
(1967) 11 PAT CK 0012
In the Patna High Court

Minimax, Ltd.

APPELLANT

Vs

Its workmen and Another

RESPONDENT

Date of Decision : 09-11-1967

Acts Referred:

Constitution of India, 1950 — Article 220, 227
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1968) 1 LLJ 369

Hon'ble Judges : R.L. Narasimham, C.J;K.B.N. Singh, J

Bench : Division Bench

Judgement

K.B.N. Singh, J.—This application under Articles 220 and 227 of the Constitution of India has been filed for quashing the award of the industrial tribunal, Bihar, Patna, dated 19 February 1966, in Reference Case No. 21 of 1864 (annexure A). The award, which was in favour of the workmen, held them entitled to payment of bonus for the period July to December 1963, equivalent to one month's pay as implied condition of service."

2. The petitioner is a public limited company, incorporated in England with branches all over the world, including Calcutta, Delhi and Bombay. Since long the petitioner has been carrying on the business of manufacturing and selling various types of machines and machineries in this country in the year 1960, the company shifted its Calcutta factory to Ranchi, and it is with this factory at Ranchi that we are concerned in the present application.

3. The Government of Bihar, in the Department of Labour and Employment, by Notification No. 111/DI-1006/64-L&E-8953, dated 24 September 1964, referred the dispute between the petitioner and its workmen represented by the Minimax Workmen's Union, opposite party 1 (hereinafter referred to as the union), u/s 10(1) of the industrial Disputes Act (hereinafter referred to as the Act). The disputes referred by the said notification were as follows:

(1) Whether the management was justified in not making payment of the customary bonus for the period July-December 1963, in January 1964 to the

workers ? If not, to what relief, if any, the workmen are entitled?

(2) What should be standards of production for the introduction bonus scheme, and in what way should the bonus be linked to production?

4. Item (2) of the reference was decided by the tribunal by an interim award dated 4 September 1965 and we are not concerned with that interim award in this application. Item (1) of the reference has been decided by the award (annexure A) which is under challenge in this application,

5. By the impugned award the tribunal held that the workmen were entitled to half-yearly bonus equivalent to one month's pay for the period July to December 1963, payable in January 1964, as implied term of employment and that the 122 workers (mentioned in the written statement of the union), who were not paid the bonus for having taken part in general strike on 15 January 1964, were entitled to the payment of this bonus. It also rejected the preliminary objection of the management and held that what was really in dispute was the question whether bonus was payable an implied term of contract of service or not, and it was loosely described as "customary bonus" in the order of reference. It further held that payment of such kind of bonus was not hit by the Payment of Bonus Act, 1965, although it was adjustable against bonus under the said Act.

6. The main contention of Sri Lal Narayan Sinha, appearing for the petitioner, was that the reference to the tribunal was with regard to payment of "customary bonus" for the period July to December 1963, payable in January 1964, i.e., for a period of six months, and the tribunal was in error in going beyond the term of reference in awarding bonus "as implied term of contract of service." He further submitted that the tribunal had no jurisdiction to vary the term of reference, so as to construe it as being one for bonus as implied term of service.

7. It is no doubt true that in the order of reference the bonus to be paid for six months from July to December 1963 has been described as "customary" bonus. Before the tribunal, the petitioner urged that customary bonus is always linked with festivals and it was not the case of the workman that this bonus was linked with any festival, and, according to the case made out by the petitioner as well, there was nothing like festival for a period of six months in respect of which the bonus in question was being claimed. That being the position, the tribunal locked into the written statement filed by the union to find out as to what WPS the real dispute between the parties with regard to bonus, the existence of an industrial dispute within the meaning of Section 2(k) of the Act, with regard to payment of bonus between the parties not being disputed. The tribunal, in Paras. 2 and 3 of its award, on a consideration of the pleadings of the parties, held that it was nobody's case that the bonus which the union was claiming was linked with any festival and the word "customary" in the order of reference has been loosely used. The tribunal also, on a consideration of the written statement of the union, found that what the workmen were really claiming was bonus as implied condition of service and proceeded to dispose of the reference on that footing. To

satisfy ourselves, with regard to the aforesaid finding arrived at by the tribunal, we called for the records of the tribunal with the connected files of the Labour Department of the State Government as to what was really the dispute between the parties.

