

COFFEE BOARD EMPLOYEES ASSOCIATION AND ORS.

v.

A. C. SHIVA GOWDA AND ORS.

DECEMBER 11, 1991

[P. B. SAWANT AND B. P. JEEVAN REDDY , JJ.]

Coffee Act, 1942: Section 32.

Coffee Board—Employees engaged for storing, curing and marketing coffee—Ex-gratia payment made to employees at the minimum rate at which bonus is payable under the Payment of Bonus Act—Payment made out of the Pool Fund constituted under the Act—Held payment made was for the purpose mentioned in Section 32 and was therefore valid.

The appellant-Coffee Board engaged employees for storing, curing and marketing coffee. After obtaining previous sanction of the Central Government, the Board made an ex-gratia payment to these employees equivalent to the minimum bonus payable to the workmen under the Bonus Act for the year 1964-65 to 1968-69. The said payment was made out of the Pool Fund constituted under the Coffee Act. The respondent-Coffee planters challenged the said payment by filing petitions in the High Court and a Single Judge of the High Court upheld the payment as legal.

On appeal the Division Bench of the High Court reversed the decision of the Single Judge by holding: (i) that the Bonus Act was inapplicable to the Coffee Board and therefore no bonus was payable under the Act; (ii) the payment made was illegal because it was not covered by Section 32. The Coffee Board and the Board Employees Association filed appeals in this Court.

It was contended on behalf of the respondent-coffee planters that section 32(2)(b) which refers to the cost of storing, curing and marketing coffee deposited in and of administering the surplus pool will not include the payment made to the employees because the Board engages no workman for the said purpose; the Board gives contracts and the contractors get the work done through their own workmen who are not employees of the Board.

Allowing the appeals and setting aside the decision of the Division Bench, this Court,

A **HELD: 1. An ex-gratia payment to the staff is a well recognised legitimate mode of incentive payment. Incentives are necessary for securing from the workmen cooperation and efficient work. In the absence of efficiency, the cost of the work undertaken is bound to increase. In the long term, such payment helps to keep down the costs and acts in the interests of the industry. The decision to make the payment has, therefore, to be left**
B **entirely to the discretion of the management. Since the payment in question was ex-gratia and not as bonus, the question whether the Bonus Act applied or not was irrelevant. The Division Bench of the High Court erred in considering the question as to whether the Bonus Act was applicable to the Coffee Board or not. [391 B, 389-G]**

C **2. It is evident from the record that the Board does employ workmen for storing and marketing of coffee as well as for administering the surplus pool of coffee. Even assuming that there is a dispute as to whether curing is done by the Board's employees, it is not disputed that those who were paid the ex-gratia payment from the Pool Fund were engaged also for**
D **storing and marketing of coffee as well as for administering the surplus pool of coffee. Therefore, the payment made to the said employees would legitimately be a part of the costs of storing and marketing coffee as well as of administering the surplus pool of coffee. [390 F-G]**

E **Sub-section(2) of Section 32 does not require that the cost of storing and marketing of coffee as well as of administering the surplus pool of coffee should be incurred only in terms of the salaries paid to the concerned staff and not otherwise. Whether the payment is made by way of salary or by way of ex-gratia payment over and above the salary, it would legitimately constitute the cost of the labour engaged in the said work. Thus, all legitimate payments made to the staff would constitute the**
F **cost of labour engaged in the said activities. In the circumstances, the Division Bench erred in holding that the payment in question from the Pool Fund was unauthorised. [391 A-C, 390-H]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3097-3099 of 1979.

G **From the Judgment and Order dated 23.8.79 of the Karnataka High Court in W.P.No. 90 to 92 of 1974.**

WITH

Civil Appeal Nos. 3100-3103 of 1979.

H **From the Judgement and Order dt. 23-8-79 of the Karnataka High Court in W.P. Nos. 90 to 93 of 1974.**

M.K. Ramamurthy, Dr. Anand Prakash, M. Veerappa and C.V.S. Rao for the Appellants. A

G.B.Pai, S.N.Sikka and Ms. Meera Mathur for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. The question involved in these appeals is whether the ex-gratia payment made by the Coffee Board to its employees at the minimum rate at which bonus is payable under the Payment of Bonus Act [hereinafter referred to as the 'Bonus Act'] is legal and further whether such payment could be made from the Pool Fund constituted under the Coffee Act, 1942 [hereinafter referred to as the 'Act']. The relevant facts in brief are as follow: B C

