
(1962) 11 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 2771 of 1961

P. Koru

APPELLANT

Vs

Standard Tile and Clay Works (P) Ltd. and Another

RESPONDENT

Date of Decision : 30-11-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10A

Citation : AIR 1963 Ker 324

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : M.M. Abdulkhader, for the Appellant; V.K.K. Menon, C.S.
Padmanabha Iyer and M. Ramachandran, (for No. 1) and Government Pleader
(Labour) (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In this writ petition, Mr. M. M. Abdulkhader, learned counsel for the petitioner, challenges the arbitration award passed by Sri V. U. Joseph, Industrial Tribunal, Kozhikode, to whom the dispute was referred by agreement of parties u/s 10A of the Industrial Disputes Act. There is no controversy that the procedure and the various formalities indicated u/s 10A of the Act were amply complied with and ultimately the State Government has published the award u/s 17 of the Act.

2. The petitioner, Union, challenges the arbitration award on the ground that the decision rendered by the arbitrator on the two main questions that were referred to him for adjudication is erroneous and illegal.

3. The question that was referred to the arbitration of Mr. V. U. Joseph related to the claim of the piece-rated workers for additional bonus for the year ending 31-12-1959 to be paid on the total wages that they were getting at the material time. The claim also related to bonus for the same period regarding the temporary workers. The actual question that was referred for the opinion of the

arbitrator and as extracted in the arbitration award is as follows -:

"The management's contention that the workers were not entitled to any additional bonus for the year ending 31-12-1959 according to the existing practice followed by the management hitherto as against the worker's contention that the existing practice is not correct and that the piece-rated and temporary workers were also entitled to the same rate of bonus as the permanent time-rated workers."

4. I will have to consider later the merits of the attack levelled against this award. But at this stage, it is enough to note that both the claims that were urged before the arbitrator, on behalf of the Union were negatived. The opinion of the arbitrator ultimately is that the existing practice adopted by the management of paying bonus based on basic wages is perfectly correct and that the temporary workers are not entitled to any bonus as claimed by them. That means, on the questions which were referred for adjudication by the arbitrator concerned, the opinion given by the arbitrator is against the union.

5. It is this arbitration award dated 21-4-1961 and published in the State Gazette on 23rd May 1961 that is attacked by Mr. Abdulkbader, learned counsel for the petitioner.

6. On behalf of the management, the first respondent, Mr. V. K. K. Menon, learned counsel, has taken a preliminary objection to the maintainability of this application under Article 226 of the Constitution.

7. According to the learned counsel, no writ of certiorari can issue against an arbitration award passed by an arbitrator to whom a reference has been made by agreement of parties u/s 10A of the Industrial Disputes Act. So far as this is concerned, quite naturally, Mr. V. K. K. Menon, relied upon the judgment of my learned brother, Mr. Justice Velu Pillai reported in A.T.K.M. Employees' Association Vs. Musaliar Industries (Private), Ltd. and Another, as also the judgment on appeal. The learned Judge in that case has accepted the contention advanced before him that under such, circumstances the arbitrator cannot be considered to be a statutory arbitrator, and, therefore, no proceedings under Article 226 can be initiated challenging the award of such an arbitrator.

8. This judgment of my learned brother. Mr. Justice Velu Pillai, was under attack before my Lord the Chief Justice and Mr. Justice Govindan Nair, in their decision reported in A. T. K. M". Employees" Association v. Musaliar Industries 1962 KLJ 865. The view of Mr. Justice " Velu Pillai, that under such circumstances the arbitrator u/s 10A cannot be considered to be a statutory arbitrator and, therefore, Article 226 of the Constitution cannot be invoked, was accepted by the learned Judges in the appeal also.

9. It is really on the basis of these decisions of this court that Mr. V. K. K. Menon, learned counsel for the management has urged that this writ petition is not maintainable and that it is unnecessary to go into the various grounds of attack

levelled as against the award itself by the petitioner.

