

(1973) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 2965 of 1970

Workmen of Mangalore Port Trust

APPELLANT

Vs

Mangalore Port Trust and Others

RESPONDENT

Date of Decision : 09-02-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d)
Payment of Bonus Act, 1965 — Section 20, 31, 32 (iv)

Citation : (1973) 27 FLR 249 : (1973) ILR (Kar) 272 : (1973) 2 LLJ 521 :
(1973) 1 MysLJ 386

Hon'ble Judges : M. Sadanandaswamy, J; Jagannatha K. Shetty, J

Bench : Division Bench

Judgement

K. Jagannatha Shetty, J.—This is a petition under Art. 226 praying for an order to quash the award made by the Industrial Tribunal in Mysore, Bangalore, in I.D. No. 1 of 1969.

2. The workmen of Mangalore Port Trust by their union secretary is the petitioner before us. On the claim for payment of bonus, a dispute arose as between the workmen and the management of the Mangalore Port Trust.

The Government of Mysore referred the dispute to the Industrial Tribunal under S. 10(1)(d) of the Industrial Disputes Act, 1947, setting out the following two points for adjudication :

"I. Are the management of the Port Trust Mangalore, justified in refusing payment of bonus to the workers for the years 1964-65 and 1965-66 at the rate of 20 per cent of their total earnings ?

II. If not, to what quantum of bonus are the said workers entitled for the said years ?"

Before the Tribunal, the parties submitted their respective statements, which are fully set out in the impugned award and we are not repeating them here. It was admitted before the Tribunal by the parties that the activities carried on by the

Mangalore Port Trust, constitute an industry. The management, however contended that the provisions of the Payment of Bonus Act, 1965 (shortly called the "Bonus Act"), are not applicable to their industry and hence the claim for the workmen was untenable and should be rejected. On the rival contentions, the following two preliminary issues were framed by the Tribunal :

"1. Whether the provisions of the Payment of Bonus Act, 1965, are inapplicable as alleged by the II party management ?

2. If the Payment of Bonus Act is applicable, whether there is no industrial dispute as contemplated by S. 22 of the Payment of Bonus Act ? And, if so, is the reference illegal ?"

On the second issue, the Tribunal held that the provisions of S. 22 of the Bonus Act are not attached to the dispute and, on the first issue it held that the Mangalore Port Trust is a local authority within the meaning of S. 32(iv) of the Bonus Act and, therefore, the workmen cannot claim bonus under the said Act. With that conclusion, the reference was rejected by the impugned award dated 30th January, 1970, published in the Mysore Gazette dated 19th March, 1970.

3. The first question that arises for our consideration is as to whether the Board of Trustees of the Port of Mangalore is a local authority. If it is held to be a local authority, then the entire provisions of the Bonus Act are inapplicable to the workmen employed by the Board.

4. We should first look into the relevant provisions of the Mangalore Port Trust Act, 1953 (which we will call as the "Port Trust Act"). Section 4 of the Port Trust Act, provides for the constitution of a Board called "The Trustees of the Port of Mangalore". It is a body corporate with the duty of carrying out the provisions of the said Act. Section 5(1) of the Port Trust Act provides :

"5. Constitution of the Board. - (1) The Board shall consist of such number of Trustees, not being less than thirteen or more than seventeen including the Chairman and Vice-Chairman, as the State Government may notify"

Section 6 provides :

"6. (1) The Chairman and Vice-Chairman shall be appointed by the State Government provided one of them at least shall be a citizen of India.

(2) (a) The members for the time being of each of the following bodies shall be entitled to elect the number of Trustees specified against it, at a meeting of the body held in accordance with its rules as then in force :

(i) The Mangalore Municipal Council - 2 Trustees.

(ii) The Kanara Chamber of Commerce - 4 Trustees.

(iii) The Western India Tiles Manufacturers' Association - 2 Trustees :

x x x (3) One Trustee shall be appointed by the State Government ..."

Now we turn to S. 32(iv) and (x) of the Bonus Act. It reads as follows :

"32. Nothing in this Act shall apply to -

x x x (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;

x x x (x) employees employed by any establishment in public sector, save as otherwise provided under this Act."

To make the picture complete, we have to find out the meaning of the expression "local authority". It is not defined under the Bonus Act. Section 3(31) of the General Clauses Act, 1897, defines it as follows :

"3. (31) "Local authority" shall mean a municipal committee, district board, body of the port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

The said definition consists of two independent parts. A municipal committee, district board and body of port commissioners fall under the first part; and any other authority which is legally entitled to or entrusted with, by the Government, the control or management of a municipal or local fund falls under the second part.

5. The contention of Mr. Sunderaswami, learned counsel for respondent 1, was that the Board of Trustees of the Port of Mangalore is similar to a body of Port Commissioners and, therefore, it is a local authority, within the meaning of the first of the definition. He further said that, in any event, the Board of Trustees is an authority falling within the description of "any other authority" stated by the second part of the said definition.

