



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1445 of 2021

The General Manager
(Personnel and Administration),
Suryalaxmi Cotton Mills Limited,
Nagardhan, Ramtek, Tahsil Ramtek,
District Nagpur.

... Petitioner

- Versus -

- (1) Rajesh Bhagwanji Maliye,
Aged about 43 years, Occ. Service,
- (2) Pradip Shamraoji Bawane,
Aged about 43 years, Occ. Service,
- (3) Jagdish Dilchandji Patle,
Aged about 44 years, Occ. Service,
- (4) Rewnath Bajiraoji Madankar,
Aged about 35 years, Occ. Service,
- (5) Yogesh Subhashji Gade,
Aged about 36 years, Occ. Service.

All Elected Representatives of
Employees of Suryalaxmi Cotton
Mills Limited, Nagardhan, Ramtek,
Tahsil Ramtek, District Nagpur.

... Respondents

Mr. D. M. Kakani, Advocate for the petitioner
Mr. S. B. Dhande, Advocate for the respondents

CORAM : ANIL L. PANSARE, J.

DATED : 05-02-2025

ORAL JUDGMENT

Issue Rule returnable forthwith. Mr. S. B. Dhande, learned
counsel waives service of notice of Rule on behalf of the respondents.

With consent of learned counsel for the parties, the petition is taken up for final hearing.

2. The petitioner is aggrieved by award dated 03.03.2020 passed by Industrial Court, Nagpur in Reference (BIR) No. 4/2017.

3. Having heard both sides and having gone through the material placed before the Court, what transpires is that the petitioner-original party no. 1 had more than one factories/units. The respondent-employee, original party No. 2, had made demands, inter alia, for payment of bonus at 20% for the year 2015-16. The Industrial Court held that the evidence show that in previous accounting years, right from 2011-12 to 2014-15, the employees of Nagardhan Unit were paid bonus on the basis of the consolidated accounts as reflected in annual report of the concerned year. The Industrial Court, accordingly, held that since for the previous accounting year, Nagardhan Unit employees were paid bonus as per the consolidated balance account as reflected in annual report of the concerned year, the petitioner establishment could not have made a departure in extending benefit of bonus for the year 2015-16 by claiming that Nagardhan Unit is a separate establishment.

4. This finding rendered by the Industrial Court is questioned by the petitioner.

5. I have, with the assistance of both the parties, gone through the evidence. The petitioner has examined two witnesses. In the cross-examination of the first witness, it has been brought on record that for the year 2011-12 and 2012-13 so also 2014-15, bonus at the rate 18% was paid in view of the agreement entered into between the parties. The witness admitted that the annual report for the year 2012 to 2016 is common for three units. There is, however, nothing in the evidence to indicate that the aforesaid bonus of 18% was paid on the basis of consolidated balance sheet of three units. In fact, the counsel for petitioner is correct in contending that payment of bonus at 18%, in terms of agreement is itself an evidence that the bonus was not paid on the basis of consolidated accounts for previous years.

6. In the evidence of second witness, the respondents – employees have themselves brought on record that the petitioner has prepared separate balance sheet of Mill at Nagardhan. The witness then deposed that consolidated balance-sheet of all the units is to be submitted to income tax authorities. The witness then states that he has not furnished before the Court the surplus amount available and allocable as per consolidated balance-sheet.

7. As regards the evidence of furnishing consolidated balance-sheets of all units to the income tax authorities, learned counsel for the petitioner submits that the establishment has one PAN and, therefore, is bound to submit to income tax authorities the consolidated balance-sheet for all the units. Such balance-sheet is furnished for the purpose of income tax, however, when it comes to payment of bonus, the employee would be entitled for bonus in terms of balance-sheet of individual unit, if it so maintained by the establishment.

8. As against, learned counsel for the respondents submits that the Industrial Court has based its findings on the basis of consolidated balance-sheet and profit and loss account as reflected in the annual report of the concerned year.

9. There is no dispute that in the annual report of the year 2015-16, consolidated balance-sheet and profit and loss account is shown. The question is whether there was evidence to prove that the respondents, who are/were employees of Nagardhan Unit were paid bonus on the basis of consolidated balance sheet as reflected in the annual report of the concerned year. I have noted above the relevant part of the evidence which would only show that it does not indicate, much less establish, that respondents were paid bonus on the basis of

consolidated account. In fact what transpires from the evidence is that petitioner has prepared separate balance-sheet of Mill at Nagardhan and further that the respondents were paid bonus at 18% in terms of agreement entered between the parties for the years prior to 2014-15.

10. I am informed that for the year 2015-16, bonus at the statutory rate of 8.33 % in terms of Section 10 of the Payment of Bonus Act, 1965 (for short 'the Act of 1965') was paid. Section 11 of the Act of 1965 provides for limit of maximum bonus at 20% where, in an accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees. In such eventuality, the employer is bound to pay to every employee bonus which will be proportionate to the salary/wages earned by the employee during the accounting year subject to maximum of 20% of such salary or wage. Such is not the case here.

11. I may refer to yet another provision that may throw light on the situation. Section 16 of the Act of 1965 is special provision with respect to certain establishments for payment of bonus. Proviso to sub-section (2) of Section 16 provides that bonus is payable in terms of sub-section (1) to the employees of new department or undertaking or branch set up by existing establishment. There is no dispute that Nagardhan Unit of the petitioner establishment was set up subsequently.

Proviso to sub-section (2) provides that if the employer in relation to an existing establishment consists of different departments/units set up at different periods and is paying bonus to the employees of all such departments/units on the basis of consolidated profits computed in respect of all such departments/units, then such employer will be liable to pay bonus in accordance with the said proviso. The extended meaning of this proviso would be that where the bonus is not paid on the basis of consolidated profits, the employees will be entitled for bonus on the basis of profits of individual units.

12. In the present case, the evidence is writ large to show that petitioner had maintained separate balance-sheet of Nagardhan Unit. The evidence also indicate that the petitioner had paid bonus at 18% per annum for previous years up to 2014-15 to the respondents. There is further no dispute that for the period 2015-16, the petitioner has paid statutory bonus to the employees. The evidence does not spell out payment of bonus on the basis of consolidated balance-sheet nor was such demand made by the respondents. The demand was to pay bonus at 20% but was not based on consolidated balance sheet. Despite such fact, the Industrial Court found the respondents entitled for payment of bonus for the year 2015-16 on the basis of consolidated balance-sheet

and profit and loss account of the petitioner. This finding is contrary to the evidence as also the provisions of law.

13. The award, therefore, will not stand the scrutiny of law. The petitioner has made out a case. Resultantly, writ petition is allowed. The award dated 3-3-2020 passed by the Member, Industrial Court, Nagpur in Reference (BIR) No. 4/2017 is quashed and set aside.

14. Rule is made absolute in aforesaid terms with no order as to costs.

(Anil L. Pansare, J.)

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