(1978) 09 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 107 of 1978

Hope Textiles Ltd. and another — APPELLANT

Vs

State of Madhya Pradesh — RESPONDENT

Date of Decision : 15-09-1978

Acts Referred:
Payment of Bonus Act, 1965 — Section 36

Citation : (1978) JLJ 875 : (1979) MPLJ 36

Hon'ble Judges : R.K. Vijayvargiya, J;G.L. Oza, J

Bench : Division Bench

Advocate : S.C. Bagdia, for the Appellant; S.L. Garg for State, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This is a petition filed by the petitioners challenging an order passed by the State Government u/s 36 of the Payment of Bonus Act. 1965.

According to the petitioners they presented to the State Government a petition on 24th August 1977 making out a case on the basis of their financial position that they be exempted from the operation of the Act by an order u/s 36 of the Payment of Bonus Act, 1965 (hereinafter referred to as "the Act"). This petition submitted by the petitioners was rejected by the order of the State Government dated 18-3-1978 and this order passed by the State Government is now challenged by the petitioners.

The only contention advanced by Learned Counsel for the petitioners is that section 36 of the Act required that the Government after considering the financial position and other relevant circumstances could pass an order exempting an establishment from the operation of the Act as a whole or in part and for a particular period. It was contended that the order u/s 36 is expected to be a speaking order which would indicate that the authority u/s 36 applied its mind to the relevant considerations indicated in section 36 itself and according to Learned Counsel the impugned order dated 18-3-1978 is not a speaking order it does not disclose that the State Government applied their mind to the relevant considerations. Consequently, the petitioners seek the quashing of this order. Learned Counsel for the petitioners placed reliance on the decisions reported in Mahalakshmi Textile Mills, Pasumalai Vs. Government of Madras, and Srinathwar Tea Company, Ltd. v. State of West Bengal 1971 Lab. IC 1011.

Learned Advocate General appearing for State contended that although it is not disputed that the order passed is the order Annexure ''J'' filed along with the petition (dated 18 3-1978) but the original file indicates that all the relevant considerations were considered by the Department of the Government and notes were prepared and after consideration of all these circumstances the impugned order was passed. He however, frankly conceded that it is not the case of the State that a different order which would be said to be a speaking order was passed. He also contended that in fact from the averments in the petition itself it could be demonstrated that the petitioners are in a position to pay bonus and are not entitled to exemption as prayed for u/s 36 of the Act.

Section 36 of the Payment of Bonus Act 1965 provides :--

36. "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 this 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 establishment or class of establishments from all or any of the provisions of this Act."

This provision, no doubt, confers authority on the State Government to exempt any establishment or class of establishments from the operation of this Act if on the basis of the financial position and other relevant consideration the State Government is of the opinion that it will not be in public interest to apply all or some of the provisions of this Act to a particular establishment. The State Government, therefore, has to make up its mind and form an opinion as to whether it would be in public interest to apply or not to apply the provisions of this Act to an establishments or class of establishments; and to arrive at this opinion the State Government is expected to consider the financial position and other relevant circumstances.

It could not be disputed that the order passed by the State Government u/s 36 may result in civil liabilities not only on the establishment but it may affect various other persons, namely, those working in the establishment. The scheme of this section therefore indicates that although the State Government has been authorised to pass an order u/s 36, still, it is expected of the State Government to apply its mind to the financial position and other relevant circumstances and it has to form an opinion. It is therefore apparent that the order passed by the

State Government should indicate that the State Government did apply its mind to the financial position and relevant circumstances and formed an opinion as to the application of this Act in public interest. The impugned order only reads:

In substance, this order means that the State Government has chosen not to exempt the petitioners from the operation of the Act. This order does not disclose whether the State Government applied its mind to the financial position and other materials and also to public interest and in that context come to the conclusion. Learned Advocate General attempted to contend that the original file indicates that all the material was in the file which was considered by the respective heads of offices. But he did not contend that any order other than the one which is filed alongwith the petition, quoted above, was passed. Apparently therefore, this order does not indicate an application of mind and in not a speaking order at all.

The question u/s 36 of the Act was considered in Amal Kumar Ghatak v. State of Assam (supra) and it was observed:

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 36 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 should be a speaking order showing that the requirements of section 36 have been duly complied with?

In Mahalakshmi Textile Mills v. State of Madras (supra) the question about passing of an order u/s 36 was considered by Kailasam J. and it was observed:

But it is clear that the rights of parties are involved by a decision of the Government u/s 36 of the Act. If it decides to grant exemption from payment of minimum bonus the Labour would be affected adversely and if it refuses to act in deserving cases, the management would be affected. In such a situation, it is the duty of the Government to consider the financial position and other relevant circumstances of any establishment and come to its conclusion giving reasons for it.

It was further observed :

But section 36 of the Payment of Bonus Act makes it necessary for the

Government to exercise its power having regard to the financial position and other relevant circumstances of the concerned establishment. In the circumstances the contention that the Government has got an absolute discretion to refuse to grant exemption cannot be accepted. It has to exercise its mind, come to its conclusion and pass an order giving reasons therefor.

A similar question was considered by the Calcutta High Court in the decision reported in Srinathwar Tea Company Ltd. v. State of West Bengal (supra) and it was observed:

I am of the view that in any event section 36 contemplates a determination and exercise of discretion guided and limited by the provision itself. Such discretion is not absolute in the sense that it is not justiciable at all. The section indicates that exemption should be given or refused on the consideration of public interest. Again the section itself lays down what should be the considerations for arriving at the decision on the question of public interest. To quote the words of Lord Redcliffe in Nakkuda Ali v. Jayarante 1951 AC 66, the section is as worded that words used are intended to serve for some sense as a condition limiting the exercise of an otherwise arbitrary power.

Here, the statute goes further; not only does it limit the exercise of powers with reference to public interest but lays down the guideline for determination of such interest. This being the position, irrespective of consideration whether the determination is quasi-judicial or administrative, it is justiciable to the extent that it is truly based on a bona fide decision as to requirements of public interest and further that such decision is based on consideration of facts relevant on the provision of the statute itself. It is now well settled that the dividing line between administrative and quasi-judicial powers is quite thin and is being gradually obliterated and even exercise of administrative powers, which are not absolute, is justiciable though subject to limitation which may vary from case to case on the provisions of each statute conferring such power. It is always justiciable to find out whether it is based on a bona fide decision or not. Reference may be made in the case of... AIR 1945 156 (Privy Council) and Rohtas Industries Vs. S.D. Agarwal and Others,

The petitioner have also submitted a copy of the judgment from the Bombay High Court in Phonaix Mills Ltd. v. State of Maharashtra Appeal No. 214 of 1977 decided on 22-12-1977. (Bombay), wherein also a similar view has been taken.

As discussed earlier, the scheme of section 36 of the Act itself indicates that the order must indicate that the Government did consider the financial position and other relevant circumstances to arrive at a conclusion about its decision in public interest. Admittedly the impugned order does not indicate any application of mind.

Consequently, the petition is allowed. The order passed by the State Government dated 18-3-1977-1978 is quashed and it is directed that the State Government shall consider the relevant material as required u/s 36 of the Act and shall pass appropriate order. In the circumstances of the case parties are directed to bear their own costs. Security amount be refunded to petitioner after verification.

