IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 22.03.2024

Delivered on :: 12.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.6958, 8930, 8946, 8947, 8948,
9007, 10336, 10337, 11013, 12334, 12483,
13212, 15575, 16200, 17760, 19700,
21454, 24095, 37909 of 2016;
7970 of 2017 and 20355 of 2018

WP No.6958 of 2016

1.The Employers' Federation of Southern India,
rep. By its Secretary General,
A-9, Second Floor, Aroshree Apartments,
No.10, Vaidya Raman Street,
T.Nagar, Chennai 17

2.The KCP Ltd.,
rep. By its Executive President
(HRD & Services),
Ramakrishna Buildings,
2, Dr.P.V.Cherian Crescent,
Chennai 600008

3.Rane Engine Valve Ltd.,
rep. By its Deputy General Manager,
HRD, R.R.Tower V Level IV,
Plot No.33-A South Phase,
Developed Plot at Thiru.Vi.Ka. Industrial Estate,
Ekkaduthangal,
Chennai 600 032.

4.Sundaram Clayton Ltd.,
rep. By its Executive Vice President (Finance)
Jayalakshmi Estates,
29, Haddows Road,
Chennai 600006.

5.Sundaram Auto components Ltd,
rep. By its Authorised Signatory,
Jayalakshmi Estates,
29, Haddows Road,
Chennai 600006.

6.Sundaram Brake Linings Ltd,
rep. By its Chief Financial Officer
and Company Secretary,
Padi, Chennai 600 050

7.Carborandum Universal Ltd,
rep. By its General manager, HR,
3rd floor, Parry House,
43, Moore Street, Chennai 1

8.Chola Business Services ltd,
rep. By its Authorised Signatory,
'Dare House' No.2, NSC Bose Road,
Parrys, Chennai 600 001

9.Cholamandam Investment & Finance company Ltd,
rep. By its Authorised Signatory,
'Dare House' No.2, NSC Bose Road,

Parrys, Chennai 600 001

10.Tube Investments of India Ltd
Rep.by its VP-Legal & Company Secretary
3rd Floor, Dare House, 234, NSC Bose Road
Chennai-600 001. : Petitioners

versus

1.The Government of India
Rep. by the Secretary
Ministry of Law and Justice
4th Floor, A-Wing Shastri Bhawan
New Delhi-110 001.

2.Union of India
Rep.by the Secretary to Government
Ministry of Labour & Employment
Shram Sakthi Bhavan
Rafi Marg, New Delhi-110 001.

3.M/s.K.C.P. Limited
Thozhilalar Munnetra Sangam Thiruvottiyur
Chennai-19.

4.M/s.Sundaram Clayton Ltd.
Indian National Engineering Employees Union
(affiliated to INTUC) GR Bhawan No.87
Royapettah High Road Chennai-14.

5.M/s.Sundaram Auto
Components Limited Plastic Division
Employees Union (affiliated to INTUC No.10046)
GR Bhawan, No.87, Royapettah High Road,
Chennai-14.

6.M/s. Sundaram Brake Linings Ltd
Indian National Engineering Employees Union

(affiliated to INTUC) GR Bhawan
No.87, Royapettah High Road, Chennai-14.

7.M/s. Carborundum Universal Ltd
Carborandum Universal Employees Union
Plot No.19/20 Anjugam Nagar
Thiruvottiyur, Chennai-19.

8.M/s.Tube Investments of India Limited
Indian National Engineering Employees Union
(affiliated to INTUC) GR Bhawan
No.87, Royapettah High Road, Chennai-14.

(R-3 to R-8 are Suo-motu impleaded as per order dated 04/04/2016)

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that Section 3 of the Payment of Bonus (Amendment) Act 2015 Act No.6 of 2016 to be discriminatory to the extent it discriminates scheduled employment and non-scheduled employment as unconstitutional and void to declare that the retrospective operation of the Act with effect from 01.04.2014 to be ultra-vires and void to declare the increase in wage ceiling limit for eligibility in Section 2(13) of the Payment of Bonus Act 1965 from Rs.10,000 to Rs.21,000 as arbitrary contrary to the scheme of the Act unconstitutional and void

For Petitioners : Mr.A.L.Somayaji,
Senior Counsel
for Mr.Anand Gopalan,
T.S.Gopalan & Co.

For Respondent No.1 : Mr.AR.L.Sundaresan,
Additional Solicitor-General
assisted by Mr.Rajesh Vivekanandan,
Deputy Solicitor-General

For Respondents 2, 3 : Mr.G.Ilangovan, SPC

For Respondents 4-6,8 : Ms.E.Maragatha Sundari

For Respondent No.7 : No appearance

COMMON ORDER

D.BHARATHA CHAKRAVARTHY, J.

All these writ petitions have been filed challenging the constitutional validity of the Payment of Bonus (Amendment) Act (Act 6/2016).

