PUNJAB AND HARYANA HIGH COURT

Landra Engineering and Foundary

Vs

The Punjab State

Civil Writ No. 2665 of 1967

(Tek Chand, J.)

26.04.1968

ORDER

Tek Chand, J.

1. The petitioner is a partnership firm registered under the Partnership Act. It has presented a petition under Article 226 of the Constitution of India for quashing the impugned award (Annexure A) given by Shri P. L. Sondhi, Labour Commissioner, Punjab, respondent No. 2. The other respondents are the Punjab State and the Phillaur Metal Mazdoor Union, Phillaur.

2. After the corning into force of the Payment of Bonus Act, 1965, a dispute had arisen in regard to the grant of bonus to the workmen for the years 1964-65 and 1965-66. The representatives of the employer and the employees met in the office of Shri I. C. Puri, Secretary, Labour Department, where respondent No. 2 was also present. As a result of intercession of respondent No. 2 and Shri I. C. Puri, the Parties had agreed to refer the dispute to the sole arbitration of respondent No. 2. The point which was referred to arbitration was :

> "Whether the workmen are entitled to the grant of any bonus for the years 1961-65 and 1965-66" If so, with what details?"
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> A written arbitration agreement was signed between the parties on 14th December, 1966 and it was delivered on the same day to Shri I. C. Puri for necessary action. Under Section 10-A (3) of the Industrial Disputes Act, 1947, the arbitration agreement was required to be published within one month but according to the petitioner- firm. it was published in the official gazette on 28t1n of January, 1967, two weeks beyond time. The petitioner's contention is that the award thereby is vitiated, At the outset, I may say that there is no substance in this contention because the [provisions as to publication within one month are direction and not mandatory vide *Remington Rand of India Ltd. v. The Workmen*[1], The principle underlying the above decision is applicable to the contention raised in this case.

3. Respondent No. 2 took up the matter referred to above and after recording the evidence, gave

his award on 26th of September, 1967, which was published in the official gazette on October 20, 1967 (Annexure A). In the award, the arbitrator found that the 'allocable surplus' for the years 1964-65 and 1965-66 worked out at ₹ 32,003 and ₹ 30,312 respectively as per calculations given in the award. For the year 1964-65, the net profits as per profit and loss account were found to be ₹ 37,312 and gross profit ₹ 1,73,192. The six item, which had been added back included ₹ 1730 as Income-tax and ₹ 100 as Personal charges. After deducting the prior charges including Income-tax of ₹ 3,708, the 'available surplus' was found to be ₹ 53,338 and the 'allocable surplus' at ₹ 32,003. For the near 1965-66, the arbitrator found net profit its per Profit and loss account at ₹ 52,908 and gross profit ₹ 1,74.058. A sum of ₹ 1,23,567 was deducted on account of prior charges which included Income-tax at ₹ 9,996. The figure of the 'available surplus' was ₹ 50,521 and of 'allocable surplus' at ₹ 30,312, He directed the petitioner-firm to distribute bonus out of `allocable surplus' to the workmen in accordance with the provisions of the Payment of Bonus Act, 1965, within a mouth, Finally, the arbitrator observed :

> "Any sum already paid as bonus by the respondent-firm for the said years shall he liable to adjustment against the bonus payable to each workmen. However, if arty workman has been paid bonus in excess, the amount paid as such in excess shall not be recoverable by the respondent concerned".
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> The petitioner's case is that for the purposes of of the amount allocable under the Payment of Bonus Act, the 'available surplus' for the years 1964-65 and 1965-66 should be ₹ 17,278 (minus) and ₹ 12,386 (minus) respectively and, therefore, there was no 'allocable surplus' for these years for distribution among the workmen by way of bonus. In support of its contention, the petitioner-firm had produced copies of statements (Annexures B-1 and B-2) and of-the balance sheet and Profit and loss account for the last two years (Annexures C-1 and C-2). Its contention is that the arbitrator while rightly accepting the, net profits as per Profit and loss account at ₹ 37.312 for 1964-65 and ₹ 52,908 for 1965-66 made certain add backs arbitrarily for which there was no justifiable basis. It was further stated that a sum of ₹ 100 under the head "Personal charges" was added back over and above those items which were shown by the petitioner-firm itself. This add back of "Personal charges' was erroneous as similar "Personal charges" were being incurred each year from 1955-56 onwards i.e.. long before the coming into force of the Payment of Bonus Act.

