(2008) 10 MAD CK 0138

In the Madras High Court

Case No : Writ Appeal No. 2888 of 2003

Madras Metropolitan Water Supply and Sewerage Board Official and Employees Union — APPELLANT

Vs

The State of Tamil Nadu and Madras Metropolitan Water Supply and Sewerage Board — RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 3, 32, 4, 4A, 6
Life Insurance Corporation Act, 1956 — Section 3
Payment of Bonus Act, 1965 — Section 32
Tamil Nadu Water Supply and Drainage Board Act, 1970 — Section 31(4), 34(1), 34(2), 34(3), 36

Citation : (2008) 10 MAD CK 0138

Hon'ble Judges : V. Periya Karuppiah, J;D. Murugesan, J

Bench : Division Bench

Advocate : K. Shanmugakani, for the Appellant; R. Thirugnanam, Spl. Govt. Pleader for Respondent No. 2 and G. Devi, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The Writ Appeal raised the following question for consideration:

Whether the employees of Madras Metropolitan Water Supply and Sewerage Board are entitled for payment of bonus under The Payment of Bonus Act, 1965?

2. The facts that give rise to the above issue in brief are as follows:

Madras Metropolitan Water Supply and Sewerage Board Employees'' Union had made a demand for bonus which was ultimately referred to the Industrial Tribunal, Chennai for adjudication. The Industrial Tribunal in turn adjudicated the dispute in I.D. No. 13 of 2005 and dismissed the same on 27.07.2006 on the ground that in spite of several notices, the Petitioner was not served. The very same Union filed W.P. No. 13760 of 1989 seeking for a direction for payment of bonus. Among other things, the union claimed the benefit of the order of the Division Bench of this Court in W.P. No. 1205 to 1210 of 1984 and 250 of 1985 dated 13.04.1989 which was subsequently reported in Regional Director, ESI Corporation Vs. S. Saravanam, . In the said Judgment, the Division Bench considered the question as to whether the Tamil Nadu Water Supply and Drainage Board, is an institution established for the purpose of profit and it is excluded as per Section 32(v) (c) of The Payment of Bonus Act, 1965 (hereinafter referred to as "The Bonus Act"). After referring to various provisions of the said Act, the Division Bench ultimately held that the Tamil Nadu Metro Water Supply and Drainage Board is an institution established for the purpose of profit and consequently directed the provisions of the Payment of Bonus Act, 1965, to be applied to the employees of The Tamil Nadu Water Supply and Drainage Board.

3. However, the writ petition was dismissed by the impugned order dated 29.08.1998 on the ground that there exist a dispute as to whether The Madras Metro Water Supply and Sewerage Board (now known as The Chennai Metropolitan Water Supply and Sewerage Act, 1978) is a profitable organisation or not and therefore the issue has to be adjudicated under The Industrial Dispute Act, consequently with a direction to the Government to refer the matter.

4. The said order is now put in issue in this Writ Appeal.

5. Mr. K. Shanmugakani, learned Counsel appearing for the Appellant would submit that both the provisions of The Tamil Nadu Water Supply and Drainage Board, 1970 and The Chennai Metropolitan Water Supply and Sewerage Act, 1978 are identical in all respects including the object for the enactment of the Board, its powers and functions, finance, accounts and audit, etc. Under similar provisions, the Division Bench had found that The Tamil Nadu Water Supply and Drainage Board cannot claim exemption u/s 32(v)(c) of The Payment of Bonus Act, on the ground that it is not an institution established for the purpose of profit, the judgment of the Division Bench were taken to the Supreme Court by the Board and those Civil Appeals Nos. 3506-12/91 were dismissed on 24.03.1998. Hence, the common judgment of the Division Bench which was confirmed by the Supreme Court squarely applies to the case on hand and consequently, the member of the Writ Petition Union are entitled to the benefit of The Payment of Bonus Act, 1965.

6. Mrs. G. Devi, learned Counsel appearing for the 2nd Respondent Board would on the other hand submit that in view of Section 4 of the Act in question - relating to the constitution of the Board; Section 4(A) - appointment of Chairman of the Board in special circumstances; Section 5 - relating to the functions of the Board; and Section 6 - relating t6 the power of Board to call for information, the Board cannot be considered as an institution established for the purpose of profit.

7. On the above back-drop of the rival contentions, the issue which we have referred to earlier has to be considered.

8. Before we delve upon the judgment of this Court reported in Tamil Nadu Water Supply and Drainage Board Engineers Association etc. Vs. State Government of T.N. and others, , we are inclined to refer to the provisions of The Chennai Metro Water Supply and Sewerage Board, 1978. The Act is intended for the constitution of the Board for exclusively attending the growing needs and for planned a development and appropriate regulation of water supply and sewerage services in the Chennai Metropolitan Area.

9. The said Board is established in terms of Section 3 of the Act 28 of 1978 by a Notification issued by the Tamil Nadu Government and in terms of Section 4 of the Act, the Board consist of, the Minister in charge of the Department who shall be the Chairman of the Board; Secretary to Government in charge of the Department; Secretary to Government in charge of the Finance Department; Member Secretary, of the Chennai Metropolitan Development Authority, Commissioner Municipal Corporation of Chennai, Managing Director, Tamil Nadu Water Supply and Drainage Board, and others.