8. In the written statement filed by the union (Para 8) it is stated that the company does not pay living wages to all its workman and to fill up the gap between the real wages and the minimum wages, the company used to pay one month's basic pay as half-yearly bonus for their services for every six months, irrespective of production or profit. In Paras. 34 to 40, while dealing with this question specifically, it is stated that the payment of one month's basic pay as customary bonus for every six months from January to June and July to December as a condition of service of the workmen under the company including its Ranchi factory since its inception, irrespective of its profit and production, and the payment which has been made for an unbroken series of years, has become a condition of employment under the company and the bonus in question is being paid of a sufficiently long time at uniform rate even during a period of loss, and that by not paying the bonus in question, the management has changed the condition of the service of the workmen in this regard. It would thus be apparent that finding of the tribunal that the workmen in their written statement were really claiming bonus as implied condition of service is quite correct. The management, on the other hand, in Paras. 6 and 8 of its written statement alleged that the payment of customary bonus has to be linked with some festival and there is nothing like festival for a period of six months, and claimed that this payment was ex gratia, paid out of bounty, as an incentive to the labourers.

9. We also looked into the files of the Labour Department and it appears that on an application filed by the union for referring the dispute with regard to bonus as well as other matters, a report was called for from the Assistant Labour Commissioner of Jamshedpur, as to which of the pending disputes between the management and its workmen were fit for reference. The Assistant Labour Commissioner held a joint enquiry with the representatives of the petitioner and the workmen and submitted a report on 13 June 1964. Point 2 of the report starts with the caption "bonus" and from the said report, it is apparent that the demand of the workmen's union that one month's basic pay was paid to all its workmen since its very inception till the period July 1963, irrespective of profit or loss and claimed that it was not a profit-sharing bonus, but a part of the workers' wages. On the other hand, it was claimed by the management that it was not a customary bonus, but actually a profit-sharing bonus, which was paid to the workmen every six months and it was entirely the management's prerogative to declare this bonus. According to the management, production in July to December 1963 was very low due to the slow-down tactics of the workers and hence the management did not declare any bonus during this period. The Assistant Labour Commissioner, on this point, reported that the bonus was paid bi-annually to all workers equivalent to one month's pay in July and January, since the start of the factory in January 1961 and it was neither a profit sharing

nor a production bonus, and the management was not justified in withholding the payment to the workers concerned who took part in the strike. On the relevant question, he recommended for reference in the following terms:

Are the management justified in not making payment of the customary bonus for the period July-December 1963, which was due in January 1964? If not, what compensation or relief, if any, should be granted to the workers?

10. It is significant to note that the point in issue, with which we are concerned in this case, has been referred in more or less identical terms, as recommended by the Assistant Labour Commissioner, Jamshed-pur. Therefore, the finding of the tribunal as to what was really the dispute and the demand of the workmen is not only supported by the pleadings before the tribunal, but also by the report on which basis the reference in question has been made, Sri Lal Narayan Sinha also has not challenged the correctness of the finding of the tribunal as to what was really in dispute between the parties. What he has challenged is the jurisdiction of the tribunal to construe the reference so as to bring out the real dispute for its decision. That the tribunal not only has such power but a duty is cast on it to find out what was the real dispute which was referred to it and to decide it and not to throw it out on mere technicality, finds ample support from the following observations of their lordships of the Supreme Court in the case of *State of Madras Vs. C.P. Sarathy and Another*, ;

The scope of adjudication by a tribunal under the Act is much wider, as pointed out in *Western India Automobile Association v. Industrial Tribunal, Bombay* 1949 LLJ 245 and it would involve no hardship if the reference also is made in wider terms provided, of course, the dispute is one of the kind described in Section 2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness. The rules framed under the Act provide for the tribunal calling for statements of their respective cases from the parties and the disputes would thus get crystallized before the tribunal proceeds to make its award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the disputes from the parties before referring them to a tribunal u/s 10(1).

11. Their lordships further observed that the settlement of an industrial dispute being an alternative method of settlement of disputes on fair and just basis, it was in public interest that such disputes were settled peacefully and quickly within the framework of the Act, rather than by resort to methods of direct action which would disturb the public peace and order and diminish production, and

Courts should not be astute to discover formal defects and technical flaws to overthrow such settlements.

The power of the tribunal to look into the pleadings for the purpose of finding out the exact nature of a dispute which was referred to it is beyond dispute, in view of the recent pronouncement of their lordships of the Supreme Court in the case

of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, quoted below:

...in our opinion, the tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is Impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble....

