
(2009) 05 BOM CK 0048
In the Bombay High Court
Case No : O.A.W.P. No. 292 of 2001

Shree Gajanana Industries

APPELLANT

Vs

Workmen and Another

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2010) 124 FLR 512 : (2010) 2 LLJ 373

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : Apolonio Luis, Constituted Attorney, for the Appellant; T. Pereira, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Dalvi, J.—Rule returnable forthwith.

2. The award of the Industrial Tribunal, Panaji, Goa dated April 25, 2001 is challenged in this writ petition. The main challenge is in regard to the payment of bonus to the workers of the petitioner. The petitioner ran a quarry and a crusher. The quarry was leased to the petitioner. The lease period expired. Thereafter there was no work. The dispute in this case does not relate the quarry. The petitioner also ran a stone crusher unit. It is stated to have employed 21 workers. The list of the workers is produced at Exhibit 20. The petitioner admittedly did not pay bonus to any of workers. The petitioner even now contends that the bonus was not payable.

3. Upon the dispute raised by the workers, the petitioner was directed to produce his muster roll, under letter dated April 6, 1990. Under that letter marked Exhibit 22, he was required to remain present in the office of the Deputy Labour Commissioner, Goa on April 17, 1990 alongwith his muster roll, wage , register, over time register, wage slips, balance sheet, form A, B and C maintained vide the Payment of Bonus Act and his profit and loss account for three years prior to the notice.

4. On April 17, 1990 the petitioner (employer) remained present along with his representative. He did not bring the balance sheet on the ground that it was not finalised by the Chartered Accountant. He agreed to produce it by June 1990. He stated that he had maintained all the registers at the stone crusher unit and they were being verified by the Inspector. He agreed to produce the records for verification on the next date.

5. The documents were not produced. Hence the Deputy Labour Commissioner addressed another letter on May 17, 1990 requiring the employer's attendance in his office on June 11, 1990.

6. The employer having not attended, further letter dated June 15, 1990 was sent. The same documents were directed to be produced. The employer failed to attend and failed to produce the relevant documents. Hence ex parte failure was recorded on August 6, 1990. Ultimately on October 4, 1990 it was recorded that on August 6, 1990 none attended on behalf of the employer. Dispute was already raised. The employer has no interest to resolve the dispute. Due to his non co-operation, a failure report was made.

7. In the evidence the constituted attorney of the employer (petitioner) it was stated that the petitioner was a small scale industry. No registration of the industry is produced. No letter showing the workers employed or registered or the muster roll was produced. The two main contentions were that the quarry work could not go on after 1987 as the lease was not extended and that contractors were employed 4 for the quarry. It was stated that the contract labourers were paid their last wage on October 7, 1990. They stopped work on October 4, 1990. The petitioner was not allowed to go the crusher or the quarry. The crushers were damaged by the employees. The employer made arrangement to start crushing work but the workers damaged the crusher which was replaced. The employer refuted that he was paying bonus to the workers. He contended that the evidence of the workers shows discrepancy. It is stated that in the letter dated July 4, 1990, thirteen workers were shown to be out of employment whereas in the statement of claim twenty one workers were shown. Twenty one workers claimed bonus. Thereafter services of thirteen workers were terminated. The petitioner claims that all the workers who claimed bonus were not his workers. In the cross examination, the witness of the petitioner has admitted that the letter of the Deputy Labour Commissioner dated April 6, 1990 was received by the petitioner. He has also admitted the minutes of the meeting dated July 4, 1990 but not the receipt of letter dated May 7, 1990 and June 15, 1990. The petitioner has argued before this Court that that was because the workers went on strike and the petitioner could not receive any correspondence. Whatever that be the assurance of the petitioner to produce the documents in the meeting has not been complied. The cross examination shows that the petitioner was maintaining the muster roll, wage records, etc. None of these records is produced. The Industrial Tribunal has considered the evidence fully. The learned Tribunal has considered the petitioner's case that the workers who

claimed bonus were not his workers and that there were contract workers. He has considered that no contractor has been examined. He has considered that the petitioner attended the meeting, assured to produce the documents and that though it was stated that the registers were maintained by the petitioner, he has not produced the muster roll, wage register, etc. He has therefore considered that there was no reason to doubt the list of workers given in Exhibit 20. The list of workers being 21 and the unit being a stone crusher, using power he had held that the Payment of Bonus Act would apply. He has further considered the written statement of the petitioner relying upon the attendance register which was never produced.

8. Hence it is seen that the fact that the petitioner was running a crusher is admitted. The petitioner was to produce the muster roll and the attendance register which were not produced. The petitioner has admitted that the bonus is not paid. It has been contended by the petitioner that the Payment of Bonus Act is not applicable.

9. The petitioner who has argued in person has stated that he could not produce the records that the documents were burnt. That aspect does not find any place in the evidence. In fact the witness of the petitioner has stated that these registers were mentioned and has not stated that they were burnt at any time. The petitioner now argues that FIR was filed alleging destruction of the records. The FIR has been filed on May 24, 1991 for an offence that took place on May 25, 1990. Certified copy of the FIR has not been produced. The xerox copy sought to be annexed to an application for production of documents has not been proved. If the FIR was filed in 1991 it is not understood why the witness has not deposed about the fact of burning or otherwise any, destruction of records by the workers when his evidence was recorded in March and June, 1995.

10. The petitioner who is present in the Court now states that he is registered as a small scale industry. He seeks to produce certain; record to that effect. That records cannot be produced in the writ petition. The examination-in-chief on behalf of the petitioner states the fact that the petitioner being a small scale industry, the records could not be, produced before the Industrial Tribunal. The petitioner claims that he had only seven workers. This Court has gone through the entire records. There is no mention anywhere either in the written statement or in the evidence of the petitioner that the petitioner had seven workers ; only. That statement made orally cannot be met. The petitioner who is present in the Court states that the records are missing. This Court has gone through the written statement as well as the oral evidence. There is absolutely no mention of this records before the Industrial Tribunal.

11. From the records, the main substance that can be seen is that the petitioner has not produced the records to substantiate his case Before the Industrial Tribunal. He has simply refuted his liability to pay bonus. The workers have instead produced the statement showing their names and positions. The learned Industrial Tribunal has accepted the statement. Acceptance cannot be faulted in

the absence of absolutely no evidence produced by the employer with regard to the workmen he has employed. The writ petition is devoid of merits. Writ petition deserves to be dismissed.

12. The advocate for the respondent No. 1 states that this petition was admitted and stay of execution of the award was granted upon the petitioner depositing the amount of bonus payable. He, therefore, applies for disbursing the amount to the workmen along with all accrued interest from the amount lying to the credit of this writ petition in this Court. Upon it being seen that the petitioner's case is totally without merits, the amount would have to be disbursed to the workers. However, it is contended by the petitioner that the workers are migrant labourers and are at present not available to receive the amount. The petitioner contends that Trade Union would appropriate the amount to itself as the workers are not available to receive payment.

13. Hence the following order:

1. Writ petition is dismissed. Rule discharged.
2. The relevant Union shall inform each of the workers of this order.
3. Each of the 21 workers shall make their respective separate and independent claims to the Registrar of this Court within six months from today.
4. The amount shall be disbursed to the respective workers upon they identifying themselves and applying independently and directly after giving notice of their respective applications to the petitioner.
5. The petitioner shall be entitled to be heard only upon such identification of the employees before the Registrar of this Court.
6. The Registrar shall pass the order of 5 refund, if any, on merits in each of the separate applications of the 21 workers.
7. Writ petition disposed off accordingly.