

(1999) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 7208 and 13890 of 1996

Midhani Workers and Staff Union

APPELLANT

Vs

Mishradhatu Nigam Ltd., Hyd.

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 10(2)
Payment of Bonus Act, 1965 — Section 10, 16(2)

Citation : (1999) 6 ALD 332 : (2000) 1 LLJ 698

Hon'ble Judges : R. Ramanujam, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. Vedula Venkataramana, for Vedula Srinivasa and Mr. P.B. Vijaya Kumar, for the Appellant; Mr. K. Srinivasa Murthy, SC for Midhani, for the Respondent

Judgement

R. Ramanujam, J

1. The issue involved as well as the respondent in both these writ petitions are common. Hence, both the writ petitions are disposed of by this common order.

2. The respondent in both the writ petitions M/s. Mishra Dhatu Nigam Ltd., is a Government of India undertaking and is hereinafter referred to as "the Industry". The petitioner in Writ Petition No.7208 of 1996 is Midhani Workers and Staff Union and the petitioner in Writ Petition No. 13890 of 1996 is Midhani Mazdoor Sangh. The petitioners are hereinafter referred to as "the workmen".

3. Writ Petition No.7208 of 1996 is filed for issue of a writ of mandamus directing the respondent-Industry to pay the statutory minimum bonus to all its workmen and employees for the accounting years 1985-86 and 1986-87. Writ Petition No.13890 of 1996 is filed claiming similar relief for the accounting year 1986-87 with interest at 18% p.a.

4. The facts, giving rise to these writ petitions, in brief, are as follows :

The workmen of the respondent-industry demanded for payment of minimum bonus for the accounting years 1983-84 and 1984-85 on the ground that the industry has started earning moneys through its trading operations from the year 1977-78 and the five year exemption period available to it has expired by the accounting year 1982-83. That demand was not conceded by the respondent-industry. Thereupon, the Government has referred the following dispute to the Industrial Tribunal, Hyderabad:

"Whether the demand of the workmen of Mishra Dhatu Nigam Limited, represented by Midhani Worker and Staff Union (Regd.No.950 recognised) for payment of Bonus for the accounting years 1983-84 and 1984-85 is justified?"

That reference was registered as Industrial Dispute No.5 of 1986. After conducting an elaborate enquiry, the Industrial Tribunal made its Award on 7-10-1986 in favour of the workmen directing the respondent-industry to pay the bonus for those two accounting years.

5. That Award of the Industrial Tribunal was challenged by the respondent-industry before this Court in Writ Petition No.17439 of 1986. Pending the said writ petition, the entire amount of bonus for those two accounting years was paid to the workmen as per the interim orders of this Court. Meanwhile, the workmen also filed Writ Petition No.6735 of 1987 seeking for a writ of mandamus for payment of minimum bonus for the subsequent accounting year i.e., 1985-86. Both the writ petitions were heard together by a learned single Judge of this Court and by a common order dated 19-7-1988 the learned single Judge allowed the writ petition filed by the respondent-industry. The Award made by the Industrial Tribunal in ID No.5 of 1986 was set aside and the matter was remanded back to the Industrial Tribunal with a direction to consider the question whether the Marketing Department of Midhani is a separate establishment u/s 16(2) of the Payment of Bonus Act, 1965 for short "the Act". Consequently, Writ Petition No.6735 of 1987 filed by the workmen was dismissed. Against the order in Writ Petition No. 17439 of 1986, the workmen have filed Writ Appeal No.199 of 1988 and the respondent-industry filed Writ Appeal No.247 of 1989. The workmen have also filed Writ Appeal No.1200 of 1988 against the order dismissing Writ Petition No.6735 of 1987. All those writ appeals were admitted by this Court and, pending those appeals, the Industrial Tribunal was directed to decide the additional issue i.e., whether the Marketing Department of the respondent-industry is a separate establishment u/s 16(2) of the Payment of Bonus Act, 1965? referred to it by this Court as aforesaid. That issue was decided by the Industrial Tribunal again in favour of the workmen in ID No.4 of 1992 on 8-6-1993 holding that the provisions of Section 16(2) of the Act are not applicable to the facts of the case and the Marketing Department forms part of the respondent-industry without any separate existence or entity and the workmen are entitled for the payment of bonus for the accounting years 1983-84 and 1984-85. That Award was challenged by the respondent-industry by filing Writ Petition No.7897 of 1994.

