
(2015) 03 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 18554 of 2010

Pradip Lamp Works

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Payment of Bonus Act, 1965 — Section 10, 19, 22, 33, 34(2)

Citation : (2015) 147 FLR 148 : (2015) 3 PLJR 254

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : S.P. Tewari and Radha Mohan Pandey, for the Appellant; Ajay and Ashish Kumar Lal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Verma, J—The parties were heard earlier at length and they concluded their arguments on 2.3.2015 itself. Now, the case is listed under the heading "For Orders" for pronouncing judgment. The matter at issue is the claim of the petitioner-firm for grant of exemption from the liability of payment of bonus to its employees under the Payment of Bonus Act, 1965 (In short "Act") for the past period i.e. during the financial years 1976-77 to 1983-84 (hereinafter referred to as "the period in question").

2. The petitioner, a partnership firm, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 17.10.2005 (Annexure-1) passed by the respondent No. 2 in exercise of his powers under Section 36 of the Act, on remand made by this Court, whereby the claim of the petitioner-firm for its exemption from the liability to pay the bonus to its employees during the period in question has been rejected. The petitioner is also aggrieved by the communication/letter dated 9.7.2009 (Annexure-1/A) issued under the signature of respondent No. 4 and addressed to the petitioner firm and its partner as also its Chief Manager,

whereby they were directed to pay bonus to the employees for the period in question on or before 24.7.2009 in the light of the order dated 17.10.2005 (Annexure-1) passed by the respondent No. 2, and produce all the relevant documents on 25.7.2009 for inspection failing which legal action shall be taken against them.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner is a partnership firm established in the year 1945 and it is engaged in manufacturing of electric bulbs, tube-lights etc. in the State of Bihar. According to him, the manufacturing unit of the petitioner firm was doing very well till the year 1975 and more than 500 employees were engaged in the petitioner-firm. However, subsequently, the financial position of the petitioner firm deteriorated due to over-licencing by the Central Government and the petitioner-firm became sick. It is the case of the petitioner that due to its bad financial condition, bonus could not be paid to the employees, as mandated under the provisions of the Act, during the period in question it is contended on behalf of the petitioner that on account of non-payment of bonus to the employees, a criminal prosecution was started against the functionaries/partners of the petitioner firm, whereafter a petition was filed on behalf of the petitioner seeking exemption from the liability to pay bonus to its employees in terms of Section 36 of the Act. However, neither the date of filing of such application has been disclosed nor the order of rejection of such claims has been brought on the record in the present writ petition filed on behalf of the writ petitioner. According to the learned counsel, the petitioner, being aggrieved by the order of rejection passed by the State Government refusing to grant exemption from payment of bonus in terms of Section 36 of the Act, approached this Court in C.W.J.C. No. 3953 of 1987 seeking a direction to the respondents to grant exemption to the petitioner from the liability of payment of bonus to its workers. The aforesaid writ petition was finally disposed of by a Bench of this Court by order dated 7.9.1987 (Annexure-10) directing the petitioner to file a fresh representation with up-to-date profit and loss account i.e. the balance sheet of the year 1976 to 1983, for the period for which exemption was claimed by the petitioner under Section 36 of the Act.

4. It is further submitted by the learned counsel appearing on behalf of the petitioner that in the light of the aforesaid order dated 7.9.1987 of this Court, the petitioner filed a fresh representation before the respondent No. 2 on 21.9.1987 and after bringing on record all the relevant materials, a prayer was made for grant of exemption for the period in question. It is pointed out that the aforesaid representation filed on behalf of the petitioner was finally rejected by the respondent No. 2 by order dated 8.2.1989, wherein it was held that the petitioner firm is liable to pay bonus to its workers. According to him, the petitioner, being aggrieved by the aforesaid order, filed C.W.J.C. No. 2867 of 1989, which was admitted by a Bench of this Court by order dated 5.2.1990 and in the meantime it was directed that no coercive steps shall be taken against the petitioner for payment of bonus for the period in question. However, the aforesaid writ petition was finally disposed of by another Bench of this Court by

order dated 21.7.1998, since reported in Pradip Lamp Works Vs. State of Bihar and Others, (1999) 2 LLJ 1190 : (1998) 3 PLJR 513 , and the matter was remitted back to the authorities with a direction to reconsider the case of the petitioner.

5. At this place it would be relevant to mention here that while passing the aforesaid order dated 21.7.1998 in C.W.J.C. No. 2876 of 1989 by a Bench of this Court, since reported in Pradip Lamp Works Vs. State of Bihar and Others, (1999) 2 LLJ 1190 : (1998) 3 PLJR 513 , remitting the matter back to the authorities for consideration of the case of the petitioner afresh, it was observed in para-graph-14 as under:--

"It is, however, made clear that if after exercise of power under Section 36, the authorities find that the petitioner is not entitled to exemption, in that case the 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."

