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In the Madras High Court

Case No : W.A. No. 193 of 1986

Workmen of Central Institute of Plastics Engineering and Tools, Guindy	APPELLANT
Vs	
Management and Others	RESPONDENT

Date of Decision : 26-06-1989

Acts Referred:
Payment of Bonus Act, 1965 — Section 10, 32

Citation : (1990) 1 LLJ 593 : (1989) 2 LW 403

Hon'ble Judges : S.T. Ramalingam, J;S. Mohan, J

Bench : Division Bench

Judgement

1. The writ appeal is directed against the order of our learned brother Ratnam, J.

2. The facts leading to the writ appeal are as follows : The Workmen of the Central Institute of Plastics Engineering and Tools, Madras represented by the Secretary CIPET United Employees'' Association are the appellant. They raised a dispute for award of bonus for the accounting years 1978-79, 1979-80 and 1980-81. That dispute was referred for adjudication in G.O. Ms. No. 1263 dated 25th June 1982 of the Labour and Employment Department, Government of Tamil Nadu to the Industrial Tribunal, Madras. It was taken on file in I.D. 33 of 1982.

3. In the claim petition of the appellant, it was urged that the first respondent-Management is a registered society, registered under the Societies Registration Act. It is receiving 100% grant-in-aid. It is a Government of India Undertaking. It has been working since 1968 consisting of a Governing Council, whose members are appointed by the Central Government representing the Ministries of Petroleum and Chemicals, Industry, Finance, Education etc. Besides, consultancy services are also provided for testing of plastics raw materials from various industries and manufacture of moulds for sale in addition to undertaking job works charging machine-hour rates etc. Thus, it is an "Establishment'' under the provisions of the Payment of Bonus Act, 1965. It was further claimed that the

first respondent is neither a University nor an Educational Institution or a Welfare Institution without profit basis. It was in fact making large profits and thereby has denied itself the exemption contemplated under S. 32(iv) and (v) of the Act. As a matter of fact, the Government of India issued a circular on 31st January 1979 wherein the first respondent had been advised to pay ex gratia amounts by way of bonus should the first respondent fall within the provisions of the Bonus Act. Inspite of such a direction, no bonus had been awarded. Thus the dispute.

4. In the counter statement, in answer to this claim, the first respondent raised two principal objections. The first was that the appellant Association did not have the representative capacity; nor is it a recognised union. Therefore, the reference made at its instance could not be maintained. The second was that the first respondent was not an ''establishment'' or a ''Government of India undertaking''. It was an independent body governed by the rules as well as the bye-laws of the society. It is run purely on aid granted by the Government of India. It is an educational institution. Therefore, it is exempt from the payment of bonus as per S. 32(v)(b) and (c) of the Act.

5. The Tribunal held that the appellant-Union was competent to raise the dispute. As regards the entitlement to bonus, it came to the conclusion that the object of founding CIPET was to impart instruction in plastic engineering and technology and to secure integration of the educational courses with the special training imparted in the Institute. It has not been establishment for the purpose of profit and therefore would be entitled to the benefit of exemption under sub-clauses (b) and (c) of S. 32(v) of the Act. Accordingly it was held by the award dated 21st March 1983, that there was no liability to pay bonus.

6. It was this Award which was unsuccessfully challenged before Ratnam, J. Before the learned Judge the question arose whether the first respondent could claim the exemption under S. 32(v)(b), viz., under the category of "other educational institutions." The learned Judge was of the view that the word "education" will have to be given wide meaning. Further, what is imparted by the CIPET is only instruction in plastic education and engineering and technology or something in addition to that. These objects have been broadly classified under Ex. W1, the Memorandum of Association. The service provided by CIPET is advisory service in the area of tool design and use of up-to-date methods in dies and mould-making and application of modern technology in process engineering to make available to the converters, moulds and dies manufactured during the training programme and to render assistance to enable production of moulds for export. The establishment of liaison with the education institutions like the I.I.T. and Polytechnics, teaching plastics engineering technology and securing integration of the educational courses with special training in the Institute, are the objects set out under the heading "Education". Further, the award of Certificates for those who successfully complete the training course and the institution of Fellowships, Scholarship, Prizes and Medals and the Management of Hostel for the students etc. clearly make out that it is an ''Educational

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Institution''. In so far as it has not been establishment for any purpose of profit, it is not a commercial venture. It is purely an institution engaged in turning out well-trained personnel for the Plastic Industry by imparting and communicating to the trainees improved and advanced Plastic Technology.

7. In the result, the CIPET, according to the learned Judge, would be entitled to the benefit of exemption under S. 32(v)(b) and (c) of the Act. Thus, upholding the Tribunal''s Award, the learned single judge dismissed the writ petition.

