# Mathuradas Kanji And Ors. vs Labour Appellate Tribunal And Ors. on 7 April, 1958

## Equivalent citations: AIR1958SC899, (1958)IILLJ265SC, AIR 1958 SUPREME COURT 899, 1958 2 LABLJ 265 1958-59 14 FJR 344, 1958-59 14 FJR 344

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## Bench: B.P. Sinha, Syed Jafer Imam, K. Subba Rao

JUDGMENT

K. Subba Rao, J.

1. This appeal by Special Leave is directed against the decision and Order of the Labour Appellate Tribunal of India, Bombay, dated 18-5-1955, modifying the Order of the Industrial Tribunal dated 31-8-1953. The appellants were Government contractors for clearing and transporting of imported foodgrains. They entered into three agreements with the Government - the first and the second appellants on 5-2-1952 and the third appellant on 1-11-1951 - for clearing the cargo at prescribed rates. The three agreements contained similar terms. The said agreements provided that if the rate of discharge on a ship exceeded 1,500 tons per 24 hours and no shed demurrage was incurred, the Government was liable to pay to the appellants remuneration at the prescribed rates plus a bonus of Rs. 4/- per ton, and if the rate of discharge fell below 900 tons per 24 hours or shed demurrage was incurred Government was liable to pay to the appellants remuneration at the prescribed rates less Rs. 8/- per ton. The appellants, for the purpose of carrying out their part of the contracts, employed workmen through muccadums (i.e., gang leaders) on piece rate basis for the purpose of clearing, filing and handling foodgrains, flour and other foodstuffs and loading the same for transport. The total number of workmen employed for the said purpose aggregated to about 2,500 and the appellants carried out the work in three shifts. In March 1952, disputes arose between the appellants 1 and 2 and the workmen employed by them. The second and the third respondents, two unions representing the workmen, demanded for an increase in wages and also put forward a claim for payment of bonus of Rs. 4/- per ton which the appellants might receive from the Government. On 24-3-1952, a settlement was arrived at between the appellants 1 and 2 and the workmen, in and by which the said appellants agreed to pay to the workmen, with effect from 25-3-1952, wages which were considerably higher than the wages which the appellants 1 and 2 were paying before. Though the third appellants were not a party to the said settlement, they also paid the increased wages to the workmen employed by them. The settlement, however did not cover the claim of the workers to the bonus of Rs. 4 /-per ton. As the dispute to that extent was not settled, the Central Government, holding that an Industrial Dispute existed between the appellants and the respondents regarding payment of 'incentive bonus', referred the said dispute for adjudication to the Industrial Tribunal

consisting of Shri S. H. Naik as the sole member. The Industrial Tribunal held, mainly on the basis of a letter written by the Government in September, 1951, that the intention of the Government in granting a bonus of Rs. 4/-per ton to the appellants was that they should pass it on to the labour. It also sustained the claim on equitable considerations, namely, that the employees, who were all temporary workmen, not entitled to gratuity,. Provident Fund and other benefits, should get incentive bonus, when dock workers in the Port Trust and stevedore workers under the Dock Labour Board were getting it. On those grounds, among others, the Tribunal directed the appellants to pay to the workmen concerned incentive bonus referred to in Clause 7(2) of the agreements with effect from 1st November, 1951, and further directed that the arrears should be paid within two months from the date on which the award became enforceable. The appellants carried the matter by way of appeal to the Labour Appellate Tribunal of India. The said Appellate Tribunal, on the materials placed before them, held that in the agreements entered into between the Government and the appellants there was no term to the effect that the bonus of Rs. 4/- per ton was to be passed on to the labour concerned in the work. But, having regard to all the circumstances of the case they were of the view that whatever might have been the strict legal rights of the workmen to the said incentive bonus of Rs. 4/- per ton, it was an addition which they in justice ought to share with the labour, provided the labour had helped them in earning the incentive bonus. They expressed the view that the workmen could claim 45 per cent of the incentive bonus received by the appellants from the Government, but that was subject to the deduction of such penalties as the Government, might have imposed or might impose on the contractors for which penalties the workmen were directly responsible. They also evolved a procedure for the disbursement of the employees' share of the bonus in the following manner:

> (i) "Notice shall be given by advertisement calling upon the workmen who claim to be entitled to this bonus to submit their claims with all available evidence within three months of the date of the advertisement. The claims are to be sent to the Conciliation Officer, Central, at his address at Bombay".
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> (ii) "The Conciliation Officer after receiving such applications will decide after hearing both the parties, upon the individual claims, and will come to a conclusion as to whether the applicant is entitled to bonus, and if so, as to his earnings during the relevant period for the purpose of ascertaining his pro rata share of bonus".
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> (iii) "After the Conciliation Officer has decided as to who are entitled to the bonus and has ascertained the individual earnings, he shall work out pro rata the amount of bonus payable, and the contractors shall pay the amounts so found by the Conciliation Officer".
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> (iv) "All the applications received by the Conciliation Officer after the period of three months shall be barred from consideration". In this appeal the appellants question the correctness of the said Order.

