
(1996) 12 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9372 of 1996

S. Samuel and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 31-12-1996

Acts Referred:

Payment of Bonus Act, 1965 — Section 10, 20, 22, 36

Citation : (1997) 2 ALD 76 : (1997) 3 ALT 60 : (1997) 2 LLJ 473

Hon'ble Judges : B. Atchuananda Swamy, J

Bench : Single Bench

Advocate : Singhania Associates, for the Appellant; Government Pleader and K.S. Mallikarjuna Rao, for the Respondent

Judgement

1. Petitioners 243 in number who are working in various capacities in the 2nd respondent Society which was registered under the provisions of the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli and is owned by the Government of Andhra Pradesh filed the present Writ Petition questioning the action of the 2nd respondent in stopping payment of minimum bonus as contemplated u/s 10 of the Payment of Bonus Act in the shape of ex-gratia, pursuant to the G. O. Ms. No. 366 Finance and Planning Department, dated October 29, 1993, wherein the Government directed the public sector undertakings and Co-operative enterprises owned by it not to pay/sanction bonus/ex-gratia until further orders as the issue of payment of Bonus/Ex-gratia to the employees of the public sector undertakings is under consideration separately.

2. The Government as well as the 2nd respondent filed their counters contesting the claim of the petitioners for payment of bonus. While it is the case of the Government that having issued G. O. No. 366, dated October 29, 1993, in exercise of its powers u/s 36 of the Act also issued U. O. Note No. 4472-A/59/A2/W & M. 1/95, dated February 8, 1995, requesting the Administrative Departments to issue notifications u/s 36 of the Act, without further reference to

Finance Department where payment of bonus is not justified in public interest, given the financial position and performance of the company. At the same time, the stand of the Government is that in respect of eligible candidates the departments are requested to refer the file to Finance Department for concurrence duly ensuring that the conditions specified in the U. O. Note are fulfilled. It is also the case of the Government that the 2nd respondent is registered as a Charitable Institution and all the products of the Society are sold to Government Department in carrying out the social welfare programmes to vulnerable sections of the lower income groups and as such the 2nd respondent is expected to sell its products without any profit motive. Stating so the Government tried to justify its action.

3. Coming to the 2nd respondent, it started blowing hot and cold. At one breadth it contended that it was not producing or manufacturing any goods nor rendering any service in competition of an establishment in the private sector as contemplated u/s 20 of the Act. Hence the question of payment of minimum bonus as contemplated u/s 10 of the Act does not apply to it. It is further contended that it stopped payment of bonus pursuant to the orders issued by the Government in the G. O. referred above. Next, it contended that any dispute with regard to payment of bonus or with respect of application of the Act to an establishment is deemed to be an industrial dispute. As such the petitioners are not entitled to approach this Court without exhausting the statutory remedy.

4. From the above pleadings it has to be seen whether the action of the respondents in stopping the bonus in the shape of Ex-gratia is a valid one or not.

5. From the counter filed by the respondents it is seen that the 2nd respondent is involved in the process of production of nutritious food for supply to the School and pre-school children, pregnant women lactating mothers and such other categories of beneficiaries as the Government may from time to time decide. It is not in dispute that the foods produced by the 2nd respondent society are not available in the open market and the Society is not making profits from out of the sales even though made to the Government alone. In fact, the petitioners in para 8 of the affidavit categorically stated that the 2nd respondent earned profits of Rs. 2,24,51,000-00, Rs. 3,17,70,000-00 and Rs. 1,83,75,000-00 for the financial years 1991-92, 1992-93 and 1993-94 respectively. None of the respondents disputed these figures though they tried to contest the claim of the petitioners on other grounds. Hence, it should be presumed that the 2nd respondent Society is making profits from the sale of its products. In fact, the counsel for the 2nd respondent did not deny this fact during the course of arguments.

