

Madurai Coats Ltd.

Vs

The Workmen of Madurai Coats Ltd. Represented by the Secretary and 51 Others

Civil Appeal No. 147 Of 1976

(Y.V. Chandrachud, P.K. Goswami JJ)

02.09.1976

JUDGMENT

CHANDRACHUD, J. –

1. On May 7, 1975 the respondents entered into an agreement with the appellant-company under which they became entitled to receive a sum of Rs. 135 lakhs by way of bonus for the period January 1, 1974 to June 30, 1975. On September 25, 1975 the Payment of Bonus (Amendment) Ordinance (11 of 1975) came into force. The ordinance introduced significant amendments in the Payment of Bonus Act, 21 of 1965. On October 14, 1975 the appellants gave a notice to the respondents stating that since the agreement stood superseded by the ordinance, it had become necessary to recalculate the bonus which would be payable under the ordinance. Thus calculated, the bonus according to the appellants would not exceed Rs. 48 lakhs. On October 30, 1975 the Government of Madras made a reference to the Special Industrial Tribunal as regards the continued validity of the agreement of May 7, 1975 and for determination of the amount which would be payable to the respondents under the ordinance if the agreement was superseded by the ordinance. By its award dated December 31, 1975 the tribunal held that the agreement continued to be valid and operative despite the ordinance since existing agreements were not hit by the ordinance. In view of this finding it became unnecessary for the tribunal to consider the second issue as to be amount which would be payable to the respondents under the ordinance.

2. On February 11, 1976 the ordinance became an Act [Payment of Bonus (Amendment) Act, 23 of 1976] and was given retrospective effect from September 25, 1975 being the date on which the ordinance had come into force. By Section 19 of the Amendment Act of 1976 a new section, Section 31A, was inserted in the Payment of Bonus Act, 1965. That section reads thus :

31A. Special provision with respect to payment of bonus linked with production or productivity, - Notwithstanding anything contained in this Act, -

(i) where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976, or

(ii) where the employees enter into any agreement or settlement with their employer after such commencement,

for payment of an annual bonus linked with production as productivity in Lieu of bonus based on profits payable under this Act, then, such employees shall be entitled

to receive bonus due to them under such agreement or settlement, as the case may be  
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Provided that such employees shall not be entitled to be paid such bonus in excess of twenty per cent of the salary or wage earned by them during the relevant accounting year.

3. Section 31A was initially introduced by the ordinance but the form in which the section was cast and the inadequately expressed marginal note accompanying it led to interpretational difficulties. The wording of that section is in material particulars identical under the ordinance and the amending Act but the ordinance did not divide the section into two separate clauses, (i) and (ii), as the amending Act does. That left scope for the argument that the concluding clause beginning with the words "for payment of an annual bonus" and ending with the words "as the case may be" governed only post-amendment agreements as were referred to in the later part of the section and did not affect the validity of the pre-amendment agreements which were referred to in the earlier part. The tribunal preferred the interpretation that the concluding clause of Section 31A as introduced by the ordinance did not affect the validity of prior agreements and therefore the agreement in the instant case continued to be operative despite the issuance of the ordinance.

4. The Amending Act of 1976 which came into force after the award was made resolves the difficulty. By dividing the section into two separate clauses, the legislature has manifested its intention in clear terms that all agreements or settlements, whether entered into before or after September 25, 1975, would attract the section if they fall within its terms. The marginal note to Section 31A as introduced by the ordinance read to say : "Special provision with respect to certain employees for payment of bonus". The marginal note to the section as introduced by the amending Act shows that the special provision contained in the section is related "to payment of bonus linked with production or productivity". As the Act has been given retrospective effect from the date of the ordinance and since the circumstance that the agreement or settlement was entered into prior to that date is not a matter of relevance, the award of the tribunal has to be set aside.

5. The reference will now go back to the tribunal for determination of the question whether the agreement dated May 7, 1975 is "for payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable" under the Bonus Act, 1965. If the answer to this question is in the affirmative, parties will be governed by the agreement and the respondents shall be entitled to receive bonus due to them thereunder, subject to the proviso to Section 31A. If, on the other hand, the agreement falls outside that section, the tribunal will have to consider to second issue arising under the reference and determine the amount payable to the respondents under the Bonus Act, 1965 as amended by the Amending Act, 23 of 1976.

6. Accordingly, we set aside the award and remit the reference back to the tribunal for making a fresh award in the light of the directions given above. The tribunal will decide the other issues also so that the entire reference shall stand disposed of. Since the matter is pending for a long time, the tribunal will dispose of the reference expeditiously. There will be no order as to costs.

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