

(2011) 07 KAR CK 0145

In the Karnataka High Court

Case No : Writ Petition No. 15514 of 2011 (L-Res)

M/S. Instrument Research Associates Pvt. Ltd.

APPELLANT

Vs

The General Secretary Karnataka Workers Union(r) Citu
office. V.G. Gopal Building No. 20/1, Lalbagh Fort Road
Bangalore - 560 004, The Deputy Labour Commissioner And
Recovery officer, Divn.2 Karmika Bhavan, Bannerghatta Road
Bangalore - 560 029 and The Deputy Commissioner
Bangalore Urban District Bangalore

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 12 (3), 18 (3), 2 (p), 33 (C-1)
Payment of Bonus Act, 1965 — Section 10, 11, 15, 2 (4) (B), 2 (6)

Citation : (2011) 07 KAR CK 0145

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Somashekar, for S.N. Murthy and A/S, for the Appellant; V.S. Naik, Advocate for R. 1 and Jagadeesh Mundargi, GA for R. 2 and R. 3, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner aggrieved by the order dt. 22.1.2011 Annexure-J of 2nd Respondent -Deputy Labour Commissioner and Recovery Officer invoking Section 33(C-1) of the Industrial Disputes Act, 1947, determining 1,87,125/- towards balance of bonus being one month's wage payable to the workman represented by the 1st Respondent-Union, has presented this petition.

2. Facts briefly stated are:

Petitioner is the employer while the 1st Respondent, the registered Trade Union, espousing the cause of its members who are the employees. Parties entered into a Memorandum of Settlement u/s 12(3) and 18(3) r/w Section 2(p) of the Industrial Disputes Act, 1947, for short ID Act", on 4.8.2008 Annexure-A inter

alia providing for payment of bonus of two months wages (Basic + DA) for every year. The period of settlement as set out in Clause (2) therein states that it shall be in force for a period of three years from 1.4.2008 and continue to be binding, until terminated by either of the parties in accordance with the provisions of the "ID Act". For the year ending 31.3.2008 Petitioner posted loss of 47,82,135/- whence bonus of 1,87,125/- representing one month's wage was paid to the employees while the balance of one month's wage was due and payable. For the year ending 31.3.2009 though the Petitioner posted loss of 88,30,250/-, nevertheless paid 3,74,250/- being the two months wage as bonus. Employees represented by their Trade Union-1st Respondent filed an application u/s 33-C(I) of the "ID Act" numbered as CR-50/2009-10 before the 2nd Respondent, who, by the order impugned directed payment of 1,87,125/- being the balance of one month's wage towards bonus.

3. THE LAW APPLICABLE:

Sections 2(4)(B), 2(6), 5, 6, 10, 11, 15, 31-A, 34 of the Payment of Bonus Act, 1965, for short "Bonus Act".

4. PRECEDENTS:

- a) Madurai Coats Ltd v. Workmen of Madurai Coats Ltd. rep. by the Secretary and 51 Ors. 1976 (33) FLR 319
- b) Workmen Vs. J.K. Jute Mills Co. Ltd. and Another,
- c) Oriental Machinery and Civil Construction (P) Ltd. v. The Second Industrial Tribunal of West Bengal and Ors. 1978 LAB. I.C.556

5. REASONS ASSIGNED BY THE 2ND Respondent:

In exercise of jurisdiction u/s 33-C(I) of the "ID Act", parties having entered into a settlement, Annexure-A, the Petitioner-employer was bound to make payment of bonus of two months wages (basic + DA) and having paid only one month's wage, was liable to pay the balance of one month's wage for the year 2008-09.

6. CONTENTIONS OF THE Petitioner:

- a) Clause (5) of the Agreement/Settlement Annexure-"A", is subject to the provisions of the "Bonus Act" and hence must mean payment of maximum bonus u/s 11, on the basis of "allocable surplus", if the amount payable to the employees, exceed the minimum bonus of 8.33% u/s 10;
- b) Section 31-A inserted by Amendment Act 23/76 W.E.F. 25.9.1975 is a special provision with respect to payment of bonus linked to production or productivity in lieu of bonus based on profits payable under the Act and therefore, clause (5) of the Settlement Annexure-A ought to be read in conjunction with Section 31-A;
- c) Section 34 of the Act substituted by Act 23/87 W.E.F. 25.9.1975 though a non-obstante clause giving effect to terms of award, agreement or settlement or contract of service inconsistent with the provisions of the Act, nevertheless is

subject to Section 31-A of the "Bonus Act". According to the Learned counsel, the clause (5) of the Agreement, Annexure - A, when read with Section 31A of the Bonus Act, disentitles the Respondent to Bonus for the year 2008-09, regard being had to the losses suffered in the year, due to deficiency in production or productivity. Learned counsel places reliance upon the decisions in Madurai Coats Ltd (ILR 1976 (33) 319 (supra)) and Workmen Vs. J.K. Jute Mills Co. Ltd. and Another,).