10. On the other hand, Mr. M. M. Abdul-haider;. learned counsel for the petitioner, has urged that in view of the recent decision of the Supreme Court rendered in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . It must now be held that the decision of this court, relied upon by Mr. V. K. K. Menon is no longer good law. According to the learned counsel, the decision of the Supreme Court is to the effect that in respect of an arbitration award passed by an arbitrator to whom by agreement of parties a reference has been made u/s 10A, a writ of certiorari can issue under Article 226. But, according to Mr. V. K. K. Menon, learned counsel, the decision of the Supreme Court has no such effect as contended for by Mr. Abdulkhader and the decisions of this Court still hold good. Therefore, the question will be as to whether the decision of the Supreme Court has in any manner altered the position so far as this question is concerned regarding the jurisdiction exercisable under Article 226.

11. If the decision of the Supreme Court does not in any manner affect the decisions rendered by this Court, especially the judgment of the Division Bench of this Court referred to earlier, namely 1962 KLJ 865, I am bound to follow that Division Bench ruling and accept the preliminary objection that is raised by Mr. V. K. K. Menon, learned counsel for the management.

12. Before I advert to the various aspects that have been dealt with by their Lordships of the Supreme Court, it is necessary to consider the basis of the decision of my learned brother Mr. Justice Velu Pillai, which has been confirmed on appeal by the learned Judges in 1962 KLJ 865.

13. Before Mr. Justice Velu Pillai, it is seen that under more or less similar circumstances a preliminary objection was taken that the arbitrator in that case to whom a reference was made by agreement u/s 10A of the Industrial Disputes Act is not a statutory arbitrator and, therefore, no certiorari or prohibition will issue to him under Article 226. The learned Judge refers to the observations of Lord Goddard, C. J., in *K. v. Disputes Committee of National Joint Council for the Craft of Dental Technicians* (1953) 1 QB 704 the substance of which is to the effect that since the decisions of English Courts first began, there is no trace of an arbitrator being controlled by that Court by writ of either prohibition or certiorari. The further observation relied upon by the learned Judge is to the effect that it will be an erroneous departure from the law relating to prerogative writs if the courts are to hold that these remedies apply to an ordinary arbitrator, whether he be a single arbitrator or a body of gentlemen called a committee or council. The learned Judge is further of the view that such writs may, however, issue to a statutory arbitrator.

14. In pointedly considering the question as to whether an arbitrator functioning u/s 10A can be considered to be a Statutory arbitrator, the learned Judge is of the view that he cannot be considered to be a statutory arbitrator and

proceedings under Article 226 cannot be invoked against an award passed by him. The learned Judge again reiterates the same view in the later part of the judgment to the effect that the arbitrator in that case who was functioning u/s 10A cannot be considered to be a statutory arbitrator. Ultimately without considering the merits arising for decision, the learned Judge dismissed the writ petition on this ground.

15. The learned Chief Justice, speaking for the Court on appeal, in the decision reported in 1962 KL. J. 865 substantially adopts the reasoning of Mr. Justice Velu Pillai. The learned Chief Justice poses the question that arises for consideration before them, namely, whether in the case of a reference which is voluntary, that is, one made without compulsion or legal obligation, the arbitration will attract the jurisdiction of the High Court to issue a writ of certiorari under Article 226 of the Constitution. The learned Chief Justice says that the learned single Judge whose judgment was under attack before them has come to the conclusion that it will not and that they are also of the same opinion.

16. In this connection, the learned Chief Justice refers to the observations of Lord God-dar 1 C. J., in (1953) 1 QB 704 to the effect that

"there is no instance of which I know in the books where certiorari or prohibition has done to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute the parties must resort."

17. The learned Chief Justice further states that the arbitrator u/s 10A of the Act, is not an arbitrator to whom by statute the parties must resort and, therefore, it must follow as a necessary consequence that no writ can be directed against him or his award. The learned Chief Justice again observes that the position is well settled that no writ will issue to a private arbitral body which derives its jurisdiction from contract, or to a voluntary association which derives its jurisdiction from the consent of its members. For this particular proposition, the learned Chief Justice refers to Judicial Re-view of Administrative Action by S. A. De Smith at page 275. Ultimately, the learned Chief Justice agreed with the conclusions arrived at by Mr. Justice Velu Pillai and in consequence the view of the learned single Judge was confirmed and the appeal was dismissed.

18. Therefore, if this decision stands I am bound by that decision and I will have to accept the preliminary objection raised on behalf of the management by Mr. V. K. K. Menon.