6. In the light of the back ground of this case this Court is called upon to decide whether the action of the 2nd respondent is a bona fide one. As stated supra the Government issued the said G.O. in exercise of its powers u/s 36 of the Act, in relation to sick undertakings owned by it, but not with regard to the organisations which are making profits. Though a power is given to the

Government to exempt any establishment or class of establishments from all or any of the provisions of the Act u/s 36, such an action should be preceded by application of mind with regard to the financial position and other relevant circumstances in relation to a particular establishment or class of establishments and after such application of mind if the Government is of the opinion that it will be in public interest not to apply any of the provisions of the Act and the notification issued should be published in the official Gazette exempting such establishment or class of establishments.

7. In the instant case, except in general terms stating that the public sector undertaking is running on losses and approaching the Government for release of funds and the issue of payment of bonus is under consideration separately, no other reason was given by the Government. As far as 2nd respondent Society is concerned though it is a public sector undertaking, it is the only establishment of its kind and it cannot be classified or tagged on to any of the other establishments that are being functioning in the State under the control of Administrative Departments of the Government. As such the Government has to form its opinion whether it is desirable to exclude the provisions of the Act from application to this society after taking its financial and other relevant circumstances into consideration. But that was not the position in the instant case. Further the Government has not chosen to issue any notification in the official Gazette exempting the respondent Society from the provisions of the Act.

8. From the counter of the Government it is seen that this G.O. was issued with regard to the sick units and if any public sector undertaking is making profit and the employees are eligible to receive bonus the Administrative Departments were directed to refer the file to the Finance Department for concurrence. From this it can be safely presumed that the said G.O. is not applicable to the undertakings owned by the Government which are run on profits. As the 2nd respondent Society is running on profits, its case deserves to be considered separately if the Government wants to exclude the provisions of the Act and it should record its reasons for coming to such a conclusion to find out whether the action of the 1st respondent in exercise of its powers u/s 36 of the Act is a bona fide one or not.

9. For all these reasons I am of the opinion that the 2nd respondent cannot stop the payment of bonus/ex-gratia under the guise of G.O. Ms. No. 366, dated October 29, 1993.

10. Coming to the plea of the 2nd respondent, that Section 20 of the Act applies to it as it is not producing or manufacturing goods in competition with any establishment in private sector and the profits earned by the 2nd respondent is less than 20 per cent of the gross income of the establishment, firstly it is not the case of the 2nd respondent Society that no private company is producing foods of nutritious value and they are not available in open market. Several private companies are producing nutritious foods under their own patent names. Secondly, the respondents did not place any material to show that it is not making profits more than 20 per cent of the gross income of the establishment.

Hence the provisions of the Act are applicable to the Society and u/s 10 of the Act, if any establishment's allocable surplus exceeds the amount of maximum in a particular accounting year, every eligible employee should be paid a minimum bonus of 8.32 (sic. 8.33) per cent of the salary or wage earned by him during that accounting year or Rs. 100-00 which ever is higher.

11. It is not the case of the 2nd respondent Society that it is paying more than the statutory minimum. Whatever name the Society may give for the payment made by it in view of the mandatory provision with regard to payment of bonus, it has to be treated only as bonus, as the respondent Society is not paying even a single paise more than the minimum bonus specified in the Act.

12. With regard to the other contention that u/s 22, the dispute is deemed to be an industrial dispute and the petitioners have to go to Industrial Tribunal, firstly, I am of the opinion that the 2nd respondent Society itself is not sure why it stopped payment of bonus. Is it because of the orders of the Government or because of Section 20 of the Act ? The reply sent by the 2nd respondent Society to the notice given on behalf of the petitioners is, they denied their liability on both grounds. But, the Government in its counter categorically stated about the issuance of the G.O. directing all public sector undertakings not to pay the bonus. It is only after issuance of the said G.O. the 2nd respondent Society stopped payment of bonus. As the action of the Government is not legal the petitioners are justified in approaching this Court under Article 226 of the Constitution of India. Accordingly, the contentions raised by the 2nd respondent are rejected and it is directed to pay the statutory minimum bonus from the date on which it stopped, without reference to G.O. Ms. No. 366, dated October 29, 1993.

13. With the above directions a Writ of Mandamus shall issue to the respondents directing payment of bonus/ex-gratia from December, 1993 as usual and they are given eight weeks time to pay the arrears of bonus from the date of receipt of the order.

14. Accordingly, the writ petition is allowed, but in the circumstances of the case there will be no order as to costs.