

(1992) 09 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 2949 of 1985

Transport and Dock Workers Union

APPELLANT

Vs

Bombay Stevedores Association and another

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 LLJ 338

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : Dr. R.S. Kulkarni, for the Appellant; J.P. Cama, for the Respondent

Judgement

1. By this writ petition under Articles 226 and 227 of the Constitution of India the petitioner impugns an Award dated December 19, 1984, and by the Central Government Industrial Tribunal, Bombay, in Reference No. COTT-14 of 1983 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioner is a registered trade union which represents, inter alia, the workmen employed in the Bombay Docks including the workmen employed by the individual members of the first Respondent which is an Association of the Stevedores operating in the Bombay Docks. The second Respondent is an Industrial Tribunal constituted under the provisions of the Act.

3. The petitioner, on behalf of the workmen employed by the members of the first Respondent-Association, had raised an industrial dispute for payment of bonus or payment of ex-gratis in lieu of bonus for the accounting year 1982-83. Failing settlement and conciliation, the said demand came to be referred for adjudication of the second Respondent-Tribunal by an order of reference made by the appropriate Government on November 26, 1983. The schedule to the order of referenc specifies the dispute referred for adjudication in the following terms :

"Whether having regard to all the facts and circumstances of the case, including the fact that the constituents of the Bombay Stevedores" Association made payment in the past over and above 8.1/3% on account of ex-gratis in lieu of bonus, the demand of the employees (Whether registered with the Dock Labour Board or otherwise) for 1982-83 for ex-gratis in lieu of bonus at 20% is justified ? If not, whether they are entitled to any payment between 8.1/3% and 20%."

4. Before the Tribunal the petitioner contended that the employers, the members of the first Respondent-Association, were giving ex-gratis payment in lieu of bonus to their workmen since or about the year 1949, that from the year 1949 onwards several settlements had been signed year after year for payment of "ex-gratis payment in lieu of bonus", that this practice had ripened into a right in favour of the workmen to receive payments over and above the bonus payable under the Payment of Bonus Act, 1965 as it had become a condition of service of the workmen. For the year 1981-82, the monthly rated staff employed by the members of the first Respondent-Association became governed by the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, and became Registered Workers thereunder. The first Respondent thereupon took the stand that the workmen registered as workers under the scheme were not entitled to payment of bonus under the Act and refused to pay what the workmen were legitimately entitled to it by way of traditional and customary right for payment of ex-gratis in lieu of bonus. The petitioner demanded that the workmen concerned should be paid 20 per cent of their annual earning during the relevant accounting year as traditional/customary bonus, without any ceiling.

5. The first Respondent opposed the reference and contended that the Tribunal had no jurisdiction to adjudicate the demand as the demand raised was for ex-gratis payment and not for customary or traditional bonus, there could be no industrial dispute for payment of ex-gratis amount which could be validly referred for adjudication as, by definition, "ex-gratis amount" is something paid gratis and not as of right. The first Respondent further pleaded that the reference had been made under the erroneous assumption that what was paid in the past was ex-gratis in lieu of bonus. The first respondent pointed out that the payments in the earlier years were in the nature of bonus and not in the nature of ex-gratis. They also pointed out that as far as daily rated workmen are concerned, they had already accepted payment of 8.1/3% as ex-gratis, unconditionally, and they could not be deemed to be party to the reference and that the dispute should be confined only to monthly rated supervisory and clerical employees numbering about 2000.

6. Both parties placed material in the form of previous settlements in support of their respective contentions before the Tribunal. After scrutinizing the evidence on record, the second Respondent-Tribunal came to the finding that the first Respondent having agreed to the reference, in the terms in which it had been made, could not be heard to say that the reference was incorrectly worded and

held that the reference had to be adjudicated on the basis of the reference which proceeded on the footing that what the first Respondent-Association had paid to its workmen was ex-gratis in lieu of bonus and that it had paid more than 8 1/3%. The parties agreed before the second Respondent-Tribunal that the reference should be confined only to monthly rated employees who had now been covered under the scheme under the Dock Workers Regulations Act. The Tribunal accepted the contention of the first Respondent that under the terms of the reference the Petitioner could not claim that what was being paid to the concerned workmen was "traditional and customary bonus". The Tribunal further held that both parties must be held to the terms of reference which they had themselves decided and agreed upon, namely, that what was paid to the employees was "ex-gratis in lieu of bonus".