19. Then the question is whether this decision has been in any manner altered by the recent decision of the Supreme Court in Civil Appeals Nos. 182, 183 and The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, .

20. It will be seen that in respect of certain arbitration awards passed by an arbitrator, to whom disputes had been referred u/s 10A of the Industrial Disputes Act, were challenged under Article 136(1) of the Constitution. At an earlier stage

the learned Judges appear to have granted special leave and when these appeals themselves were taken up for final hearing, objections were raised on behalf of the respondents therein by the Solicitor General to the effect that inasmuch "as the Arbitrator functioning u/s 10A of the Act can be considered to be neither a Tribunal nor a Court, Article 136(1) will have no application whatsoever.

21. Mr. Justice Gajendragadkar, speaking for the court, has, if I may say so with great respect, very elaborately considered the position of an arbitrator functioning u/s 10A of the Act. No doubt, the main question that arose before the learned Judges was as to whether such an arbitrator can be considered to be a Tribunal so as to give a right to the parties to challenge his award under Article 136(1) of the Constitution.

22. The learned Judges note the objection raised on behalf of the respondents that the appeals are incompetent inasmuch as the arbitrator functioning u/s 10A is not a tribunal under Article 136 of the Constitution.

23. The learned Judge after considering Article 136(1) in relation to Article 133(1) and 134(1) expresses the view that for invoking Article 136(1) two conditions must be satisfied, namely, (a) the act complained against must have the character of a judicial or quasi judicial act and (b) the act must have been done by a Court or a Tribunal. The learned Judge further emphasises that unless both these conditions are satisfied Article 136(1) cannot be invoked.

24. Then the learned Judge considers the exercise of judicial, administrative or quasi judicial functions by various authorities and ultimately comes to the conclusion that there will be no difficulty in holding that the decision of the arbitrators, to whom, industrial disputes are voluntarily referred u/s 10A are quasi judicial decisions and they amount to a determination or order under Article 136(1). Then the learned Judge poses the question that arises for consideration before them, viz., regarding the character of the authority which decided the disputes which were under attack before the Supreme, Court.

25. Then the learned Judges refer to their previous decision in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, wherein by a majority, the Supreme Court had held that the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions and, therefore, though the Tribunal is not a Court, it was nevertheless a Tribunal for the purposes of Article 136(1) of the Constitution.

26. The learned Judges ultimately wind up the discussion on this aspect of the case by holding that the basic and essential condition which makes the authority or a body a Tribunal under Article 136 is that it should be constituted by the State and should be invested with the State's inherent judicial power and inasmuch as this condition was satisfied by the Industrial Tribunal under the Act, the Supreme Court held by a majority that the awards made by the Industrial Tribunal are subject to the appellate jurisdiction of that court under Article

136(1).

27. Then the learned Judges consider the scheme of the relevant provisions of the Industrial Disputes Act, 1947, bearing on the voluntary reference to an arbitrator, the powers of the said arbitrator, as well as the procedure which the said arbitrator is required to follow by virtue of the provisions of the statute as well as the relevant rules. The learned Judges, if I may say so with great respect, after noting that Section 10A was incorporated by Act 36 of 1956, and after advertent to the various provisions contained in Section 10A refer in considerable detail to the various other provisions in the statute itself and ultimately come to the conclusion that the inclusion of an arbitration award within the meaning of "award" in Section 12(b) has led to the application of Sections 17, 17A, 18(3), 31, 29, 30, 336 and 36A of the Act to the arbitration award passed u/s 10A.

28. The learned Judges then refer to the relevant rules framed by the Central Government as well as by the State Government under the provisions of the Act. It is the view of the learned Judges that the position under the relevant rules and the statute is to treat the arbitrator functioning u/s 10A on the same basis as the other appropriate authorities functioning under the Industrial Disputes Act.

29. Then the learned Judges consider the points of view that were urged by the learned Solicitor General for the respondents and Mr. Pai, learned counsel appearing for the appellants before them.

