(1969) 11 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rules No''s. 198, 221, 222, 231, 252, 303, 304 and 305 of 1967 and 90 of 1968

Amal Kumar Ghatak and Others — APPELLANT

Vs

The State of Assam and Others — RESPONDENT

Date of Decision : 28-11-1969

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1), 31(1), 358, 43
Minimum Wages Act, 1948 — Section 5(1)
Payment of Bonus Act, 1965 — Section 10, 13, 16, 33, 34(2)

Citation : (1969) 11 GAU CK 0001

Hon'ble Judges : M.C. Pathak, J

Bench : Single Bench

Advocate : P. Chaudhuri, for the Appellant; B.C. Barua, General and A.R. Barthakur, Government Advocate, for the Respondent

Judgement

M.C. Pathak, J.—These cases were heard by a Division Bench consisting of the Hon''ble the Chief Justice and Hon''ble Goswami, J. and on the difference of opinion; the cases have been referred to me.

2. The above nine applications were filed by the Petitioners challenging the State Government''s order rejecting their prayer for exemption from payment of bonus under the provisions of the Payment of Bonus Act, 1965, hereinafter referred to as the Bonus Act. The fact9 leading to these petitions are similar and the points that arise for decision also are same and therefore these are heard as analogous and the same judgment will cover all the above cases.

3. The facts of Civil Rule No. 198/67. Which are similar to the other cases, are briefly as follows: The Petitioner is the proprietor of the Tea Estates known as Lahorijan and Nirmal Kumar Tea Estates situated in the United North Cachar and Mikir Hills District. The said Tea Estates are uneconomic which is evidenced by the findings of the Minimum Wages Committee, appointed u/s 5 (1) (a) of the Minimum Wages Act, 1948 under the Government of Assam Notification No.

GLR-126/58/20 dated 18th October, 1958. An extract from the said report has been quoted in the petition. In 1965 the Payment of Bonus Ordinance 1965, was promulgated by the President of India which was replaced by the Payment of Bonus Act 1965 which came into force with effect from 25-9-65. In the said Act provisions have been made for compulsory payment of bonus to both workers and employees at the rates- specified by the said Act. u/s 36 of the said Act, the State Government is empowered to exempt any establishment or class of establishments from all or any of the provisions of the said Act having regard to financial position and other relevant circumstances of the establishment concerned. Relying on the findings of the Minimum Wages Committee, the Petitioner applied to the Respondents on 13-9-1965 for exemption u/s 36 of the Payment of Bonus Ordinance 1965. On 11-1-1967 the Petitioner made a further representation to the Respondents for exemption u/s 36 of the Payment of Bonus Act. By letter No. GLR-418/66/3 dated the 1st May. 1967 the Respondents rejected the Petitioner''s prayer for exemption u/s 36 of the said Act. The Petitioner has challenged this order of the State Government.

The impugned order is quoted below "GOVERNMENT OF ASSAM LABOUR DEPARTMENTS LABOUR BRANCH. No. GLR-418/66/3, Dated Shillong, the 1st May, 1967". From: Shri A. Ahmed, I.A.S. Deputy Secretary to the Govt. of Assam. To: The Proprietor, Lahorijan and Nirmal Kumar Tea Estate, P.O. Manipur Road. Assam.

Sub.: Payment of Bonus for the year 1964 - Application for exemption.

Ref.: Application No. 1085/L-63 dated 13-9-65 and subsequent letter No. 1366/ L-63 dated 7-10-66.

Sir,

With reference to your application mentioned above for exemption from payment of bonus for the year 1964 I am directed to say that Government after due consideration have rejected your prayer. However, time is allowed upto 30-9-67 and payment may be made in two equal installments, if you so desire. I am there are to request you to pay the workers due accordingly with intimation to Government.

Yours faithfully, Sd/- A. Ahmed, Dy. Secretary to the Govt. of Assam, Labour Department. The substance of the impugned orders In the other petitions, is same except that the concession for payment in installments is not in the other orders and in Civil Rule No. 90/68 the petition for exemption was rejected as time barred.