7. CONTENTIONS OF THE 1st RESPONDENT-TRADE UNION:

a) The Settlement Annexure-A being sacrosanct entered into between the parties with the full knowledge that the Petitioner suffered loss during the year ending 31.3.2008, having agreed to pay two months wage as bonus cannot retract from the said obligation;

b) Though losses are posted for the year ending 31.3.2009 nevertheless for the financial year 2009-10, bonus in terms of clause (5) of the Settlement was fully paid. According to the Learned counsel, the Petitioner indicated loss of 47,82,135/- for the year ending 31.3.2008 and ₹.88,30,250/- for the year ending 31.3.2009, and having paid bonus for the year 2009-10, cannot be heard to contend that due to loss in the year 2008-09, full bonus cannot be paid;

c) Except for contending posting of losses for the year ending 31.3.2008 and 31.3.2009 no material is placed before the 2nd Respondent in terms of Section 15 of "Bonus Act".

8. PROVISIONS OF LAW:

(a) "Allocable surplus" is defined u/s 2(4)(b) of the "Bonus Act" to mean 60% of such available surplus in an accounting year.

(b) "Available surplus" is defined u/s 2(6) to mean available surplus computed u/s 5.

(c) Section 5 read thus:

5.Computation of available surplus -

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6: 11 Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of-

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6: and

(b) an amount equal to the difference between-

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the

immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

(d) Section 10 provides for payment of minimum bonus of 8.33% of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

(e) Section 11 provides for payment of maximum bonus which reads thus:

11. Payment of maximum bonus -

(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section."

(f) Section 15 provides for Set on and set off of allocable surplus, while Sub-Section (1) states that where for any accounting year it exceeds the amount of maximum bonus payable to the employees in the u/s 11, then the excess shall be subject to a minimum of 20% of the total salary or wages of the employees employed in the establishment in that amounting year being carried forward for being set on in the succeeding accounting year up to until utilised for payment of bonus in the manner illustrated in the Forth Schedule.

Sub-section (2) of Section 15 states that where for any accounting year there is no surplus, or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment u/s 10 and there is no amount or sufficient amount carried forward and set on under subsection (1) which could be utilised for the purpose of payment of minimum bonus, then such minimum amount or the deficiency as the case may be shall be carried forward for being set off in the succeeding accounting year and so on up to inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule. Subsection (4) of Section 15 makes it mandatory that in any accounting year any amount has been carried forward and set on and set off under this Section, in calculating bonus for the succeeding accounting year, the amount of set off and set on carried forward from the earliest accounting year

shall first be taken into account.

(g) Section 31A is a special provision with respect to payment of bonus linked with production or productivity. Where notwithstanding anything contained in the "Bonus Act", the employees enter into an agreement or a settlement with their employer after the commencement of the Amendment Act, 1976 (23 of 1976), for payment of full bonus linked with production or productivity in lieu of bonus based on profits payable under the Bonus Act, then such employees shall be entitled to receive bonus due to them under such agreement or settlement as the case may be. The first proviso states that if employees relinquish their right to receive the minimum bonus u/s 10 shall be null and void, while the second proviso entitles the employees to bonus not beyond 20% of the salary or wage earned by them during the relevant accounting years.

(h) Section 34 substituted by Act 23 of 1976 W.E.F. 25.9.1975 provides for effects of laws and agreements to be subject to Section 31 A.

9. REASONS AND FINDINGS:

A bare perusal of the aforesaid statutory provisions, makes it abundantly clear that Section 10 provides for payment of minimum bonus at 8.33% of the wages earned by an employee, during the relevant accounting year, while Section 11 provides for increase in the rate of Bonus, based on "Allocable surplus", i.e. 60% of available surplus in an accounting year, to be calculated on the basis of its Set on or Set off in terms of Section 15 of the "Bonus Act". The amendment Act of 1975 inserting Section 31A is a special provision for payment of Bonus linked with production or productivity, in lieu of bonus based on profits payable under the Bonus Act, where the employee enters into an agreement or settlement with their employer, after the commencement i.e., W.E.F. 25.9.1975.