30. It is seen that the contention of the learned Solicitor General was that an arbitrator functioning u/s 10A of the Act was no more and no better than a private arbitrator, to whom a reference can be made by the parties under Central Act X of 1940. Then the learned Judges advert to his further contention that there is, no doubt, a duty cast upon the arbitrator to act judicially and to follow the particular procedure fairly, to take evidence, hear the parties and come to a conclusion and that is all that the arbitrator to whom a reference u/s 10A has been made does. The learned Judges particularly note the contention of the learned Solicitor General that against an award made" by a private arbitrator, no writ of certiorari can issue under Article 226 and therefore no appeal can lie under Article 136 also. They also particularly note the further contention of the learned Solicitor General that the position with regard to the award made by an arbitrator u/s 10A is not different from that of a private arbitrator. I am only advertent to this aspect to show that Article 226 appears to have loomed fairly large before their Lordships.

31. Then the learned Judges again advert to the reliance placed by the learned Solicitor General upon the observations of Lord Goddard C. J. in (1953) 1 Q. B. 704 quoted by M. S. Menon C. J. in 1962 KLJ 865 and extracted by me earlier in this judgment. Ultimately, the learned Judges note that the contention of the learned Solicitor General was that an arbitrator u/s 10A of the Act is an arbitrator of the parties" choice and cannot be treated as a statutory arbitrator.

32. Then the learned Judges advert to the contention raised on behalf of the

appellants by the learned counsel Mr. Pai. The learned Judges note his contention that it would be unreasonable to treat an arbitrator functioning u/s 10A as a private arbitrator because Section 10A gives statutory recognition to the appointment of the arbitrator and there have been consequential changes made in the Act and the rules framed under the statute to which a reference has been made earlier by the Supreme Court. The learned Judges also advert to this further contention that it would be appropriate to treat such an arbitrator as a statutory arbitrator and as such a writ of certiorari will lie against his decision under Article 226.

33. Reference again to Article 226 in this contention of Mr. Pai in my opinion, clearly shows that the learned Judges were also considering the question as to whether a writ of certiorari can be issued as against the award of such arbitrators.

34. Again in support of his contention that an arbitrator under such circumstances must be treated as a statutory arbitrator and a writ of certiorari will lie, the learned counsel was referring to certain English decisions and in particular to the decision reported in *R. v. Electricity Commissioners; Ex parte, London, Electricity Joint Committee Co. (1920), Ltd.* (1924) 1 K. B. 171. Then the principles laid down in these decisions are again adverted to by the learned Judges.

35. Ultimately, the learned Judges take note of the argument advanced on behalf of the appellant that against an award pronounced by an arbitrator appointed u/s 10A, a writ of certiorari would lie under Article 226 and, therefore, the arbitrator should be deemed to be a Tribunal even for the purposes of Article 136.

36. In dealing with the contention that the said arbitrator is a Tribunal, the learned Judges say :

"In our opinion, this argument is not well-founded. Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Article 136 because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the order of Courts or Tribunals. Under Article 226(1) an appropriate writ can be issued to any person or authority including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10A is not a Tribunal under Article 136, in a proper case, a writ may lie against his award under Article 226. That is why the argument that a writ may lie against an award made by such an arbitrator does not materially assist the appellants" case that the arbitrator in question is a Tribunal under Article 136."

The above extract, in my view, clearly shows that it is the view of their Lordships of the Supreme Court that under appropriate circumstances, a writ can be issued by the High Court, under Article 226 to an arbitrator u/s 10A of the Industrial Disputes Act. In fact the learned Judges very categorically state that even if the arbitrator appointed u/s 10A is not a Tribunal under Article 136, in an appropriate

case a writ may lie against his award under Article 226. So far as I could see, their Lordships have not rejected the contention of Mr. Pai that a writ will lie under Article 226 against an arbitration award u/s 10A. Nor do the learned Judges say that they express no opinion on this question. But on the other hand, their Lordships accept as correct the contention that a writ will lie.

37. On the one hand, the learned Solicitor General urged that a writ of certiorari cannot issue against an arbitrator functioning u/s 10A as such an arbitrator cannot be considered to be in any way superior to a private arbitrator. On the other hand, Mr. Pai urged that a writ of certiorari can issue to such an authority and therefore he must be considered to be a Tribunal under Article 136(1) also. Though the learned Judges were not prepared to accept the larger contention of Mr. Pai that the authority functioning under Section 10A of the Act can be considered to be a Tribunal, the learned Judges are prepared to hold that in an appropriate case a writ of certiorari can issue against such an authority under Article 226. Then the learned Judges ultimately held that the argument that a writ of certiorari would lie against an award made by an arbitrator functioning u/s 10A will not materially assist the appellants in that case because the arbitrator cannot be considered to be a Tribunal under Article 136.

