Hukam Chand Jute Mills Ltd vs Second Industrial Tribunal, West ... on 11 April, 1979

Equivalent citations: 1979 AIR 876, 1979 SCR (3) 644, AIR 1979 SUPREME COURT 876, 1979 LAB. I. C. 612, 1979 UJ (SC) 467, 54 FJR 391, 1979 (11) LAWYER 100, (1979) 3 SCR 644 (SC), 38 FACLR 383, 1979 (1) LABLJ 461, 1979 SCC (L&S) 3 266, (1979) 1 LAB LN 509, 1979 (3) SCC 261, (1979) 2 SCJ 225, (1979) 2 SCWR 19

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, V.D. Tulzapurkar, R.S. Pathak

PETITIONER:
HUKAM CHAND JUTE MILLS LTD.

Vs.

RESPONDENT:
SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL & ORS.

DATE OF JUDGMENT11/04/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1979 AIR 876 1979 SCR (3) 644
1979 SCC (3) 261

ACT:
Payment of Bonus Act, 1965 -Customary and contractual bonus-If excluded by the Act-Amending Act 23 of 1976-Effect of.

HEADNOTE:
The appellant mills had been paying customary bonus to its employees for a number of years. Consequent to the amendment of the Bonus Act, 1965 in 1976 by Act 23 of 1976 the management denied the customary bonus claimed by the workmen, whereupon the dispute regarding "customary bonus

for the year 1976" was referred by the State Government to the Industrial Tribunal. The Management's plea that customary bonus was no longer payable, in view of the provisions of the 1976 Amendment, was negatived by the Tribunal.

In the appeal to this Court it was contended on behalf of the appellant that the Bonus Act as amended by Act 23 of 1976, annihilates all species of bonus including customary and contractual bonus.

Dismissing the appeal,

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HELD: 1. The Bonus Act (1965) though a complete code was confined to profit-oriented bonus only. The other kinds of bonus that have flourished in Indian industrial law have been left uncovered by the Bonus Act. The legislative universe spanned by the said statute cannot therefore, affect the rights and obligations belonging to a different world or claims and conditions. [647-E]

2. The amending Act, 23 of 1976 amended the long title of the Bonus Act to provide for the payment of bonus "on the basis of profits or on the basis of production or productivity, and for matters connected therewith." The inference that flows therefrom is that customary or contractual bonus goes beyond the pale of the amending Act which modifies the previous one by bringing within its range bonus on the basis of production or productivity also. [648G-649B].

3. Section 17 of the Bonus Act in express terms refers to puja bonus and other customary bonus as available for deduction from the bonus payable under the Act, thus making a clear distinction between the bonus payable under the Act and "puja bonus or other customary bonus". This section has been left intact. So long as this section remains without amendment the inference is clear that the categories covered by the Act, as amended, do not deal with customary bonus. [649-C]

4. Section 31A relates to bonus linked with production or productivity in lieu of bonus based on profits. It speaks nothing of the other kinds of bonus. [649-G]

5. The Bonus Act (1965) does not deal with customary bonus and is confined to profit-based or productivity-based bonus. The provisions of the Act have no say, on customary bonus and cannot, therefore, be inconsistent therewith.

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Conceptually, statutory bonus and customary bonus operate in two fields and do not cash with each other. [649H-650A]

In the instant case, both parties have agreed that throughout they have been dealing with customary bonus only and whenever there has been a settlement or agreement it has been not the source of the right but the quantification thereof. The claim was rooted in custom but quantified by contract. It did not originate in any agreement, but was organised by it. The customary bonus as claimed is neither

impaired nor eliminated by the 1976 Amendment Act. [650 C, B]

Mumbai Kamgar Sabha, Bombay v. M/S. Abdulbhai Faizullabhai & Ors. [1976] 3 SCR 591 at 608-609 & 612; Sanghi Jeevaraj Ghewar Chand & Ors. v. Secetary Madras Chillies, Grains Kirana Merchants Workers' Union and Anr. [1969] 1 SCR 366; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1118 of 1978.

Appeal by Special Leave from the Order dated 12-5-1978 of the Second Industrial Tribunal, West Bengal in Case No. VIII-169/77 G.O. No. 3000 IR dated 26-7-77.

