

Shiva Bangles Stores and Another

Vs

Industrial Tribunal (II) U. P. and Others

Civil Appeal No. 1820 of 1971

(C. A. Vaidialingam, I. D. Dua JJ)

20.03.1972

JUDGMENT

ORDER. -

1. In this appeal by appeal by Special Leave the Appellant challenges the order of the High Court more or less dismissing in limini the Civil Miscellaneous Writ Petition No. 4025 of 1970, filed by the Appellant for quashing the award of the Industrial Tribunal, Lucknow.
2. The claim of the workmen was for payment of bonus at the maximum rate fixed under the Payment of Bonus Act, 1965, namely 20 per cent. It is seen from the award of the Tribunal that the proceedings were adjourned to enable the Appellant to enter appearance and contest the proceedings. According to the Tribunal though the Appellant had been properly served it remained absent. On this basis the Tribunal set them ex-parte and on the sole oral evidence so to day adduced on the side of the workmen has accepted the case of the respondents that the concern has made a profit of about Rs. 2.75 lakhs in the year 1967-68 for which bonus was claimed. The Tribunal has also accepted the oral evidence that the Appellant is a very flourishing concern. Quite naturally, as the Appellant did not appear before the Tribunal, the latter ultimately passed the award in question directing the Appellant to pay the bonus at the maximum rate of 20 per cent. prescribed under the Act.
3. The main grievance of the Appellant before the High Court appears to have been that no notice of the proceedings before the Tribunal was received nor has the notice been effected in accordance with the provisions contained in the rules regarding thereto. As we have mentioned earlier, the High Court is of the view that substantial justice appears to have been done by the Industrial Tribunal in the impugned award and on this basis rejected the writ petition.
4. In our opinion an adjudication, and then an award for bonus, which is exclusively based on the provisions of the Payment of Bonus Act have to be done in accordance with the provisions laid down therein. After ascertaining the gross profits there is a duty on the part of the concerned Industrial Tribunal to work out the available allocable and available surplus in accordance with the provisions contained in the said Act. The maximum amount of bonus at 20 per cent. under the Act can only be awarded if the profits arrived at by the Tribunal in accordance with the statute has been found to be such as to justify the said award of bonus. As we have already pointed out, the award in this case is exclusively based on the oral evidence adduced by the workmen. One can very well appreciate, that situated as they are, the Respondents also would not have been in a position to place the necessary materials before the Tribunal in this regard. Therefore, a reading of the award clearly gives impression that the finding that profits arrived at by the appellant has been Rs. 2.75 lakhs for

the year in question, appears to be more or less a guess work not based upon any of the materials that should be taken into account as provided under the Act. It is not necessary to consider whether there has been a proper service of notice on the Appellant as required by the Act and the rules framed thereunder. At any rate, we are satisfied that the interest of justice requires that the claim regarding bonus will have to be adjudicated upon by the Tribunal afresh after giving the Appellants, as well as the Respondents a fresh opportunity of placing the necessary materials bearing on the question.

5. Counsel for both the parties have agreed before us that they will appear before the Tribunal on May 1, 1972. On that day the Tribunal, after noting their appearance will give suitable directions regarding filing of statements by both the parties in respect of their respective claims. After these formalities are over, the Tribunal will proceed to adjudicate upon the claim in respect of bonus for the year in question, in accordance with the provisions of Payment of Bonus Act, 1965.

6. In the result, the order of the High Court, dated August 20, 1970, as well as the award the Tribunal, dated March 20, 1970, are both set aside and the appeal allowed. The dispute is referred back to the Tribunal for fresh adjudication in the light of the directions and observations contained in this judgment.

7. The appellant will pay the cost of Respondents in this Court as well as the cost incurred by them before the Tribunal when it was originally heard.

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