4. It was next contended that while computing prior charges, the arbitrator had erred ill not allowing the proper amount of direct taxes like Income-tax etc.. which were permissible under Sec. 6 of the Payment of Bonus Act, 1965. The figures of ₹ 3,708 for the year 1964-65 and of ₹ 9,996 for the year 1965-66 were absolutely erroneous on their very face. According to the

petitioner, the gross Profit for 1964-65 works out at ₹ 1,57,566 (erroneously mentioned as ₹ 1,73,192 in the award), the share of the three partners being ₹ 45,694, Rupees 58,299 and ₹ 53,573 respectively. On this basis, according to the petitioner, the Income-tax etc., works out as under:

	Rs.
(a)Directly on the firm	14,890
(b)Annuity Deposit by Partners	15,757
(c)Total Income-tax payable by partners	43,624
Total	74,271

It was also maintained that the award did not disclose the basis for allowing prior charges under this head for 1964-65 at ₹ 3,708 only. It was said that the arbitrator did not take into account the direct taxes like Annuity Deposits and the increase in the allocated share of the partners as a result of add back to be made under the Payment of Bonus Act. It was also said that the arbitrator had given no basis oil which he had arrived at the figure of ₹ 3,708. Regarding the subsequent year 1965-66, the gross profits arrived at by the petitioner as also by the arbitrator himself came to ₹ 1,55,827 (though erroneously mentioned as ₹ 1,74,088 in the award). The amount on allocation to the three partners worked out at ₹ 45,190, ₹ 57,650 and ₹ 52,981 respectively. According to the petitioner. on the above basis, the direct taxes deductible were as under:

	Rs.
(a) Firm's Income-tax	16,103

(b) Annuity Deposits by Partners	15,583
(c) Total Income-tax payable by partners	46,980
Total	75,666

It was also contended that the arbitrator had given no basis on which he had allowed a deduction of ₹ 9,996 under the head Income-tax. It was said that the arbitrator had arbitrarily allowed lower figures of Income-tax when they ought to have been very high and, therefore, he erroneously raised the amount of 'available surplus' and correspondingly of 'allocable surplus' which neither the facts nor the circumstances justified.

5. It was next urged that the direction in the award that bonus paid in excess shall not be recoverable by the petitioner-firm was contrary to Section 7 (2) (f) of the Act. The award has been impugned on the ground firstly that the sun of ₹ 100 under the head "Personal charges" was wrongly added back to the amount of net profits for the year 1964-65 and thus the figure of gross profits for that year has been inflated; secondly, in computing prior charges, the amounts of direct taxes had not been properly allowed and the figures of ₹ 3,708 for 1964-65 and of ₹ 9.996 for 1965-66 under the head Income-tax were grossly inadequate; thirdly that the award does not disclose ally basis and gives no reason for the figures of the Income-tax given and is, therefore, not a 'speaking order' and fourthly that by providing that excess amount paid to the workmen by way of bonus cannot be recovered by the petitioner-firm, the arbitrator has committed a patent legal error.

6. The petitioner-firm thus feels that as a result of this award, it is required to pay a highly inflated figure of bonus to the workmen which is not justified and is beyond its capacity.

7. Written statements were filed on behalf of respondents 1 and 2 and also on behalf of respondent 3 which are in the nature of general denials. On behalf of respondent No. 3 a preliminary objection was also raised to the effect that a petition of writ was not maintainable as it was directed against the award of an arbitrator appointed by agreement of respondent No. 3 and the petitioner-firm and no writ petition could be entertained against a private arbitrator who has neither the status of a Court nor of a Tribunal.