G. B. Pai, R. C. Shah, S. R. Agarwal, O. P. Khaitan and Praveen Kumar for the appellant.

M. K. Ramamurthi, D. T. Sen Gupta, S. R. Gupta and P. K. Chakravorti for Respondent No. 3.

M. K. Ramamurthi, and Ramesh C. Pathak for the Intervener (The Bank of Tokyo Staff Association).

The Judgment of the Court was delivered by KRISHNA IYER, J.-Industrial jurisprudence, based on the values of social justice which is integral to our Constitution, has been built around several legislations enacted by Parliament, one of which is the Payment of Bonus Act, 1965, (the Bonus Act, for short). The bonus branch of labour law, however, is not exhausted by this enactment and has been replenished by judge-made law, drawing sustenance from practice and precedent, custom and contract. Against this backdrop, we have to state and assess the single issue strenuously canvassed before us by the appellant-management challenging the award of the Industrial Tribunal and urging that the Bonus Act, as amended by Act 23 of 1976, annihilates all species of bonus including customary and contractual bonus. The claim of the Union of Workmen is for customary bonus, the reference to industrial adjudication relates to customary bonus, and the special leave to appeal granted by this Court is confined to customary bonus as the common basis and focuses on the sole legal issue of negation of that kind of bonus by virtue of the provisions of the amending Act 23 of 1976.

The matrix of minimal facts necessary to highlight the limited controversy may lay bare the crucial issue we have to decide. The appellant is a jute mill in Bengal employing several thousand workers but we are directly concerned here with a dispute between the Management and the employees in its head office. Certain indisputable facts, fundamental to the case, make a useful beginning. Customary bonus has been claimed, conceded and settled between the parties for long years since the early sixties at least. From time to time, this demand has been the subject of dispute and, fortunately, of agreed solution right down to 1975. But in 1976-the year in which Art. 43A making participation of workers in Management of industries was made a Directive Principle in our Constitution-the Bonus Act was, paradoxically, amended restricting workers claim to Bonus by Act 23 of 1976 although

much of the curtailment has been cancelled by the next Amending Act, 1977. Anyway, the changes wrought by the 1976 amendment emboldened the Management to deny the legality of Customary bonus claimed by the workmen. This conflict led to a reference by the State Government to the Industrial Tribunal of the following dispute:

> "CUSTOMARY BONUS FOR THE YEAR, 1976"

What is material to notice is that the demand and the denial, the reference and the adjudication and, finally, the special leave itself revolved round customary bonus. The specific case of the Management was that customary bonus could no longer be payable, in view of the provisions of the 1976 amendment. A statutory fatality was sought to be spelt out of its provisions before the Tribunal and before us. We emphasize this to exclude a hazy, though half-hearted plea mentioned by Shri G. B. Pai for the appellant that here the bonus was based on agreement and no agreement as such could avail in view of s. 34, read with s. 31A, (as amended by the 1976 Act). Apart from the law relied on, it is somewhat starting that bonus paid by settlement between the parties qua customary bonus at least since 1962-63 (see page 4 of the Paper Book) should be anathematized as untenable in 1976, suggesting that labour law, viewed from the social justice angle, is making headway steadily backwards. Even so, we will examine the law as the statute speaks.

The payments over the years have been of customary bonus. The demand for 1976, which alone directly concerns us, is also for customary bonus. The dispute referred is of customary bonus. The legal objection urged is to customary bonus. The award has upheld the tenability of customary bonus. The special leave petition complained about the legality of customary bonus and the order granting leave clinched the issue by treating the dispute as one for customary bonus. Likewise, throughout, the only defence of the management was the lethal impact on customary or other bonus, save profit or productivity-based bonus of Act 23 of 1976. So the sole question is the soundness of the legicidal impact of the 1976 amendment on the customary bonus claim which otherwise was valid and, indeed, was honoured by the appellant by progressively escalating rates by agreement. This part of the narration may be concluded by excerpting the order granting leave:

> "Mr. Pai states on behalf of the petitioner- Management that if they fail on the legal issue, namely, because of the amendment in the Bonus Act customary bonus is not payable, then they will not ask for the trial of that issue on merits and straightway they will pay the customary bonus they have been paying as per the agreement dated 20-3-1975. In view of this undertaking we grant special leave to appeal and even if the appellants succeed in this appeal, they will not ask for costs against the workmen concerned."

The Bonus Act (1965) was a complete code but was confined to profit-oriented bonus only. Other kinds of bonus have flourished in Indian Industrial law and have been left uncovered by the Bonus Act. The legislative universe spanned by the said statute cannot therefore affect the rights and obligations belonging to a different world or claims and conditions. This has, in the Mumbai Kamgar's case(1) exhaustively dealt with the anatomy of the Bonus Act, its functional scope its modalities and its operational frontiers to reach the following conclusion:

> "It is clear further from the long title of the Bonus Act of 1965 that it seeks to provide for bonus to persons employed 'in certain establishments'-not in all establishments. Moreover, customary bonus does not require calculation of profits, allocable surplus, because it is a payment founded on long usage and justified often by spending on festivals and the Act gives no guidance to fix the quantum of festival bonus; nor does it expressly wish away such a usage. The conclusion seems to be fairly clear, unless we strain judicial sympathy countrarywise, that the Bonus Act dealt with only profit bonus and matters connected therewith and did not govern customary, traditional or contractual bonus.
>
> The end product of our study of the anatomy and other related factors is that the Bonus Act spreads the canvas wide to exhaust profit-based bonus but beyond its frontiers is not void other cousin claims bearing the caste name 'bonus' flourish-miniatures of other colours ! The Act is neither proscriptive nor predicative of other existences."