2. The learned Attorney-General, appearing for the appellants, contended that the workmen have no claim to a share in the bonus under the terms of the agreements entered into by the appellants with

the Government, and that that apart, the respondents were not entitled to any bonus as the necessary condition giving rise to a claim for bonus, namely, that the business should have made profits, was neither pleaded nor established before the Tribunal. The first question turns upon the terms of the agreements. The three agreements are couched in similar terms. It would therefore, be sufficient if we consider the terms of Exhibit 'A', the agreement that was entered into between the Union of India and the first appellant. The agreement was only between the Union of India and the first appellant and the workmen were not parties to it. The appellants entered into separate agreements with the workmen through muccadums on piece rate basis. Clause 7 of the agreement dealt with remuneration. It provided for the payment of remuneration to the first appellant at specified rates per ten tons in respect of grains arriving in bulk or loose and for grains arriving in bags. Note 2 to the said Clause of the agreement on the basis of which rival contentions were advanced read as follows:

> "Bonus of 4 annas per ton will be paid to the contractors in addition to the rates given at A (i) and B(i) above if the rate of discharge on a ship exceeds 1,500 tons per 24 hours and no shed demurrage is incurred. A penalty of annas 8 per ton will be charged from them if the rate of discharge falls below 900 tons per 24 hours or shed demurrage is incurred unless the Regional Director (Food) Bombay is satisfied that the shortfall in discharge or shed demurrage was for reasons beyond the contractors' control."

Note 3 may usefully be extracted as it would throw some light on the construction of the terms of the agreement. It was as follows:

> "If the contractors have to pay a rate higher than Rs- 4/2 per 10 tons to their labour for stacking of bags the excess amount actually paid to labour for stacking over the rate of Rs. 4/2 per 10 tons and upto a maximum of Rs. 4/8 per 10 tons would be paid by Government on production of a certificate by the contractor from the Labour Conciliation Officer, Bombay, that the amount has actually been paid to labour. The contractors undertake to keep the rate within Rs. 4/2 per 10 tons as far as possible".

A fair reading of the terms of the agreement indicates that the bonus of annas 4 per ton provided in Note 2 was really an additional remuneration agreed to be paid to the first appellant in case the rate of discharge on a ship exceeded 1,500 tons per 24 hours and no shed demurrage was incurred. Equally, he was liable to a penalty of annas 8 per ton if the rate of discharge fell below 900 tons per 24 hours or shed demurrage was incurred. In the happening of either of the contingencies, it was the first appellant that would be benefited or incur the penalty as the case may be. The said bonus and the penalty were the corresponding benefit and burden which were to go to the appellant alone. If the contention of the workmen should- prevail, the benefit should go to the employees and the burden should be borne by the employer. The terms of the agreement, unless they indicate a clear intention to the contrary, should be so construed that bonus as well as penalty should be received or incurred by the employer in the happening of one or other of the two contingencies. The said term was conceived only in the interest of the parties to that contract and it was to the effect that if the discharge was above the average and if no demurrage was incurred, the Government agreed to pay

