**BOMBAY HIGH COURT**

Prakash Cotton Mills

Vs.

State of Bombay

O.C.J. Appeal No. 92 of 1956. Miscellaneous Suit No. 268 of 1956

(M.C. Chagla, C.J. and S.T. Desai, JJ.)

26.06.1957

**JUDGMENT**

**M.C. Chagla, C.J.**

1. This appeal raises a rather important question as to the powers of the Government to direct under Section 114(2) of the Bombay Industrial Relations Act, 1946, that an award passed under the provisions of Section 115A should be applied to certain employers who were not parties to the dispute. There was an industrial dispute between the Rashtriya Mill Mazdoor Sangh and the Textile Mills on the question of bonus, and a reference was made to the Industrial Court under Section 73A. Petitioner No. 1 company, which was also a party to that dispute, represented to the Tribunal that its case should be separately considered from the case of other mills inasmuch as it has been making losses from 1950 onwards, and as far as it was concerned no question of paying bonus to the employees could arise. The reference, therefore, was separated with regard to petitioner No. 1 company. While the reference was pending, the Rashtriya Mill Mazdoor Sangh and the Mill Owners Association entered into an agreement and they fixed the basis of the bonus that was to be paid to the employees, and in this award there was a reference to those mills which had been making loss and the provision was that with a view to creating better relations between the workers and the industry and for continuing peace in the industry but without creating a precedent, the mills which fell in that category should pay to their employees a minimum bonus equivalent to 4.8 per cent, of the basic wages earned by them during the year. Petitioner No. 1 company was not a party to this agreement, and an award was passed in terms of the agreement under Section 115A and it became binding upon those mills which had subscribed to that agreement.

2. The Government subsequently proceeded under Section 114(2) of the Act and gave notice to petitioner No. 1 company, and after hearing the company directed that the award shall be binding upon the various mill companies among which was petitioner No. 1 company. This was done by a Notification of July 81, 1936. The result of this Notification was that petitioner No. 1 company was as much bound by the award as the mill companies which were parties to the agreement, and further the important consequence that flowed from this notification issued by the Government was that petitioner No. 1 company became liable to pay bonus to its employees in terms of the

agreement, to which a reference has just been made. This Notification was challenged by petitioner No. 1 company before Mr. Justice Tendolkar on various grounds. The learned Judge dismissed the petition and the petitioners have now come in appeal before us.

3. What is strenuously urged by Mr. Bhatt is that the Supreme Court in a recent decision in *Muir Mills Co., Ltd. v. Suti Mills Mazdoor Union, Kanpur*[1], has held to the following effect (p. 999) :

> "It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. Because if it were so it would necessarily rank for precedence before dividends. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can also arise for distribution of any sum as bonus amongst the employees. If the industrial concern has resulted in a trading loss, there would be no profits of the particular year available for distribution of dividends, much less could the employees claim the distribution of bonus during that year."

and taking that view, the Supreme Court set aside the decision of the Industrial Tribunal which had awarded bonus when the employer had made no trading profits. Mr. Bhatt says that here we have a case where admittedly petitioner No. 1 company has made no trading profits, that there is no surplus from which the bonus can be paid by the employer to the employee, and, therefore, the direction issued by the Government under Section 114(2) is an illegal direction.

4. It is urged by Mr. Bhatt that what cannot be done by an Industrial Court in an industrial dispute which is referred to it by means of an award can equally not be done by the Government by means of the machinery provided under Section 114(2). If an award made by the Tribunal awarding bonus in a case where there are no trading profits is illegal, then equally illegal is the direction of the State Government to the employer under Section 114(2) to pay bonus when there is an absence of the source from which the said bonus could be paid. Now, in our opinion, the case that the Supreme Court was dealing with is entirely different from the one that we have before us. The Supreme Court was concerned to determine the jurisdiction of an Industrial Court in a reference made to it on an industrial dispute arising and the decision of the Supreme Court is that an Industrial Court has no jurisdiction to make an award awarding bonus when the employer has made no trading profits out of which the bonus can be paid. The case that we have here is a case of an agreement arrived at between the employer and employees. There is nothing whatever to suggest in the judgment of the Supreme Court that whatever might be the result of an adjudication by an Industrial Court, whatever result might follow upon a disputed and contested reference, that the employer and employee are prevented or precluded from entering into an agreement which is not against the law or against public policy. The basis of the award, in our opinion, is the agreement arrived at between the employer and the employee and there is no law which we are aware of which prevents the employer from saying that he would pay to the employee bonus notwithstanding that he made no trading profits. If, therefore, the agreement entered into between an employer and an employee