6. It appears to us that there is no differences between the body of Port Commissioners and the Board of Trustees of the Port of Mangalore. A reference may be made to the Madras Port Trust Act, 1905. Sections 6, 7 and 8 therein are almost similar to Ss. 4, 5 and 6 of the Mangalore Port Trust Act, 1953. The Board of Trustees constituted by the Madras Port Trust Act, came up for consideration in two decisions before the Madras High Court.

7. In *Official Assignee of Official Assignee Vs. Trustees of Port Trust*, , the High Court observed thus :

"It is contended that the Port Trust is not entrusted by the Government with the control or management Municipal or Local Fund and is not, therefore, a "local authority" within the meaning of that sub-section and that no fund has been constituted under the Port Trust Act of 1905 such as that in S. 139 of the Madras City Municipal Act. Mockett, J., negatived this contention because provision is made in the Port Trust Act for the imposition and recovery of rates and that it is from these rates that the Port Trust income is derived and had no doubt that its collection by the Port Commissioners constitutes a local fund within the meaning

of S. 3(28) of the General Clauses Act. In our view, it is not necessary to employ the test of whether the Port Trust is entrusted with the control or management of a local fund because Mr. K. S. Krishnaswami Iyengar has put an interpretation upon that sub-section with which we agree. It is that the words "legally entitled to or entrusted by the Government with the control or management of a Municipal or Local fund" qualify the words immediately preceding them, namely, "or other authority", and do not relate to a Municipal Committee, District Board or body of Port Commissioners. We think that that is clearly correct. It is obvious that a Municipal Committee is a "local authority" and equally so a District Board and in our view so also is body of Port Commissioners; and it is conceded that the Port Trust comes within this description; and it does not seem to us to be intended or reasonable that they should be a "local authority" only when they control or are entrusted by the Government with the control and management of a Municipal or local fund but is otherwise in the case of other authorities not definitely specified who can only bring themselves within that definition if the latter part of the sub-section can be applied to them; and moreover the word "or" and not "and" other authority is used. The Port Trust, therefore, is a local authority."

8. In *R. Sarangapani and Another Vs. The Port Trust of Madras*, Rajamannar, C.J., said at page 239 that the Port Trust would fall within the extended definition of the State under Art. 12, because it would be a local authority as defined under S. 3(31) of the General Clauses Act, 1897.

9. The Labour Tribunal to reach its conclusion that the Mangalore Port Trust is a local authority, has followed the statement of law laid down in the above two decisions. In our view, the Tribunal did so quite rightly. The ratio of the said two decisions is clearly applicable to the case on hand. The Trustees of the Port Trust, Madras, are in no way different from the Trustees of the Port of Mangalore. We, therefore, hold that the Board of Trustees of the Mangalore Port is a "local authority" within the meaning of the first part of the definition of the said expression.

10. The second branch of the submission of Mr. Sunderaswamy, whether the Port Trust is entrusted by the Government with the control or management of Municipal or Local fund, has to be considered with reference to the relevant provisions of the Port Trust Act. The expression "local fund" has got a definite connotation. It is defined under Rule 2(17) of the Mysore Financial Code, 1958. These rules were made by the Governor of Mysore in exercise of the powers conferred by clause (2) of Art. 283 of the Constitution.

11. "2(17) Local Fund" means :

(1) the revenues administered by bodies which come under the control of Government by law or rule having the force of law whether in regard to the proceedings generally or to specific matters such as the sanctioning of their budgets, sanction to the creation or filling up of particular appointments, the

enactment of leave, pension, or similar rules; and

(2) the revenues of any body which may be specifically notified by the Government of Mysore as such."

There is no doubt that the Board of Trustees of Port of Mangalore is a Body or authority coming under the control of the State Government. With that, let us see whether the said authority and the revenues administered by it are under the control of the Government.

12. Section 6 of the Port Trust Act provides for the appointment of Chairman and Vice-Chairman of the Board by the State Government. Under S. 16, it is for the State Government, from time to time, to determine their remuneration, like salary, leave allowance. By S. 27, the Government has retained power of appointing, promoting, suspending, dismissing, fining and granting leave to certain officers and servants of the Board. By Ss. 28, 29 and 35 of the Act, the Board must receive prior sanction of the Government for its regulations and notifications. Under Ss. 67, the Board has to obtain previous sanction of the Government if it wants to raise any loan from the public. Chapter VIII of the Act deals with the expenditure of the Board. A reference to the provisions of Ss. 79, 81, 82, 83 and 84 makes it abundantly clear about the complete control of the State Government on the annual estimate of income and expenditure of the Board. Under S. 85, the accounts of the receipts and expenditure of the Board shall, once in every year, be laid before the State Government and it is subject to the examination and audit by the auditors appointed by the State Government. There are also other provisions conferring supervisory power to the Government over the activities of the Board.

