

HIGH COURT OF GUJARAT

SARABHAI COMMON SERVICE

Versus

MANTRI, SARABHAI CHEMICAL LTD EMPLOYEES UNION & 1 OTHER(S)

Date of Decision: 12 July 2021

Citation: 2021 LawSuit(Guj) 2212

Hon'ble Judges: [Umesh A Trivedi](#)

Eq. Citations: 2021 171 FLR 902

Case Type: Special Civil Application

Case No: 18757 of 2017

Subject: Constitution, Labour and Industrial

Acts Referred:

[Constitution Of India Art 227](#), [Art 226](#)

[Payment Of Bonus Act, 1965 Sec 4\(b\)](#).

Advocates: [Nirav Joshi](#), [Nanavati Associates](#), [M S Mansuri](#)

Cases Referred in (+): 2

Umesh A Trivedi, J.

[1] By way of this petition under Articles 226 and 227 of the Constitution of India the petitioner challenges the order passed by the Presiding Officer, Labour Court No.4, Vadodara dated 03.09.2016 in Reference (Demand) No.16 of 1995 whereby the Labour Court has directed the petitioner to pay an amount of bonus at the rate of 11.67% for the Financial Years 1992-93 and 1993-94 with 9% simple interest from the date of filing of the Reference as also to pay cost of Rs.1500/- to the respondent no.1.

[2] Respondent no.1 - Union vide Exh.3 filed its statement of claim claiming that the workmen were working with the petitioner - Company since the beginning and the workmen were being paid the bonus at the rate of 20% by the petitioner - Company. It is further the case of respondent no.1 - Union that the petitioner - Company has never provided the accounts, never published set-on, set-off of the petitioner - Company or has provided them with the Forms as provided under the Payment of Bonus Act, 1965

(hereinafter referred to as 'the Act') to the respondent no.1 - Union. It is further the case of respondent no.1 - Union that since last four years, without publishing Form 'A' and Form 'B' under 'the Act', the petitioner - Company is paying minimum bonus at the rate of 8.33% arbitrarily to the workmen and they have been deprived of higher rate of bonus. It is further the case that the petitioner - Company has shown wrong loss despite they earned huge profit running into crores of rupees so as to deprive the workmen of the bonus. According to the case of respondent no.1 - Union, though there is huge surplus with the petitioner - Company, they are not paying the bonus at the required rate and thereby the petitioner - Company has committed breach of provisions of 'the Act'. It is the case of respondent no.1 - Union that despite repeated demands of calculation of bonus, working loss and profits, it has not been satisfactorily replied by the petitioner - Company. Similarly in the year 1993-94, Form 'A', 'B' and 'C' have not been produced, and therefore, the workmen have claimed for difference of bonus at the rate of 11.67%, for the years as aforesaid. Over and above that they have demanded diwali gift at the rate of Rs.1001/-. The petitioner - Company on issuance of notice of the Reference appeared and filed written reply, Exh.9. According to the case of the petitioner - Company, it has paid bonus to the workmen at the rate of 8.33% and demand for 20% of bonus is illegal and unreasonable. It is also the case of the petitioner that no demand is raised against Sarabhai Common Services, and therefore, they prayed for rejection of the Reference. Respondent no.1 - Union examined two witnesses in support of their case. During the course of proceedings before the Labour Court on behalf of respondent no.1 - Union, an application Exh.5, which is at page 29 for production of certain documents from the petitioner - Company as enlisted therein, was made. Though it has been endorsed over the same seeking time to file reply, despite the order passed below Exh.5, it has not been produced in time. The order below Exh.5 is at page 33 of the compilation. Despite time was sought for to reply Exh.5 application, no such reply came to be filed nor at the relevant time of hearing that application, neither the petitioner nor its representative was present before the Court for hearing. Since the documents, asked for to be produced, contained profit and loss account, balance sheet of the Company as also the schedule annexed with it for five years alongwith a calculation under section 4(b) of 'the Act' for the years 1991 to 1995, calculating gross profit with the signature of the auditor, the Labour Court found that the documents, as demanded vide Exh.5, are useful for the purpose of determination of the proceedings before it, and therefore, the petitioner was asked to produce the said documents on the next date. The said order came to be passed on 04.05.2001. Not only the petitioner did not produce the said documents on the next date, he produced only 11 documents and not all the documents called for at Exh.5. Those documents are also produced much after the impugned order, nearly after three years thereof and again those documents are neither audited nor the signature of the auditor is appended thereto. Instead of that, documents vide list

Exh.10 signed by the Chief Accountant came to be produced whereas list of documents Exh.10 came to be signed by the General Manager (P&A).