10. Section 5 relates to the functions of the Board; Section 6 relates to the power of the Board; while Chapter V, relating to the Finance, Accounts and Audit.

11. Section 31 of The Chennai Metropolitan Water Supply and Sewerage Act, 1978 reads as under: -Board''s Fund:

34. (1) The Board shall have its own fund and all receipts of the Board shall be credited thereto and all payments by the Board shall be made there from.

(2) All moneys belong to that fund may be deposited or invested-

(i) in any scheduled bank within the meaning of the Reserve Bank of India Act, 1934 (Central Act II of 1934): or

(ii) in any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970 (Central Act 5 of 1970): or

(iii) in the State Bank of India as defined in the State Bank of India Act, 1955 (Central Act 23 of 1955)or its subsidiary banks as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act XXXVIII of 1959); or

(iv) in such securities as may be approved by the Government.

(3) The Government may, from time to time, make grants, subventions, or advances or loans to the Board for the purposes of this Act on such terms and conditions as the Government may determine.

(4) The Board may accept grants, subventions, donations and gifts from the Central or State Government or local authority, or any individual or body, whether incorporated or not, for all or any of the purposes of this Act.

(5) The Board may constitute a sinking fund, depreciation reserve fund and other funds in such manner and in such form as may be prescribed. Such funds shall be vested in such manner as may be determined by the Board with the approval

of the Government.

12. Section 32 of The Chennai Metropolitan Water Supply and Sewerage Act, 1978 reads as under:

Power of the Board to borrow and lend:

32. (1) Subject to the provisions of this Act and the regulations made there under and subject to such conditions as may be specified by the Government by a general or a special order issued in this behalf by them and with their previous approval, the Board may, from time to time, borrow money required for the purposes of this Act by any one or more of the members specified below:

(a) raising loans from any bank or other financing institutions or the Life Insurance corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or

(b) raising loans from any corporation owned or controlled by the Central or the State Government; or

(c) raising loans from the public by issue of bonds, or debentures or stocks or otherwise in the form and manner approved by the Government:

Provided that the loans or amounts borrowed under this Sub-section shall be utilized only for the purpose or purposes for which such loans or borrowings were raised or made.

(2) Subject to the provisions of this Act and to such conditions and limitations as may be specified, the Board may out of its funds grant loans and advances, on such terms and conditions as it may determine to any local authority for any development scheme.

(3) the Government may guarantee in such manner as they think fit, the repayment of the principal and interest of any loan proposed to be raised by the Board under Sub-section (1):

Provided that the government shall, so long as any such guarantees are in force, lay before both Houses of the Legislature in every year during the Budget session, a statement of the guarantees, if any, given during the current year and an up-to-date account of the total sums, if any, which have been paid out of the Consolidated Fund of the State by reason of any such guarantees or paid into the said Fund towards re-payment of any money so paid out.

13. The question is, as to whether, on the basis of the provisions of Section 32(v)(c) of the Bonus Act, Chennai Metropolitan Water Supply and Sewerage Board is an institution established not for profit and consequently exempted from the provisions of payment of the Bonus Act. The bone of contentions of the Employees Union is that in as much as the very same dispute was earlier raised, argued and decided in respect of The Tamil Nadu Water Supply and Drainage Board and the Division Bench held that The Tamil Nadu Water Supply and

Drainage Board cannot claim exemption u/s 32(v)(c) of the Bonus Act and on the very same parameter provisions, the employees of The Chennai Metropolitan Water Supply and Sewerage Board are also entitled to payment of bonus.

14. There is no controversy that claim of the Union is resisted by the Board solely on the ground that the Board is exempted u/s 32(v) (c) of The Payment of Bonus Act and not on any other grounds. Keeping the above contention in mind, let us refer to the judgment rendered by this Court in Regional Director, ESI Corporation Vs. S. Saravanam, . Prior to the establishment of The Chennai Metropolitan Water Supply and Sewerage Act, 1978, the Government of Tamil Nadu established The Tamil Nadu Water Supply and Drainage Board, by Act IV of 1971 viz., The Tamil Nadu Water Supply and Drainage Board Act, 1970 to provide for the establishment of Water Supply and Drainage Board and the regulation and development of drinking water and drainage in the State of Tamil Nadu. As it was felt by the Government that a similar Board should be set up exclusively to attend the growing needs and planned development and appropriate regulation of water supply and sewerage services in the Chennai Metropolitan Area, the Chennai Metropolitan Water Supply and Sewerage Act, 1978 was enacted. The object behind both the Acts are one and the same.

15. Section 32 of The Payment of Bonus Act, 1965, reads as under:

32. Act not apply to certain classes of employees - Nothing in this Act shall apply to-

...

(v) employees employed by

...

