is a separate establishment; and therefore, there is absolutely no justification for us to interfere against the impugned order in this appeal. He also drew our attention to paragraph 5 of the objections filed by the 2nd appellant to the claim statement filed by the workmen Union, wherein it is admitted by the 2nd appellant that till the employees, who stood transferred to the HMT Specialised Watch Case Division who were under the control of the HMT Watch Directorate, were given the benefit of bonus which were being given to the employees of the HMT Watch Directorate. The learned Counsel, in support of his submission, relied upon the decision of the Supreme Court in the case of *Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another*,

6. The only question that would arise for consideration in this appeal is as to whether the workmen Union is the entitled for payment of bonus for the period in question as held by the learned Single Judge?

7. The undisputed facts disclose that the Watch Case project was conceived in the year 1979 at the HMT Watch Directorate for the manufacture of wrist watch case and accordingly a project office was set up at Basappa Complex, 40/1A, Lavelle Road, Bangalore under the control of HMT Watch Directorate and some persons for the Project Office were recruited from 1979 depending upon the necessity and after completion of the building for the factory, the office of the Watch Case project was also shifted to the factory premises at Jalahalli and the project was inaugurated on 25th November, 1983 and commercial production of the watch case commenced from that date. The averments made in paragraph 5 of the objection statement, strongly relied upon by Sri M.V. Vedachala, also indicates that as long as employees were under the control of HMT Watch Directorate, they were given all the financial benefits which were given to the employees of the HMT Watch Directorate. It is useful to extract paragraph 5 of the objection statement, which reads as hereunder:

"The averments made in para 5 of the claim statement are not correct and are denied. It is true that as long as the employees who were under the control of Watch Directorate, they were given the benefits which were being given to the employees of the Watch Directorate. And once the project took shape and started commercial production in its own factory with a separate licence of its own, with a separate profit and loss account, balance-sheet etc., this division came to be treated as a separate Unit and entity for all purposes and the employees also came to be treated as part and parcel of this separate unit and entity. Hence, the question of extending the benefits which are being given to the employees of other Units or treating the employees of this Unit on par with the employees of other Units does not arise".

8. It is also not in serious dispute that some of the employees, out of 163 employees in the HMT Watch Directorate, were transferred to the HMT Specialised Watch Case Division. M.W. 1 in his cross-examination has admitted that the HMT Watch Directorate recruited employees to the HMT Specialised Watch Case Division commencing from 1979 and the employees recruited to the watch case division were paid bonus from 1979 to 1983 as declared by the HMT Watch Directorate and the employees who were recruited to HMT Specialised Watch Case Division were transferred to the Watch Case Division from the HMT Watch Directorate. While admitting that some of the employees of the HMT Watch Directorate were transferred to the HMT Specialised Watch Case Division, he has stated that the HMT Watch Directorate, also has recruited some more employees. In this connection, it is useful to refer to the statement of M.W. 1 at paragraphs 9 and 10, which reads as hereunder:

"9. The Watch Directorate recruited employees to the Watch Case Division commencing from 1979. The employees recruited to the Watch Case Division was paid with bonus, from 1979 to 1983 as declared by the Watch Directorate.

10. Those employees who were recruited to Watch Case Division were transferred to the Watch Case Division from the Watch Directorate. They were not transferred and they were all issued with the modification of appointment order. I see the copy of the appointment order issued to one of the employee who was appointed to the Watch Directorate in the year 1979. It is as Ex. W. 4. The service conditions of such employee is governed by the rules governed by the rules, regulation and service conditions in vogue in watch case project from time to time. I am not aware whether there are any separate rules governing the service conditions of the employees of Watch Case Division. I can verify and produce. To my knowledge, we have not issued any notice avoider Section 9 of the Industrial Disputes Act, 1947 to the employees. The employee who were transferred to Watch Case Division was not paid with bonus after 1983. Apart from transferring some employees from Watch Directorate to Watch Case Division, we have also recruited some more employees. The employees who were working in the HMT Watch factory were also transferred to Watch Case Division. To the persons who were transferred from watch factory were paid with bonus,

when they were working in watch factory. After their transfer to watch case division, payment of bonus was stopped".