After dealing with Ghewar Chand's case(1), the Court arrived at the final view that "A discerning and concrete analysis of the scheme of the Act and the reasoning of the Court leaves us in no doubt that it leaves untouched customary bonus."(2) This ruling has our concurrence and, indeed, the principal plea of Shri Pai, counsel for the appellant, is that the effect of the 1976 amending Act has been left open in that decision and that is precisely the justification for his submission that the new provisions nullify all kinds of claims of bonus except profit-or-productivity-based bonuses, having regard to ss. 31A and 34A brought into the statute Act.

Counsel made his goal-oriented submissions by taking us through the new provisions. As we have stated earlier many of the statutory modifications brought about in 1976 in the then wisdom of Parliament have been repealed and the original position restored in 1977 by the later wisdom of the new Parliament. However, we are concerned only with the import and effect of the few provisions incorporated by Act 23 of 1976. The fundamental fact which we must reiterate is that the Bonus Act before the 1976 amendment had nothing to say on bonus not oriented on profit. What then was the departure made ? Did it travel beyond the broad territory of the original statute and invade other forms of bonus ? Apart from the clauses which we will presently deal with, a key to the understanding of the changes is the long title. The long title of the Bonus Act was also amended in 1976 and the substituted one runs thus:

> "An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith."

The clear light that we glean from the new long title is contrary to the intent of Shri Pai's argument. Specifically, the new long title purports to provide for the payment of bonus "on the basis of profits or on the basis of production or productivity and for matters connected therewith". The emphatic inference flows therefrom that customary or contractual bonus goes beyond the pale of the amending Act which modifies the previous one by bringing within its range bonus on the basis of

production or productivity also. Nothing more-unless the text expressly states to the contrary. It is important to remember that s. 17 of the Bonus Act has been left intact. That Section in express terms refers to puja bonus and other customary bonus as available for deduction from the bonus payable under the Act, thus making a clear distinction between the bonus payable under the Act and "puja" bonus or other customary bonus. So long as this Section remains without amendment the inference is clear that the categories covered by the Act, as amended, did not deal with customary bonus Strong reliance was placed by counsel for the appellant on new s. 31A read with substituted s. 34. It is proper to read s. 34 at this stage:

> "34. Subject to the provisions of section 31A, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service."

The only changes that we notice as between this Section and its predecessor are (i) that agreements, settlements and contracts of service inconsistent with the provisions of the Act regardless of whether they were made before 29th May, 1965 or after would now stand superseded; and (ii) s. 24 shall be subject to the provisions of s. 31A newly inserted.

We may straightway dispose of the argument based on s. 31A. That relates to bonus linked with production or productivity in lieu of bonus based on profits. We are not concerned with such a situation and we agree that in regard to productivity bonus s. 31A shall have operation but it speaks nothing about the other kinds of bonus and cannot, therefore, be said to have the spin-off benefits claimed by the appellant. Similarly, the submission that all agreements inconsistent with the Bonus Act shall become inoperative also has no substance vis-a-vis customary bonus. The fallacy is simple. Once we agree-and this is incontestable now-that the Bonus Act (1965) does not deal with customary bonus and is confined to profit-based or productivity-based bonus, the provisions of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other.

We have reached the end of journey because the focal point of the debate is as to whether customary bonus, as claimed in this case, is impaired or eliminated by the 1976 amendment Act. Moreover, both parties have agreed that throughout they have been dealing with customary bonus only and whenever there has been a settlement or agreement it has been not the source of the right but the quantification thereof. The claim was rooted in custom but quantified by contract. It did not originate in any agreement, but was organised by it. We are, therefore, satisfied that the appeal must fail.

We should have unhesitatingly directed costs to be paid by the management-appellant to the respondent-workmen; but during the course of the hearing we were far from impressed with the attitude taken up by the respondent. While the merits of the matter have to be decided indifferent to such factors, costs are discretionary and we are constrained to dismiss the appeal, directing both the parties to bear their respective costs.

N.V.K. Appeal dismissed.