The Amendment Act of 1975 substituting Section 34 declares that, subject to Section 31 A, the provisions of the Bonus Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in terms of any award, agreement, settlement or contract of service.

10. In the given facts, that clause (5) of the settlement - Annexure A is bereft of particulars except for payment of annual bonus of 2 months wages (Basic + D.A.), whether it is to be construed as Bonus based on production or productivity, in lieu of Bonus paid on profits, as contended by the learned Counsel for the Petitioner-employer, or is it Bonus paid *dehors* profits i.e., "allocable surplus" computed in terms of Section 15, as contended by the learned Counsel for the Respondent-employees represented by the Trade Union?

11. In order to ascertain as to what transpired in the negotiations pre recording the terms of settlement Annexure - A, more particularly over clause (5), the records from the conciliation officer when called for and perused, did throw no light on the subject, as neither the order sheet maintained, records what transpired, nor pleading of the parties over the basis for the claim of annual

bonus.

12. One thing is obvious, that under the "Bonus Act", apart from Section 10 and 11, there is no other provision for payment of bonus under any other head. See *Oriental Machinery and Civil Construction Pvt. Limited* (1978 LAB. I.C.556(supra)). Therefore in the light of statutory obligation to pay bonus, to the employees in terms of Section 10 and 11 of the Bonus act, what were the reasons and basis for clause (5) of the settlement -Annexure - A is not forthcoming from the pleadings of the parties and therefore rather intriguing.

13. A doubt arises as to whether clause(5) of the settlement Annexure - A ought to be read as Bonus based on productivity, in lieu of bonus on profits/allocable surplus, so as to fall within the special provision u/s 31A of the Bonus Act. If the contention of Sri. Somasekhar, learned Counsel for the Petitioner employer is accepted, i.e. clause (5) is bonus based on production in lieu of profits, it makes it all the more intriguing as to why the Petitioner agreed to pay two months wage (Basic + DA) as Bonus, when admittedly there was deficiency in production leading to posting of loss of 47,82,135/- as on 31.3.2008. So also if the Petitioner had posted losses for the year ending 2008, why one month's wage was paid as Bonus in the year 2008-09, while for the next year ending 31.3.2009, though posted losses of 88,30,250/-, why two months wage was paid as bonus for the year 2009-10. Therefore in the absence of relevant material, it is not possible to conclude that the settlement-Annexure -A as regards payment of Bonus is an agreement falling under clause (ii) of Section 31A of the "Bonus Act".

14. The contention of Sri. V.S. Naik, learned Counsel for the Respondent, that the Bonus, contemplated under clause (5) of the settlement - Annexure - A, is dehors bonus paid on profits, in the light of Section 10 and 11 of the "Bonus Act", there being no other provision there under for payment of any other kind of Bonus, is but a specious plea.

15. An examination of the order impugned does not animate the consideration of the contention advanced by the employer, supra, nor has the authority taken pains to consider whether the Balance sheets of the employer disclosed "allocable surplus", carried forward in accordance with Section 15 of the Bonus Act.

16. In the absence of specific findings over the said two questions, there is no other option but to remit the proceeding to the 2nd Respondent to enable parties to place relevant material and thereafter pass an order strictly in accordance with law.

17. Although learned Counsel places reliance upon the opinion in *Madurai Coats Ltd.* (1976 (33) FLR 319(supra)), that Judgment, on facts, is inapplicable to the case on hand. So also the decision of the Apex Court in *Workmen Vs. J.K. Jute Mills Co. Ltd. and Another*,) has no application since the question that arose for consideration was whether Section 31A of the Bonus act vis-a-vis Article 14 of the

Constitution was discriminatory in so far as payment of Bonus at the rate of 8.33% was made to certain workman and after the Amendment Act came into force, payment at the lesser rate of 4% was made to others.

In the result, this petition is allowed. The order dt. 22.1.2011 Annexure-J of the 2nd Respondent is quashed and the proceeding remitted for consideration afresh after extending reasonable opportunity of hearing to the parties concerned and to pass orders strictly in accordance with law. Bonus for half a month since paid in terms of the interim order of this Court, is directed not to be recovered from the workman until disposal of the proceeding before the 2nd Respondent.