6. On remand made by this Court by the aforesaid order dated 21.7.1998, parties including the workmen/employees were heard by the respondent No. 2. The employees working under the petitioner firm were represented by their different unions. After taking into consideration all the materials, the respondent No. 2 once again rejected the claim of the petitioner firm for the 2nd time by order dated 7.10.1999 and it was held that the petitioner firm, in the public interest, is not entitled for exemption from the liability of the payment of bonus to its employees. The aforesaid order dated 7.10.1999 has been brought on record by the respondents as Annexure-B to the counter-affidavit filed on behalf of the respondent Nos. 1 to 4. It is contended by the learned counsel for the petitioner that the aforesaid order dated 7.10.1999 passed by the respondent No. 2 was contrary to the orders and directions issued by this Court earlier. Therefore, the petitioner, being aggrieved by the aforesaid order, filed a fresh writ petition vide C.W.J.C. No. 615 of 2000, which was ultimately heard by a Bench of this Court and was disposed of finally by order dated 11.3.2005 (Annexure-16 to the writ petition). Once again the matter was remitted back to the Secretary, Labour and Employment Department, Government of Bihar with a direction to reconsider the exemption application of the petitioner-firm. In view of the aforesaid remand order dated 11.3.2005 (Annexure-16), the matter was once again considered afresh and by the impugned order dated 17.10.2005 (Annexure-1), claim of the petitioner-firm for grant of exemption under Section 36 of the Act from the liability to pay bonus to its employees has been rejected. Hence, the present writ petition has been filed once again by the petitioner-firm for the 4th time raising the same issues on the same ground for grant of exemption from the liability to pay bonus to its employees.

7. While assailing the validity and correctness of the impugned order, learned counsel appearing on behalf of the petitioner has essentially raised the issues of facts regarding bad financial position of the petitioner firm during the relevant

period, but he has not raised any question of law. He has also not been able to show violation of any statutory provision. However, according to him, the impugned order as contained in Annexure-1 is liable to be set aside and the petitioner-firm is entitled for grant of exemption in terms of Section 36 of the Act from the liability to pay bonus to its employees for the period in question.

8. Learned G.A. 12 appearing on behalf of the respondent Nos. 1 to 4 has strongly opposed the prayer made on behalf of the petitioner, by referring to the averments made in the counter-affidavit filed on behalf of the respondent Nos. 1 to 4. It is submitted that the present writ petition suffers from delay and laches on the part of the petitioner. The impugned order was passed on 17.10.2005 and the present writ petition was filed on 9.11.2010, therefore, according to him, on the ground of delay of more than five years itself, the writ petition is liable to be dismissed. He further contended that the claim of the petitioner is stale one. It is pleaded that the provisions of the Payment of Bonus Act is benevolent in nature and exemption, if any, can be claimed by the employer/establishment only for the prospective year/period(s) and not for the previous year/past period(s). It is next contended that under Section 10 of the Act, every employer is bound to pay minimum bonus to the extent of 8.33% of the salary/wage earned by each employee during the accounting year or 100/- rupees, whichever is higher. By referring to Section 19 of the Act, it is further contended that within a maximum period of 8 months from the close of the accounting year, payment of bonus is required to be made to all its employees. It is highlighted by him that the petitioner was obliged to pay bonus to its employees within 8 months of each accounting year during the period in question. Therefore, after passage of such long time, the claim of the petitioner cannot be allowed and the right already accrued to the employees cannot be taken away without giving them opportunity of hearing. It is pointed out that the employees have not been impleaded as party respondents in the present proceeding. For the aforesaid reasons as also the reasons disclosed in the counter-affidavit, it is contended that the writ petition is liable to be dismissed with heavy costs.

9. In order to appreciate the issues of facts and law raised on behalf of the parties, it would be appropriate to examine the scheme, scope and mandate of Sections 10, 19 and 36 of the Payment of Bonus Act, 1965. For better appreciation, Sections 10, 19 and 36 of the aforesaid Act are reproduced hereinbelow:--

"10. Payment of minimum bonus.--Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the

beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted

X X X

X X X

19. Time-limit for payment of bonus.--All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer--

(a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

x x x

x x x

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 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."

10. From plain reading of Section 10 of the Act it is apparent that every employer is obliged to pay to every employee for every accounting year a minimum amount of bonus of 8.33 per cent of the salary or wage earned by such employee during that accounting year or one hundred rupees, whichever is higher. However, in certain exceptional cases, which has been indicated in proviso to that section, the minimum amount of bonus can be reduced upto sixty rupees only. It further appears that surplus amount to the employer for payment of such bonus in that accounting year is not a relevant consideration for discharge of his statutory obligation for payment of statutory bonus to its employee.