[1](1955) 1 S.C.R. 991

was a valid agreement, then legal effect must be given to that agreement under Section 115A. The provisions of Section 115A are mandatory, and unless the agreement is in contravention of any of the provisions of the Act or is vitiated by those factors which vitiate a contract, there is no option left in the Industrial Court except to give effect to the agreement and pass an award in terms of the agreement. It is urged by Mr. Bhatt that this award is as illegal as the award which the Supreme Court was considering, because by this award the employers are made to pay bonus when there are no trading profits. But what is overlooked is that the basis of this award is a valid agreement. One can well imagine a case where the Court may have no jurisdiction to pass a decree or order in invitum and yet the Court would be in a position to pass a decree or order or indeed it may be compelled to pass a decree or order if parties suijuris went to the Court and submitted to the Court an agreement upon which they have arrived. Therefore, this is a case where a judgment or an award is passed by an Industrial Tribunal as a result of a valid agreement arrived at between two parties who are capable of contracting and where an agreement is arrived at which is not vitiated by any factors which would vitiate a contract. Therefore, to say that this award stands on the same footing as the award which the Supreme Court was considering is to try and equate two decisions which have no resemblance to each other. The question then is that if the award under Section 115A is a valid award, whether the power given to the State Government under Section 114(2) has been properly exercised. The Legislature in its wisdom has expressly conferred upon the State Government power to make an award binding upon the party when that party had not consented to the agreement which ultimately resulted in the agreement. The principle underlying Section 114(2) is clear. Notwithstanding the want of consent on the part of a particular employer, if the State Government is satisfied that an agreement entered into by a body of employees and employers is conducive to the interest of labour, is conducive to industrial peace and industrial progress of the country, the State Government has been given the power to compel a recalcitrant employer to submit to the same award as the willing and co-operative employers have done. Therefore, it is no argument to suggest that petitioner No. 1 company was not a party to the agreement, that it was not bound by the award and the State Government has compelled it by its direction under Section 114(2) to pay bonus which it was not in a position to pay and which it was not bound to pay. The very purpose of Section 114(2) is to compel employers like petitioner No. 1 company to fall into line with the industrial policy which in the opinion of the Government is a policy conducive to public interest. But it is said that whatever the powers of Government may be, they do not extend to compelling an employer to submit to a provision which is contrary to law. Mr. Bhatt says that if the Industrial Tribunal in a reference could not have compelled petitioner No. 1 company to pay the bonus, surely it is not possible for the State Government to compel it and to regularize what the Supreme Court has declared to be illegal. There is again a misapprehension as to the principle underlying Section 114 and the powers and jurisdiction of an Industrial Tribunal. We have already pointed out that now it is settled law in view of the judgment of the Supreme Court in Muir Mills case that an Industrial Court has no jurisdiction to award bonus when an employer has made no trading profits. But when the State Government acts under Section 114(2), it is not acting in the same capacity as the Industrial Tribunals are acting under the Act, The powers of the State Government are distinct and separate. They have been expressly conferred because the Legislature felt that the State Government should be armed with such powers, and it is difficult to understand how the decision of the Supreme Court can come in the way of the Government taking the view that a valid agreement arrived at between the employer and employees with regard to the payment of bonus is an agreement so conducive to the interest of industrial economy that not only the employers who are parties to that agreement but also those employers

who have not subscribed to that agreement should be bound by it. Therefore, in our opinion, the decision of the Supreme Court in no way limits or controls the powers of the State Government under Section 114(2).

5. It is then urged that even so the State Government cannot act under this sub-section when there is a pending reference. It is pointed out that a reference was pending, a reference which would have ultimately resulted in an award being given by the Industrial Tribunal, and Government by its action has rendered that reference infructuous and that power the State Government does not possess, and in support of this argument reliance is placed on the proviso to Section 114(2):

> "Provided that before giving a direction under this section the State Government may, in such cases as it deems fit, make a reference to the Industrial Court for its opinion.

It is difficult to understand how this proviso supports the argument which has been advanced. Government may want to know the opinion of the Industrial Court with regard to any industrial dispute and power is given to the Government to obtain such opinion. But that power can be exercised whether a reference is pending or not pending and that power has no relation whatever to the pendency of a reference or otherwise. Therefore, in our opinion, on the clear plain language used by the Legislature in Section 114(2) the power of the State Government is in no way trammeled by the pendency of a reference before an Industrial Tribunal.

6. It is then urged that Section 114(2) is itself ultra vires of the Constitution because it offends against Article 19(i)(f) and 19(1)(g) of the Constitution, and what is urged is that it is not open to the Legislature to impose burdens upon the employers which make it difficult, if not impossible, for them to carry on their business or to hold or own or possess property, and it is said that the restriction imposed in this case is an unreasonable restriction inasmuch as the employer who is not in a position to pay bonus has been compelled to pay it. We must not forget that we are no longer living in the age of laissez faire and the relations between employer and employees are no longer solely governed by the principles of contract. Contractual rights and liabilities are now subject to the principles of industrial law and also the principles of social justice. It is true that social justice is an imponderable and Mr. Bhatt asked us not to introduce the principles of social justice in construing legislation which comes for interpretation before us. In our opinion, no labor legislation, no social legislation, no economic legislation can be considered by a Court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution. It is true that it may be difficult to define social justice. In the opinion of Mr. Justice Holmes it is an inarticulate major premise which is personal and individual to every Court and every Judge. How a Court or a Judge approaches a particular problem is influenced and colored by his outlook on life and society. But however a Judge or a Court may approach a particular problem, it cannot ignore the fact that all our legislation is aimed at bringing about social justice, and, therefore, it would indeed be startling for any one to suggest that the Court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice. Therefore, it is a truism to say that the present tendency of our labor and industrial legislation is to impose more and more burdens upon the employers. These burdens are imposed in the interests of the employees, because they have been under-dogs for decades and centuries and the Legislature wants to raise their status, and therefore an employer cannot be heard to say:

"Thereisan unreasonable restriction upon my right to carry on business or hold or own or possess property because the burden inflicted upon me by the law is such as in my opinion is intolerable." In the larger interests of the country an employer must submit to those burdens and carry on his business in conformity with the social legislation which is put upon the statute book.