8. I may now deal with the points raised in the petition and also with the objection as to the competency of a writ petition. I do not find ally good reason for not supporting the award as to the item of ₹ 100 wider "Personal charges". This item covered ceremonial gifts given on ceremonial occasions to the customers of the petitioner-firm and were rightly disallowed as not a

justifiable expenditure connected with the business. The arbitrator was justified in rejecting the amount of ₹ 100 in 1961-65 and also the amount of ₹ 25 for 1965-66.

9. He was then contended that the arbitrator had given no reasons how he calculated the meagre figures of Income-tax for the two years in question. He had given no reasons as to the basis of his calculations and the award suffers from the infirmity that it is not a 'speaking order'. Reference was made to a decision of the Supreme Court in *Workmen of India Explosives Ltd. v. Indian Explosives Ltd.*[2], where it was held that the deduction of Income-tax to ascertain 'available surplus' was notional. The gross profits were arrived at by adding back certain items to the net profits and then the gross profits were reduced by making certain notional deductions. One such deduction was under the head of "Income-tax". This deduction was not made on the actual amount payable but what would be notionally payable on the profits determined under die formula laid down by the Full Bench in the judgment under appeal. It was found that as there was a deficit and no 'available surplus', the Tribunal was right in rejecting the claim for bonus for the year ending September 30, 1960. The appeal of the workmen was consequently dismissed. It does appear that the correct Income-tax on the gross profits has not been determined by the arbitrator and what he has actually determined, has not been explained.

10. The next item in the award on which arguments have been addressed relates to the direction that if any workman has been paid bonus in excess, the amount paid as such in excess shall not be recoverable by the employer. There does not appear to me the least justification for this conclusion. Learned counsel for the respondents cited Section 34 (3) of the Payment of Bonus Act which refers to the effect of laws and agreements inconsistent with the Act and provides :

> "Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act :
>
> Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under Sec. 10 shall be null and void in so far as it purports to deprive them of such right". This provision does not justify what was stated in the award that the bonus paid in excess is not recoverable.

11. On behalf of the employer, reliance has been placed on *Supdt. of Collieries, Ciridih v. Deputy Commr., Hazaribagh*[3], where it was held that bonus paid to the workmen not entitled to it could be deducted from the wages. The employer could deduct the bonus paid by mistake and contrary to law. No argument in support of the direction given by the arbitrator allowing the workmen to retain the bonus paid to them in excess, has been advanced. Howsoever liberally such enactments may be construed in favour of the workmen, the proposition cannot be supported that the excess amount paid by mistake cannot be deducted from the wages of the workmen. The view of the arbitrator cannot be supported on logic or on legal principle.

12. I may now turn to the objection raised on behalf of respondent No. 3 that a writ petition is not maintainable as it is directed against the award of an arbitrator appointed by agreement and that in the circumstances, the arbitrator is not a public authority or a statutory tribunal and, therefore,

is not amendable to the writ jurisdiction of this Court. Reliance was placed upon a decision of a Bench of Kerala High Court in *A. T. K. M. Employees' Association v. Musaliar Industries (Private) Ltd.*[4], It was held that the reference contemplated under Section 10-A of the Industrial Disputes Act was voluntary and made without compulsion or legal obligation. The arbitrator under Sec. 10-A of the Act was not an arbitrator to whom by statute, the parties must resort and it must follow that no writ could be directed against him or his award. It was found that writ would not issue to a private arbitral body which derived its jurisdiction from contract or to a voluntary association which derived its jurisdiction from the consent of its members. Reliance was placed upon the dictum of Lord Goddard C. J. in *R. v. Disputes Committee of the Dental Technicians*[5], It was held that the Court had no power to direct the issue of orders of certiorari or of prohibition addressed to an arbitrator directing that a decision by him should be quashed or that he be prohibited from proceeding in an arbitration, unless he be acting under powers conferred by statute. In that case, arbitrators had been appointed under an ordinary submission to arbitration contained in an indenture of apprenticeship.