11. Section 19 of the Act mandates that amount of bonus payable to an employee must be paid within a maximum period of 8 months from the date of

close of the accounting year. However, in certain exceptional cases and on showing the sufficient reasons by the employer, the appropriate Government or the competent authority so specified may extend the said period of eight months to such further period as it is found fit, but in no case it can be extended beyond the period of two years.

12. From the conjoint reading of Sections 10 and 19 of the Act it is apparent that payment of bonus to the employee is the statutory obligation of an employer and that statutory obligation must be discharged within a maximum period of eight months from the date of close of the accounting year and only in some exceptional cases that period can be extended, but not beyond the period of two years. So far the present case is concerned, the petitioner was obliged to pay bonus to its employees for the financial year 1976-77 within eight months from the date of close of the accounting year. Similarly for the each succeeding accounting year, the petitioner-firm was obliged to pay the statutory bonus to its employees within eight months from the date of the close of each accounting year, and last payment was required to be made within eight months from the date of close of the accounting year 1983-84. Admittedly, that has not been done in the present case. The rights accrued to the employees to receive bonus from the petitioner-firm for the period in question cannot be taken away after such a long time.

13. At this place it would be relevant to mention here that the validity of the provisions of the Payment of Bonus Act, 1965 came up for consideration before a Constitution Bench of the Hon'ble Supreme Court in the case of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, AIR 1967 SC 691 : (1966) 36 CompCas 901 : (1966) 2 LLJ 546 : (1967) 1 SCR 15 wherein it was observed in paragraph-64 that "the power of Parliament to fix minimum bonus cannot be questioned because it flows from jurisdiction over industrial and labour disputes, welfare of labour including conditions of work and wages. The legislation is, therefore, neither a fraud on the Constitution nor a colourable exercise of power".

Finally, by a majority Sections 10, 19 and 36 of the Payment of Bonus Act were held to be intra vires. However, Sections 33, 34(2) and 37 of the Act were declared ultra vires.

14. The constitutional validity of Section 10 of the Payment of Bonus Act, 1965 came up for consideration once again before a three Judge Bench of the Hon'ble Apex Court in the case of *Jalan Trading Co. (P) Ltd. and Others Vs. D.M. Aney and Another*, AIR 1979 SC 233 : (1979) 38 FLR 58 : (1979) 1 LLJ 162 : (1979) 3 SCC 220 . The Hon'ble Apex Court while repelling the contention raised against the validity of Section 10 of the Act observed that the employers are obliged to pay the statutory minimum bonus even in years when they have sustained loss. It follows from the aforesaid observation that accrual of profit by the establishment/management during the particular accounting year is not the relevant criteria for payment of statutory bonus to its employees.

15. The whole scheme, object and mandate of Section 36 of the Payment of Bonus Act came up for consideration once again before a two Judge Bench of the Hon"ble Apex Court in the case of State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another, AIR 1997 SC 4325 : (1997) 9 JT 316 : (1997) 7 SCALE 170 : (1998) 1 SCC 318 : (1998) SCC(L&S) 260 : (1997) 5 SCR 345 Supp wherein it was held that Section 36 of the Act is a piece of a conditional legislation and not a piece of delegated legislation. In paragraph-18 of the aforesaid judgment the conditional legislation was broadly classified into three categories. So far Section 36 of the Act is concerned, it was held that it falls in third category of conditional legislation functions. It was further held by the Hon"ble Apex Court that the Bonus Act is a piece of welfare legislation enacted for the benefit of large category of employees. For better appreciation relevant portion of paragraph-21 of the aforesaid judgment is reproduced hereinbelow:--

"Now it is obvious that but for the exercise of power of exemption under Section 36 of the employees of an institution governed by the sweep of the Act would be entitled to minimum statutory bonus as per Section 10 of the Act. It has also to be kept in view that Bonus Act is a piece of welfare legislation enacted for the benefit of a large category of workmen seeking a living wage to make their lives more meaningful and for fructifying the benevolent guarantee of Article 21 of the Constitution of India. Bonus is treated as deferred wage. When the Parliament in its wisdom has enacted such a beneficial piece of social legislation which already guarantees minimum statutory bonus to employees governed by it, if their employers are to be allowed to earn exemption from the sweep of such a beneficial legislation which would ipso facto adversely affect entire class of their employees, the conditions for exercise of such power of exemption have to be strictly and objectively fulfilled by the repository of such a drastic power. A statutory right already accrues to employees under the Act. If the establishment employing such workmen or employees is desirous of depriving the statutory right of minimum bonus to its employees it may move the appropriate Government for exemption under Section 36 of the Act....."