6. All the aforesaid matters i.e.. Writ Appeal Nos.1199 of 1988, 1200 of 1988, 247 of 1989 and Writ Petition No.7S97 of 1994 were heard together by a Division Bench of this Court. The Division Bench by its order dated 25-9-1995, upheld the plea of the respondent-industry and quashed the Award of the Tribunal in ID No.4 of 1992. Writ Appeal No.247 of 1989 and Writ Petition No.7894 of 1994 filed by the respondent-industry were allowed and, consequently, Writ Appeal No. 1199 of 1988 and Writ Appeal No.1200 of 1988 filed by the workmen were dismissed.

7. Against the aforesaid order of the Division Bench of this Court, the workmen have filed appeals before the Supreme Court in SLP (C) Nos.24898 to 24901 of 1995. Thereupon, the Honourable Supreme Court issued notice to the respondent-industry and heard the arguments of both the parties. By order dated 12-2-1996 the Honourable Supreme Court allowed those SLPS; set aside the Judgment of the Division Bench of this Court; and restored the Awards of the Industrial Tribunal. The said order of the Supreme Court is as under:-

"Special Leave granted.

The Government of Andhra Pradesh referred the following dispute u/s 10(2) of the Industrial Disputes Act, 1947:

"Whether the demand of the workmen of Mishra Dhatu Nigam Limited, represented by Midhani workers and Staff Union (Regd.No.950) recognised for payment of bonus for the accounting years 1983-84 and 1984-85 is justified?"

The Industrial Tribunal, Hyderabad-11 gave its Award dated June 8,1993 in favour of the workmen. The workmen were held to be entitled to the payment of bonus for the accounting years 1983-84 and 1984-85. The High Court in its writ jurisdiction reversed the findings of the Tribunal and answered the reference against the workmen. These appeals by the workmen are against the judgment of the High Court.

It is not disputed that the core question for determining the reference before the Tribunal was whether the Marketing Department of the respondent-industry has been established and functioning for the last 7 years as a separate unit of the industry. On appreciation of the evidence led before the Tribunal, it came to the finding as a fact that the Marketing Department was set up in the year 1977 and as such the workmen were entitled to the bonus for the accounting period. The High Court, on reappraisal of the evidence, reversed the findings of facts reached by the Tribunal. We are of the view that in the facts and circumstances of the case, the High Court was not justified in reappraising the evidence and thereafter reaching a finding different than that of the Tribunal. We, therefore, allow the appeals with costs, set aside the impugned judgment of the High Court and restore the award of the Tribunal. We quantify the costs as Rs.10,000/-".

In the meanwhile, the respondent-industry has paid the minimum bonus to its workmen in the form of ex-gratia for the accounting year 1987-88, vide, Circular

dated 17-10-1988. For all the subsequent years also, the respondent-industry has paid the bonus as per the provisions of the Act.

8. Thus, the only period for which the minimum bonus was not paid to the workmen is for the accounting years 1985-86 and 1986-87. As already noted, the workmen have earlier filed Writ Petition No.6735 of 1987 claiming payment of minimum bonus for the accounting year 1985-86 on the basis of the Award in ID No.5 of 1986. That writ petition was dismissed by a learned single Judge as a consequence of allowing the writ petition filed by the respondent-industry and setting aside the Award. Writ Appeal No.1200 of 1988 filed by the workmen was also dismissed by the Division Bench, as aforesaid, consequent to allowing the writ appeal filed by the respondent-industry. The appeal filed by the workmen against that order was also allowed by the Supreme Court as extracted above. Even though it is not clearly spelt out in the order of the Supreme Court that the writ petition filed by the workmen was allowed, their claim for bonus for the accounting year 1985-86 certainly stood revived. The respondent-industry did not pay the minimum bonus for the accounting year 1986-87. The workmen have, therefore, demanded payment of minimum bonus for those accounting years also on 7-3-1996 and 27-3-1996. Since the respondent-industry has not acceded to that demand, these two writ petitions are filed by the workmen through their Unions.

