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**(1998) 07 PAT CK 0056**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2876 of 1989**

Pradip Lamp Works

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 21-07-1998

**Acts Referred:**

Constitution of India, 1950 — Article 141  
Payment of Bonus Act, 1965 — Section 36

**Citation :** (1999) 2 LLJ 1190 : (1998) 3 PLJR 513

**Hon'ble Judges :** A.K. Ganguly, J

**Bench :** Single Bench

**Advocate :** L.K. Bajla, S.P. Tiwary and Sateyandra Dubey, for the Appellant;  
Sanjoy Singh and Gyan Prakash Ojha, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Ganguly, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed against the order dated February 8, 1989 which is at Annexure-1 to the writ petition, whereby, the respondent No. 1 has refused the prayer of the petitioner's company for granting exemption u/s 36 of the Payment of Bonus Act (hereinafter referred as the. said Act). Prior to passing of the said order, the petitioner's prayer for exemption was rejected previously. Thereafter, the petitioner came before this Court, and a Division Bench of this Court by the order dated July 7, 1997 quashed the previous order and directed the matter to be considered on the basis of fresh representation to be filled by the petitioner in details within a particular time. Pursuant to the said order the petitioner filed a detailed representation, on which the impugned order dated February 8, 1989 has been passed.

3. Learned Counsel appearing for the petitioner's company raised various objections against the said impugned order. The main objection is that the finding in the impugned order that the petitioner's company suffered financially because of their own action has been arrived at without disclosing any cogent

material in support of the same.

4. It appears from the impugned order that the said finding has been made in a rather casual fashion, and the said order has not disclosed reasons in support of the said findings. Apart from the aforesaid infirmity, the impugned order also does not disclose the reason on which is based the formation of opinion for refusing the prayer for exemption.

5. Section 36 of the said Act is a provision on the strength of which the appropriate Government, having regard to the financial position and other relevant circumstances, may pass an order granting exemption to a company or establishment from the operation of all or some provisions of the said Act. Such exemption can be granted for a specified period subject to certain conditions. Exercise of power u/s 36 of the said Act to be in public interest.

6. Looking at the wording of the said Section, this Court is of the opinion that while exercising power of exemption the appropriate Government will have to take a decision which must be a speaking one. Since such decision affects the right of the parties seeking exemption, such decision should be given in a manner which is consistent with the principles of natural justice.

7. In the case of Raghuvir Prasad Mali, Secretary, Maha Gujarat Mill Mazdoor Union Vs. The General Manager, Arvind Mills Ltd. and Others, , a Constitution Bench of the Supreme Court while repelling the challenge of constitutional validity of Section 36 to the said Act, felt that in a given case exercise of power u/s 36 of the said Act by the Government is justiciable.

Following the said ratio, the Court has examined the impugned order which as already noted, contains certain infirmities.

8. But the learned Counsel for the petitioner relying upon a decision of Assam High Court in the case of Amal Kumar Ghatak and Ors. v. The State of Assam and Ors., reported in (1971 I LLJ 246) (Assam & Nag) urges that the power u/s 36 of the said Act is a quasi judicial power.

On a difference of opinion between the " two Judges, the matter was referred to the third Judge who delivered the judgment in the case of Amal Kumar Ghatak (supra), and in paragraph 26 of the report held: "I am clearly of the opinion that the power to be exercised u/s 36 of the said Act is a quasi judicial power". A Division Bench of the Patna High Court also followed the aforesaid ratio in the case of Amal Kumar Ghatak (supra).

9. But in view of the recent Supreme Court judgment in the case of State of Tamil Nadu v. K. Sabanayagam and Anr., reported in (1998 I LLJ 214) (SC), the said finding that the power u/s 36 of the said Act is quasi judicial power, is no longer a good law. In the said case of State of Tamil Nadu (supra), after elaborate discussions of various aspects of Section 36 of the said Act, the learned Judges of the Supreme Court held that Section 36 is an instance of conditional legislation. Their Lordships of the Supreme Court have categorised conditional

legislation into three categories and held in paragraph 21 of the report, that wherein the exercise of conditional legislation, would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefits of such an exercise with a view to deprive the rival class of persons of certain benefits in such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power. Saying that the learned Judges have hastened to add that May be such an exercise may not amount to any judicial or quasi judicial function, still it has to be treated to be one which requires objective consideration. In the said paragraph the learned Judges have held as follows:- t

"Section 36 of the Act with which we are concerned falls in this third category of conditional legislative functions. A mere look at the said Section shows that before an appropriate Government can form its opinion regarding grant of partial or full exemption to any establishment or class of establishments which are otherwise already covered by the sweep of the Act the following factual conditions must be found to have existed at the relevant time to enable the delegate to exercise its power under Act."

1. The financial position of the establishment or class of establishments as the case may be, must be such that it would not be in public interest to apply all or any of the provisions of the Act to such establishment or establishments.
2. There may be other relevant circumstances pertaining to such establishment or establishments which would require exercise of such power of exemption.
3. Such exercise must be in a public interest as a whole and not confined to the personal or private interest of the establishment or establishments concerned."

