

HIGH COURT OF GUJARAT (D.B.)

**PATEL MILLS COMPANY LIMITED
V/S
TEXTILE LABOUR ASSOCIATION**

Date of Decision: 18 June 1971

Citation: 1971 LawSuit(Guj) 38

Hon'ble Judges: [B J Divan](#), [P D Desai](#)

Eq. Citations: 1972 GLR 519, 1973 (1) LLJ 143, 1972 LabIC 392

Case Type: Special Civil Application

Case No: 1571 of 1969

Subject: Constitution, Labour and Industrial

Head Note:

Art.14 and Art.31 - Even though establishment is not earning profit, payment of Bonus is to be given at statutory rate Act of Art.14 and Art.31 not violative. Art.19(A) Company registered under the Indian companies Act is not a citizen within the meaning of Art.19 of the constitution - Under Art.19 , it cannot ask for enforcement of fundamental right.

Sec. 10 of the Payment of Bonus Act was enacted with a view to maintain peace and harmony between the agencies, which contribute to the earning of profits. Distribution of profits, which is not subject to great fluctuations year after year, would certainly conduce to maintenance of peace and harmony and would be regarded as equitable and provision for payment of bonus at the statutory minimum rate even if the establishment has not earned profit is clearly enacted to ensure the object of the Act. Sec. 10 of the Act therefore is not violative of Articles 14 and 31 of the Constitution. (Paras 4 and 5) Constitution of India 1950

19 registered under the Companies Act not citizen-Cannot ask for enforcement of fundamental right under Art. 19. A company registered under the Indian Companies Act is not a citizen within the meaning of Art. 19 of the Constitution and therefore it cannot ask for the enforcement of fundamental rights granted to citizens under the said Article. (Para 6) Kumaon Motor Owners Union Ltd. Kathgodam v. State of U. P. ors. dissented from. Jalan Trading Co. v. Mill Mazdoor Sabha State Trading Corporation of India v. Commercial Tax Officer referred to.

Acts Referred:

[Constitution Of India Art 31, Art 14](#)

[Payment Of Bonus Act, 1965 Sec 10](#)

Final Decision: Petition dismissed

Advocates: [K S Nanavati](#), [I M Nanavati](#), [S N Shelat](#), [J S Patel](#), [Mh Desai & Co](#)

Reference Cases:

[Cases Referred in \(+\): 3](#)

Judgement Text:-

Divan, Ag C J

[1] The petitioner herein is a Limited Company and is engaged in the business of manufacturing textiles. The petitioner's factory is situated at Ahmedabad and the petitioner is governed by the provisions of the Bombay Industrial Relations Act, 1946 (Bombay Act No. 11 of 1947) (hereinafter referred to as the Act) in the matter of its relations with its employees. The respondent is a representative Union of the workers working in the petitioner's factory and in the matter of payment of bonus the petitioner Company is governed by the Payment of Bonus Act, 1965 (hereinafter referred to as 'the Bonus Act').

[2] In the accounting year 1967, the petitioner Company had incurred a loss of about Rs. 5,90,000/- without any provision being made for depreciation and, therefore, it had not declared any bonus for its employees. The respondent Union made a demand for the payment of minimum bonus under sec. 10 of the Bonus Act from the petitioner Company. As the petitioner Company did not agree to that demand, dispute was

referred to the Conciliation Officer but no settlement was arrived at before that officer and thereafter a reference was made to the Industrial Court regarding the liability of the petitioner Company to pay the minimum bonus under sec. 10 of the Act. Before the Industrial Court, the petitioner Company contended that sec. 10 of the Bonus Act did not apply to a concern making a positive loss and, therefore, the petitioner Company was not liable to pay the minimum bonus to its employees. This contention of the petitioner Company was rejected by the Industrial Court and in coming to this conclusion the Industrial Court relied on its own award in another matter in the Textile Labour Association, Ahmedabad v. The Fine Knitting Company Ltd. The petitioner has thereafter filed this petition under Art. 227 of the Constitution challenging the award of the Industrial Court.