4. Mr. R. Chaudhuri, the learned Counsel appearing for the Petitioner in Civil Rule No. 198/67 submitted that - (1) an order passed u/s 36 of the Payment of Bonus Act 1965, is a quasi-judicial order and not purely administrative and as such the impugned order of the State Government is liable to be quashed inasmuch as the Petitioner was not given a hearing nor was the order a speaking order; and (2)

even assuming that the order was an administrative order the Government failed to perform its duty assigned under the Act and therefore a mandamus would lie to perform their duty.

5. Mr. B.C. Barua, the learned Advocate-General, appearing for the Respondents, submitted on the other hand that - (1) the order passed u/s 36 of the Payment of Bonus Act was purely an administrative order and not a quasi-judicial order and (2) the Government rejected the Petitioner''s prayer for exemption after having duly considered the materials placed before it and therefore no writ of certiorari or mandamus as trayed for would lie.

6. From a perusal of the impugned order, which has been quoted above, it is found that the order is not a speak-in order. It has been simply stated therein that Government rejected the petition after due consideration. In view of the submissions made by the learned Counsel of both the parties, the main point that arises for consideration is whether an order passed u/s 36 of the Payment of Bonus Act, 1965 is an administrative order or a quasi-judicial order.

7. In the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, the vires of the Bonus Act was considered by the Supreme Court which held that Sections 33, 34(2) and 37 were ultra vires but it held that the remaining provisions of the Act were valid and intra vires.

8. Section 10 and Section 36 of the Bonus Act which will require particular consideration for deciding the above case are quoted below:

Section 10 Payment of minimum bonus.

Subject to the provisions of Sections 8 and 13 every employer shall be bound to pay to every employee in an accounting year a minimum bonus which shall be four per cent of the salary or wage earned by the employee during the accounting year or forty rupees, whichever Is higher, whether there are profits in the accounting year or not:

Provided that where such employee has not completed fifteen years of age al the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "forty rupees", the words "twenty-five rupees" were substituted.

Section 36 Power of exemption. If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishments or class of establishments from all or any of the provisions of this Act.

9. In the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, (supra), Shah, J. (for self and Wanchoo and Sikri, JJ.) in the majority judgment, observed

as follows regarding Section 36 of the Payment of Bonus Act:

By Section 36 the appropriate Government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Condition for exercise of that power is that the Government holds the opinion that it is not in the public interest to apply all o" any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the pro- visions of S. 36. The power so conferred does not amount to delegation of legislative authority. Section 86 amounts to conditional legislation and is not void. Whether in a given case, power has been properly exercised by the appropriate Government would have to'' be considered when that occasion arises.

In the same case in the minority judgment Hidayatullah, J. (as he then was) (for self and Ramaswami, J.) observed as follows:

Similarly Section 36, which gives further power to the Central Government to exempt in the public interest an establishment or class of establishments for some period subject to such condition as the Central Government might deem necessary to impose, does not per se augur discrimination. There may be special cases which may require immediate relief and but for such provision there would be no means of affording the relief. The existence of such a provision is not bad because it merely gives a power. But the exercise of the power must, of course, bear the scrutiny of Article 14. As no abuse of power is suggested, we cannot say that the section is by reason of a possibility of abuse discriminatory. The section cannot lightly be described as a piece of delegated legislation.

10. From the above observations of the Supreme Court it is quite clear that Section 36 of the Payment of Bonus Act is a valid legislation and it amounts to conditional legislation and not a piece of delegated legislation and the appropriate Government, on whom the p6wer is invested, must act according to the principles and guidance laid down in the section itself and the exercise of the power must bear the scrutiny of Article 14 of the Constitution.

11. Regarding Section 10 of the Bonus Act, the Supreme Court observed in the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, (supra) that the plea that . Section 10 infringes the fundamental freedom under Article 31(1) of the Constitution had no force. The question whether Section 10 by imposing unreasonable restrictions infringes the fundamental freedom under Article 19(1)(g) of the Constitution was however, left undecided by the Supreme Court in view of declaration of emergency by the President under Article, 52 which has, by virtue of Article 358, the effect of suspending protection of Article 19 against any

legislative measure or executive order which was otherwise competent. The emergency no longer exists.

