

(2002) 02 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 3509 of 1990

Sarva Udyog Kamgar Sangh.

APPELLANT

Vs

Jawahar Engineers Pvt. Ltd.

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Bonus Act, 1965 — Section 10, 36

Citation : (2002) 3 LLJ 905 : (2003) 2 MhLj 617

Hon'ble Judges : N.H. Patil, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : Ujjwal Agarwal, for the Appellant; Vinayak N. Upadhye and P.B. Patil, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Marlapalle, J.—This petition, filed under Article 226 of the Constitution, brings in question the order passed u/s 36 of the Payment of Bonus Act, 1965 (the Act for short) by the Government of Maharashtra on 6th December, 1989.

2. The petitioner claims to be the trade union registered under the Trade Unions Act and the employees of the respondent no.1 were its members. The respondent no.1 is a company registered under the Companies Act, 1956 and it has its registered office at Nawkalp Society, Ghole Road, Pune - 411 004, with its manufacturing activities at Shrirampur, District Ahmednagar. The factory at Shrirampur is a manufacturer of diesel engine pump sets and allied products. The bonus issue covered by this petition is in respect of the workmen/employees in the said factory at Shrirampur.

3. From the impugned order, it appears that on 15th April, 1987, the respondent no.1 applied to the State Government for exemption u/s 36 of the Act for the accounting year, 1985-86 and similar application was submitted on 11th April, 1988 for the accounting year, 1986-87. The applications came to be allowed by the impugned order and exemption was granted. The factory at Shrirampur was

exempted from the provisions of section 10 of the Act for the accounting years, 1985-86 and 1986-87 jointly, by the impugned order.

4. The petitioner union contends that a settlement was signed for the payment of bonus in the year, 1983 and accordingly, bonus was paid @ 10.54% and 8.32% for the accounting years, 1982-83 and 1983-84 respectively. On 30th April, 1986, the respondent no.1 submitted an application u/s 36 of the Act for exemption in the accounting year, 1984-85 and the said application was rejected by the State Government on 22.12.1986. The respondent no.1 thereafter, paid bonus in the accounting year, 1984-85 @ 8.33%. However, in the next accounting year i.e. 1985-86, it submitted a fresh application on 30th April, 1986 itself and prayed for exemption from the provisions of the Act for a period of five years. The petitioner union appeared before the State Government and filed its say opposing the said application. The application was rejected on 17th March, 1987.

5. The union further alleges that in response to the fresh application submitted on 15th April, 1987 and 11th April, 1988, neither a notice of hearing was given to the petitioner nor was it called upon to submit its say and the impugned order came to be passed illegally. The said order does not give any reasons for formation of opinion by the State Government that it would not be in public interest to apply the provisions of section 10 of the Act to respondent no.1. Once the application for the year, 1985-86 and for further four years was rejected by the competent authority on 17th March, 1987, fresh application was not tenable and the respondent no.1 had a remedy to challenge the said order, if it was aggrieved. When the respondent no.2 State authority had rejected the earlier application, it had no powers to entertain fresh application for the same period for granting exemption.

6. The relevant portion of the impugned order regarding formation of opinion and reasons to invoke the powers u/s 36 of the Act reads, as under:

"And whereas the Government of Maharashtra, having regard to the financial position and other relevant factors such as stringent market conditions, of the said establishment, is of the opinion that it will not be in the public interest to apply the provisions of the section 10 of the said Act to the said establishment for the accounting years 1985-86 and 1986-87."

7. In the case of State of Tamil Nadu v. K. Sabanayagam and another AIR 1998 SC 344 the Supreme Court has interpreted the scope and ambit of section 36 of the Act and laid down certain guidelines while entertaining and deciding the applications filed under the said section. It also held that the exercise of powers u/s 36 of the Act by the State Government may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration.

The relevant observations are, -

"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 powers under the 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 public interest as a whole and not confined to the personal or private interest of the establishment or establishments concerned."

8. There is no doubt that the applications submitted by the respondent no.1 were also in the third category of conditional legislative functions as they were submitted u/s 36 of the Act. It is, therefore, necessary that the impugned order satisfies the three parameters laid down by the Supreme Court, namely, (a) financial position of the establishment; (b) relevant circumstances as may be applicable to the establishment; and (c) the public interest as a whole and not confined to the personal or private interest of the establishment concerned.

All these three factors are totally absent in the impugned order. Merely, saying that having regard to the financial position and other relevant factors such as stringent market conditions, would not meet the conditions laid down by the Apex Court. The respondent no.1 was engaged in manufacture of Diesel Engine Pump sets and allied products. If the manufacturing of such product is adversely affected for whatever reasons, it was necessary for the competent authority to demonstrate in the impugned order as to how the public interest at large was affected. The order certainly concentrates on the interest of the establishment alone and under the camouflage of the public interest, the exemption was granted. On this ground alone, the petition deserves to be allowed.

9. However, we need to discuss the additional issues also as raised by the petitioner and more so, when the petition was admitted by this Court on 8.3.1991, neither the respondent no.1 nor the other respondents have filed return. When the petition came up for final hearing before us on 8th January, 2002, we had directed the learned A.G.P. to submit the relevant record and in spite of sufficient time of more than four weeks, no record came before us and the learned A.G.P., on instructions, stated that the concerned file was not traced. In such conditions, we will have to, per force, go by the averments made in the petition.

10. The petitioner union is emphatic in saying that the earlier application in the

year, 1985-86 and for additional four years was rejected by the competent authority on 17th March, 1987 and if that be so, the competent authority had no powers to entertain a fresh application for the said period as was submitted on 15th April, 1987 or for that matter, on 11th April, 1988. The remedy available to the respondent no.1 was to challenge the order passed on 17th March, 1987. If the Government had exercised powers u/s 36 of the Act for a particular period, in response to an application submitted by the establishment, on rejection of the said application, it had no powers to entertain a fresh application for the same period. Thus, the subsequent applications submitted by the respondent no.1 were not tenable and on this count also, the impugned order must fall to the ground.

11. The impugned order also does not mention as to whether the employees to be affected by granting the exemption or the union representing such employees, was heard or it was called upon to file its say in response to the applications subsequently submitted by the establishment. The law laid down by the Apex Court in the case of *State of Tamil Nadu v. K. Sabanayagam and another* (supra), mandates such a requirement and it is evident from the record that when the earlier application was rejected, the union was issued with a notice calling upon it to submit its written statement or say. This is a third infraction on which the impugned order must be held as void ab initio.

12. In the result, the petition is allowed and the order dated 6th December, 1989 passed u/s 36 of the Act is hereby quashed and set aside. We direct the respondent no.3 to take appropriate steps to ensure that the employees of the respondent no.1 as represented by the petitioner at the relevant time, are paid bonus under the Act, expeditiously.

Rule made absolute in terms of the above order, however, without any costs.