The facts:

2 (a) The petitioners are aggrieved by the amendment to Section 2 (13) of the Payment of Bonus Act inasmuch as the ceiling limit which was hitherto Rs.10,000/-, was amended to Rs.21,000/-. The petitioners are further aggrieved by the amendment to Section 12 of the Principal Act in and by which the words "Rs.3,500/-" have been replaced with words "Rs.7,000/- or the minimum wage for the scheduled employment as fixed by the appropriate government, whichever is higher" is substituted.

(b) The petitioners are further aggrieved by Section 1(2) of the amending Act, inasmuch as it makes that the amending Act shall be deemed to have come into force retrospectively with effect from the First Day of April 2014.

(c) The petitioner in WP No.6978 of 2016 is the employer federation of South India. Various production houses are its members. Some of the production houses are included as petitioners and they are arrayed as petitioners 3 to 10 in the writ petition.

(d) It is the case of the petitioners that the scheme of the Payment of Bonus Act was to determine that portion of the profit that is to be disbursed to eligible employees in proportion to their earned wages with the fixation of a minimum of 8.33% of the wages earned in the accounting year and a maximum of 20% of the wages earned in the accounting year.

(e) The first step in the payment of the bonus is the computation of gross profit in respect of the accounting year, as per the first

schedule, in the case of banking company, or as per the second schedule, in the case of other establishments. Once the gross profit is calculated, then certain sums enumerated in Sections 6 and 7 of the Payment of Bonus Act have to be deducted. The net amount so derived is called '*available surplus*'. In the case of establishments that are companies other than a banking company, 65% of such available surplus will be '*allocable surplus*'. In other cases, it would be 60%.

(f) In the absence of allocable surplus in an accounting year, a minimum bonus becomes payable. Such minimum bonus paid can be carried forward and set off against the allocable surplus in the succeeding three years, which is to be utilised for payment of the bonus. If the allocable surplus is more than the maximum, then the excess can be set on the deficit of 20% in the following three accounting years.

(g) The Payment of Bonus Act applies to all categories of employees; be it manual, clerical, technical, supervisory, administrative or managerial. However, the ceiling limit of salary is

fixed to exclude the employees receiving salary over the ceiling. Before the impugned amending Act, even with respect to the employees falling within the salary ceiling limit, the calculation of bonus is restricted to a maximum of Rs.3,500/-. This limit was fixed keeping in mind that a disproportionately higher amount of allocable surplus should not go to the employees earning higher wages.

(h) While so, in the year 2015, a Bill was introduced to amend the Payment of Bonus Act, 1965 and it was tabled in the Lok Sabha on 30.11.2015. It was passed by the Lok Sabha on 22.12.2015. Even though the original Bill to amend the Act was to take effect from the accounting year commencing from 01.04.2015, the bill which was ultimately passed, made the amendment to apply retrospectively from 01.04.2014. The Bill was also thereafter passed in the Rajya Sabha on 23.12.2015. It received the assent of the President of India on 31.12.2015 and was notified in the Gazette on 01.01.2016 as Act 6 of 2016.

(i) By the said impugned enactment, the definition of the term '*employee*' was amended to include employees drawing salary/wages not exceeding Rs.21,000/-. Similarly, Section 12 of the Act was amended to the effect that for the purposes of calculation of bonus in the case of employees drawing salary exceeding Rs.7,000/-, it shall be calculated as if the salary/wage were Rs.7000/- or the minimum wages for the scheduled employment as fixed by the appropriate Government whichever is higher. An explanation was also added to the effect that for the purposes of Section 12, where the salary/wages of the employee exceeds Rs.7,000/- per month or the minimum wages for the scheduled employment as fixed by the appropriate Government whichever is higher, the bonus shall be calculated as if his salary/wage was Rs.7,000/- per month or the minimum wages for the scheduled employment, as fixed by the appropriate Government, whichever is higher.

(j) As stated above, the amendment was also made applicable retrospectively from 01.04.2014. This amendment Act, according to the petitioners, causes grave prejudice to them. For a start, the

petitioners contend that the coverage of employees drawing wages up to Rs.21,000/- from the erstwhile ceiling of Rs.10,000/- is arbitrary and would act to the peril of the employees who are in the lower wage level. It disturbs the balance maintained in the matter of determining the share of allocable surplus amongst different categories of employees.

(k) It is their further contention that apart from the maximum wage limit being increased to Rs.7,000/- from Rs.3,500/-, the inclusion of new criteria of minimum wages is arbitrary. The scheduled employment in respect of which minimum wages are fixed under the Minimum Wages Act alone would be getting a higher amount as the impugned enactment makes Rs.7,000/- or the minimum wages, whichever is higher as payable.

(l) Such classification between the employees whose employment comes within the scheduled employment and the other employees is irrational as the present Act relates to the payment of bonuses. Bonus is primarily meant to be shared by every category of

employee who contributed to the production. Thus, the introduction of a new criterion has no nexus with the object sought to be achieved. Besides, it causes industrial unrest as the employees who are in other employment which are not scheduled employment, would be receiving lesser bonuses and there would be heartburn. Thus, the said amendment is arbitrary. Finally, there is no reason whatsoever in making the Payment of Bonus Act to be retrospectively applicable from 01.04.2014.

