

Sadashiv Engineering Pvt. Ltd And Others Vs State Of Madhya Pradesh And Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Sept. 5, 2022

Acts Referred: Constitution Of India, 1950 " Article 226, 227
Payment Of Bonus Act, 1965 " Section 4, 8, 10, 11, 21, 22, 23, 23(2)

Hon'ble Judges: Vivek Rusia, J; Amar Nath (Kesharwani), J

Bench: Division Bench

Advocate: Girish Patwardhan, Kirti Patwardhan

Final Decision: Dismissed

Judgement

Vivek Rusia, J

1. Regard being had to the similitude in the controversy involved in the present case, with the consent of the parties, these petitions are finally heard

and decided by a common order. Facts of W.P. No.4401 of 2022 are narrated hereunder.

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the order dated 14.10.2019 passed by the

Labour Commissioner in Case No.708/7/Teen/2019/48768-74 and order dated 10.01.2022 passed by the Presiding Officer, Industrial Tribunal

(pronounced on 25.01.2022) in Reference No.16/ID/19.

2. The facts of these cases in short are as under:-

2.1. The petitioner is a Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale

of small auto parts and auto components which are used by EICHER Motor & Force Motors. Respondent No.2 is a registered trade union and the

members of the Union are working in the plant of the petitioner.

2.2. Respondent No.2 raised a dispute about the payment of bonus for the year, 2017 " 18 @ 20% of their wages. A demand letter dated

11.09.2019 was submitted before respondent No.1. The petitioner was called upon by a Labour Officer, Pithampur to supply the balance sheet and

form No.A, B & D for the year, 2017

" 18 for the purpose of conciliation between them. The petitioner appeared and produced the aforesaid balance sheets and forms and submitted that

the bonus @ 8.33% has already been paid to the members of the Union, hence, claim of 20% is not tenable. Since no settlement arrived, the

conciliation proceedings ended into failure and the dispute was referred to the Labour Court for adjudication on the following terms of reference:-

2.3. The aforesaid reference was registered as Reference No.16/ID/19 and the parties were directed to submit the statement of claims and written

statement. Respondent No.2 submitted a claim and the petitioner / Company submitted a reply and issues were framed. All the parties have examined

their witnesses and after evaluating the evidence and material that came on record vide award dated 25.01.2022, learned Tribunal has partly allowed

the claim by directing the petitioner / Company to pay bonus @ 13% to all the workmen / members of respondent No.2, hence, the present writ

petition is before this Court.

3. Shri Girish Patwardhan, learned Senior Counsel for the petitioner submits that respondent No.2 claimed a bonus of 20% before the Labour

Commissioner as well as before the Industrial Tribunal but they have not filed any evidence in support of the claim. The learned Tribunal has

arbitrarily directed the petitioner / Company to pay a bonus of 13% without appreciating the evidence. Learned Senior Counsel further submits that on

the basis of profit & loss of the Company, bonus for the year, 2017-18 @ 8.33% had already been paid to all the workers. It is further submitted

by the learned senior counsel that Section 23 of the Payment of Bonus Act gives presumption about the accuracy of audited balance sheets and

profits & loss accounts of the Company. The petitioner has filed account books, profit & loss statement duly certified by the Chartered Accountant in

which the profit for the year 2017-18 was declared and on the basis of which bonus @ 8.33% has rightly been paid to the workmen, therefore,

without any basis and material, bonus @ 13% has been awarded which is per se illegal and liable to be set aside.

4. We have heard learned Senior Counsel for the petitioner and perused the record.

5. The Payment of Bonus Act, 1965 enacted by the Central Government in order to provide rights of bonus to persons employed in certain

establishments on the basis of profit or on the basis of production activities. Section 4 of the Act provides for the computation of gross profits derived

from establishment in respect of each accounting year.

6. Section 8 of the Act provides for eligibility criteria for bonus and according to which every employee shall be entitled to be paid by his employer in

an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working

days in that year.

7. Section 10 of the Act provides that every employer shall be bound to pay to every employee in respect of accounting year a minimum bonus @

8.33% of the salary of wages during the accounting year. Likewise Section 11 of the Act provides for maximum limit of bonus up to 20% of the salary

or wages. Therefore, in view of Sections 10 & 11 of the Act, it is mandatory on the part of the employer to give bonus ranging from 8.33% up to

20%.

8. Section 21 of the Act provides for recovery of bonus due from the employer, where any money is due to an employee by way of bonus from his

employer, he may make an application before appropriate Government for recovery of money and on certification issued by the authority of the

appropriate Government, the Collector shall recover the amount as land revenue.

9. Section 22 of the Act provides for reference of a dispute for adjudication as an industrial dispute to an arbitrator or Tribunal constituted under the

Industrial Disputes Act, 1947. Shri Patwardhan has rightly said that Section 23 of the Act gives presumption about accuracy of balance sheets and

profit & loss in the account of the Company.

10. Sub-section (2) of Section 23 gives an authority to the learned Presiding Officer to call clarification from the employer relating to any item in the

balance sheet and profit & loss account.

11. In the present case, the petitioner examined Sudhanshu Sharma before the Tribunal and he deposed that the financial condition of the Company

was not sound at the relevant financial years, therefore, bonus more than 8.33% could not be paid to the workers. In cross-examination, he has

admitted that he and his wife are Director in Galaxy Components Private Limited and Sadashiv Engineering Private Limited i.e. the petitioners in both

the writ petitions and likewise his son Varun Sharma is also working as Manager in both the Company and getting the salary. Both the companies are

purchasing the oil from J. J. Sharma and making the payment. After examining the record, the Tribunal has found and held that with an intention to

give less bonus to the worker, the petitioner / Company has shown the expenditure as zero allocable surplus. If the salary paid to Sudhanshu Sharma is

deducted, then sufficient amount would be available to the Company to pay the bonus more than 8.33%. It has also been noted that in order to conceal

the allocable surplus of 2017-18, balance sheets of last five years have not been submitted. The petitioner / Company earned total income of

Rs.8,50,301/- in the year 2017-18, but showing the expenditure, it remained Rs.3,14,301/- and Company paid bonus of Rs.3,71,702/- @ 8.33%,

therefore, the Tribunal after examining the profit & loss statement of the Company and appreciation of evidence, has rightly awarded bonus @ 13%.

We are not inclined to interfere with the well reasoned order in exercise of power conferred under Article 227 of the Constitution of India.

In view of the above, present Writ Petition stands dismissed.

The order passed by this Court in the present case shall govern the connected petition also, therefore, W.P. No.4617 of 2022 also stands dismissed.

Let a copy of this order be kept in the connected petition also.