38. The learned Judges more or less wind up the discussion of this point by adverting to the nature of the functions discharged and the jurisdiction exercised by an arbitrator u/s 10A. In this connection, the learned Judges refer to the various provisions of the Statute and the rules to which they had already adverted earlier and then they say that an arbitrator appointed u/s 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under the Arbitration Act. On the other hand, the learned Judges are of the view that an arbitrator appointed u/s 10A is clothed with certain powers.

his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions, a certain validity and a binding character for a specified period. Ultimately, the learned Judges say that having regard to all these provisions it is possible to describe such an arbitrator functioning u/s 10A, in a loose sense, a statutory arbitrator and on that basis they reject the contention of the learned Solicitor General. Categorically, the learned Judges also say that an arbitrator under Section 10A is not exactly in the same position as a private arbitrator. But the learned Judges say that this conclusion will not certainly assist the appellants to support their contention that such a statutory arbitrator can be considered to be a Tribunal under Article 136 of the Constitution.

39. Ultimately, on this aspect the learned Judges close the discussion by observing that the position of an arbitrator functioning u/s 10A may be said to be higher than that of a private arbitrator and lower than that of a Tribunal. In the earlier part of the judgment, the learned Judges have stated that such an arbitrator can be called, at least in a loose sense, a statutory arbitrator and his position cannot be relegated to the position occupied by a private arbitrator.

40. Finally, the learned Judges again refer to the question of issuing a writ of certiorari and the learned Judges say that the argument strenuously urged before them by Mr. Pai that a writ of certiorari can lie against this award is of no assistance to the appellants when the learned Judges do not think that such an arbitrator is a Tribunal under Article 136. Then the learned Judges consider a slightly different line of approach sought to be made by the other learned counsel who was appearing for one of the appellants.

41. Therefore, the question now is whether in view of what is stated by their Lordships of the Supreme Court in the judgment referred to above it can be stated, that the decision of Mr. Justice Velu Pillai reported in 1961 I LLJ 81 (Kerala) and the decision of the appellate court reported in 1962 KLJ 865 are still good law.

42. I may also add that the Supreme Court of Canada in the recent decision reported in *Howe Sound Co. v. International Union of Mine, Mill and Smelter Workers* 1962 CLR (SC) 318 quotes with approval the observations of Lord Goddard C. J. at page 329 that there is no instance in the books where certiorari has gone to any arbitrator except a statutory arbitrator to whom by statute the parties must resort.

43. I may also mention that the Bombay High Court in its decision reported in *Air Corporations Employees' Union and Another Vs. D.C. Vyas and Others*, has declined to follow the decision of Mr. Justice Velu Pillai referred to above. According to the learned Judges of the Bombay High Court the word "Tribunal" in Article 227 of the Constitution means statutory and private tribunals and the High Court has got jurisdiction under Article 227 over the arbitrators functioning u/s 10A of the Industrial Disputes Act. But it is not necessary for me to consider that decision any further because the Bombay decision itself was adverted to by the Supreme Court in the decision in Civil Appeals 182, 183 and 204 of 1962 : *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . The Supreme Court has expressed the view that Article 227 like Article 136, refers to courts and Tribunals and that what the Supreme Court has said about the character of an arbitrator appointed u/s 10A with reference to the requirements of Article 136 may *prima facie* apply to the requirements of Article 136 also. But the Supreme Court however says that that is not a matter with which they were directly concerned in the appeals before them.