16. From conjoint reading of Sections 10, 19 and 36 of Act in the light of the judicial pronouncement made by the Hon"ble Apex Court in the case of State of Tamil Nadu vs. K. Sabanayagam (supra), this Court is of the considered opinion that the payment of statutory bonus by the employer to their employees is the rule and exemption in terms of Section 36 of the Act is an exception, but for that the employer/establishment has to approach the appropriate government before close of accounting year for grant of such exemption on fulfillment of the conditions enumerated in paragraph-26 of the judgment in the case of State of Tamil Nadu vs. K. Sabanayagam (supra). The employer as a matter of course cannot claim such exemption under Section 36 of the Act.

17. From the reading of Section 36 of the Act it further appears that if an establishment or class of establishments makes an application seeking

exemption from the application of the provisions of the Act, then in that case, if the appropriate Government/competent authority taking into consideration the financial position and all other relevant circumstances comes to a conclusion that in the public interest the provisions of the Act is not required to be applied, then in that case a notification is required to be issued in the Official Gazette granting exemption to such establishment or class of establishment for a specified period indicated in that Official Gazette. So far the present case is concerned, if the financial position of the petitioner-firm had deteriorated and it was not in a position to pay the statutory bonus to its employees, then the petitioner - firm was required to make an application before the appropriate Government/competent authority for grant of such exemption during the period in question. However, the petitioner has not brought any document on record to show that any application was filed by the petitioner-firm during any of the accounting year when statutory bonus became payable to its employees or prior to commencement of any accounting year during the periods in question. It appears that when the State authorities took punitive action against the petitioner - firm for non-payment of statutory bonus to its employees, then suddenly it woke up from its deep slumber and approached this Court for the first time in C.W.J.C. No. 3953 of 1987 seeking a direction to the respondents to grant exemption to the petitioner-firm from liability to pay bonus to its employees. Aforesaid C.W.J.C. No. 3953 of 1987 was disposed of by the order dated 7.9.1987 (Annexure-10) to the writ petition. From the reading of Annexure-10 also it does not appear that the petitioner had challenged any order passed by the competent authority/appropriate Government refusing to grant exemption in terms of Section 36 of the Act. Since the petitioner-firm did not approach the competent authority during the period in question, and/or before the close of each accounting year or before the commencement of each accounting year, there was/is absolutely no question for consideration of its claim for grant of such exemption in terms of Section 36 of the Act. Obviously, the claim of the petitioner has become stale one. It was obliged to pay bonus to its employee within eight months from the date of close of every accounting year during 1976 to 1984 i.e. the period in question, but that has not been done by the petitioner. In absence of the claim raised on behalf of the petitioner during the period in question, the impugned order passed by the respondent No. 2 cannot be legally faulted. Furthermore, the writ petition suffers from delay and laches on the part of the petitioner. Impugned order was passed on 17.10.2005 (Annexure-1) and the present writ petition was filed on 9.11.2010. No explanation has at all been furnished by the petitioner for the delay of more than 5 years for approaching this Court. This is also fatal for the petitioner's case.

18. The present writ petition is liable to be rejected yet on another ground of constructive res judicata, since while passing the order dated 21.7.1998 in the case of the present petitioner vide C.W.J.C. No. 2867 of 1989 [Pradip Lamp Works Vs. State of Bihar and Others, (1999) 2 LLJ 1190 : (1998) 3 PLJR 513] it was directed by a Bench of this Court that if on remand the petitioner is held to

be not entitled to exemption in terms of Section 36 of the Act, then the petitioner will have to pay bonus along with interest at the rate of 10%. The operative part of the said observation has been reproduced in paragraph-6 of the present judgment. In above view of the matter, since claim of the petitioner was rejected on remand, it ought to have paid bonus to its employees along with interest at the rate of 10%, but that has not been done by it. Therefore, the whole claim of the petitioner is hit by the principles of constructive res judicata.

19. For the reasons recorded above, this Court does not find any good ground to interfere with the impugned order dated 17.10.2005 (Annexure-1) passed by the respondent No. 2 as also the consequential letter/communication dated 9.7.2009 (Annexure-1/A) issued by the respondent No. 4. Consequently, the writ petition has to fail and is, accordingly, dismissed, but without costs. Now, the respondents shall be at liberty to proceed further for realisation of bonus amount from the petitioner firm for being paid to its employees. The interim order dated 27.6.2012 passed by a Bench of this Court stands vacated.