Again in paragraph-25 of the said decision the learned Judges reiterated the position by holding that personal hearing is not contemplated to the employees who are affected by the exercise of such power. They further said that otherwise instead of remaining a conditional legislative power it would assume the characteristics of a quasi judicial power. The Judges have cautioned that it be kept in view that the appropriate Government does not adjudicate upon the rights and obligations of parties nor does it decide any lis between the parties. All that it does while exercising powers u/s 36 of the Act is to form an opinion on the satisfaction of objective facts regarding financial position and other relevant circumstances in connection with the claimant establishment or class of establishments which would require in public interest and not necessarily purely in the private interest of the claimants that relevant provisions of the Act should not be made applicable to those claimants for a given period of time.

10. In view of the aforesaid declaration of law by the Supreme Court that power u/s 36 of the said Act is not a quasi-judicial power, the principle decided in the case of Amal Kumar Ghatak (supra) to the contrary is no longer a good law.

11. In the case of State of Tamil Nadu (supra), the Supreme Court has given

certain guidelines which are to be observed while acting u/s 36 of the said Act. Those guidelines enumerated in the case of State of Tamil Nadu (supra) are extracted below:

"When such applications are received by the appropriate Government which necessarily have to be supported by the relevant date by the claimants, the receipt of such application has to be brought to the notice of the employees likely to be affected by grant of such applications and for that purpose notices can be (sic) suitably got affixed by the appropriate Government on the notice boards of the concerns or factory premises of the establishments where the workmen are working mentioning the dates on which such applications are received and the grounds on which such exemptions are claimed under such applications.

2. Suitable public notices in newspapers having circulation in the area of operation of such establishments can be got published and for that purpose suitable expenses can be required to be reimbursed by the claimants to the appropriate Government.

3. The concerned employees through their representative unions may, under these circumstances, be permitted to file their written representations with relevant data for rebutting the material furnished by the claimants so that the rival version put forward by the employees also will become available to the appropriate Government before it forms its opinion. For that purpose the public notice and the notice to be affixed on the notice boards of the concerns should indicate as to within what reasonable time such representations may be furnished with relevant data by the representative unions of the employees concerned.

4. Though it is not necessary for the appropriate Government before forming its opinion u/s 36 of the Act on the basis of the data furnished by the rival parties to give any personal hearing either to the claimant establishment or to the representative union of the employees. It may be still open in appropriate cases for the Government, if so thought fit, to give opportunity of personal hearing to the representatives of the establishments as well as of the employees if any elucidation is required in this connection.

5. For making the aforesaid exercise effective if the concerned employees through their representative unions seek an opportunity to look into the material supplied by the establishment in support of their claims for exemption, inspection of such material can be made available to the unions of employees to enable them to file their representations and to furnish the data in rebuttal for opposing such claims.

6. Strict time schedule can be fixed by the appropriate Government within which the entire exercise can get completed so that the proceedings may not drag on for indefinite number of months. Under the circumstances, therefore, it would always be open to the appropriate Government on receipt of such applications for exemption u/s 36 to fix the time schedule of four to six weeks from the date of

publications of such notices about receipt of applications for exemption as aforesaid within which the employees through their representative unions, if so advised, may file their representations and within the same time they may be given an opportunity, if so required, to have inspection of the material furnished by the claimant- establishments in support of their claim applications. Once such time schedule is followed no written representations would ultimately be required to be entertained after the time limit fixed for receipt of such representations from the employees unions likely to be affected by the grant of such exemption so that within a short time thereafter as expeditiously as possible the appropriate Government can form its opinion, if any, and complete the exercise if it is of the opinion that all the requisite conditions for exercise of the power u/s 36 of the Act have been found to have existed qua the claimant-establishment or class of establishments for an appropriate period, for which such exemption is to be granted."

12. Those guidelines have been laid down by the Supreme Court for general application virtually declared under Article 141 of the Constitution the law relating to Section 36 of the said Act. So today the State Government while exercising the power u/s 36 of the said Act must abide by those guidelines. It goes without saying that the impugned order, if tested, against those guidelines, cannot be sustained.

13. In that view of the matter, this Court remands the matter once again to the appropriate authority for considering the petitioner's prayer for exemption in the context of the said guidelines referred to above.

14. Since this matter is an old one, it is expected that the authorities concerned will dispose of the matter as early as possible preferably within a period of six months from the date of service of a copy of this order upon the said authorities. Counsel for the petitioner is also directed to serve a certified copy of the order upon respondent No. 3 within a period of one month from today. Thereafter, respondent No. 3 will start the aforesaid exercise in the light of the guidelines mentioned above, and conclude the same within the time frame mentioned above.

15. It is, however, made clear that if after exercise of power u/s 36, the authorities find that the petitioner is not entitled to exemption, in that case petitioner will have to pay bonus along with interest at the rate of 10% which will be calculated from the date of passing of the said order till the date of actual payment.

16. The impugned order at Annexure-1 is quashed. This writ petition is allowed to the extent indicated above. There will be no order as to costs.