
N.S. Hospital and Maternity Home Vs Industrial Tribunal and Another

O.P. No. 3287 of 2000-N

Court: High Court Of Kerala

Date of Decision: Sept. 29, 2000

Acts Referred:

Payment of Bonus Act, 1965 " Section 23, 25

Citation: (2001) 1 LLJ 60

Hon'ble Judges: J.B. Koshy, J

Bench: Single Bench

Advocate: M. Ramachandran and P. Ramakrishnan, for the Appellant; Ashok B. Shenoy, Lakshmi B. Shenoy and Priya K.R., for the Respondent

Judgement

J.B. Koshy, J.

Petitioner is challenging Ext. P1 award passed by the Industrial Tribunal awarding 20% bonus for the 1993-94 and 1994-

95 for the employees employed in the petitioner establishment. With regard to coverage of the establishment, it was stated in the written statement

that petitioner's establishment was employing less than ten persons and the Act is not applicable. As a finding of fact Tribunal found that the

establishment is employing more than ten persons and Act is applicable. It is a finding of fact and no interference is called for regarding coverage of

the establishment. It was argued that Hospital as such was covered under the Payment of Bonus Act. According to the respondents, all

establishments covered under the Shops and Commercial Establishments Act employing ten or more persons are specifically covered under the

Payment of Bonus Act in view of notification No. 1852/A2/76/L&H dated October 21, 1978. Hospital is an establishment covered under the Act.

Even if provisions of the Act are exempted for the hospital by separate notification under the Act, establishment defined under the Act are covered

under the Payment of Bonus Act in view of the Notification dated October 21, 1978. Ext M-58 in I.D. No. 16 of 1996 is the Certificate of

Registration under the above Act to the petitioner hospital. In view of exemption granted under the Shops Act earlier SRO 1777/1993 the

hospital, was specifically covered under the Shops Act. In any event, a reading of the impugned award shows that the only dispute pressed by the

petitioner regarding coverage of the establishment was that since the establishment was not employing ten or more persons, statutory bonus is not

payable. That is found against.

2. With regard to awarding of 20% bonus, the Tribunal found as follows:

.....To rebut the claim of the union for maximum Bonus and when it is disputed by the management the burden is heavily upon the management to

prove the same by producing balance sheet and connected records. But in this case except income statement the management has not produced

any other records even after this Court directed the management to produce income and expenditure accounts with connected records, audited

Balance Sheet and Profit & Loss Account etc. at the instance of the union. But the management did not produce the same without any explanation

what so ever. MW 1 has admitted that he has duly audited accounts for the years 1993-94 and 1994-95 and found out the allocable surplus which

is in his possession. Sub-section 2 of Section 23 of the Bonus Act clearly states that the management must produce the records as required by the

union as directed by the Court. As per Sub-section (b) of Section 4 of the Bonus Act the gross profit derived by the opposite party from his

establishment in respect of the accounting years shall be calculated in the manner specified in the second schedule. But this Tribunal is not in a

position to fix the rate of bonus in the absence of relevant records. Admittedly management is having audited accounts showing allocable surplus

but it is not forthcoming. In these circumstances it can only be concluded that the management has deliberately not produced the relevant records

because if produced that would prove against the case of management and support the case of union. In this state of affairs adverse inference is

necessarily to be drawn and it can only be held that the management has earned substantial profit and the workers are entitled to get 20% bonus

for the disputed years as claimed by the union.

3. It is seen that in spite of the specific request by the union, the account books were not produced by the management which management was

bound to produce as per Sections 23 and 25 of the Payment of Bonus Act and as per directions of the Court order. Only statement of income and

income tax return were produced. That is not at all enough in the absence of non-production of audited accounts and Balance Sheet as prescribed

under the Bonus Act. Petitioner's attitude was very adamant before the Tribunal. It is true that Tribunal can appoint an auditor for auditing the

accounts. Section 25 of the Payment of Bonus Act provides as follows:

25. Audit of accounts of employers, not being corporations or companies:

(1)

Where any dispute of the nature specified in Section 22 between an employer, not being a corporation or a company, and his employees has been

referred to the said authority under that section and the accounts of such employer audited by any auditor duly qualified to act as auditor of

companies under Sub-section (1) of Section 226 of the Companies Act, 1956 (1 of 1956), are produced before the said authority, the provisions

of Section 23, shall, so far as may be, apply to the accounts so audited (2) When the said authority finds that the accounts of such employer have

not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question

referred to it, then, it may, by order direct the employer to get his accounts audited within such time as may be specified in the direction or within

such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(3) Where an employer fails to get the accounts audited under Sub-section (2) the said authority may, without prejudice to the provisions of

Section 28, get the accounts audited by such auditor or auditors as it thinks fit.

(4) When the accounts are audited under Sub-section (2) or Sub-section (3) the provisions of Section 23 shall, so far as may be, apply to the

accounts so audited.

(5) The expenses of, and incidental to, any audit under Sub-section (3) (including the remuneration of the auditor or auditors) shall be determined

by the said authority (which determination shall be final) and paid by the employer and in default of such payment shall be recoverable from the

employer in the manner provided in Section 21.

For giving a direction u/s 25(3) also accounts has to be produced before the Tribunal. When management asserted that its accounts were audited it

is necessary for the Tribunal to verify the above statement and peruse whether it is audited or whether any direction u/s 25(2) and 25(3) is

necessary. Of course matter would have been different if the employer produced the audited Balance Sheet and Profit and Loss Account before

the Tribunal as prescribed u/s 23(1) and 25(1). Petitioner has a duty to produce the accounts when ordered by the Tribunal. That was not done in

this case. Therefore, it cannot be stated that Tribunal's award is wrong. However, there should have been some more material to award maximum

bonus even though petitioner was responsible for the same.

4. On the facts of this case, since the allocable surplus is not found out, I set aside the Tribunal's order on the following conditions:

(1) Petitioner

shall pay cost of Rs. 10,000/- to the second respondent within two months from today as it was dragged to this Court for failure of the petitioner in

producing the accounts and had to engage an advocate; (2) Petitioner shall produce relevant audited accounts for the years 1993-94 and 1994-

95, as submitted by him are in his possession, before the Tribunal within two months from today. If there is no audited accounts but only general

ledger and other accounts, it shall be produced before the Tribunal to take a decision as per Section 25(2) or (3) as the case may be. If these

conditions are complied with within two months from today the Tribunal shall re-adjudicate the same according to law expeditiously. Otherwise the

award shall stand confirmed.

5. The original petition is disposed of accordingly.