9. From the reading of paragraph 5, the objections filed on behalf of the 2nd appellant and the evidence of M.W. 1, what emerges is that some of the employees in the HMT Watch Directorate ever since the year 1979 when it was conceived to establish the Watch Case Division, were transferred to HMT Specialised Watch Case Division and they were being paid bonus till the year 1983. After the HMT Specialised Watch Case Division started production, while the employees who were continued to remain to HMT Watch Directorate were continued to receive bonus, the employees who were transferred to HMT Specialised Watch Case Division were denied of payment of bonus from the year 1983. Now, the question is, in the light of the undisputed facts set out above, merely because few more employees came to be recruited in HMT Specialised Watch Case Division during the year 1983, whether the 2nd appellant is entitled for exemption from payment of bonus in terms of Section 16(1) and (2) of the Bonus Act?

10. While we are inclined to agree with submission of Sri Joshua that the interpretation placed by the learned Single Judge on Sections 3 and 16 of the Bonus Act and also the understanding of the judgment of the Supreme Court in the case of M/s. Alloy Steel Project is not correct, we are of the view that on facts the appellants are not entitled for the relief sought for by them in this appeal. However, before we proceed to give our reasons in support of our conclusion, we find it useful to refer to Sections 3 and 16(1) and (2) of the Bonus Act, which read as hereunder:

"3. Establishments to include departments, undertakings and branches.--Where an establishment consists of different departments or undertaking or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

16. Special provisions with respect to certain establishments.--(1) Where an establishment newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of Sub-sections (1-A), (1-B) and (1-C).

(1-A) In the first five accounting years following the accounting year in which the

employers sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year but without applying the provisions of Section 15.

(1-B) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of Section 15 shall apply subject to the other following modifications, namely.--

(i) for the sixth accounting year -- x x x x x x

(ii) for the seventh accounting year -- x x x x x x

(1-C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be from such establishment, the provisions of Section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I.--For the purpose of Sub-section (1), an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II.--For the purpose of Sub-section (1-A), an employer shall not be deemed to have derived profit in any accounting year unless.--

(a) he has made provision for that year's depreciation to which he is entitled under the Income Tax or, as the case may be, under the agricultural Income Tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III.--For the purposes of Sub-sections (1-A), (1-B) and (1-C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or any oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any Court or other authority.

(2) The provisions of Sub-sections (1), (1-A), (1-B) and (1-C) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of

different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid".

Sub-section (3) of Section 1 of the Bonus Act provides that the Act applies to (a) every factory; (b) every other establishment in which twenty or more persons are employed on any day during an accounting year. Section 3 of the Bonus Act, consists of two parts. The main provision provides that where an establishment consists of different departments or undertaking or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under the Act. However, the proviso given to the said section which could be considered as second part of the section, provides that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under the Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus. In other words, if such departments or undertakings or branches, immediately before the commencement of accounting year, were treated as part of the establishment for the purpose of computation of bonus, such departments or undertakings or branches are required to be treated as part of the existing establishment. Sub-section (1) of Section 16 of the Bonus Act referred to above grants exemption from payment of bonus to an establishment which is newly set up for a particular period subject to the compliance of requirement of Sub-sections (1-A), (1-B) and (1-C) of the said Section. Sub-section (2) of Section 16 provides that the provisions of Sub-sections (1), (1-A), (1-B) and (1-C) of the said Section shall also apply to new departments or new undertakings or branches set up by existing establishments. In other words, if an existing establishment starts new departments or undertakings or branches, such new departments or undertakings or branches are also entitled for exemption from payment of bonus just as newly set up Unit, in terms of Section 16(1) of the Bonus Act. In the instant case, undisputedly the HMT Specialised Watch Case Division is a new department or undertaking set up by the existing HMT Watch Directorate. Therefore, normally in terms of Sub-sections (1) and (2) of Section 16 of the Act, unless the proviso to Sub-section (2) of the said Section is applicable, the employees of HMT Specialised Watch Case Division would not be entitled for