him bonus, but if the discharge was below the average or if the Government incurred the demurrage, the contractor was made to suffer. The interest of the employees was not in the picture at all. This view is further strengthened by the circumstance that Note 3 provided for higher rate of payment for stacking of bags, in case the labour was paid higher rate, indicating thereby that the parties to the contract, whenever they intended to provide for the claims of the workers, expressly did so. Though in the tenders submitted by the appellant, as required by the Government, the rates paid to the workmen were given, presumably for purpose of fixing the rates payable to the contractors, it was not mentioned in the agreement that either the entire bonus of annas 4 per ton or a share therein should be passed on to the workers. If that was the intention of the parties, one would expect a specific term to that effect in the agreement. The absence of any such term is a clear indication that the bonus was intended for the sole benefit of the appellant to induce him to discharge his duties under the agreement efficiently without causing any loss to the Government. Further there will be difficulties in working out the terms of the bonus clause, if it was intended for the benefit of the workmen. Admittedly the company did not keen a record containing the names of the workmen, their identity, the work they had done and the remuneration which they received for their services: for they were engaged through muccadums, who supplied labour and received payment. In the case of a fluctuating body of labourers, it was not likely that the parties would have agreed to provide for the payment of bonus, which would necessaryily be subject to deductions for penalty incurred and depend upon the contribution made by the individual members of the body. Realising that no such scheme of bonus could be gathered from the terms of the agreement, an attempt was made to establish before the Tribunal that the Government, subsequent to the agreement, engrafted a new condition on the terms of the agreements to pass on the bonus to the workmen. Exhibit 'U 10' was a letter, dated 14-2-1952, written by the Conciliation Officer (Central) to the appellants, wherein it was pointed out that the Ministry of Food and Agriculture, Government of India, had informed the Conciliation Officer that the contractors were required to pay the amount of bonus of annas 4 to the labour and that the agreement should be taken to be subject to the above condition. If the payment of the bonus of annas 4 to the workmen was not a term in the agreement, the mere fact that, subsequent to the agreement, the Government thought that the bonus of annas 4 per ton mentioned in the agreement should go to the workmen would not conceivably make it a term of the contract, unless the other parties to the contract agreed to the additional term. Admittedly the appellants did not agree to any such new term. In the circumstances, on the construction of the express terms of the contract, we have no hesitation to hold that the bonus of annas 4 mentioned in Note 2 of the agreement was part of an integrated scheme of additional remuneration vouchsafed to the appellants in case they complied with the conditions laid down in the agreement and the workmen employed by the appellants had no right to the same. As we have already pointed out, the other two agreements entered into by the Central Government with the second and the third appellants were similar in terms and what we have stated about the first agreement would equally apply to the construction of the terms of the said two agreements. If so, it follows that the workmen were not entitled either to the bonus under Note 2 to the agreement or to any share therein.

3. The next question is whether the workmen are entitled to claim incentive bonus de hors the agreements. The Appellate Tribunal gave to the workmen a share of the bonus earned by the appellants under the terms of the agreement on the ground that social justice required that the employees, who were all piece rate workers, and had no steady and continuous flow of income and

not entitled to gratuity, provident fund and other benefits, should get a share in the incentive bonus. The learned Attorney-General contended that the respondents claimed bonus only under the terms of the agreement entered into between the Ceiuial Government and the appellants and therefore the Tribunal was not justified in giving relief to them on a different basis. He further argued that the workmen were not entitled to bonus, whether incentive or otherwise, unless the appellants' business made profits, and in this case there was neither an allegation much less proof that the appellants made profits during the years in question.

4. The concept of the word 'bonus' has been succinctly defined and the circumstance under which it is to be paid to the workmen has been clearly laid down by this Court in Muir Mills Co. Ltd. v. Suti "Mills Mazdoor Union, Kanpur, . Various definitions of the word 'bonus' were culled out from authoritative text-books and quoted in the judgment with approval. They accepted the definition of 'bonus' as cash payment made in addition to wages as a stimulus to extra work and efficiency by the labour. But to enable the labour to earn the bonus the following conditions are laid down at page 998 of the case cited above (1) "when wages fall short of the living standard and (2) "the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production".

In the words of Bhagwati J., "The demand for bonus becomes an industrial claim when either or both these conditions are satisfied".

5. Bonus schemes vary with the conditions obtaining in different industries. Though bonus is a cash payment made to the workmen in addition to the wages, it is no longer considered as an ex gratia payment. The claim, if raised, becomes an Industrial Dispute and the award made thereon is binding on the employer as well the employee. One of the categories of bonus is described as 'incentive bonus'. The name indicates that it is given as a cash incentive to greater effort on the part of the labour. But the essential condition for the payment of incentive bonus, just like any other kind of bonus, is that the industry concerned must earn profits part of which is due to the contribution which the workmen made in increasing production.

6. The first question is whether in the case of workmen engaged on piece rate basis, there is any scope for awarding incentive bonus. If the wages of the workmen were fixed and paid on piece rate basis, they would earn more if they worked more and therefore, the argument proceeded, that it was neither just nor equitable to award payment of any further incentive bonus to workmen.

7. Though the incentive to work may be implicit in the system of piece rate work, it may be contended that other devices or adventitious aids may be conceived and implemented to speed up the pace and to induce the labour to put up extra effort. We do not propose to express our opinion in this case on the said question, as, even if payment of incentive bonus was legally permissible; in the case of piece rate work, the workmen would be entitled to it only if the appellants made profits in the business. But in this case the contesting respondents did not claim incentive bonus linking it with profits. There was no allegation at any stage of the proceeding that the appellants made profits due to the contribution which the workmen made in increasing the production. There was also no evidence placed before the Tribunals or before us to prove that the appellants earned profits. In the

circumstances, the workmen were not entitled to incentive bonus claimed by them. In the result the appeal is allowed, but in the circumstances, without costs.