[3] Shri Nirav Joshi, learned advocate for Nanavati Associates for the petitioner, submitted that the Court has relied on only the evidence adduced by and on behalf of respondent no.1 - Union. However, it is submitted that non production of the documents demanded and ordered by the Labour Court, will not absolve the Labour Court from assessing and concluding necessity of paying bonus at the maximum rate of 20%.

[3.1] Relying on Section 23 of 'the Act', it is submitted that there has to be a satisfaction recorded by the Labour Court that the statement and particulars contained in the balance sheet or profit and loss accounts of the corporation or the Company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars. He has submitted that if no audited accounts are produced, it is for the concerned Labour Court to ascertain and assess the payable bonus to the workmen of the petitioner - Company. Having failed to do so the order becomes vulnerable.

[3.2] Relying on a decision of the Supreme Court in the case of [Shiva Bangles Stores and Another Vs. Industrial Tribunal \(II\) U.P. and Others](#), 1973 3 SCC 899, more particularly paragraph 4 therein, it is submitted that in case of a litigant failing to appear before the tribunal the Supreme Court has said that no order for payment of maximum bonus be made solely based on oral evidence adduced by the workmen. It has been submitted that maximum amount of bonus of 20% 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. In short the submission is that despite non production of profit and loss account of the balance sheet duly audited, it is the duty of the Court to arrive at an amount, which becomes payable under 'the Act', and therefore, he has submitted that the order impugned requires to be interfered with, that too, in a petition under Articles 226 and 227 of the Constitution of India.

[3.3] Referring to a decision in the case of Ahmedabad Advance Mills Limited Vs. Rameshchandra D. Christian, 2018 1 CLR 442 rendered in Special Civil Application No.5406 of 2014, more particularly paragraph 48 therein to submit that for the purpose of calculating bonus under 'the Act' gross profit should be calculated according to Section 4 of 'the Act' and after computing available surplus in accordance with Section 5 of 'the Act', the said calculation has to be arrived at after deducting permissible heads as contemplated under Section 6 of 'the Act'. Relying on the said decision, it is submitted that the award of bonus to the workmen is

based on the calculation made as per the provisions of 'the Act' and then only an order for paying bonus at the maximum rate prescribed being 20% can be ordered by the concerned Court /tribunal.

[3.4] Relying on a decision of the Madras High Court in the case of **Managing Director, Tamil Nadu Kudineer Vadigal Variyam Vs. Tamil Nadu Kudineer Vadigal Variya, Oozhiyar Central Organisation rendered in Writ Petition No.24934 of 2007**, more particularly paragraph nos.9 to 12 and 13 thereof to submit that the Labour Court /tribunal has power to appoint an assessor in terms of Section 11(5) of the Industrial Disputes Act read with Section 11-A(4) of the Industrial Disputes Act to get expert opinion on the question of calculation of bonus, and therefore, it is submitted that by appointing any expert on the subject, the Court /tribunal should have calculated the payable bonus instead of awarding bonus at the maximum rate of 20%, which is awarded, and therefore, it is submitted that the matter requires consideration and it is required to be allowed. No other arguments were made.

[4] As against that, Shri Mansuri, learned advocate for respondent no.1, submitted that not only the required documents are submitted, it has been submitted long after the Court passed an order for production thereof. It is further submitted that despite the petitioner - Company sought for time to file reply to Exh.5 application praying direction against it to produce certain documents for determination of the proceedings, not only the petitioner - Company did not produce the same as claimed in it, it has been produced belatedly, and therefore, their conduct is also required to be deprecated.

[4.1] He has further submitted that despite the order passed on 04.05.2001 respondent no.1 - Union though filed an application to produce calculation of gross profit payable under Section 4(b) of 'the Act' for the years 1991 to 1995 signed by the auditor and other documents, the same have not been produced so required and on the contrary less than the required documents are produced. Over and above that the documents bear the signature of the Chief Accountant produced alongwith the list of documents signed by the General Manager (P&A). It has been submitted that despite specific demand and the orders passed by the Court, the petitioner - Company has deliberately not produced the documents duly audited accounts so as to deprive the Court as also the workmen to come to a reasonable conclusion of their entitlement of bonus, and therefore, according to the submission of Shri Mansuri, learned advocate for the respondent no.1, the judgment and award passed by the Labour Court requires no interference by this Court and hence he has requested the Court to reject the same.

[5] Having heard the learned advocates for the appearing parties as also going through the impugned judgment and award as also the documents annexed with the petition for the relevant years 1992-93, 1993-94, bonus at the rate of 8.33% is already paid to the workmen of the petitioner - Company. Though the documents were demanded to be produced by the petitioner, duly audited and signed by the auditor as ordered by the Court, the petitioner produced the documents and accounts signed by the Chief Accountant of the petitioner - Company. The said documents signed by the Chief Accountant came to be produced with a list of documents and list signed by the General Manager (P&A). If the copies of balance sheet and profit and loss account duly audited by Auditor is produced there is a presumption about accuracy of balance sheet as also profit and loss account. Here in this case despite petitioner was directed to produce such audited accounts by an order of Court the petitioner has deliberately not produced the same. Not only that accuracy of statement and particulars contained in such balance sheet and profit and loss account is not proved by filing affidavit or by any other mode by the petitioner.