2. The appellant-coffee Board is constituted under Section 4 of the Act. For the purpose of carrying out its activities under the Act, the Board engages various categories of employees. In the present appeals, we are concerned with the staff engaged for storing, curing and marketing coffee. The Board made an ex-gratia payment equivalent to the minimum bonus payable to the workmen under the Bonus Act for the years 1964-65 to 1968-69. There is no dispute that this payment was made by the Board after obtaining previous sanction of the Central Government. There is further no dispute that the concerned employees were made the said payment out of the Pool Fund constituted under the Act. The respondent-Coffee planters challenged the said payment by filing different writ petitions before the Karnataka High Court. The learned Single Judge of the High Court upheld the said payment as legal and dismissed the writ petitions. In appeal, the Division Bench of the High Court reversed the said finding and held that the Bonus Act was inapplicable to the Coffee Board and, therefore, no bonus was payable under the Act. The Bench also held that inasmuch as the payment was made out of the Pool Fund which was to be applied only for the purposes mentioned in Section 32 of the Act, the said payment was illegal on the ground that the purposes mentioned under the said section did not cover the payment to the employees by way of bonus. It is aggrieved by this decision that the Coffee Board and the Coffee Board Employees' Association have preferred these appeals. D E F

We are afraid that the Division Bench of the High Court had erred by considering the question as to whether the Bonus Act was applicable to the Coffee Board or not. On the undisputed fact that the payment in question was ex-gratia and not as bonus Act applied or not was irrelevant. The only question that fell for consideration was whether the payment could be made out of the Pool Fund. It is for this reason that it is not necessary for us to go into the G H

- A question whether the Bonus Act applied to the Coffee Board or not. Mr. Pai, learned counsel appearing for the respondents-owners/planters of Coffee Estates contended that Section 32 had laid down that the Pool Fund shall be applied only to “(a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the surplus pool; (b) the costs of storing, curing and marketing coffee deposited in and of administering the surplus pool; (c) the purchase of coffee not delivered for inclusion in the surplus pool”; “Provided that where, after the requirements of the clauses of this sub-section have been met, there remains any excess in the pool fund, the Board may, with the previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the General Fund”. According to him, this does not include payment to employees either for securing better working conditions or for providing amenities and incentives to the workers. Nor does any one of the said purposes include expenses of the board which may broadly be held to cover the expenses incurred on the maintenance of the staff. He submitted that the payment for both purposes is to be made from the General Fund since clauses (2) (a) and (e) of Section 31 of the Act specifically mention that it is the General Fund which shall be applied to meet both the said expenses. He further contended that Section 2(b) of Section 32 which refers to the cost of storing, curing and marketing coffee deposited in, and of administering the surplus pool, will not include the expenses on employees employed for the said purposes because, urges he, the Board neither stores nor cures coffee and engages no workmen for the said purposes. He submitted that for curing, the Board gives contracts and it is the contractors who get the work done through their own workmen who are admittedly not the employees of the Board and to whom the said payment is not made.

- We are afraid that on the factual aspect Shri Pai is not right because paragraph 14 of the Board’s affidavit-in-reply filed in the writ petition clearly mentions the fact that the staff who were paid the exgratia payment from the Pool Fund had “rendered service in the service of the Board insofar as it related to pooling, curing and marketing of coffee”. This statement has nowhere been controverted by the respondent-Coffee planters. We also find from the record that the Board does employ workmen for storing and marketing of coffee as well as for administering the surplus pool of coffee. This is also not disputed on behalf of the respondent-Coffee planters. Even assuming, therefore, that there is a dispute as to whether curing is done by the Board’s employees it is not disputed that those who were paid the ex-gratia payment from the Pool Fund were engaged also for storing and marketing of coffee as well as for administering the surplus pool of coffee. If that is so, the payment made to the said employees would legitimately be a part of the cost of storing and

marketing coffee as well as of administering the surplus pool of coffee. Whether the payment is made by way of salary or by way of ex-gratia payment over and above the salary, it would legitimately constitute the cost of the labour engaged in the said work. Sub-section (2) of Section 32 does not require that the cost of storing and marketing of coffee as well as of administering the surplus pool of coffee should be incurred only in terms of the salaries paid to the concerned staff and not otherwise. All legitimate payment made to the staff would constitute the cost of labour engaged in the said activities. An ex-gratia payment to the staff is a well recognized legitimate mode of incentive payment. Incentives are necessary for securing from the workmen cooperation and efficient work. In the absence of efficiency, the cost of the work undertaken is bound to increase. In the long term such payment helps to keep down the costs and acts in the interests of the industry. The decision to make the payment has, therefore, to be left entirely to the discretion of the management.

3. In the circumstances, we are afraid that the Division Bench has erred firstly in going into the question whether the Bonus Act was applicable or not and secondly in holding that the payment in question from the Pool Fund was unauthorised. The appeals are, therefore, allowed. The decision of the Division Bench of the High Court is set aside and that of the learned Single Judge is restored. The respondent-Coffee planters will pay costs in each of the appeals.

T.N.A.

Appeal allowed.