Thus there does not appear to be any substance in the submission of the learned Counsel that the tribunal has no power to construe the reference and to look into the pleadings of the parties for the purpose.

12. Sri Lal Narayan Sinha next urged that "customary bonus" is not an expression of indefinite meaning and is a term of definite connotation and is different from "contractual bonus" and that it is only the customary aspect of the bonus which was referred to the tribunal and substitution of one for the other was not possible. Learned Counsel, however, conceded that a customary bonus may be recognized or grow into a right or become contractual but submitted that overlapping, however, does not obliterate the distinction between the two. There does not seem to be any substance in this contention of the learned Counsel also. What was in dispute was whether bonus in question was an ex gratia payment made in case of profit or it was an implied condition of service and that was what was referred to the tribunal, as has been rightly held by the tribunal, as discussed above, and not the customary aspect of the bonus. As already pointed out, the stand of the petitioner before the tribunal was different that customary bonus was synonymous with puja or festival bonus and the bonus which was referred to, according to both parties, was not linked with any festival. The tribunal overruled the petitioner's objection and held that the word "customary" was loosely used in the reference and what was referred was bonus as implied condition of service, payable every six months. The parties proceeded on that basis and led evidence and on a consideration of the evidence, the tribunal found that the bonus in question was being paid continuously without any break for a sufficiently long time having been paid since the inception of the Ranchi factory, even in the year of loss, at uniform rates, which has been admitted by the management witness 2 as mentioned in Para, 10 of the award.

13. The expression "customary bonus" has not been defined in law. It is surely not a profit-sharing or a production bonus. The dictionary meaning of the word "customary" as found in the Oxford English Dictionary (Vol. II, 1961 reprint) is "usual, habitual, accustomed," etc., as also "commonly used or practised." It has been conceded by Sri Sinha that what is "customary" can become "contractual" also. Therefore, the two expressions are not absolutely exclusive. It is no doubt true that cases arising out of customary bonus have often been regarding festival bonus. As observed by their lordships of the Supreme Court in the case of *Tulsidas Khimji Vs. Their Workmen*, .

such a bonus has a reference to a special occasion like a festival, for example,

the pujas in Bengal and the dewali in Western India--occasions which are generally utilized by employers to reward the services of their employees.

"Festival bonus" or "puja bonus" is not synonymous with "customary bonus" finds support from the following observations of their lordships of the Supreme Court in the well-known case of *Ispahani Ltd., Calcutta Vs. Ispahani Employees' Union*, where the question was of the payment of puja bonus as implied term of employment:

The claim for puja bonus in Bengal is based on either of two grounds. It may either be a matter of Implied agreement between employers and employees creating a term of employment for payment of puja bonus, or (secondly) even though no implied agreement can be inferred, it may be payable as a customary bonus.

14. Be that as it may, in the instant case, as already pointed out, the festival aspect of the bonus was never in dispute between the parties, nor it was referred to the tribunal. Sri Sinha rightly conceded that the customary bonus can become contractual. Customary bonus divorced from festival bonus is not alien to contractual bonus and the tribunal cannot be said to have travelled beyond the term of reference, in construing the reference with regard to customary bonus as contractual in the facts and the circumstances of this case.

15. The test to be applied in support of a claim of customary or traditional bonus has been laid down by their lordships of the Supreme Court in the case of *The Graham Trading Co. (India) Ltd. Vs. Its Workmen*, namely--

- (i) payment should be over an unbroken series of years,
- (ii) it should be paid for a sufficiently long time, though the length of the period might depend on the circumstances of each case,
- (iii) it should be under circumstances so as to exclude the possibility of ex gratia payment, and
- (iv) payment at uniform rate throughout.

Their lordships also pointed out these tests are more stringent than those in the case of puja bonus as Implied term of service, which need not be uniform as pointed out in *Ispahani* case 1969 II LLJ 4 (vide supra). It is important to note that on the facts found by the tribunal, as referred to in Para. 10 above (which have not been challenged before us), not only the tests laid down for payment of bonus as implied condition of service as in *Ispahani Ltd., Calcutta Vs. Ispahani Employees' Union*, have been satisfied, but even the tests applicable for "customary bonus" (other than "festival bonus") enumerated above seem to have been satisfied.

16. In the result, there is no merit in this application and it is accordingly dismissed with costs, hearing fee Rs. 200 payable to opposite party 1.

R.L. Narasimham, C.J.

17. I agree.