

(1968) 03 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 2120 of 1965

Ramdeo Pheru Rajbhur and Another

APPELLANT

Vs

B.N. Biscuit Confectionery Works and Another

RESPONDENT

Date of Decision : 04-03-1968

Acts Referred:

Bonus Act, 1965 — Section 33

Citation : (1968) 2 LLJ 72

Hon'ble Judges : J.L. Nain, J;D.V. Patel, J

Bench : Division Bench

Judgement

Patel, J.—Petitioner 1 is an employee of respondent 1 and petitioner 2 is the union, which is entitled to represent the workers of respondent 1. For the two years prior to the end of October 1964 respondent 1 was paying bonus equivalent to five months' wages of the workers. For the year under reference 4 November, 1963 to 3 November, 1964 the workmen claimed six months' wages as bonus which respondent 1 refused to pay. As there could be no conciliation of the matter, the dispute was referred by the State Government to the industrial tribunal. During the pendency of this dispute before the tribunal, the Payment of Bonus Ordinance, 1965 (3 of 1965) came into force on 29 May, 1965. It was later substituted by the Bonus Act, 1965 (21 of 1965), and it became effective from 25 September, 1965. The petitioners contended before the tribunal that they were not affected by the Act and that they would be entitled to the full amount of the bonus determined in accordance with the principles previously obtained. The tribunal rejected this contention relying on S. 33 of the Bonus Act which requires that in every dispute pending on coming into force of the Act in respect of the years commencing from 1962, the provisions of the Act should be applied. The tribunal accordingly awarded 20 per cent of the wages of the workmen as bonus.

2. In *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , the Supreme Court has held that S. 33 of the Bonus Act was ultra vires the powers of legislature as

it retrospectively enhanced the burden on the employers. Evidently, when it is invalid and ultra vires for one purpose, it is invalid and ultra vires for all purposes.

3. On behalf of respondent 1, Sri John has made a contention that we should refuse to interfere with the award as a large number of awards have been made on the basis of the Bonus Act. The contention has absolutely no substance. We are concerned with the present award and since the tribunal has applied a provision which is ultra vires the legislature, the award cannot be permitted to stand.

4. We accordingly quash the award and remit the matter to the tribunal for reconsideration of the case on principles obtainable prior to the Bonus Act. Respondent 1 will pay the costs of the petitioner.