Royal Western India Turf Club Ltd. Vs Meher M.R. and Others

Court: Bombay High Court

Date of Decision: Sept. 19, 1961

Acts Referred: Industrial Disputes Act, 1947 â€" Section 12(5)

Citation: (1962) 2 LLJ 683

Hon'ble Judges: Shah, J; A.N. Mody, J

Bench: Division Bench

Judgement

Mody, J.
The petitioners are the Royal Western India Turf Club, Ltd. and respondent 3 are a union registered under the Indian Trade

Unions Act. The petitioners conduct horse races. The races are held between the months of November and April in Bombay and between July

and October at Poona. For it business the petitioners engage employees, who are in their permanent service. But besides those permanent

employees, the petitioners employ other persons temporarily for working on race days. The permanent employees are not members of the

respondent 3 union, but only such temporary employees are members of that union. Those employees made a demands for bonus for the year

1956-57. The petitioners resisted that demand. There were certain conciliation proceedings held, but the same were infructuous. Ultimately, the

respondent 2 which is the State of Maharashtra, made an order dated 25 April, 1960, under S. 12(5) of the Industrial Disputes Act, 1947,

referring the said dispute about bonus for adjudication to the respondent 1, who constituted the industrial tribunal. The respondent 1 thereafter held

adjudication proceedings before it and ultimately made its award dated 16 February, 1961. By that award, the respondent 1 directed payment of

bonus in a particular manner and at a particular of bonus in a particular manner and at a particular rate to the temporary employees of the petition.

The petitioners have filed this petition challenging that award.

2. Mr. Zaveri, who appears on behalf of the petitioners, has urged three contentions in support of his challenge to the said award. He has

contended that looking to the nature of the employment of these employees they cannot claim bonus if bonus is understood in its correct sense.

Secondly, he has contended that even if bonus is capable of being claimed or paid to these employees, the award does not disclose that the

necessary material was placed before the respondent 1 or has been considered by the respondent 1 in its award which would justify payment of

any bonus. The third contentions urged is that the respondent 1 has in its award taken an extraneous circumstance into consideration, namely, that

there was a practice of the petitioners to pay bonus to the employees, even though they might be temporary employees till 1951 and that the

consideration of this circumstances is so mixed up with the others that it cannot be separated, and that therefore the award must be held to be

invalid. Based on the said first contention, Mr. Zaveri contended that as the demand was for a payment, which could not be said to be bonus and

as what the respondent 1 has awarded by its award is called bonus, but in fact is not bonus, the respondent 1 had no jurisdiction in the matter.

Based on his said second contention, Mr. Zaveri contended that the respondent 1 has arrived at the conclusion as embodied in the said award,

without any material before it and that the award cannot therefore, be sustained, and is bad in law. Based on the third contention Mr. Zaveri

contended that as the extraneous circumstance must have affected the mind of the respondent 1 when it made its award and as the extraneous

circumstance cannot be separated, the whole award is vitiated.

3. In Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur, , the Court has enunciated the following test as to what is bonus :

There are, however, two conditions which have to be satisfied before a demand for bonus can be justified and they are :

(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.

4. Mr. Zaveri has relied upon the said first condition in support of his argument on the first contention. Now, to ensure a living standard, social

justice requires that a minimum living wage must be paid by every employer to his employee. In practice, however, in most cases the actual wage

paid to every workman falls short of such minimum living wage. The idea underlying the first condition, as laid down by the Supreme Court,

appears to be that when a workman depends for his livelihood on his employer the amount of wages which the employer should pay to the

workman, should at lest be such that same should ensure a living standard to the workmen and that bonus should be paid to the workmen to

bridge the short-fall which may exist between the actual wage and the minimum living wage. Although payment of at least a minimum living wage

would be that goal, it may be that in some cases the employer may not be in a position financially to pay the same and that is why in fixing the

amount of bonus the financial position of the employer has to be taken into consideration. The other reason why a bonus is to be paid to workmen

is as mentioned in the said second condition laid down by the Supreme Court, that he workmen must share in the profits of the industry, which

have resulted by reason of their labour. We are, however, not concerned with the said second reason in this case. But it is clear that bonus can be

ordered to be paid only when both the said conditions are fulfilled. We must, therefore ascertain whether the first condition is capable of being

fulfilled in this case.

5. It is necessary to bear in mind certain facts concerning the said temporary workmen of the petitioners. The temporary employees, barring some

few exceptions employed by the petitioners in Poona during the season at Poona, are different from the temporary employees employed at

Bombay during the racing season in Bombay. The temporary employees were employed in the relevant year for about 28 days in Bombay and for

about 14 days in Poona. None of the temporary employees worked for the petitioners except on these days. Even on those days they did not

work for the full day, but only a part of the day. The petitioners were under no obligation to employ the same persons as temporary employees,

but in practice the petitioners engaged the same persons for the same job so far as they were available for the work. This was done year after year.