7. These views of ours derive strong and emphatic support from a recent decision of the Supreme Court, to which our attention has been drawn by Mr. Seervai and that is the case of *Bijay Cotton Mills Ltd. v. The State of Ajmer*[2], That case as far as the burden on the employer was concerned was even stronger than the case before us. There the Industrial Tribunal fixed certain wages as the proper wages which the employer should pay in view of the economic condition of the industry. The Minimum Wages Act was brought into force and under that Act Government fixed higher wages. Employers said that they were not in a position to give those wages. The employees supported the employers stating that they were prepared to take the wages fixed by the Tribunal the were not pressing for the minimum wages, because if the industry closed down, they would be thrown on the street. These arguments were rejected by the Supreme Court and the Supreme Court held that the Minimum Wages Act whose vires was challenged was a law in conformity with the directives contained in the Constitution and was intra vires, and at page 755 Mr. Justice Mukherjea observed :

> "...Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the Act but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for the striking down the law itself as unreasonable."

Therefore, it is open to the Legislature to tell an employer : "You must treat your employees as human beings. You must pay your employees wages which would ensure to them minimum living standards. If you cannot do that in this country you cannot carry on a business which will deprive the employees of those minimum rights," and if the Legislature says so, the Legislature is entitled to say it and it is completely in conformity with the principles underlying the Constitution. Therefore, in our opinion, there is no substance in the contention that the payment of bonus constitutes an unreasonable restriction upon the right of the employer under Article 19(1)(g) or (f).

8. It is then urged that the law constitutes discrimination under Article 14. This argument is rather difficult to understand. What is urged is that there is a compulsion upon an employer in violation of the Contract Act, that the Contract Act permits the employer to enter into any contract and this direction of the Legislature deprives the employer of his rights under the Contract Act and there lore deprives him of the equality before the law. Now, we have already pointed out that mercifully we have left behind us the age of

[2](1955) 1 S.C.R. 752

laissez faire. This is the age of social good and it is not as if the employer in this case alone is deprived of his rights under the contract. Every employer who conies within the category fixed by the State Government under Section 114(2) to which the Notification applies is equally deprived of his rights under the ordinary law of contract.

9. It is then said that under Section 114 absolute discretion is given to the State Government to

decide which employer shall be bound by an award made under Section 115, and according to Mr. Bhatt this constitutes discrimination. Now, this is not a case where untrammelled absolute discretion is conferred upon an individual or an officer. Discretion is conferred upon the State Government, which is in the best position to decide what is the proper thing to do in the interest of economy and industrial progress and industrial peace. It may be that in a particular specific case by giving effect to the provisions of Section 114(2), the State Government may be guilty of discrimination. That would be administrative discrimination, and when such a case arises, it may be that the party affected by it may challenge the decision in Court. But it is not suggested in this case that petitioner No. 1 company has been singled out for special treatment leaving other mills similarly situated unaffected by the Notification issued by the Government. What is suggested is not administrative discrimination but legislative discrimination, and we see nothing in Section 114(3) which leads us to the conclusion that there is any discrimination which would offend the principles underlying Article 14.

10. It was also faintly suggested that the State Government was guilty of mala fides, and what is urged is that the object of this Notification was to circumvent the decision of the Supreme Court, and reliance is placed on the letter of the Rashtriya Mill Mazdoor Sangh of March 21, 1956, which it wrote to the Government and where it stated that it had become necessary to find some way out of the situation arising as a result of the decision of the Supreme Court in Muir Mills case and the decisions of the Labour Appellate Tribunal fixing prior claims before available surplus for bonus could be ascertained. Now, if the Government can really achieve a result which may seem to be based upon reasons different from those which proved acceptable to the Supreme Court, the State Government is perfectly entitled to do so. It is open to the State Government to take the view that the decision of the Supreme Court with, regard to the payment of bonus was not conducive to the industrial peace and industrial progress. If it takes that view and if in law it can give effect to its own view, it is difficult to understand how the question of mala fides can arise. It is not suggested that the State Government has any grudge against either petitioner No. 1 company or other companies which are affected by the Notification in question.

11. The result is that we agree with the decision of the learned Judge Mr. Justice Tendolkar. The appeal fails and must be dismissed with costs.

12. As Mr. Bhatt says that he proposes to go higher up, we stay the operation of the Notification of July 31, 1950, quae petitioner No. 1 company for fifteen days from to-day.
Appeal dismissed.