IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.32307 and 32308 of 2015
and M.P.Nos.1 and 2 of 2015 and W.M.P.Nos.18529, 18531, 18534, 18538, 18540 and 18542 of 2020

W.P.No.32307 of 2015

The Management,
Bhadras International India Private Limited,
Cargo Complex, Airport Authority of India,
Meenambakkam,
Chennai-600 027. ... Petitioner

Vs.

1.The General Secretary,
Airport Authority of India Bhadras Employees Union,
K.T.K.Thanagamani Illam,
2/1, Kovoor Vaidyanathan Street,
Chintadripet,
Chennai-600 002.

2.The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Shastri Bhavan,
Chennai-600 006. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in the impugned award dated 25.06.2015 in I.D.No.34 of 2014 and quash the same.

For Petitioner : Mrs.R.Maheswari
for Mr.N.Vijayakumar

For Respondents : Mr.Balan Haridas for R1

W.P.No.32308 of 2015

The Management,
Bhadras International India Private Limited,
Cargo Complex, Airport Authority of India,
Meenambakkam,
Chennai-600 027. ... Petitioner

Vs.

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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in the impugned award dated 25.06.2015 in I.D.No.35 of 2014 and quash the same.

For Petitioner	:	Mrs.R.Maheswari for Mr.N.Vijayakumar
For Respondents	:	Mr.Balan Haridas for R1

C O M M O N O R D E R

The present writ petitions have been directed against the common award passed by the 2nd respondent in I.D. Nos.34 and 35 /2014, in and by which, the claim of bonus raised by the 1st respondent was affirmatively decided in favour of the 1st respondent.

2. It is the case of the petitioner that pursuant to coming out successful in the global tenders floated by the Airports Authority of India for appointment of professional ground handling agency in terms of Clause 3 of the Airport Authority of India (General Management, entry for Ground Handling Services) Regulations, 2007, the petitioner came out successful

and was awarded the contract for handling the cargo services for the aircrafts of india and aborad. Pursuant to the said contract, the company commenced its operations during December, 2010 and the first invoice was raised by the petitioner on 31.01.2011. It is the further case of the petitioner that it did not derive any profit during the last four accounting years from the date of the first invoice and it had been incurring huge losses and incurring recurring and escalating cost due to illegal stoppages of works and go-slow practice adopted by the members of the 1st respondent and due to the said acts, the petitioner was penalised on account of the claims made by many of the airlines to the Airports Authority of India. It is the further averment of the petitioner that due to the acts of the members of the 1st respondent Union, the volume of cargo handling by the petitioner had started decreasing, thereby eroding the financial capacity of the petitioner.

3. It is the further averment of the petitioner that based on false averments and allegations, the 1st respondent, without any basis claimed that the petitioner was making huge profits and had made speculative claims

and raised dispute claiming payment of bonus for the year 2010-2011, 2011-2012 and 2012-2013 before the Assistant Commissioner and conciliation and as there was no conciliation, the dispute was referred for adjudication leading to the impugned award coming to be passed, aggrieved by which the present petitions have been filed.

4. Learned counsel appearing for the petitioner submits that the dispute has been raised by the 1st respondent with ulterior motive and mala fide intention to create unrest amongst the employees and disrupt the smooth functioning of the petitioner. It is the further submission of the learned counsel that the 2nd respondent has completely ignored the evidence of W.W.1 in cross examination, in which there is a categorical deposition that he was appointed only in November, 2010 and has been working in the company for four years which clearly proves that the petitioner commenced operations only in November/December, 2010.

5. It is the further submission of the learned counsel that the deposition of M.W.1 also clearly establishes that the petitioner had started operations only in December, 2010 and there is no iota of material from which it could be inferred that the petitioner commenced business earlier in point of time. It is the further submission of the learned counsel that even the profit and loss account and balance sheet filed as Ex.M-1 clearly shows that the petitioners did not generate any revenue out of its business handling cargo in the year 2009-2010.

6. It is the further submission of the learned counsel that the materials, more particularly, the deposition of M.W.1, W.W.1 and the averments in the claim petition and the proof affidavit have not been properly appreciated by the 1st respondent while coming to the conclusion about the profitability of the petitioner. It is the further submission of the learned counsel that Exs.M-1, M-2 and M-3, clearly reveals that the accounts of the petitioner have been certified by its chartered accountants

that the petitioner did not derive any profits during the last four accounting years and coupled with Ex.zM-9, the first invoice, there could be no doubt that not only the petitioner commenced business only during December, 2010, but was not deriving any profits for four years from that date.

7. It is the further submission of the learned counsel that the manner in which the profits have to be derived by an employer is provided under 2nd Schedule to the payment of Bonus Act and calculations in this regard have been filed under Exs.M-1, M-2 and M-3. Further, the claim of the 1st respondent that they are not in possession of the balance sheet of the company is false, as it is a public document, which could be very much retrieved from the Registrar of Companies. Further, the balance sheet and profit and loss statements have been audited, signed and certified by registered chartered accountants and it is in strict adherence fo the provisions of the Companies Act.