12. Mr. Choudhury the learned Counsel for the Petitioner, submitted that if the legislature had not provided for Section 36, Section 10 would be ultra vires Article 19(1) (g) of the Constitution. His submission was that if the legislature had not provided for-the provisions of Section 36, the compulsory nature of payment of bonus at rate fixed under the Act would amount to, in certain cases, as in the present case, unreasonable restrictions infringing the fundamental freedom guaranteed under Article 19(1) (g) of the Constitution. The provisions of Section 36 have saved Section 10 from the vice of unreasonable restrictions infringing fundamental right under Article 19(1) (g) of the Constitution. This power u/s 36 was vested on the Government and hence from the very nature of the power and the authority on whom it is vested, the power u/s 36 must be treated'' as quasi-judicial and not purely administrative.

13. On the controversial question whether a particular power is an administrative or quasi-judicial, the Supreme Court has observed in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, - A.K. Kraipak and Others Vs. Union of India (UOI) and Others, as follows:

The dividing line between the administrative power and quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every'' organ of the State under our Constitution is regulated and controlled by the Rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

The Supreme Court .then quoted as Instructive the following observations of Lord Parker, C. J., in Regina v. Criminal Injuries Compensation Board, Ex Parte Lain (1967 2 QB 864):

With regard to Mr. Bridge''s second point I cannot think that Atkin, L. J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case, the rights determined were at any rate not immediately enforceable right since the scheme laid down by the Commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this Court. Moreover, as can be seen from Rex v. Postmaster-General Ex Parte Carmichel 1928 1 KB 291 and Rex v. Boycott Ex Parte Kessley 1939 2 KB 651 the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see It is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is. from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, see Reg. v. Manchester Legal Aid Committee, Ex parte R. A. Brand & Co. Ltd. 1952 2 KB 413 to cases in which the decision of an administrative officer is only arrived at after an" inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is. as Mr. Bridge said, ''a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown.'' It is clearly, therefore, performing public duties.

. The Supreme Court then observed as follows:?

This Court In the Purtabpore Co., Ltd. v. Cane Commissioner of Bihar and others, held that the power to alter the area reserved under the Sugarcane (Control) Order. 1966, is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power ....

14. On a consideration of the above observations of the Supreme Court, it is found that in order to determine whether a power is an administrative or quasi-judicial power, we have to consider the following factors? (1) the nature of the power conferred, (2) the person or persons on whom it is conferred, (3) the framework of law conferring that power, (4) the consequences issuing from the exercise of that power and (5) the manner in which the power is expected to be exercised.

15. Secondly the Supreme Court has held that the requirement of acting judicially is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously, and that in such matters rigid adherence to precedents may not advance public good.

16. From the Preamble of the Bonus Act it appears that it is an Act to provide for payment of bonus to persons employed in certain establishments and for matters connected there with.

17. Section 10 of the Bonus Act provides that subject to the provisions of Sections 8 and 13, every employer shall be bound to pay to every employee in an accounting year a minimum bonus as provided in the Bonus Act whether there are profits in the accounting year or not.

18. Section 8 provides that every employee who has worked in the establishment for not less than thirty working days in that year, shall be entitled to be paid by his employer in an accounting year bonus in accordance with the provisions of the Bonus Act. Section 13 provides for proportionate reduction of bonus in certain cases.

19. From a perusal of the provisions of Sections 10, 8 and 13 it is found that an employer is legally bound to pay bonus to an employee in accordance with the provisions" of the Bonus Act. Though originally the concept of bonus was profit-oriented, the Bonus Act has linked up the bonus with wage and the Bonus Act has converted the payment of bonus as provided under the Bonus Act as legal obligation on the part of the employer. Section 10 has provided that the minimum bonus will have to be paid by the employer to the employee whether there are profits in the accounting year or not. The section does not however mention loss as such. Hence the question may arise whether bonus is to be paid if an establishment has been incurring loss. To obviate this difficulty the legislature has enacted Section 16 to provide special safeguard for newly set up establishments in respect of payment of bonus under the Bonus Act.