(c)institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;

16. The Division Bench on an earlier occasion, while considering the issue as to whether the employees of The Tamil Nadu Water Supply and Drainage Board are entitled to payment of bonus following the issue raised by the Board that the Tamil Nadu Water Supply and Drainage Board is not an institution which could claim exemption u/s 32 (v) (c) of the Payment of Bonus Act held in the affirmative. The Division Bench considered the various provisions of The Tamil Nadu Water Supply and Drainage Board Act, 1970 and ultimately, rejected the claim of exemption u/s 32 (v) (c) of The Payment of Bonus Act, 1965. The Division Bench considered Section 34 of The Payment of Bonus Act, 1965, relating to The Bonus Forumula. It also considered the provisions of Section 34 and 35 of The Tamil Nadu Water Supply and Drainage Board Act, 1970, relating to sanction of loans and grants to the Board by the State Government for the purpose of the Act and Section 36 relating to the Power of the Board to borrow and lend subject to the provisions of the Act and the rules made there under. Applying the above said provisions, the Division Bench rejected the contention

that the Board is exempted under the provisions of Section 32 (v)(c) of The Payment of Bonus Act by holding that that Board is an institution established not for the purpose of profit.

17. Coming to The Chennai Metropolitan Water Supply and Sewerage Act, 1978, the provisions under Chapter-V, relate to Finance, Accounts and Audit. Section 31(1) of the Act in question is parameter to Section 34(1) of The Tamil Nadu Water Supply and Drainage Board Act; likewise Section 34(3) of the Act in question is parameter to the provisions of Section 34(2) The Tamil Nadu Water Supply and Drainage Board Act; and Section 31(4) of the Act in question is parameter to Section 35 of The Tamil Nadu Water Supply and Drainage Board Act; and Section 32 of the Act in question is parameter to Section 36 of The Tamil Nadu Water Supply and Drainage Board Act.

18. On consideration of the provisions of The Tamil Nadu Water Supply and Drainage Board Act, the Divsion Bench held thus:

We have no manner of doubt that the Respondent-Board has been established to serve the public interest by ensuring better amenities of life and raising the standard of living of the community as a whole. Learned single Judge has referred to the functions of the Board and its powers and rightly held that the purpose behind the functions of the Board is to provide protected drinking water supply and drainage facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its method of recovery of the cost of the scheme, making investment and constituting its funds by "all moneys received by or on behalf of the Board...., all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other moneys accruing to the Board and all moneys and receipts", deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and lose in another year. Thus, in its commercial activities of sort, it has got a capital structure of profit, liabilities and labour force to care for. We see reason to hold in accordance with the rule indicated by the Supreme Court in the case of Workmen, T.T. Devasthanams v. Management 1980 LIC 389 that the Board is an institution designed for profit in the limited sense that when the Government''s Department found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meager revenue and other resources of the State.

Applying the test as above, we have no hesitation in holding that the learned Single Judge has fallen in error in holding that the Respondent-Board is an institution established not for purposes of profit. Employees of the Board qualifying for bonus under the Act, in our opinion are entitled to minimum amount of bonus and/or such amount computed in accordance with law upon the surplus in the accounting year.

19. The Division Bench has also referred to the judgment of the Supreme Court in Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others, wherein it has been held that the Haryana Housing Board is not entitled to the statutory exemption from the Act u/s 32 of The Payment of Bonus Act, 1965 on the ground that it was a local authority.

20. Questioning the above findings rendered by the Division Bench, The Tamil Nadu Water Supply and Drainage Board, went on appeal before the Supreme Court in Civil Appeals) Nos. 3506-12/91 and the same were dismissed on 24.03.1998 by the following orders:

It is not in dispute that the Appellant has been paying though not in the name of bonus every year either in the name of ex-gratia payment or under some other name. No doubt Mr. Krishnamurthy, learned Counsel appearing for the Appellant-Board, argued at length to persuade us to hold that the Appellant-Board will come under the exempted category u/s 32(v)(c) of the Act. However, we are unable to persuade ourselves to take a different view from the one taken by the High Court on the facts as found by it. We are satisfied that the judgment of the High Court does not call for any interference. The appeals fail and are accordingly dismissed with no order as to costs.

21. The issue raised in this Writ Appeal is whether The Chennai Metropolitan Water Supply and Sewerage Act, 1978 could be exempted from payment of the Bonus in terms of Section 32 of The Payment of Bonus Act, 1965. The similar question had already been decided against the Board in the case of Tamil Nadu Water Supply and Drainage Board. Therefore, in our considered opinion the ratio laid down in the judgment rendered in that case would be squarely applicable to the present case on hand. Accordingly, the point is answered against the Board and in favour of the Writ Petitioner Union. It is held that The Chennai Metropolitan Water Supply and Sewerage Board cannot claim exemption u/s 32(v) (c) of The Payment of Bonus Act. In view of our findings, the employees of The Chennai Metropolitan Water Supply and Sewerage Board are entitled to the Bonus in accordance with law. The writ Appeal succeeds accordingly.

22. In fine, the Writ Appeal is allowed and the order dated 29.08.1998 made in W.P. No. 13760 of 1989 is set aside. No costs.