payment of bonus for the periods in question, u/s 16(1-A) and (1-B) of the Bonus Act. However, the proviso given to Sub-section (2) of Section 16 of the Bonus Act provides that if an employer in relation to an existing establishment, consisting of different departments or undertakings or branches, set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of the Act to the employees of such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid. In the instant case, as noticed by us earlier, the undisputed facts disclose that some of the employees of the HMT Watch Directorate were transferred from the years 1979 to 1983 to the HMT Specialised Watch Case Division. They were being paid bonus till the year 1983 when the production in Watch Case Division commenced. No doubt, in the year 1983 few employees came to be directly recruited to the HMT Specialised Watch Case Division. Under these circumstances, the question is, merely because from the year 1983 onwards separate profit and loss account, separate balance-sheet were prepared for HMT Specialised Watch Case Division, whether the 2nd appellant is exempted from payment of bonus to the employees of HMT Specialised Watch Case Division? In our view, on combined reading of the proviso given to Section 3 and proviso given to Sub-sections (1) and (2) of Section 16 of the Bonus Act, it is not possible to take the view that the 2nd appellant is exempted from payment of bonus to the workmen of the HMT Specialised Watch Case Division. It is not the case of the 2nd appellant that the workmen, who are working in HMT Factory and HMT Watch Directorate came to be transferred from the years 1979 to 1983 to the HMT Specialised Watch Case Division on the request made by them. On the other hand, the evidence of M.W. 1 shows that they were transferred by the respective management; and till the year 1983 they were being paid bonus that were being paid to the employees working in HMT Factory and HMT Watch Directorate. His evidence further shows that the workmen who were in HMT Watch Directorate and HMT Factory were being paid bonus. Therefore, the evidence on record shows that till the commencement of the production in HMT Specialised Watch Case Division in the year 1983, the Watch Case Division was treated as part and parcel of the establishment of the HMT Watch Directorate and HMT Factory and the bonus was being paid on the basis of the consolidated profits computed. Therefore, as noticed by us earlier, merely because subsequent to the commencement of production in the year 1983 at the Watch Case Division, the profit and loss account and the balance-sheet were prepared for HMT Specialised Watch Case Division, as rightly contended by Sri Vedachala, on undisputed facts, there cannot be any justification to deprive the workmen of their legitimate right to claim bonus for the year 1983-84 onwards till the time bonus was paid by the 2nd appellant. There cannot be any dispute that the Bonus Act is a beneficial

legislation passed to protect the interest of the workmen who are considered to be the weaker sections of the society. It is well-settled legal principle that while interpreting the provisions of law or contract regarding payment of bonus to the employees or workmen, the Courts have to liberally construe such provisions of law and contract in favour of the weak. In this connection, it is useful to refer to the observations made by the Supreme Court in the case of Binny Limited, at paragraph 9 of the judgment which reads as hereunder:

"9. ... The contention of the company is that this clause speaks only of separate profit and loss account for each of the amalgamated companies for the financial year 1969 and not of a separate balance-sheet for this year. The question before us is whether the company could be permitted to put forward such a specious plea to defeat the claim of the employees, though the profit and loss account and the trial balance-sheet disclose surplus permitting the company to pay 20% bonus as claimed by the petitioners. It is a trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak. If only a separate balance-sheet had been prepared for this unit, the company would have had no answer to the claim made by the petitioners. It could be that a separate balance-sheet was not prepared deliberately to avoid payment of bonus to the employees of this unit under the cover of the proviso to Section 3 of the Payment of Bonus Act and Clause 13 of the Scheme. When evidence and facts made available before the Court show that the claim of the employees (on the strength of profit and loss account and trial balance-sheet) is justifiable, it would be not only improper but unjust for the Courts, and Tribunals to deny to themselves the jurisdiction to direct a company to prepare a balance-sheet in terms of the profit and loss account and the trial balance-sheet".

11. In the instant case, when undisputedly the other employees, who are similarly situated like some of the employees who came to be transferred from HMT Watch Directorate to the HMT Specialised Watch Case Division were being paid bonus, we do not find any justification or good ground to deny the similar benefit regarding payment of bonus to the employees of the HMT Specialised Watch Case Division merely because few more appointments came to be made to the Watch Case Division in the year 1983 and separate profit and loss account and balance-sheet were prepared. Ultimately, in every case, the Court will have to lift the veil and find out what is the substance of the matter and whether an attempt is being made by the management to deprive the workmen of their legitimate claim of bonus. If the matter is viewed from that point of view, we have no hesitation to come to the conclusion, on the basis of the undisputed facts, that the HMT Specialised Watch Case Division continued to be the part and parcel of the same establishment till commencement of the production and the bonus was being paid upto the commencement of production from the consolidated profit computed and therefore, the proviso given to Sub-section (2) of Section 16 of the Bonus Act fully applies to the facts of the present case. Therefore, in the light of the discussion made above, we are of the view that this

appeal is liable to be rejected. Accordingly it is rejected. However, no order is made as to costs.

12. Before parting with this order, we would like to place on record the able assistance given to us by Sri Vedachala, who had appeared as Amicus Curiae on our request.