20. On a consideration of the scheme of the Bonus Act it appears that an establishment has to pay bonus whether it earns profit or not or whether it incurs loss in the accounting year. The Supreme Court while holding that Section 10 is not hit by Article 14 of the Constitution, observed in the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, (supra) as follows:

Section 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 oil 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 the 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.

Article 43 of the Constitution provides as follows:

The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage,. conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities arid, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

The Supreme Court in the case of All India Reserve Bank Employees Association Vs. Reserve Bank of India, observed as follows:

The concept of fair wages involves a rate sufficiently high to enable the worker to provide "a standard family with food, shelter clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishments concerned". A fair wage is related to a fair workload and the earning capacity. The concept of living wage is one" or more steps higher than fair wage.... It has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure for frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept 6f living wage.

21. The concept of bonus is linked up with wages and the Bonus Act is a step towards providing for a living wage for workers. With this end in view the legislature has enacted Section 10 which has created an obligation on the part of the employer to pay bonus to workers as provided under the Bonus Act whether there is profit or no profit, or even in case of loss. We are therefore required to consider the question whether in some cases of establishments. Section 10 of the Bonus Act is tantamount to the negation of the fundamental right under Article 19 (1) (g) of the Constitution of India. If in a given case, an establishment is running loss for a number of years even beyond the period of protection as provided by Section 16 for new establishments and if such an establishment is

compelled to pay bonus to the employees under the Bonus Act, and the employer consequently is compelled to close down the establishment due to loss overburdened with the obligation of payment of bonus under the Bonus Act, would it not mean unreasonable restriction infringing fundamental right under Article 19(1) (g) of the Constitution? In my opinion this aspect of the matter was considered by the Legislature while enacting the Bonus Act and Section 36 of the Act was provided to meet the difficulty. Section 36 appears to be a complete answer to the question of vire9 of Section 10 on the ground of infringement of fundamental right under Article 19(1) (g) of the Constitution. We have to keep in clear view this aspect of the legislation while interpreting whether the power conferred on the appropriate Government u/s 36 of the Bonus Act is administrative or quasi-judicial.

22. The Supreme Court has held as quoted above that "Section 36 of the Bonus Act amounts to conditional legislation and the power conferred by it does not amount to delegation of legislative authority; that there may be special cases which may require immediate relief and if there were no provisions like Section 36 there would be no means of affording such relief.

23. The power has been conferred on the Government who necessarily bear the responsibility of acting justly and fairly under our Constitution.

24. Section 36 provides that if the appropriate Government having due regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of the opinion that it will not be in public interest to apply all or any of the provisions of the Act, then it may exempt the establishment or class of establishments by an appropriate order under this section from all or any of the provisions of the Bonus Act. The formation of the opinion whether the exemption will be or will not be in public interest, no doubt, is an administrative action. But Section 36 provides that the formation of this opinion is subject to due consideration of the financial position and other relevant circumstances of the establishment or class of establishments. The financial position and other relevant circumstances may be placed before the appropriate Government by the establishment or class of establishments seeking exemption u/s 36. The Bonus Act has created a legal obligation on the part of the establishment or class of establishments to pay minimum bonus as provided under the Act. A duty has been cast upon all the establishments covered by the Bonus Act to pay the minimum bonus in accordance with the provisions of the Bonus Act. If any establishment finds that it is not able to pay the minimum bonus due to it9 financial position and other relevant circumstances, it is open to it to make a representation u/s 36 of the Bonus Act. When any establishment finds itself unable to comply with the requirements of the Section 10. it may approach the appropriate Government for an appropriate order u/s 36. If the appropriate Government in compliance with Section 36 passes any order either rejecting the application for exemption or allowing it, it will affect either the establishment or the employees as the case may be. If the appropriate

Government makes an order of exemption as provided u/s 36 it will necessarily have civil consequences as to the rights of the employees and if it rejects the application for exemption it may affect the establishment vitally. An order made u/s 36 would entail civil consequences either to the establishment or to the employees. In this connection the following passage from the Supreme Court in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, may be usefully quoted:-

It is one of the fundamental rules for our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed 5 it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

In the case of Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, (supra), the Supreme Court has observed that condition for exercise of the power u/s 36 is that the Government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances of the establishment or class of establishments. Parliament has clearly laid down the principles and has given adequate guidance to the appropriate Government in implementing the provisions of Section 36. Whether in a given case, power has been properly exercised by the appropriate Government or not may be considered when occasion arises.