(m) The Payment of Bonus Act is now retrospectively made applicable from 01.04.2014 i.e. from the accounting year 2014-15. The accounting year ended on 31.03.2015. The eight-month period within which bonuses have to be calculated and paid to the employees expired in November 2015. Therefore, as per the time limit, already bonuses have been calculated and paid to the eligible employees and thereafter, the impugned enactment, which was published in the gazette only on 01.01.2016, makes the same applicable retrospectively. In such a scenario, the employers cannot recover the amounts which are already paid to the employees who are only eligible

as per the original Act and it causes grave prejudice to the employers who will be forced to pay the amount higher than the allocable surplus. Therefore, the impugned enactment which interferes with the settled accounts and vested rights of the employers and employees ought not to have been made retrospectively. In any event, the same is without considering the situation of *fait accompli* and the irreversible process by which the employers have already paid the bonus in respect of the accounting year 2014-15. Hence, the impugned legislation is liable to be struck down since it is retrospective in application.

3. The writ petition is resisted by the respondents by filing a detailed counter-affidavit.

4 (a). It is submitted that the original Act was enacted after considering the tripartite commission set up by the Government of India so as to implement its recommendations in the matter of payment of bonuses. The ceiling limit which was fixed for eligibility as Rs.10,000/- had to be enhanced to Rs.21,000/- given the efflux of time. Similarly, to continue the social welfare objective, Section 12 was

amended by substituting the word 'Rs.3,500' with 'Rs.7000 or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher'. The amendments were made after eight years. It could be seen that the eligibility criteria and the ceiling have been periodically amended from time to time. Fixing of minimum wages under the Minimum Wages Act, 1948 for scheduled employment is in order, considering the Directive Principles of the State Policy under the Constitution of India. The classification between the workers in the scheduled employment and the other workers has a rationale since the object sought to be achieved is social justice in respect of poor workers. The conditions of service of the scheduled employment and non-scheduled employment are distinguishable for comparison and classification. The same is not arbitrary. The amendment is within the legislative power of the Parliament and in the absence of any violation of constitutional provisions, the same cannot be questioned.

(b) It is their further contention that the Parliament has powers to make laws both prospectively and retrospectively. Even in the year

1995, when the amendment was made to the Principal Act, it was given retrospective application with effect from 01.04.1993 and the said challenge to the retrospective application was repelled by the Rajasthan High Court vide its judgment in ***J.K. Acrylics vs Union Of India [1997 (2) LLJ 608]***.

(c) Further, the very amendment has already been questioned before the Patna High Court, and by judgment in ***M/s.Magadh Sugar and Cenergy Ltd vs. Union of India (2023 SCC Online Patna 3318)***, the *vires* of the impugned enactment was upheld.

(d) Further, set-on and set-off of allocable surplus can be done up to and inclusive of the fourth accounting year. The purpose of the inclusion of the limit on the amount of salary/wages in Section 12 of the Payment of Bonus Act is only for the calculation of bonuses and not for the exclusion of any employee who is otherwise covered. The debit and credit is a routine procedure in any establishment and there is no difficulty practically as projected by the petitioners. The grounds raised by the petitioners are without any merits.

(e) The issues relating to the amendment of the Payment of Bonus Act were discussed in a tripartite meeting consisting of the representatives from the Central Government/State Government, employers' group and workers' group on 20.10.2014 under the Chairmanship of the Hon'ble Minister for Labour and Employment. The issue was also discussed in the meetings of the inter-ministerial groups on the amendment to the Minimum Wages Act, 1948 and Payment of Bonus Act, 1965, on 03.12.2014. There is no way by which any benefit or right enjoyed by the petitioners is taken away by the amending Act. The ceilings were increased by scientifically taking into account the consumer price index for industrial workers.

5. We have Mr.A.L.Somayaji, learned Senior Counsel, Mr. S.Ravindran, learned Senior Counsel, Mr.Anand Gopalan, learned counsel, Mr.P.Ragunathan, learned counsel, learned counsel, and Mr. A.Devnarenderan, learned counsel, Mr.P. Nehru, learned counsel, Mr S.Jayaraman, learned counsel, Mr.S.Jayaraman, learned counsel, Mr S.Shivathanu Mohan, learned counsel, Ms. Rathi, learned counsel for the petitioners and Mr.AR.L.Sundaresan, learned Additional Solicitor

General on behalf of the official respondents, Ms.E.Maragatha Sundari, learned counsel for Respondents 4 to 6, 8 and Mr.G.Illangovan, learned counsel for the respondents 2 and 3 in WP No.6958 of 2016.

