Dishergarh Power Supply Co. Ltd., ... vs Workmen Of Dishergarh Power Supply Co. ... on 15 July, 1986

Equivalent citations: AIR1986SC1486, JT1986(1)SC206, (1987)ILLJ53SC, 1986(2)SCALE23, (1986)3SCC450, [1986]3SCR184, 1986(2)UJ509(SC), AIR 1986 SUPREME COURT 1486, 1986 LAB. I. C. 1372, (1986) JT 206 (SC), 1986 LAB LR 122, 1986 2 UJ (SC) 509, 1986 SCC (L&S) 669, (1986) 69 FJR 154, (1986) 53 FACLR 307, (1986) 2 LAB LN 443, 1986 (3) SCC 450, (1986) 3 SUPREME 411, (1986) 2 CURLR 141

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Bench: V. Balakrishnan Eradi, V. Khalid

JUDGMENT

V. Balakrishna Eradi, J.

1. This appeal by Special Leave has been preferred against the Award dated May 8, 1974 made by the Ninth Industrial Tribunal of West Bengal, Durgapur in Case No. X-4 of 1973 on its file. The appellants are two companies incorporated under the Indian Companies Act, 1913 having their registered office in Calcutta. Both the appellants are engaged in the business of generation, transmission, distribution and sale of electricity in certain areas of Bengal and Bihar under licences granted by the concerned Governments. Appellant No. 1 has a power station at Dishergarh and Appellant No. 2 has its power station at Sibpore. In connection with their aforesaid business the two appellants were having at the relevant time 400 and 250 workmen respectively employed under them.

2. For the years 1965-66 to 1970-71 (inclusive) bonus was paid to the workmen on the basis of agreements entered into each year under Section 34(3) of the Payment of Bonus Act, 1965 (hereinafter referred to as the 'Act'). Concerning the bonus payable for the year 1971-72, a dispute was raised by the workmen of the two companies and it was referred to conciliation under Section 12(1) of the Industrial Disputes Act, 1947. The contention of the workmen before the Conciliation Officer was that they were entitled to bonus equivalent to three months' basic wages as on March 31, 1972 as customary bonus or in any event as bonus payable under the provisions of the Act. The appellant-companies, on the other hand, contended that the workmen were entitled to only minimum bonus as provided under the Act on a computation being made in the manner laid in the said Act. The said dispute was ultimately settled before the Conciliation Officer inter alia on the following terms:

> (1) Subject to usual adjustments made in 1969-70 and 1970-71, each eligible workmen will be paid an amount equal to three months' basic wages as on 31.3.1970.
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> (2) A sum of Rs. 20,000 will be distributed equally among all workmen who were on the rolls on 15.8.1972 and have worked for at least 30 days. This will be 'Silver Jubilee Year' payment.
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> (3) The demand of the Union for bonus this year will be referred to as Tribunal for adjudication.
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> (4) The payment should be made by 12.10.1971. Eligible workmen under terms (1) of this settlement-
>
> (a) Permanent and probationers. Rest of workmen will be paid bonus under the Payment of Bonus Act.

Although the said settlement was an agreement under Section 34(3) of the Act since under its very terms as incorporated in Clause (3), the parties had stipulated for a reference of the question for adjudication by a Tribunal. The issue was accordingly referred by the Government of West Bengal for adjudication to the Ninth Industrial Tribunal of West Bengal by an order of reference dated January 15, 1973.

3. In the written statement filed by the workmen before the Ninth Industrial Tribunal they claimed three months' basic wages as on March 31, 1972 as customary bonus or in the alternative 20 per cent of the salary or wages as bonus payable under the Act. The appellants reiterated before the Tribunal the same contentions which they had put forward before the Conciliation Officer. The Tribunal allowed the parties to adduce evidence. After a detailed discussion of the evidence produced before it, the Tribunal recorded a clear finding that the workmen had failed to make out the claim of customary bonus put forward by them and that the said plea had therefore to fail. It was further found by the Tribunal that the plea put forward by the appellant companies that there was no available surplus during the year in question and that only the minimum bonus was payable under the provisions of the Act had to be upheld. The Tribunal, therefore, held that the unions representing the workmen had failed to make out the case put forward by the workmen that the workmen were entitled to maximum bonus of 20 per cent as provided under the Act. After having recorded the aforesaid findings, the Tribunal, however, proceeded to accept the contention advanced before it by the Counsel appearing for the workmen that it was legally open to it to substitute for the agreement entered into between the parties before the Conciliation Officer a new contract and pass an award on that basis, if such a step would be conducive to industrial peace. On this reasoning the Tribunal proceeded to observe:

> In my opinion, there would not be material alteration in the financial liability of the companies in case the agreement was modified by substituting for the words that the workmen will be paid the amount equal to three months' basic wages as on 31.3.1970 by the words an amount equal to basic wages as on 31.3.1972.... I am, therefore, in

agreement with this contention of the learned lawyer for the unions that the Tribunal should create a new contract and that is pass an award of three months' basic wage as on 31.3.1972. This is in my opinion would be conducive to industrial peace and it would not violate any existing industrial law.

4. Accordingly, the Tribunal passed an award directing the appellant companies to pay to the workmen the balance amount by way of bonus as per the rates calculated by the Tribunal within a month from the date of publication of the award in the Calcutta Gazette. It is the legality of this award that is under challenge in this appeal.

5. It has to be remembered that the claim of the workmen which the Tribunal was considering while making the aforesaid observations was one for Profit bonus only since the claim for customary bonus had been rejected by it. The rights and liabilities of the parties regarding Profit bonus were governed by the provisions of the Act which are exhaustive on the subject and the adjudication had to be conducted by the Tribunal strictly in accordance with those provisions-See Sanghi Jeevraj Ghewar Chand and Ors. v. Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union and Anr. and Mumbai Kamgar Sabha, Bombay v. Abdulbhai Faizullabhai and Ors. .

6. As already noticed, the Tribunal has categorically found on a consideration of the evidence adduced before it that there was no "available surplus" in respect of the two companies for the year in question on a computation made under Section 5 of the Act. The settlement entered into before the Conciliation Officer constituted an agreement under Section 34(3) of the Act and but for the said agreement the liability of the appellants under the provisions of Act would have been only to pay minimum bonus under Section 10 of the Act. Since the parties were at variance on the question of existence of liability for payment of customary bonus in the establishments as well as on the question regarding the existence of available surplus, provision was made in Clause (3) of the agreement for reference under the industrial adjudication. If the Tribunal found that the claim for payment of customary bonus was substantiated it could have passed an order in favour of the workmen for payment of such bonus. That claim had been negatived. The only question which remained for determination for the Tribunal was whether the claim of the workmen for payment of 20 per cent of the salary or wages as bonus payable under the Act was tenable or not. That depended essentially on the question of existence of available surplus and its quantum, if any surplus was available. In view of the finding recorded by the Tribunal accepting the plea put forward by the appellant companies that the result of the working of the companies during the concerned year was a loss and there was no available surplus, the Tribunal could not have legally proceeded to make an award directing payment of bonus at any rate higher than the minimum bonus specified in Section 10 of the Act. As pointed out by this Court in The New Maneck Chowk Spinning and Weaving Company Ltd. Ahmedabad and Ors. v. The Textile Labour Association, Ahmedabad ,-while "it is certainly open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending Agreement or making new one, but this power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature." It is manifest that the impugned award made by the Tribunal is

clearly inconsistent with the provisions of the Payment of Bonus Act which contemplate the imposition of an obligation for payment of only the minimum bonus where the employer has no allocable surplus in the concerned accounting year. However, in as much as the appellant companies had entered into the settlement before the Conciliation Officer agreeing to pay bonus at a rate higher than the minimum bonus, the said settlement would constitute an agreement under Section 34 of the Act and the terms of the settlement will govern the liability for bonus for the year in question.

7. It follows from the foregoing discussion that the impugned award passed by the Ninth Industrial Tribunal is not legally sustainable. The appeal is accordingly allowed and the Award of the Industrial Tribunal will stand set aside. The rights of the workmen for payment of bonus for the year in question will be governed by the terms of the agreement entered into before the Conciliation Officer on October 9, 1972.

8. In view of the condition imposed by the order of this Court dated November 21, 1974 while granting Special Leave, the appellants are directed to pay the costs of the respondents in this appeal.