25. It is thus clear that the appropriate Government while exercising the power under the provisions of Section 36 must be guided by the principles and guidance provided in the section itself. In exercising this power the appropriate Government must act justly and fairly and not arbitrarily or capriciously. The provisions of Section 36 require that while forming its opinion as to the public interest, the appropriate Government must have due regard to the financial position and other relevant circumstances of any establishment or class of establishments. This would necessarily mean that the order u/s 36 should be a speaking order.

26. Though the formation of opinion as to public interest by itself may be an administrative action, Section 36 requires that the Government before forming such an opinion must have an objective view regarding the financial position and other relevant circumstances of the establishment or class of establishments concerned. The order passed u/s 36 must be passed justly and fairly and for that purpose the order should show that the Government have considered the financial position and other relevant circumstances of the establishment or class

of establishments concerned. The order, on the face of it, should not appear to be arbitrary or capricious. Thus, applying the test as laid down by the Supreme Court for finding out whether a particular power is administrative or quasi-judicial, I am clearly of the opinion that the power to be exercised u/s 38 of the Bonus Act is a quasi-judicial power and the appropriate Government has to act justly and fairly and not arbitrarily or capriciously. The order sliTild be a speaking order showing that the requirements of Section 36 have been duly complied with. In the instant case from the impugned order it is not clear whether Government had due regard to the financial position and other relevant circumstances, which were placed before the Government by the establishments concerned.

27. I, therefore, hold that while exorcising the power u/s 36 of the Bonus Act, the State Government should duly consider the financial position and other relevant circumstances of the establishment concerned that may be produced before it, hear the affected parties and pass a speaking order. This was not done in any of the above cases. The impugned orders of the State Government in all the above nine cases are, therefore, liable to be quashed.

28. Mr. Choudhury, the learned Advocate appearing for the Petitioner, submitted that on the admitted facts in Civil Rule No. 198/67 a mandamus should be issued directing the State Government to pass an appropriate order u/s 36 granting exemption. I am unable to accept this submission. The impugned order does not clearly show that the State Government gave due consideration to the financial position and other relevant circumstances as required u/s 36. The Government''s order allowing payment of bonus in instalments does not amount to granting of exemption u/s 36. At best it may be an action u/s 19 of the said Act.

29. In Civil Rule No. 90/68 the petition for exemption was rejected as lime: barred. The impugned order in Civil Rule No. 90/68 runs as follows:

With reference to your application mentioned above, I am directed to say, that Government regret their inability to entertain your application for exemption from payment of Bonus for the year 1965 as the time for receiving applications has long expired.

The application was made on 23-10-67. Section 19 of the Bonus Act provides that the payment of bonus under the Bonus Act shall be paid in cash within a period of eight months from the close of the I accounting year. But there is no period I of limitation prescribed by the Act for exercise of the power u/s 36 and this power may be exercised in apprd priate case by the State Government if bona fide representation is made by the establishment concerned within reason-) able time. I, therefore, hold that the petition should not have been rejected on the ground of limitation, but it should have been disposed of as required u/s 36.

30. In Civil Rule 231/67 it appears from the petition that a hearing was given, but the order does not appear to be a speaking order. In the circumstances, in this case also the impugned order has to be quashed.

31. In the result the Impugned orders of the State Government in all the above nine cases are quashed and the cases are remanded to the State Government to be disposed of as required u/s 36 of the Bonus Act on the lines indicated above. All the nine petitions are allowed and the rules are made also lute. There will be no order as to costs.

ORDER OF DIVISION BENCH

Dutta, C.J. and Goswami, J.

32. In view of the majority decision, the impugned order of the State Government is quashed and the case is remanded to the State Government to be disposed of as required u/s 36 of the Bonus Act on the lines indicated.