Arguments:

6 (a) Leading the arguments on behalf of the petitioners, Mr.A.L.Somayaji, learned Senior Counsel would contend that firstly, the increase in ceiling limit affects the poor employees. It is his primary contention that the introduction of Minimum Wages as a criterion under Section 12 of the Payment of Bonus Act is made for the first time by the amended enactment. Thus, the amendment Act creates a sub-classification among the class of employees with no intelligible differentia. When there are only two classifications for the purpose of application of the Act under Section 2(13): (i) those who are earning less than the ceiling limit and (ii) those who are earning more than the ceiling limit, the further classification among the employees to whom the Act is applicable is without a reason or justification.

(b) The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Pattali Makkal Katchi vs. A.Mayilamperumal and others [(2023) 7 SCC 481]***, more fully relying upon paragraphs 95 and 96 to contend that the classification is discriminatory and arbitrary. The learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Twyford Tea Co.Ltd vs. State of Kerala, [1970 (1) SCC 189]*** to contend that the classification is unreasonable. Paragraph 18 of the judgment is relied upon. He would submit that the purposes and definitions under the Payment of Bonus Act and Minimum Wages Act are different. The Payment of Bonus Act includes managers and supervisors, while the Minimum Wages Act does not include them. In the Minimum Wages Act, the appropriate Government fixes wages based on the cost of living of the State and the purpose is to ensure that the employee gets a minimum wage. The Payment of Bonus Act is meant to share profits with the other employees, that too only with the employees within the wage ceiling under Section 213 of the Act. Therefore, the amendment making consideration of the minimum wage as a criterion of ceiling is contrary to the very principles of the Payment of Bonus Act.

(c) Even when a demand for equalisation of dearness allowance for the employees across the country was made, the same was rejected stating that the dearness allowance will depend on the local factors such as cost of living etc. and uniform dearness allowance was rejected. This is the principle of determination of wages.

(d) To demonstrate the same, learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Workmen Employed by M/s.Indian Oxygen Ltd. vs. M/s.Indian Oxygen Ltd, (1985) 3 SCC 177***. The only justification which is made on behalf of the respondents that, repeatedly the Parliament need not be approached for amendment as the minimum wages are periodically notified, and cannot be countenanced, as there are ceiling limits in every other labour welfare legislation like the ESI Act and the Payment of Wages Act and the Parliament is repeatedly approached for the amendment of the ceiling limits. Alternatively, the amendment can be made to delegate the power of enhancement of the ceiling to the executive.

(e) Mr.Somayaji, learned Senior Counsel would rely upon the following three scenarios to impress upon this Court that the impugned enactment results in inequities and heartburns among the employees:

SCENARIO 1

A company has executives working across the country drawing the same wages. Before the amendment, the bonus earned by these employees were equal. However, after the amendment, their bonus earnings would not be uniform as it would be linked to Minimum wages.

BONUS BEFORE AMENDMENT

	Andhra Pradesh	*Tamil Nadu*	*Maharashtra*	*Delhi*
Salary	9,000	9,000	9,000	9,000
Bonus @ 20% on ceiling of 3,500/-	8,400	8,400	8,400	8,400

BONUS AFTER AMENDMENT

	Andhra Pradesh	*Tamil Nadu*	*Maharashtra*	*Delhi*
Salary	20,000	20,000	20,000	20,000
Minimum Wages (illustration)	12,526.20	11,047	14,310	21,215 (above ceiling)
Bonus @ 20%	30,062.88	26512.8	34,344	50,916

SCENARIO 2: Minimum wages – Assam and Tamil Nadu

The employer is paying Rs.18,000/- to its employees employed both at Assam and Tamil Nadu. The Government of Tamil Nadu has published rates of minimum wages for employers industry at Rs.14,000/- whereas no minimum wages have been prescribed for the employer's industry in Assam. While both employees have contributed uniformly to the profits, the bonus for the person at Assam would be calculated on Rs.7000, whereas the person at Tamil Nadu will be calculated at Rs.14,000.

SCENARIO 3:

The employer is paying his manager a salary of Rs.20,000/- whereas the operator is being paid Rs.14,000 as per the Minimum Wages Act, 1948. the Appropriate Government has fixed minimum wages for the operator however given the definition of employee as defined in Section 2(i) of the Minimum Wages Act, 1948 it is not fixed any minimum wages for the Manager. Though the manager's salary is higher, for the purpose of bonus it will be reckoned as Rs.7,000/-. Whereas the operator's salary would be reckoned as Rs.14,000 for bonus calculation."

(f) Learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Burn and Co. vs. Employees, (AIR 1957 SC 38)***. Referring to paragraph 13 of the said judgment learned Senior Counsel contended that the factors which will create unrest and discontent among the employees should also be taken into account.

(g) Learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Burma Shell Refineries Ltd. vs. Workmen, [1961 SCC Online SC 84]*** to press home the point that all the employees contribute to the prosperity of the industry and it would not be fair to make a distinction in the quantum of bonus between different classes of workmen. Paragraphs 6 and 8 of the said judgment are specifically referred to.