[3] The petitioner has contended that sec. 10 cannot apply where there is a positive loss and it has contended that if sec. 10 of the Bonus Act is applicable even to establishments which are making heavy losses, then sec. 10 of the Act would be ultra vires Art. 19(1)(g) of the Constitution. The petitioner has contended that sec. 10 of the Bonus Act being ultra vires Art. 19(1)(g) of the Constitution is non est in law and, therefore, the Tribunal has no jurisdiction to direct payment of minimum bonus under sec. 10 of the Bonus Act.

[4] Mr. Nanavati, on behalf of the petitioner, has relied upon the decision of a Single Judge of the Allahabad High Court (Lucknow Bench) in Kumaon Motor Owners ' Union Ltd., Kathgodam v. State of Uttar Pradesh & Ors., (1969) 1 Labour Law Journal 809. There it was contended that such bonus was not payable in an accounting year where the employer had suffered loss; and it was held :-

"Evidently, there can be three situations, one in which there has been profit, another in which there has been no profit and yet a third in which there has been loss. The absence of profit does not necessarily mean loss. So the words "whether there are profits in the accounting year or not" in sec. 10 of the Payment of Bonus Act cannot possibly be construed to cover all the abovementioned three situations, though, of course, they are wide enough to cover two situations, namely, one in which there has been profit and another in which there has been no profit. The said expression could not be construed to cover the case where the employer has suffered a positive loss in the year in question."

With respect to the learned Judge of the Allahabad High Court, we are unable to agree with his reasoning because in our view the words : "whether there are profits in the accounting year or not" are wide enough to include the case of an employer in whose case there has been a positive loss in the accounting year. We must not forget, as laid down by the Supreme Court, that sec. 10 was enacted with a view to maintain peace and harmony between the agencies which contribute to the earning of profits. Distribution of profits which is not subject to great fluctuations year after year, would certainly conduce to maintenance of peace and harmony and would be regarded as equitable and provision for payment of bonus at the statutory minimum rate, even if the establishment has not earned profit, is clearly enacted to ensure the object of the Act.

[5] When one turns to the decision in *Jalan Trading Co. v. Mill Mazdoor Sabha*, A.I.R. 1967 S.C. 691, one finds that the validity of the provisions of sec. 10 of the Bonus Act with reference to Art. 14 and Art. 31(1) was upheld and as regards that challenge the Supreme Court has observed in para 25 at page 705 of the report :-

"Examined in the light of the object of the Act and the scheme of "set off and "set on", the provision for payment of minimum bonus cannot be said to be discriminatory between different establishments which are unable on the profits of the accounting year to pay bonus merely because a uniform standard of minimum rate of bonus is applied to them.

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Sec. 10 undoubtedly places in the same class of establishments which have made inadequate profits not justifying payment of bonus, establishments which have suffered marginal loss and establishments which have suffered heavy loss. The classification so made is not unintelligible; all establishments which are unable to pay bonus under the scheme of the Act, on the result of the working of the establishment, are grouped together. The object of the Act is to make an equitable distribution of the surplus profits of the establishment with a view to maintain peace and harmony between the three agencies which contribute to the earning of profits. Distribution of profits which is not subject to great fluctuations year after year would certainly conduce to

maintenance of peace and harmony and would be regarded as equitable, and provision for payment of bonus at the statutory minimum rate, even if the establishment has not earned profit is clearly enacted to ensure the object of the Act"

We may point out that the learned Single Judge of the Allahabad High Court in the case relied upon by the petitioners has not referred to this judgment of the Supreme Court in Jalan Trading Co.'s case (supra).

[6] As regards the challenge on the ground of Art. 19, the Supreme Court held in State Trading Corporation of India v. Commercial Tax Officer, A.I.R. 1963 S.C. 1811, that a Company registered under the Indian Companies Act is not a citizen within the meaning of Art. 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said Article.

[7] The above decision of the Supreme Court still holds the field and in the instant case the petitioner is a limited Company and, therefore, it cannot ask for enforcement of its fundamental rights in the present petition.

[8] The result, therefore, is that both as regards the interpretation of sec. 10 and as regards the vires, this petition fails. This Special Civil Application is, therefore, dismissed and the rule is discharged with costs.

Petition dismissed