8. Mr. N. G. R. Prasad, learned counsel for the appellant, would urge that the construction placed by the learned single Judge on the words "other educational institutions" occurring in S. 32(v)(b) of the Act is not correct. It was further submitted that the first respondent institution is only an adjunct and not an educational institution. In support of this submission, The Ahmedabad Textile Industry''s Research Association Vs. The State of Bombay and Others, was cited. The second submission was that, as seen from S. 32(v)(c), it should be an institution established not for the purpose of profit. Under similar circumstances this Court took the view in Sabanayagam K. Vs. The Secretary to Government of Tamilnadu, Housing Department and Others, that the Housing Board cannot claim the benefit of the clause. The said ruling was affirmed by a Division Bench of this Court in Tamil Nadu State Housing Board Vs. K. Sabanayagam and Govt. of Tamil Nadu, . From the Memorandum of Association (Ex. W1,) it is clear that this establishment is not only indulging in development but also imparting training. As seen from Ex. W3. It is providing service to industry and it is maintaining liaison with educational institutions like the I.I.T. and Polytechnics. Further, the industry is required to sustain the CIPET. Orders have also been placed and the Office Memorandum dated 31st August 1979 makes it clear that ex gratia amount should be given, and in answer to it the Government issued the letter dated 11th September 1979. It made the position very clear. All that the appellant wants is minimum bonus as laid down under S. 10 of the Bonus Act. Merely because the first respondent is not making profit it cannot be denied, as laid down in Sabanayagam v. The Secretary to Government of Tamil Nadu, Housing Department (supra). The Tribunal has not correctly appreciated the ruling reported in Ahmedabad Textile Industry''s Research Association v. State of Bombay (supra). It has failed to note that CIPET is merely an establishment and not an institution. For all these reasons, the order of the learned single Judge requires interference and the Award of the Tribunal has to be set aside.

9. Mr. C. Harikrishnan appearing for the first respondent would urged that exemption under S. 32(v)(c) would clearly apply to the first respondent, because it is not a profit-making establishment. In fact, that is the finding. There is no material on which it could be pleaded by the other side that this finding is incorrect. In a similar situation the learned single Judge in W.P. No. 7406 of 1983 (TWAD Board Administrative Staff Association v. The State Government of Tamil Nadu), dealt with a claim for bonus as against the Tamil Nadu Water and Drainage Board. The learned Judge found that this was an establishment not for

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profit and therefore disallowed the claim. That ratio would clearly apply to the facts of the case.

10. Under S. 32(v), what is talked of is ''Universities and other educational institutions''. In the instant case, it is clear from the Memorandum of Association (Ex. W1) that it is nothing but an educational institution. In fact, the said memorandum makes it clear that no portion of the income and the property of the Society shall be paid or transferred directly or indirectly by way of dividends, bonus etc.

11. No commercial activity is carried on, is the admitted case.

(i) The Society is registered under the Societies Registration Act.

(ii) It is established by Central Government.

(iii) It receives grant from the Central Government.

(iv) It imparts training.

(v) Students are selected on All-India basis.

(vi) Scholarship is awarded.

(vii) Consultancy service is free whosoever seeks such service.

(viii) Orders are received for the benefit of the students.

(ix) Orders are not solicited.

12. More then above all these, as seen from Ex. M6, it is very clear that this is not a commercial establishment at all.

13. These factors clearly weighed with the learned single Judge and on that basis he has arrived at the finding which does not call for any interference.

14. In the case of Sabanayagam v. The Secretary to Government of Tamil Nadu, Housing Department (supra) affirmed in the Tamil Nadu State Housing Board, State of Tamil Nadu v. Sabanayagam, (supra) the Court found that the Housing Board had a reserve of 18 Lakhs for bonus; further even though there was a claim for exemption under the Bonus Act, no such claim had been made. Therefore, that case is distinguishable. Ahmedabad Textile Industry''s Research Association v. State of Bombay (supra) was a case of Research Institution, being an adjunct of the mills. That is not position here.

15. In the light of the above arguments, we will now proceed to examine the case. Ex. WI is the Memorandum of Association of CIPET, the first respondent. The objects for which the Society was established are for Development and Training :

"I DEVELOPMENT

(a) to design and develop moulds and dies for the plastics processing industry;

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(b) to standardise tool and tool elements for the plastics conversion industry;

(c) to introduce up-to-date methods in die and mould making;

(d) to introduce modern technology in plastics processing;

(e) to develop application ideals and product concepts in plastics with particular reference to import substitution.

II. TRAINING

(a) to train highly skilled tool, die and mould makes for the plastics and other industries

(b) to train mould polishers;

(c) to train process control and maintenance operators of special plastics conversion equipment;

(d) to train designers and designing personnel of moulds, tools and dies for the plastics processing industry;

(e) to train plastics processing and application engineers;

(f) to upgrade suitably experienced personnel from industry such as Craftsmen, Instructors, Supervisors and Designers."

There is a governing council for CIPET which consists of the Chairman of Plastics Institute and representatives from Ministries of Petroleum and Chemicals and Fiance of the Government of India. They are highly placed Government officers.