7. Further complimenting the arguments on behalf of the petitioners, Mr Ravi, the learned Senior Counsel, by taking this Court through the calculation of allocable surplus and the dividing of available sums to the employees, would submit that when the sum has

already been paid to the eligible employees as per the law which existed as on 01.11.2015, it is impossible to undo the same. By the amending Act, the ceiling has been increased; as such the employees who were hitherto not receiving bonuses would become eligible to receive the same. The amounts having already been paid, there is no question of any set-off in the ensuing years. Therefore, he would contend that the retrospective operation would only result in the employers paying more amount than the allocable surplus. This violates the rights of the employers despite their complying with the provisions of the Act meticulously. Such retrospective amendment would be liable to be interfered with by this Court.

8. Arguments of the other learned counsel would also overlap with the arguments of the learned Senior Counsels noted above and as such, they are not repeated.

9 (a) Per contra, Mr AR.L.Sundaresan, learned Additional Solicitor General of India, would submit that the impugned amendments to the Payment of Bonus Act have been brought out in a

social welfare legislation, keeping in mind the increase in the cost of living between the previous amendment carried out in the year 1995 and the present amendment. The amendment has been brought in with retrospective effect from 01.04.2014. The Parliament has got power to make laws prospectively or retrospectively within its sphere. The meeting of all stakeholders had taken place on 14.10.2014 about the necessity for bringing about an amendment and hence, there has been an interaction, on which the industry was very much aware of the amendments in the offing and the said meeting being before the last date for payment of bonus, there cannot be any unforeseen circumstances or sudden surprises. No vested right of the petitioners is taken away. If at all the petitioners have computed the allocable surplus for the year ending up to 31.03.2015 and even paid the same, if any additional payment towards the bonus has to be made, because of the increase in the wage limit for eligibility of bonus, such liability has to be met by the petitioners for the year 2014-15.

(b) The legislation is a social welfare measure with a larger objective of alleviating the hardship of the working community to

enable them to bridge the gap between the income and the cost of living, and such additional expenditure incurred by the employers for a minimal window period should be deemed to be well within the authority of the legislature to provide for retrospective effect. Challenge was made to the earlier amendment made in the year 1995, giving retrospective effect, and the same was rejected by a Division Bench of the Rajasthan High Court in ***J.K. Acrylics*** (cited supra). With the advent of the present Act, even if the company sustains losses, a mandatory bonus and minimum rate of 8.33% is payable. Therefore, the argument that the bonus is a share given back to the workers out of the profit earned by the company and hence the same has to be equally distributed, cannot be countenanced in the scheme of the present Act. Even as per the judgment in ***Burma Shell Refineries Ltd***, relied upon by the petitioners, the Hon'ble Supreme Court had opined that it is not an in-flexible rule that clerical staff and labour staff must always be paid the same rate of bonus. The legislature in its wisdom has identified minimum wages as a criterion in respect of the class of workers who are in scheduled employed, who need to be paid more bonus than others. Minimum wages itself is fixed only for the class of

workmen who deserve the same. Such identified workmen have been given protection as a social welfare measure and they form a class by themselves. There is a clear intelligible differentia between the two classes and there is rationale and nexus with the object sought to be achieved therefore, the contentions raised about the amendments made to Section 12 are unsustainable. Even *dehors* the amendments, the amount of bonus which would be taken home by every employee would be very much dependent upon his own wages and was never equal. Therefore, all the employers pleading industrial unrest and heartburn among the employees are nothing but a ruse to challenge the provision to avoid liability and increase their own profit. The present amendment has already been considered by a Division Bench of the Patna High Court in the judgment reported in ***Magadh Sugar and Cenergy Ltd.*** Further, in support of his proposition that the differential treatment among different classes is not violative of Article 14 of the Constitution of India and that there can be classification based on intelligible differentia with rationale and nexus with the object sought to be achieved, the learned Additional Solicitor General of India would rely on the following judgments:

(i) AIR 1957 SC 877 : Babulal Amitlal Mehta vs. Collector, Customs, Calcutta – Paragraph 16

(ii) 1990(4) SCC 366 : Shashikant laxman Kale vs. Union of India Paragraphs 1, 2 12 to 14

(iii)1994 Supp(2) SCC 322 : ITC Bhadrachalam Paper Boards Ltd. vs. Collector Central Taxes, Paras 13, 14

(iv) 1998(5) SCC 111 : Union of India vs. K.G.Radhakrishna Panickar and others, para 12

(v) 2011 (2) SCC 575 : Transport and Dock Workers Union vs. Mumbai Port Trust & Another, Paras 20, 21, 24, 25, 33, 34, 36 and 37

(c) To further contend that the Parliament is entitled to enact legislations with retrospective application and such laws are valid, the learned Additional Solicitor General would rely upon the following judgments:

(i) 1965 SCC Online SC 39: Jawaharlal vs. State of Rajasthan, paras 17 and 18

(ii) 2005 (7) SCC 825 : R.C.Tobbaco (P) Ltd. vs. State of Andhra Pradesh paras 20, to 22

(iii) 1997 SCC Online Raj 119: J.K.Acrlics vs. Union of India retrospective amendment to the Payment of Bonus Act by Amendment Act 34 of 1995

with effect from 1.4.1993 was upheld

(iv) 2023 SCC Online Pat 3318: Amendment to the Payment of Bonus Act with retrospective effect from 1.4.2014 has been upheld by a Division Bench of the Patna High Court

(v) 1994 (1) SCC 209 : Entertainment Tax Officer & Anr. vs. M/s.Ambae Picture Palace

Points for consideration:

10. Upon considering the rival submissions made on either side and perusing the material records, the following questions arise for our consideration:

> "(i) Whether or not the increase in the ceiling limit from Rs.10,000/- to Rs.21,000/- as to the applicability of the Payment of Bonus Act and the wage limit as Rs.7,000/- from Rs.3,500/- is in order?
>
> (ii) Whether the introduction of minimum wages also as a criterion and payment of a bonus of Rs.7,000/- or minimum wages whichever is higher, is arbitrary and violative of Article 14 of the Constitution of India?

(iii) Whether the impugned enactment is illegal because of its retrospective operation with effect from 01.04.2014?"

Question No.1:

11 (a) It can be seen that after the Act came into force in the year 1961, the following amendments have been brought in periodically:

Amendment Act	*With effect from*	*Eligibility under Section 2(13)*	*Eligibility under Section 12*
Payment of Bonus (Amendment) Act, 1985	07.11.1985	Rs.2500	Rs.1600
Payment of Bonus (Amendment) Act, 1995	01.04.1993	Rs.3500	Rs.2500
Payment of Bonus (Amendment) Act, 2007	01.04.2006	Rs.10,000	Rs.3500
Payment of Bonus (Amendment) Act, 2015	01.04.2014	Rs.21,000	Rs.7000 or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher

(b) Further, as far as limits of Rs.21,000/- as well as Rs.7,000/- are concerned, the following calculation is given in the counter-affidavit and it can be seen that the same is made on a rational basis, by

comparing the consumer price index for the year in which the amendment is made and not otherwise:

CALCULATION OF WAGE CEILING ***Increase in the Consumer Price Index for Industrial Workers on Base: 2001=100***			
Month & Year	**Index**	**Calculation Ceiling (Rs.)**	**Eligibility Limit**
April 2006	120	3500	100
March 2015	254	7408	21167
		3500/120*254	10000/120*254
Enhanced Rates as on 01.04.2014		7000	21000

(c) There can be no quarrel over the proposition that the Payment of Bonus Act is a social welfare legislation brought in to ensure a decent standard of life for the workmen. The same seeks to achieve the objective contained in Articles 42 and 43 in Part IV - Directive Principles of State Policy of the Constitution of India. Therefore, we do not find any reason whatsoever to interfere with the

same. It is also pertinent to note that the amendments have also been carried out by making extensive tripartite discussions, which always form the basis of labour reforms. Therefore, the answer to the question is that the enhancement of the ceiling limit in respect of the applicability of the Act as well as the upper limit for payment of bonus are in order.

Question No.2:

12 (a) It is true that for the first time, the minimum wage payable is made as the maximum limit for the calculation of bonus in respect of the employees who are in the scheduled employment. Minimum wages are fixed as per the Minimum Wages Act, 1948. The same is challenged by the petitioners on the grounds of irrationality and unreasonable classification.

(b) We do not agree with the submissions of Mr.Somayaji, the learned Senior Counsel for the petitioners, based on the judgment in ***Burn and Co.*** (cited supra) that the purpose of the bonus is all about the sharing of profits. Even though the core value may still be the

same, the essence has undergone a paradigm shift and a complete transformation, which can be gauged from the scheme of the present Act viz., the Payment of Bonus Act, 1961.

(c) Section 8 of the Act states that every employee will be entitled for a bonus, provided he has worked in the establishment for not less than thirty working days during the concerned year. The same is not linked to any profit.

(d) Section 10 of the Act mandates payment of a minimum bonus at the rate of 8.33% of the salary or wage earned by the employee during the accounting year irrespective of whether the employee has any allocable surplus in the accounting year.

(e) Section 11 of the Act also fixes the maximum limit even if the allocable surplus available is more, any employee will be entitled to a maximum bonus of 20% of such salary or wage limit.

(f) Section 12 provides the method of calculation of bonus. If the

salary received by the employees to whom the Act is applicable is more than Rs.7,000/- or over the minimum wage, the bonus should be calculated as if the wages were Rs.7,000/- or the minimum wage, whichever is higher.

(g) Proportionate reduction in bonus in the case where the employee has worked for all the working days in an accounting year is also provided.