9. Writ Petition No.7208 of 1996 was initially came up for hearing before a learned single Judge of this Court (Justice T.N.C. Rangarajan). After hearing both sides, the learned single Judge, having regard to certain observations of the learned single Judge, in his order, in Writ Petition No.6735 of 1987, referred the matter to the Division Bench by order dated 15-4-1996. Thereafter, Writ Petition No. 13 890 of 1996 was also directed to be heard along with Writ Petition No.7208 of 1996. That is how both these writ petitions came up for hearing before us.

10. Appearing for the workmen the learned Counsel Sri V. Venkata Ramana contended that: (a) the liability of the respondent-industry to pay the minimum bonus from the accounting year 1983-84 onwards was confirmed by the Apex Court by its order dated 12-2-1996 in SLP (c) Nos.24898 to 24901 of 1995; (b) the respondent-industry itself paid the minimum bonus for the subsequent accounting years commencing from 1987-88; and (c) the workmen, therefore, became entitled to be paid minimum bonus for the accounting years 1985-86 and 1986-87.

11. Disputing the aforesaid contentions, the learned Counsel for the respondent-industry, Sri K. Srinivas Murthy, contended that: (a) the order of the Supreme Court covers the liability only for those two accounting years i.e., 1983-84 and 1984-85; (b) the workmen are not entitled to the benefit of the aforesaid order of the Supreme Court for the accounting years 1985-86 and 1986-87; and (c) therefore, they cannot approach this Court directly, but have to approach the Industrial Tribunal again for adjudication of the dispute regarding payment of

minimum bonus for the accounting years 1985-86 and 1986-87.

12. We do not see any merit in the aforesaid contentions of the learned Counsel for the respondent industry. As noted by the Honourable Supreme Court, the core question that has to be decided is whether the Marketing Department of the respondent-industry has been established and functioning for the last 7 years as a separate unit? That question was already answered by the Industrial Tribunal in favour of the workmen in ID No.4 of 1992 holding that the Marketing Department is not a separate Department of the respondent-industry; provisions of Section 16(2) of the Act have no application; and, therefore the workmen are entitled to payment or bonus for the accounting years 1983-84 and 1984-85. These findings of the Tribunal have been confirmed by the Supreme Court, thus:

"On appreciation of the evidence led before the Tribunal, it came to the finding as a fact that the Marketing Department was set up in the year 1977 and as such the workmen were entitled to the bonus for the accounting period."

From the above, it is clear that the core question regarding the liability of the respondent-industry to pay the minimum bonus u/s 10 of the Act was not only decided by the Industrial Tribunal but was also confirmed by the Supreme Court. That being so, there is absolutely no justification to contend that the issue relating to payment of bonus for the accounting years 1985-86 and 1986-87 should again be adjudicated by the Industrial Tribunal. Further more, the respondent-industry itself recognised its liability under the statute and paid the minimum bonus for all the subsequent years.

13. It is now well settled that a writ of mandamus will issue compelling performance of a statutory duty. Supreme Court Advocates-on-Record Association and another Vs. Union of India, .

14. Section 10 of the Act clearly imposes a statutory duty on the respondent-industry to pay minimum bonus to its workmen irrespective of the allocable surplus, Anand Oil Industries Vs. Labour Court, Hyderabad and Others, . In view of the decision of the Tribunal on the "core" issue, holding that "the Marketing Department was set up in the year 1977 and as such the workmen are entitled for the bonus for the accounting period", which was confirmed by the Hon'ble Supreme Court, nothing remains to be decided by the Industrial Tribunal again as payment of minimum bonus has nothing to-do with profits or allocable surplus of the respondent-industry.

15. It is not in dispute that the workmen have demanded payment of minimum bonus for the said two accounting years on 7-3-1996 and 27-3-1996. In spite of these demands, the respondent-industry failed to perform its statutory duty without any justification. Undisputedly, the respondent-industry, which is a Central Government Undertaking, is a "State" within the meaning of that expression under Article 12 of the Constitution of India and is, therefore, amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. Since it has failed in discharge of its statutory duty as aforesaid, a writ of

mandamus will issue compelling it to perform the said statutory duty.

16. For the foregoing reasons, both the writ petitions succeed. A writ of mandamus is issued directing the respondent-industry to pay the statutory minimum bonus to all its workmen and employees for the accounting year 1985-86 1986-87 as per law.

17. The writ petitions are accordingly allowed with costs quantified at Rs.5,000/- in each case.