It cannot be disputed, and in fact is not disputed however, that there was no obligation on any of the said employees to work for the petitioners on

any of those days. In practice however, such employees used to give reasonable intimation to the petitioners in case they would not been attending

on any particular day on which otherwise they would have found employment with the petitioners in that manner. The nature of the employment of

this class of employees is very pertinent to be born in mind when considering their claim for payment of bonus. The basic concept of the payment

of bonus is, as considered earlier, that the employer of an employee should pay him, at least such wages as can be said to be the minimum living

wages. That obligation can be cast on the employer in such cases where the employee depends on that employer for his livelihood. An employer

would, therefore be under an obligation to pay a bonus this employee when the employee is in his employment permanently. The permanence of

the employment need not be in the sense of the employment being for the whole year. It may even be a seasonal employment in the sense that the

industry may be working only in a certain season, that is, only for a number of months in a year and not the whole year, but the essential feature

would be that during the period during which the employee works for the employer he depends on his employer mainly, if not wholly for his

livelihood. In the case of the employees of the petitioners who are temporary employees of the nature mentioned earlier, they would not be

depending on the petitioners as their employer to provide them for their livelihood. The persons, who take such temporary employment with the

petitioners, may themselves be regularly employed elsewhere or may even be retired persons drawing a pension, or even not drawing a pension or

students or of any such other category of person. It cannot, therefore, be said that such employees would depend for their livelihood on the

petitioners. It can even happen that between different persons doing the same type of work with the petitioners and getting the same wages, some

may be getting higher wages elsewhere, some may be getting lower wages, and some may no be otherwise earning at all as in the case of students.

There, therefore cannot exist in that class of employees one standard for judging the gap between the actual wage and the minimum living wages,

which may sought to be filled up wholly or partly, by payment of a bonus. What the petitioners would pay to such temporary employees would be

in the hands of the employees merely by way of supplementing their regular income if they have any such regular income otherwise. It is therefore,

clear that intrinsically it is impossible that the first condition constituting bonus laid down by the Supreme Court is capable of being applied or

fulfilled in the case of employees of that nature of the petitioners. The said claim therefore, made by the respondents 3 was not a claim for bonus

and it is therefore, clear that the respondent 1 had no jurisdiction to make the said award for payment of a bonus.

6. In view of the conclusion, which we have reached on the first contention of Mr. Zaveri, it is not necessary for us to decided the other

contentions. However, even if the said a demand made by the respondent 3 on behalf of the temporary employees could be said to be a demand

or payment of bonus, it appears from the award that it had not been shown by the said employees that there was in full a gap between the actual

wage and minimum living wage. In views of the peculiar nature of their employment, it was necessary for them to show what would be said to be

the minimum living wages which the petitioners as the employers should have paid to such temporary employees. In view of the fact that those who

worked at Bombay worked only for about 28 days in a year, and those who worked in Poona worked only for about 14 days in a year, in proof

as to the minimum living wage, which the petitioners ought to have paid, was necessary. However, that aspect does not seem to have been taken

into consideration by the respondent 1 in its award. If it was, therefore, necessary for us, we would have held the award to be invalid by reason of

this ground also.

7. As regards his third contention, Mr. Zaveri relied upon the judgment of the Supreme Court in Ispahani Ltd., Calcutta Vs. Ispahani Employees"

Union, . In its award the respondent 1 has made a reference to the practice of the petitioners to pay bonus till the year 1951. Mr. Zaveri wanted to

contended relying upon this Supreme Court judgment that the three tests lad down by the Supreme Court in this judgment, which must be fulfilled

before a practice can become a term of contract, have not been considered and applied by the respondent 1 in its award. We, however feel that

this contention of Mr. Zaveri is misconceived. In the Supreme Court case bonus was claimed not by way of filling up the gap between the actual

wage and the minimum living wages, but by way of an implied term of the contract. The three tests laid down by the Supreme Court must be

fulfilled only in those cases where bonus is claimed on the basis of an implied term of a contract. The amount claimed by the temporary employees

of the petitioners as a bonus was not claimed by way of any implied term of a contract and, therefore, the contention urged by Mr. Zaveri is

misconceived.

8. By this petition, the petitioners had also challenged the order made by the respondent 2, the State of Maharashtra, under S. 12(5) of the

Industrial Disputes Act, 1947. It was because of the challenge to the order that the respondent 2 had appeared. As Mr. Zaveri, however, has

made it clear that he does not now challenge that order of the respondent 2, it is not necessary for us to decide the same.

9. Under the circumstances aforestated, the petition against the respondents other than the respondents 2 succeeds and we make the rule absolute

and set aside the said award. As the petitioners have not pressed the petitioner as against the respondent 2, the petition is dismissed as against

them, and the petitioners shall pay the costs of the respondent 2, as between the petitioners and other respondents, there will be no order as to

costs.