
(1994) 07 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 289 of 1984

Kalkaji Compressors Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 05-07-1994

Acts Referred:

Payment of Bonus Act, 1965 — Section 6

Citation : (1995) 1 LLJ 203 : (1994) 108 PLR 148

Hon'ble Judges : S.P. Kurdukar, C.J.;A.S. Gill, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Kurdukar, C. J.—This letters patent appeal is directed against the judgment and order dated December 19, 1983, in Civil Writ Petition No. 395 of 1982, passed by the learned Single Judge. The learned Single Judge affirmed the award dated August 10, 1981, made by the Industrial Tribunal in Reference No. 101 of 1971. The Industrial Tribunal directed the appellant to pay additional bonus at the rate of 15.60 per cent

2. The second respondent, K.G. Khosla Workers' Union, represented to the Government of Haryana, that the appellant proprietary concern had failed and neglected to pay the bonus in accordance with law. A reference was made by the Government of Haryana to the Industrial Tribunal in the following terms:

"Whether the management should pay bonus to the workmen for the year 1970? If so, how much and with what details?"

3. Parties filed their claims before the Industrial Tribunal. The appellant led oral evidence of Mr. K.K. Khuba. The respondent did not lead any oral evidence. Parties produced documentary evidence before the tribunal. The tribunal after considering the material produced before it and after working out the calculations, found that the workmen are entitled to the additional bonus at the

rate of 15.60 per cent for the year 1970. Accordingly, the impugned award dated August 10, 1981, came to be passed by the Industrial Tribunal. The appellant challenged the legality and the correctness of the said award in the writ petition. The learned Single Judge after considering the submissions made before him, dismissed the writ petition vide his impugned judgment. It is against the judgment and order dated December 19, 1983, that the present letters patent appeal has been filed by the appellant.

4. From the record it is noticed that this Court on August 9, 1984, passed interim order giving certain directions to the appellant to pay the amount of bonus on certain conditions.

5. Second respondent is served, but nobody has appeared on their behalf. From the interim orders, it appears that the amount of bonus is already paid over to the workmen in accordance with the award.

6. Mr. Patwalia, the learned counsel appearing in support of this appeal, urged two contentions - (i) that the sum of Rs. 3.68 lacs under item No. 1 in the award of the Tribunal (see page 47) could not have been added back to the profits since it had already been reflected in the final balance-sheet, and (ii) that the Tribunal as well as the learned Single Judge have made no provisions for direct taxes payable by the appellant. Impugned order to that extent at any rate is contrary to Section 6(c) of the Payment of Bonus Act, 1965, (hereinafter called the Act).

7. Coming to the first submission, Mr. Patwalia, in support thereof, drew our attention to the pleadings of the parties. He urged that the appellant had taken a specific ground in the writ petition in paragraph 15(VIII), that amount added back in item No. 1 related to stocks and raw-material amounting to Rs. 6.68 lacs which had been added to the profits on the ground that it does not pertain to the expenditure for the year under reference. This amount was not an expenditure, but was an income and had already been shown in the profit and loss account on the in-come side and, therefore, this amount had to be reduced from the total additions as made by the tribunal. If this amount, as shown, is added back, as had been done, this would amount to double addition in the income, once already done by the petitioner in the balance-sheet and secondly under the impugned award (see paragraph 15 (VIII)). The second respondent in their reply had denied the aforesaid averments in the writ petition and averred that the sum of Rs. 3.68 lacs represented the estimated value of custom duty, freight etc. on the stock in hand and had been added without incurring the expenditure of this amount on the purchase of the stocks of the raw-material and stores in hand notionally to the valuation of the stock in hand made on the basis of invoice cost including custom duty, freight etc. actually incurred and paid and shown in the profit and loss account thereby inflating the value of the stock in hand and thus deflating the real profits of the company. It was further pleaded by the second respondent that the statement of the Chief Accountant of the company where he had admitted that he could not show any entry of Rs. 3.68 lacs in the account books of the company was significant (see paragraphs 15(1)(i) and (viii)). On the

first submission, these are the pleadings of the parties. We have gone through the evidence of Mr. K.K. Khuba, who was examined on behalf of the appellant. His evidence apart from being unsatisfactory also does not give the necessary details to indicate as to how much custom duty or freight etc. were paid by the appellant and in what year. Mr. Patwalia, however, urged that the balance-sheet placed on record on behalf of the appellant does reflect this amount and there is no reason to doubt the correctness of the balance-sheet. He also urged that at no stage the second respondent doubted the correctness of the said balance-sheet. He, therefore, urged that the appellant is entitled for reduction of Rs. 3.68 lacs being expenditure and, therefore, this amount needs to be excluded from the calculation for the purposes of determining the bonus.

8. We are, however, unable to appreciate the contention of Mr. Patwalia, having regard to the state of record. The appellant who was in possession of all the necessary account books, had failed to produce the same before the Tribunal and the Tribunal, in our opinion, was right in observing that the amount of Rs. 3.68 lacs be added to the profit. We, therefore, do not see any substance in the first submission. The Tribunal as well as the learned Single Judge, have accepted the finding which is based on appreciation of the oral and documentary evidence and we see no reason to take a contrary view in this behalf.

9. Coming to the second contention of Mr. Patwalia, based on Section 6(c) of the Act, it may be stated that the said contention was not raised before the Tribunal. This contention was, however, taken up in the writ petition (see ground No. IV). To support this contention, in our opinion, it was necessary for the appellant to bring before the Court the tax returns and the payment of tax made for the disputed year. No such evidence has been produced before the Tribunal, nor Mr. K.K. Khuba, who was examined on behalf of the appellant, has stated anything about the tax liability.

10. Mr. Patwalia, however, urged that it is a statutory obligation u/s 6(c) of the Act, to make provision for direct tax. Having not done so, both the orders are illegal and contrary to Section 6(c) of the Act. While supplementing this argument, the learned counsel drew our attention to the decision of the Supreme Court in Metal Box Company of India Ltd. Vs. Their Workmen, in particular, he drew our attention to the observations made by the Supreme Court in pp 800-804 of the judgment. We have gone through this decision carefully and in our opinion, in view of the facts and circumstances of the present case, the same is not applicable. It is needless to add that if the appellant is required to pay the bonus or paid the same in terms of the award, he may apply to the Income Tax authority in accordance with law for such benefits, as available and so permissible under the said Act.

11. In the result, the appeal fails and the same is dismissed. Since the respondents are not present, there will be no order as to costs.