[5.1] Neither the petitioner nor anyone on their behalf entered the witness box to depose. Not only that, from the impugned judgment and award it is reflected that they have cross examined only witness Ramsinh Somabhai, who is examined on behalf of the workmen vide Exh.11 and so far as other witness, Sahdevsinh Mangalsinh is concerned, there appears no cross examination conducted of the said witness.

[5.2] Coming to the next question that despite non production of documents, the Labour Court /tribunal is required to calculate the amount of bonus, as submitted by Shri Nirav Joshi, learned advocate for the petitioner is concerned, it is important to note that when the petitioner - Company was asked to produce audited balance sheet as also profit and loss account duly signed by the auditor, which would add to the authenticity to the extent that accuracy of it can be presumed, the petitioner has deliberately deprived not only the respondent - workmen but the Court also. Deliberate non production of such documents leads to only one and one presumption that the surplus profit is much more far beyond any contemplation rendering the workmen entitled for a maximum bonus at the rate of 20%. When the workmen have deposed before the Court and asserted payment of bonus at a particular rate calling upon the petitioner - Company to produce audited account so as to presume their available resources to pay the bonus as provided under 'the Act', and when the petitioner deliberately did not produce it despite the Court's order, there is no option but to draw adverse inference against the petitioner so as to reach to a finding by the Labour Court that the respondent - workmen are entitled to the bonus at the maximum rate as provided under 'the Act'. The

production of documents by the petitioner without proving its accuracy of such statements and particulars in balance sheet and profit and loss account either by filing an affidavit or by any other mode, it cannot be presumed to be correct as provided under 'the Act' and therefore, the contention that the Court /tribunal should calculate the amount of bonus despite absence of such material to defend the case relying on a decision of the Supreme Court in the case of **Shiva Bangles Stores and Another (Supra)** is out of context. In the said case the impugned award came to be passed exclusively based on oral evidence adduced by the workmen whereas in the present case not only there is oral evidence of the workmen, the finding recorded by the Labour Court is supported by drawing adverse inference based on non production of audited accounts despite directed by the Court to produce the same on an application tendered by the workmen. Over and above that petitioner has not proved the accuracy of statements and particulars of balance sheet and profit and loss account by filing an affidavit or any other mode. There is a deliberate attempt by the petitioner to deprive the Court of assessing payable bonus. Even the Labour Court could not have awarded bonus beyond the maximum limit under 'the Act', and therefore, non production of the audited accounts, despite ordered by the Court, that order being final as it was never challenged before higher forum, the burden is all throughout on the petitioner to prove its case that workmen is not entitled for the bonus as claimed, which it failed to discharge.

[5.3] The argument that in view of the decision in the case of **Managing Director, Tamil Nadu Kudineer Vadigal Variyam (Supra)** it was open to the Court /tribunal to get expert opinion on the question of calculation of bonus is again out of context. On the contrary the Labour Court in the present case even accepted the auditor of the petitioner - Company to be an expert on the point and therefore directed only to produce audited accounts signed by the auditor to come to a conclusion about the entitlement of the bonus and at what rate. As such, when reliance is placed on the expert of the petitioner - Company for the purpose of calculation of bonus when that assistance also Court is deprived of, there is no option before the Court but to draw an adverse inference, which is inferred by the Court requires no interference, that too, in a petition under Articles 226 and 227 of the Constitution of India. If despite Court order audited balance sheet and profit and loss account is not produced then petitioner was supposed to prove accuracy of statements and particulars in it by filing affidavit or any other mode, which petitioner failed.

[5.4] The decision in the case of **Ahmedabad Advance Mills Limited (Supra)** and the paragraphs referred therein throw light on the calculation of the payable

bonus and it has nothing to do with the issue involved in the present case, and therefore the said decision is not applicable.

[5.5] Shri Nirav Joshi, learned advocate for the petitioner is not able to show from any reliable or proved documents or even the calculation even after adverse inference drawn, how and in what manner the respondent - workmen are not entitled to the bonus awarded by the Labour Court by way of impugned judgment and award. Hence, challenge to the said judgment and award fails on each count, and therefore, this petition is rejected. Notice is discharged.

At this stage, Shri Nirav Joshi, learned advocate for the petitioner, prays for stay of the present order. However, since there was no stay granted in this petition at any point of time there is no question of granting stay at this stage, and therefore, the said prayer is also rejected.