16. In the Memorandum of Association Ex. W1 it is clearly stated that the income and the property of the Society, however derived, shall be applied towards the promotion of the objects as set forth therein -

"Subject nevertheless in respect of the expenditure of grants made by the Government of India to such limitation as the Government of India may from time to time impose. No portion of the income and property of the Society shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise howsoever by way of profit to persons, who at any time are or, have been members of the Society, or to any of them, or to any of persons claiming through them or any of them provided that nothing herein shall prevent the payment in good faith of remuneration to any member or other person in return for service rendered to the Society, or for travelling allowance, halting allowance and other similar charges."

The funds of the Society, as per R. 57, consist of -

"(i) Grants made by the Government of India

(ii) Contribution from other sources

(iii) Income from investments

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(iv) Receipts of the Society from other sources."

In Ex. W3, which is a brochure, it is stated -

"We are a Service to Industry and Government establishment.

"The Institute is a Government of India Undertaking under the Ministry of Petroleum and Chemicals assisted by United Nations Development Programme with I.L.O. as the Executing Agency. This is an autonomous body and was registered as a Society in July 1968 .., ''

It is further stated in Ex. W3 brochure -

"CIPET will be maintaining liaison with the educational institutions like I.I.T.s. and Polytechnics teaching plastics/engineering/technology and secure integration of the educational courses with the special training in the Institute. It will also be in touch with the Plastic Industries, large and small, and with the Government bodies concerned with export promotion, plastic manufacture etc. with a view to keeping abreast of the progress of plastic industries in the country and policies of the Government that govern production activities."

The students are selected on All-India basis and scholarships are awarded.

As regards training and advisory service, it is seen -

"The institute as a pilot project, should provide training and advisory services in the design and construction of moulds, dies and tools. In additional, it is to provide upgrading training for various plastics industry personnel specifically the objects of the UNDP/ILO Project assistance includes :

CIPET training programmes are essentially production oriented. During the first phase of the project, the Institute had an intake of 406 Trainees for various courses. The majority of the trainees were sponsored by industries all over India."

17. However, it is contended by Mr. Prasad that orders not solicited. We do not find any material to that affect. On the contrary, when plastic moulds are made, that is for the purpose of training and not as a commercial venture. Thus, it is clear that the Institute is not a commercial institute established for purposes of profit.

18. It is in the light of the factual background, whether exemption under S. 32(v)(b) and (c) would apply, has to be examined. S. 32(v)(b) says ''Universities and other educational institutions.'' Education does not mean mere teaching the three "Rs". On the contrary, the first respondent will clearly fall within the definition of ''Educational Institutions.'' There is no justification to interpret those words narrowly. It imparts specialized instruction and practical training in the filed of Plastic Technology. The consultant''s service is free whosoever wants the service of the first respondent. Where, therefore, training is imparted to students, it is undoubtedly an ''educational institution.''

19. The next question is whether it is established for profit. It is in this

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connection Ex. M6 becomes very relevant. That is an income and expenditure statement for 1980-91. That clearly establishment that there is no such profit motive at all. However, what is urged is that even without making profit, the first respondent would be liable for minimum bonus under S. 10. This contention is backed by the ruling reported in Sabanayagam K. Vs. The Secretary to Government of Tamilnadu, Housing Department and Others, . In that case, one of us sitting singly held.

"Therefore, if this is the view to be taken certainly a semi-commercial Organisation like the Housing Board cannot fall under the exemption clause, under S. 32(v)(c). This is the reason why I referred the statement in relation to the profits. Even otherwise, irrespective of the profit being made, if there is the statutory liability, that cannot be avoided once it is held to be an establishment."

This was affirmed in (TNSHBD) The Tamil Nadu State Housing Board v. Sabanayagam (supra). A careful reading of the above ruling would show that there was a case where the Housing Board had a reserve of 18 lakhs for payment of bonus. Inspite of the possibility of getting exemption under S. 32(v)(c), it never agreed to do so as rightly contended by Mr. Harikrishnan. The position here is different.

20. Ahmedabad Textile Industry''s Research Association v. State of Bombay (supra) relates to a case where the Research Institute was an adjunct of the mills. But, here, it is not so. Therefore, that case is clearly distinguishable.

21. Workmen of Madras Flying Club Ltd. Vs. Additional Labour Court and Another, dealt with a case as to what would constitute an ''industry''. We do not think that if any way advances the case of the appellant.

22. In so far as it is clear that CIPET is an institution established not for the purposes of profit within the meaning of S. 32(v)(c) of the Bonus Act, we think the ration of the decision in W.P. No. 7406 of 1983 (TWAD) Board Administrative Staff Association v. The State Government of Tamil Nadu) would be of great help of the first respondent.

22. For all these reasons, we dismiss the writ appeal. However, there will be no order as to costs.

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