7. After scrutinizing the evidence placed on record consisting of the copies of the agreement/settlements from the year 1956 to the year 1981-82, the Tribunal found that the quantum of payment had varied and had not at all been uniform over the years. The quantum had varied from 15.28% of the total wages to 16.67% of the basic wages; the maximum amount paid being 28.47% of the basic wages during the year 1969-70 and the minimum being 19.44% of the total wages during the year 1980-81. It was only in the year 1981-82 that the first Respondent had paid 8.1/3% of the total wages as "ex-gratis in lieu of bonus" and that it was for the first time that this expression appeared on the scene. The Tribunal then held that what had been paid during the period from 1956-1980 had not been described as "ex-gratis in lieu of bonus" but as bonus itself. The Tribunal further held that, apart from the variation in the quantum of bonus paid, the basis for payment thereof was also not uniform. Between the years 1954-55 to 1969-70, the payment was made on the basis of paise or annas per dead-weight tonne of cargo hand led, while in the year 1952-53 it was in terms of 53 days of basic wages and in the year 1970-71 it was in terms of 70 days of basic wages. In view of this wide disparity, both as to basis and quantum of payment, the Tribunal rejected the demand on merits by taking the view that the petitioner had failed to make out a case in support of the demand.

8. Dr. Kulkarni, learned counsel appearing for the petitioner, impugned the award as perverse and contrary to the evidence on record. It is not disputed by Dr. Kulkarni that neither the basis of payment, nor the quantum of payment had been uniform over the period 1952-53 to 1981-82. He also does not dispute that it is only for the first time that in the year 1981-82 that the expression "ex-gratis in lieu of bonus" appeared in the settlement.

9. In my view, it is difficult to accept the contention of the petitioner that the award is perverse. Upon a careful scrutiny of the material placed on record, the learned Tribunal came to the conclusion that there was no consistency or uniformity in the payments that were made during the years 1952-53 to 1980-81. It is also rightly pointed out that not only the basis of payment varied, but also the quantum varied from year to year and no payment prior to the year

1980-81 had been described as "ex-gratis in lieu of bonus" and further that all payments in the earlier years had been made as "bonus itself". Even for the year 1980-81, what was paid was "bonus" without going into the details of profitability of the members of the first Respondent which was paid with a view to maintain cordial and good relations.

10. It was only by a letter dated June 21, 1982, that the Under Secretary to Government of India, Ministry of Shipping, wrote to the Chairman of all major ports that all eligible employees and "registered and listed dock workers" be paid "ex-gratis in lieu of bonus" at the rate of 8.1/3%. The first Respondent, therefore, legitimately contended that all the employees having become registered dock workers were not entitled to more than 8.1/3% for the years 1980-81 and 1982-83, the year under dispute.

11. The Tribunal has rejected the demand on two grounds. The first, is factual. The Tribunal was not satisfied that the amounts paid by the first Respondent during the years prior to the accounting year 1982-83 could be styled either as "ex-gratis in lieu of bonus" or as "customary or traditional bonus". In my view, the Tribunal has rightly applied the triple test laid down by the Supreme court in *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, . Having applied the said triple test to the facts, the Tribunal came to the right conclusion that it was difficult to accept the contention put forward by the petitioner that there was an implied term of contract for payments of "ex-gratis in lieu of bonus". In my view, it is not possible to fault this reasoning of Tribunal, nor is it possible to say that the finding of the Tribunal on this aspect of the matter is perverse.

12. The second reason given by the Tribunal for rejecting the demand was that granting the demand would unjustifiably create invidious distinction between the workmen, creating a class amongst the workmen who, merely on the fortuitous circumstance of having been assigned to the employment of stevedores, would become eligible to an additional payment of bonus, while the other workmen would not be so eligible, though all workmen were covered under the scheme applicable to the Bombay Dock Workers (Regulation of Employment) Act. After a careful examination of the provision of the Act and the Scheme, the Tribunal correctly concluded that the scheme was intended to apply uniformly to the registered workmen working in the Docks and for regulating the employment of Dock-workers and that granting the demand raised on behalf of section of workmen, who were fortuitously in the service of Stevedores, would lead to unhealthy and unfair competition amongst the workmen for being assigned for work to the Stevedores. Such a situation militates against the policy of the Act and the Scheme of bringing about uniformity in conditions of service, particularly, hours of work and remuneration for different classed and kinds of work done by the registered dock workers, whether with the Stevedores or otherwise. Even this reasoning of the Tribunal is unexceptionable and perfectly accords with the legislative policy and philosophy underlying the Industrial Disputes Act, which is

to settle industrial disputes and not to generate more and more of such disputes.

13. In my view, the award made by the second Respondent is neither perverse, nor opposed to any principle of law. On the other hand, it is perfectly sustainable on the material on record as to the factual finding and fully justified on the legal principles applied. I find no infirmity in the award which requires interference by this Court in exercise of its writ jurisdiction.

14. In the result, the petition is hereby dismissed Rule discharged. However, there shall be no order as to costs.