13. On a consideration of the above provisions, it is clear that the Board of Trustees is a body which comes under the control of the Government by law, in regard to its proceedings generally and also on specific matters including its expenditure, and appointments to certain specified posts. It seems to us that the revenue administered by the Board of Trustees of the Mangalore Port falls within the expression "local fund" as defined by Rule 2(17) of the Mysore Financial Code and for that reason also the said Board comes within the definition of "local authority" under S. 3(31) of the General Clauses Act.

14. The decision of the Supreme Court in *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, , relied on by counsel for the petitioner is clearly distinguishable. In that case, the question that arose for consideration was as to whether the Bombay State Road Transport Corporation was a local authority. After referring to the definition of the expression "local authority" in S. 3(31) of the General Clauses Act, *Mudholkar, J.*, said at p. 1894 :

"It will be clear from the definition that unless it is shown that the State Transport Corporation is an "authority" and is legally entitled to or entrusted by the Government with control or management of a local fund it cannot be regarded as a local authority. No material has been placed before us from which

it could be deduced that the funds of the Corporation can be regarded as local funds. It was no doubt submitted by the learned Attorney-General that the Corporation was furnished with funds by the Government for commencing its business; but even if that were so, it is difficult to appreciate how that would make the funds of the Corporation local funds."

From the above observation, it is apparent that no materials were placed before the Supreme Court to show that the funds administered by the Bombay State Transport Corporation should be regarded as local funds.

15. The contention of Mr. Balakrishna Rao, learned counsel for the petitioner, that the Board of Trustees is a body corporate and hence cannot be regarded as a local authority, has no substance. We do not think that the said decision of the Supreme Court lends support to his contention. Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others, , was explained in a decision of this Court in Channaveerappa Shivappa Baligar v. State of Mysore [1968] 1 Mys. L.J. 300, where Chandrasekhar, J., said, at p. 305 :

"..... In our opinion, the above decision of the Supreme Court cannot be understood as laying down that where a statutory authority is legally entitled to the control or management of a local fund, such authority is not a local authority is a body incorporated under an Indian law."

16. In concluding this part of the case, there is a decision of the Calcutta High Court which we may usefully mention. In Bhikari Behara Vs. Sm. Dhanapatie Bentia, , one of the questions for consideration was whether Calcutta Dock Labour Board cannot be regarded as a local authority. Bijayesh Mukherji, J., after referring to the various provisions of the Dock Workers Regulations and the definition of "local authority" in S. 3(31) of the General Clauses Act, said, at p. 178 :

"... How do those funds come in here in the hands of the Dock Labour Board ? The answer is to be found in Rule 38 read with Rule 52, of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956. It is hardly necessary to go through all that these rules contain. Suffice it to say that the nucleus of the funds is supplied by registered employers upon whom a suitable levy has been imposed under the command of the statute. I, therefore, see no difficulty whatever in treating such a fund as a local fund which the Calcutta Dock Labour Board is legally entitled to, and even entrusted by the State under the command of the statute, to control and manage. So soon as that is said, the Dock Labour Board at once elevates itself to the height of a local authority within the meaning of S. 3, clause (31), of the General Clauses Act"

17. The conclusion which we have so far reached is sufficient to dispose of this case but we will also pass on to consider the further question, i.e., whether S. 20 of the Bonus Act is applicable to the dispute raised by the workmen.

18. The provisions of the Bonus Act are inapplicable to the employees employed

by the establishment in public sector save as otherwise provided by the said Act (see Section 31.) Section 20 is one of the exceptions. Section 20 provides :

"20. (1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both is not less than twenty percent of the gross income of the establishment in public sector for that year, then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) An establishment in public sector to which this Act applies shall continue to be governed by this Act notwithstanding that in any subsequent accounting year its income from the sale of goods produced or manufactured by it or from services rendered or from both, in competition with an establishment in private sector, falls below twenty per cent of its gross income for that accounting year."

19. In order to attract the provisions of the said section, the establishment of the Board of Trustees of the Mangalore Port must render services in competition with an establishment in private sector and the income derived therefrom, must not be less than twenty percent of its gross income for the year in question. The said Board is not selling any goods in competition.

20. The evidence produced by the workmen on the above question was scanty. On the appreciation of the evidence of W.W. 1, Anande, Nayak, the Tribunal has reached the conclusion that the Board is not rendering any service to the customers in competition with any establishment in private sector. This is not an appeal to re-examine the evidence. Our jurisdiction is limited. The counsel for the petitioner was not able to show how the said finding of the Tribunal was vitiated by any error of law or jurisdiction. It must be, therefore, held that S. 20 of the Bonus Act cannot be availed of assuming that the Board of Trustees is in public sector.

21. In the result, the petition fails and is dismissed with no order as to costs.