44. There is also a decision of the Patna High Court reported in *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, , of the learned Chief Justice and Mr. Justice Untwalia. The learned Chief Justice speaking for the Court has dealt with the objection raised on behalf of the respondents before them that a writ of certiorari cannot be granted against private arbitrators who are appointed by agreement of parties. It may be stated at this stage that the learned Judges were dealing with an award of an arbitrator functioning u/s 10A of the Act. The learned Chief Justice expresses the view that the objection taken by the

respondents before them cannot be accepted because in that case the arbitrators whose award was challenged cannot be considered to be private arbitrators but the jurisdiction exercised by those arbitrators is statutory because it has been u/s 10A of the Industrial Disputes Act. If I may say so with respect, this view is in accordance with the opinion expressed by the Supreme Court in the decision referred to above. But notwithstanding this decision of the Patna High Court. if otherwise the Division Bench decision of this Court still holds good, I will be bound only to follow the latter decision.

45. I have given this matter my very careful consideration and ultimately I am of the opinion that in view of the decision of the Supreme Court in Civil Appeals Nos. 182, 183 and 204 of 1962 : The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, the decisions reported in A.T.K.M. Employees' Association Vs. Musaliar Industries (Private), Ltd. and Another, are no longer, if I may say so with respect, good law.

46. The decisions of this court referred to above have largely proceeded on the basis that the arbitrator functioning u/s 10A of the Industrial Disputes Act stands on the same footing as that of a private arbitrator and that in no sense can he be considered to be a statutory arbitrator. So far as that is concerned, I have already pointed out that the view of the Supreme Court is that such an arbitrator u/s 10A of the Act can be considered to be, at least in a loose sense, a statutory arbitrator. That conclusion had been arrived at by their Lordships of the Supreme Court, if I may say so with respect after a very careful and minute-consideration of the various provisions of the statute in question. I have also pointed out that their Lordships have stated in categorical terms that even if an arbitrator appointed u/s 10A is not a Tribunal under Article 136, in an appropriate case a writ may lie against his award under Article 226. That a writ may lie against such an arbitrator, is adverted to by their Lordships on several occasions in the judgment. Therefore, in view of the Supreme Court judgment, it must be held that the judgment of this court treating an arbitrator u/s 10A as nothing more or less than a private arbitrator appointed by agreement of parties can no longer be accepted as good law.

47. Therefore, it follows that this writ petition is maintainable and this court can go into the grievance placed before it by the petitioner on the merits.

48. So far as the actual merits are concerned, no doubt, Mr. Abdulkhader urged that the arbitrator has made a very erroneous approach in negating the claims of the workers concerned.

49. As I mentioned earlier, the first question that was referred to the arbitrator was as to whether any alteration was necessary in the manner of payment of wages to the piece-rated workers.

50. So far as that is concerned, and so far as I could see, the claim of the piece-rated workers appears to have been that though bonus was being paid at 25 per

cent of the basic rate that was erroneous and the correct principle to be adopted in the matter of payment of bonus must be on the basis of total wages earned by these workers. That is, as an illustration, Mr. Abdulkhader pointed out that in respect of particular items of work when six people are necessary for doing that work and actually four workmen have done it, and they share the wages of six people, the total wages obtained by each of these workmen must be taken into account.

51. I am not impressed with this contention. I find that the arbitrator has gone into this matter and has come to the conclusion that the present system of paying bonus uniformly to all the workers on the basis of the basic wages is perfectly correct and it requires no alteration. I am not impressed with the contention of the learned counsel that any interference is called for so far as this aspect is concerned.

52. The second question that was referred for decision by the arbitrator was regarding the claim made by temporary workers for payment of bonus. So far as that is concerned, here again, the arbitrator has taken note of the fact that this management, at any rate, was giving bonus to such of these temporary workers who had put in 240 days of work and who were actually taken in their permanent employ. The arbitrator has also further noted that so far as temporary workers are concerned, though they are not entitled to any bonus in law, nevertheless this management has been making an ex gratia payment varying from Rs. 20 to Rs. 50 to temporary workers also at the time when bonus was being declared. The arbitrator has also held that temporary workers are free to absent themselves as they like and the management has no control whatsoever over these workers and it would be absolutely unjust and hard to impose a liability, as claimed by the Union, on the management and more especially when the management was giving them every consideration by making ex gratia payment.

53. Here again, I am not impressed with the contention of the learned counsel for the petitioner that the award requires interference at the hands of this court. I do not find any error which justifies an interference by this court in the circumstances.

54. Therefore, the writ petition has to fail and is dismissed. Parties will bear their own costs.