(h) Section 15 of the Act provides for set on and set off of allocable surplus as illustrated in the fourth schedule. Thus, it can be seen that the statutory regime is very different from the situation prevailing as of the year 1956 in which the judgment in ***Burma Shell Refineries*** cited supra, was concerned with. Therefore, it can only be deduced that the purpose of the Act is to ensure a minimum amount of bonus for the employees to whom the Act applies and if the establishment has an allocable surplus, to be decided at the rate as per the allocable surplus, subject to the maximum of 20%. Therefore, we reject the contention that there cannot be any sub-classification

among the employees on the grounds that the bonus is to be equally shared. Further, it can be seen that the Minimum Wages Act, 1948 is also a social welfare legislation intending to guard the poorest among the poor workers, specifically considering the trades or types of employment mentioned in the schedule of the Act. The minimum wages are fixed depending on the conditions of living so that the workmen can lead a decent standard of life.

(i) Thus, in respect of the said employees, if the Parliament in its wisdom decides that instead of periodically hiking the ceiling limits by basing on the consumer price index, when already the legislature is revising the minimum wage, as per the scientific procedure which is undertaken to fix the minimum wage, instead of amending the Act every time, if the same could be taken as the maximum limit to compute the bonus, it is the wisdom and policy of the legislature. It cannot be said that the same has no nexus with the object sought to be achieved. Different rates of bonus, minimum or maximum, is not prescribed. It would be 8.33 % and 20% only. The only differentiation is that if the category in which the workman is employed is traceable

to a scheduled employment and if he is also receiving wages less than or up to Rs.21,000/-, the monthly wages should be reckoned for calculating 8.33 % or such percentage of allocable surplus will be by basing on the minimum wages applicable.

(j) We do not find any irrationality or arbitrariness in the same. Apart from fixing the maximum criterion as Rs.7,000/- introducing one more criterion of minimum wages by itself cannot be opposed. It is for the legislature to provide such criteria for the calculation of bonuses.

(k) The main contention is that it would create heartburn among the workmen and thus would lead to industrial unrest.

(l) We do not buy the said argument. The workmen would be more aware that the minimum wage is fixed based on the living wage conditions. In an urban scenario considering the house rent prices etc., the minimum wage would be more whereas if the same unit and the same work is done in a rural scenario, there may be a case where the minimum wage would be low or fixed differently by a different State or

not fixed at all. The same amount of money would have different purchasing power in different locations and therefore, the workmen would very well understand the difference in amounts received by the other workmen.

(m) It is pertinent to state here that it is only the employers who are shedding tears in these present writ petitions and no trade union or workmen body has made such a grievance. Legally also, the Act does not result in a uniform bonus to be paid among all the workmen and it would depend on their individual wages. In any event, the same cannot be a ground to attack the constitutionality of the impugned legislation. Therefore, the said submission made cannot be factually or legally countenanced.

(n) Regarding the factual scenario submitted on behalf of the petitioners, we do not agree with the submission that only after the amendment, the bonus earnings have become disproportionate. The area-wise comparison is also without any substance since the purchasing power of the very same amount would be different for

every area. A person in a rural scenario may lead a decent standard of life and full enjoyment of leisure and social and cultural opportunity; while if the very same amount is granted in a metropolitan city, the same would be scarcely enough. The petitioners fail to take into account the above factor while making submissions relating to disparity.

(o) While considering the classification, the Hon'ble Supreme Court considered the terms 'rationale and reasonable' in the judgment in ***Transport & Dock Workers Union & Ors vs Mumbai Port Trust & Anr (2011(2) SCC 575)*** and in paragraph 25, laid down the following test to determine what is reasonable or having rationale. The same is reproduced hereunder:

> "25. In our opinion while it is true that a mathematically accurate classification cannot be done in this connection, there should be some broad guidelines. There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is : *is it conducive*

to the functioning of modern society? If it is then it is certainly reasonable and rational."

(p) Useful reference can also be made as to the re-statement of law in this regard to the judgment of the Hon'ble Supreme Court in ***State of Tamil Nadu & Anr vs. National South Indian River Interlinking Agriculturist Association, 2021 (15) SCC 534***, more particularly, paragraphs 15 to 15.2 which read as under:

> *"15. The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification per se is not discriminatory and violative of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down by Justice SR Das in State of W.B v. Anwar Ali Sarkar(1952 SCR 284) are fulfilled:*
>
> *15.1 The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and*

15.2 The differentia must have a rational relationship to the object sought to be achieved by the statute."

(q) Thus, it is seen that the classification *per se* between the employees who are in scheduled employment receiving minimum wages and others by itself is not forbidden, provided the same is reasonable.

(r) The twin test for arriving at a finding as to the reasonability is that it should be based on an intelligible differentia, which distinguishes the persons or things that are grouped from the others left out of the group. In this case, it is the workmen who are poorer among the poor who are governed under the Minimum Wages Act, 1948 who are grouped from the others left out.