13. The above decision of the Kerala High Court was considered later on in *Koru v. Standard Tile and Clay Works (Private) Ltd*[6]., It was found that a writ of certiorari against an award made by an arbitrator under Section 10-A of the Industrial Disputes Act was maintainable as such an arbitrator could not be equated to a private arbitrator. It was observed that in view of the judgment of the Supreme Court in *Engineering Mazdoor Sabha v. Hind Cycles Ltd*[7]., a writ could be entertained against an award made by an arbitrator under Section 10-A of the Industrial Disputes Act and that the earlier decision of the Bench of the Kerala High Court in 1962-2 Lab LJ 317, was no longer good law. After referring to the observations of Lord Goddard C. J. in *R. v. Disputes Committee of the Dental Technicians*, the Supreme Court also considered the decision of the Court of Appeal in the *King v. Electricity Commrs*[8]. and also the decision in the case of *R. v. Northumberland Compensation Appeal Tribunal*[9], It was held that Article 226 of the Constitution under which a writ of certiorari could be issued in an appropriate case, was, in a sense, wider than Article 136. Even if the arbitrator appointed under Section 10-A was not a Tribunal under Article 136, in a proper case, a writ would lie against his award under Article 226.

14. This matter was also considered in detail by it Division Bench of this Court in *Rohtak Delhi Transport (Private) Ltd. v. Risal Singh*[10], and it was held that the decision of the arbitrator to whom industrial dispute is voluntarily referred under Section 10-A is a quasi judicial decision and not a purely administrative or executive determination. It is also an authority for the proposition that the award of the arbitrator exercising judicial functions should ex facie show the reasons on which the award is based. It should disclose that it is the result of a quasi judicial approach by one who is called upon to adjudicate upon important contested claims. Wien an award in a dispute between an employer and employee regarding compensation to be paid to the latter gives no basis for fixing the compensation at certain amount though he had stated in the award that he had considered the evidence and heard the parties, the award must be struck down in writ proceedings under Article 226 of the Constitution as the arbitrator had to decide "a proposal and an opposition", in other words, to determine a lis, the decision which he had to give could not be devoid of any reference to the mode or manner by which that opinion was formed.

15. Similar view was also taken by the High Court of Madras in *Coimbatore Salem Transports (Private) Ltd. v. Their Workmen*[11], and in *Nellai Cotton Mills v. Asst. Commr. of Labour, Madras*[12],

16. For reasons stated above, I find this objection devoid of merit.

17. The award of the arbitrator cannot, therefore, be sustained and is liable to be set aside in the exercise of powers of this Court under Article 226 of the Constitution and I would order accordingly.

18. The next question is whether the matter be now sent back to the arbitrator for giving his award de novo after hearing the parties on the question before him or the arbitration proceedings should be deemed to have ended. I think, in the circumstances, it is just and equitable that the matter he referred back to the arbitrator to rectify the errors indicated above and to proceed with the arbitration in accordance with the agreement and determine the matter which was referred to him after giving the parties opportunity to place their respective contentions before him.

19. In the circumstances, the parties are left to bear their own costs.

Order accordingly.

Cases Referred.

1AIR 1968 SC 224
2(1960) 2 Lab LJ 313 (SC)
3AIR 1957 Pat 647
41962-2 Lab LJ 317 (Ker)
51953-1 All ER 327
6(1964) 1 Lab LJ 102 = (AIR 1963 Ker 324)
7(1962) 2 Lab LJ 760 = AIR 1963 SC 874
81924-1 KB 171
9(1951) 1 All ER 268
10AIR 1963 Punj 472
111967-2 Lab LJ 120 (Mad)
121967-2 Lab LJ 240 (Mad)