8. Further, the 1st respondent has failed to note that the commencement of recruitment of employees by the petitioner was only during end 2010 and no employees and the 1st respondent was formed only in the year 2012, a year after commencement of operations by the petitioner. All the above documents clearly establish that the petitioner not only did not derive any profits, which could be paid as bonus under the Payment of Bonus Act, but the appointment of the members of the 1st respondent was only during the year 2011 and, therefore, there arises no question of payment of bonus for the year 2010. Further, in the absence of any profit for the petitioner during the years 2010-2013, there arises no scope for the petitioner to pay bonus to the members of the 1st respondent as per the provisions of the Payment of Bonus Act. It is the further submission of the learned counsel that no material whatsoever has been placed by the 1st respondent to establish that the petitioner has been deriving profits and on erroneous misconception with regard to the figures shown in the brackets in the profit and loss statement, the 1st respondent had termed it to be profits

for which bonus has to be paid to the members of the 1st respondent and had passed the impugned order, which is per se arbitrary, perverse and unreasonable and the same deserves to be set aside.

9. Per contra, learned counsel appearing for the 1st respondent submitted that the Tribunal, after properly appreciating all the materials and taking into consideration the deposition of all the witnesses has come to the conclusion that the petitioner was established in the year 2000 itself and at best, the present operations had started in the fag end of year 2010 cannot be taken to mean that the company was not functional and had accordingly held that the workmen are entitled to bonus as per the provisions of the Payment of Bonus Act, which view, arrived at, by no stretch could be termed to be unsustainable or erroneous and, therefore, the same does not require any interference at the hands of this Court.

10. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. The gravemen of the contention advanced on behalf of the petitioner is that the operations were started only during December, 2010 and, therefore, for five years, the company is not required to pay bonus and further the profit and loss statement and statement of accounts of the company during the period 2010-2013 does not show any profit and, therefore, the petitioner is not required to pay any bonus to the members of the 1st respondent.

12. There is no dispute about the fact that based on the successful tenderer being the petitioner, the contract was awarded to the petitioner in the year 2010. However, it is not to be forgotten that the petitioner is not a new concern, but is a concern, which was well established in the year 2000 and it is only the said concern, which had partaken in the tender process and had come out successful. The petitioner is not a new concern for the purpose of getting the tender from the Airports Authority, but is a concern, which had been established in the year 2000 and, therefore, the operations at Chennai Airport may have been new, but the company is a going concern

and had been in existence since 2000 and, therefore, the five year period for availing the protection u/s 16 (1-A) and (1-B) of the Payment of Bonus Act would not be available to the petitioner. Further, as held by the Tribunal, the petitioner does not claim it to be a separate and distinct concern from its parent concern and, therefore, it would not be entitled to avail the benefits u/s 16 (1-A) and (1-B) of the Act.

13. In this backdrop, it is only required to be seen that whether the petitioner was facing loss, as claimed by the petitioner which is decipherable from the profit and loss statement. As held above, the petitioner does not claim that the operation in Chennai, though started in the year 2010, was distinct from its earlier operations which was started way back in the year 2000. Such being the case, the Chennai operations could be treated to be part and parcel of the running establishment and, therefore, it cannot claim any exemption from paying bonus.

14. Further, it is evident from the auditor's report that the balance

sheet and profit and loss account are prepared and maintained in respect of the operation at Chennai Airport. However, as seen from the finding recorded by the Tribunal, the Tribunal has relied on the deposition of M.W.1, who, in his deposition has stated that ever since the incorporation of the company in the year 2000, the company has been submitting profit and loss account and balance sheet to the Registrar of Companies. However, insofar as the present case is concerned, the balance sheet for the financial years 2010-2011, 2011-2012 and 2012-2013 alone are produced by the petitioner and the annexures therein have not been placed on record. Further, M.W.1 though had deposed that the balance sheet and profit and loss statement for the earlier years could be produced, but were not produced, has gone on to further depose that ever since the incorporation of the company, the statements are submitted with the Registrar of Companies. When the petitioner claims that it had started operations only in the year 2010 and statements for the earlier years in respect of the petitioner ought to have been submitted to decipher as to when the business operations in Chennai have been started. Without there being any material placed to prove the stand of the petitioner, inferences from the deposition of witnesses cannot be drawn, when there are documents to establish the plea, but which have not been submitted by the petitioner for reasons best known to it.

15. Further, as rightly held by the Tribunal, when the petitioner contends that it was not carrying on business prior to December, 2010, however, as pointed out by the Tribunal, the statement of account of the year ending 31.03.2011 shows a figure of Rs.1,36,00,000/-, but for the year ending 31.03.2010, the amount is shown as Rs.1,60,00,000/-. When such is the discrepancy in the figure, more particularly when the petitioner claims that it has not done any business which was started only in December, 2010, it is for the petitioner to place all the relevant documents to establish its case that its business was started only in December, 2010 it is for the petitioner to place relevant materials to establish the same and in the absence of such materials being placed, an adverse inference has been drawn against the petitioner by the Tribunal, which cannot be said to be erroneous.

16. The Tribunal, after considering the materials, both oral and

documentary, through a proper and reasoned order had passed the award directing the petitioner to pay bonus to the members of the 1st respondent Union, which is neither perverse nor unreasonable and the same does not warrant any interference at the hands of this Court.

17. For the reasons aforesaid, these writ petitions fail and, accordingly, the same are dismissed. However, the petitioner is directed to pay the minimum bonus of 8.33% for the year 2012-2013 in respect of I.D.No.34 of 2014 and for the year 2010-2011 and 2011-2012 in respect of I.D.No.35 of 2014, after adjusting the amount already deposited within a period of 12 weeks from the date of receipt of a copy of this order, in default, failure to pay the aforesaid wages within the said period of 12 weeks would attract an interest at the rate of 9% per annum. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.03.2025

NCC: Yes / No
Index : Yes / No

Speaking Order : Yes / No
ssb

To

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M.DHANDAPANI,J.

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