(s) The second essentiality is that such differentiation must have a rational relationship to the objects sought to be achieved by the

statute. The object sought to be achieved by the statute viz., the original Act is to provide a reasonable amount of bonus. The object of the amending Act is to enhance/modify or vary the quantum according to the prevalent conditions. Taking into account the time it takes to make amendments, i.e., it can be seen that the last amendment was made in the year 2006 and it has taken almost another decade to review the amount and the vagaries of the price index, when at least in respect of one part of the employees an able mechanism is available in the form of minimum wages, adopting the same has a rational relationship to the objects sought to be achieved by the statute. Therefore, we are unable to agree with the contentions made on behalf of the petitioners that the impugned enactment amounts to class legislation and is discriminatory. Accordingly, the question is answered that the classification made is reasonable and has nexus to the purposes of the Act.

Question No.3:

13. Learned counsel on both sides are *at idem* as to the proposition that the Parliament is competent to enact legislations

retrospectively also. The only bone of contention is that as per Section 19 of the Act, the bonus is payable within eight months from the closing of the accounting year. The present Act is made retrospectively applicable with effect from 01.04.2014. Therefore, the bonus is payable as per the amended provisions for the accounting year 2014/2015. However, the last date of payment of the bonus expired on 31.10.2015 and all the establishments by then have calculated and paid the bonus.

(b) In this regard, firstly it can be seen that in the case of a minimum bonus where there is no allocable surplus, it should be treated on par with a liability of wages that should be paid by the employer. In such a case, the retrospective application is only for one year and as such is negligible. In cases where there are allocable surplus, where the calculation has been made as per the Fourth Schedule to the Act, as rightly contended by learned Additional Solicitor General of India, that Section 15 provides for set on and set off and therefore, the amounts if any additionally payable can be adjusted and set off in the ensuing accounting years.

(c) Firstly, the argument of Mr.S.Ravi, learned Senior Counsel was based on the possibility of the employer not being able to set off where the workmen would cease to be in service for the next year etc. In this regard, we would observe that the validity or otherwise of legislation cannot be tested on the ground of every possibility but with reference to the actual prejudice which is caused, when it relates to the affecting of vested rights by retrospective application. In our opinion, neither any actual prejudice is demonstrated and even if the same results in the employer shelling out an additional sum, we see the same as very negligible, that too in respect of one accounting year alone which does not lead to the holding of the very retrospective application of the statute itself as illegal.

(d) When the trivial prejudice which is sought to be demonstrated as compared to the larger purpose of the social welfare legislation, purporting to implement the Directive Principles of the

State Policy, as observed by the Hon'ble Supreme Court in the ***Transport and Dock Workers Union***, cited supra, it would not be pragmatic for the Court to interfere in a judicial review. It can also be seen that the tripartite meetings and consultations were happening simultaneously. The first amendment bill bearing No.265 of 2015 which was tabled, had the date of application as 01.04.2015. It can be gauged that there is a second bill bearing bill No.265-C of 2015 in which the date is altered as 01.04.2014. The tripartite meetings and interactions between all concerned were happening simultaneously and when the decision has been taken and introduced by the competent legislature and the statute is made retrospectively only for the minimum period of one year, we do not find any ground to interfere.

(e) A Division Bench of Rajasthan High Court in ***J.K. Acrylics*** has considered the very same issue in detail, where under the retrospective applicability of the very same enactment in the year 1995 was considered and held that the additional amount of bonus which is in the nature of wages, cannot be contested by the management as if it violates any vested rights, and upheld the

enactment. We are completely in agreement with the same.

(f) This apart, we find that yet another Division Bench of the Patna High Court has considered the validity of the very same enactment and considered enhancement of the ceiling limit as well as retrospective application and after considering the ratio of the judgment of the Hon'ble Supreme Court in ***Jayam and Company vs. Assistant Commissioner, reported in 2016(15) SCC 125***, has held that in a challenge to the constitutional validity of the provisions of a statute, the Court exercising the power of judicial review must be conscious of the limitation of the judicial intervention, particularly in matters relating to legitimacy of economic and fiscal legislation and considered the question of difference in bonus to be calculated and held that the retrospective operation being for one financial year, the beneficial or welfare legislation cannot be termed to be unduly oppressive or confiscatory, and accordingly upheld the legislation. We see no ground to depart from the said view taken from the Patna High Court.

The Result:

14. Accordingly, finding no merits, the writ petitions stand dismissed. There shall be no order as to costs. Consequently, WMP Nos.6177, 7941, 7950, 7951, 7952, 8006, 9141, 9142, 9578, 10667, 10800, 13541, 13979, 15442, 18345, 20621, 32484 of 2016; 8715 of 2017; 23905 of 2018 are closed.

(S.V.G., CJ.) (D.B.C., J.)
12.04.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

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2.The Secretary to Government
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THE HON'BLE CHIEF JUSTICE

AND

D.BHARATHA CHAKRAVARTHY, J.

(tar)

WP Nos.6958 of 2016 etc. batch

12.04.2024