

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2146 OF 1995

Kanoria Industries Limited and anr. .. Petitioners
Vs.
Union of India .. Respondent

Mr.Amit Tungare i/b Mr.Atul Tungare, for the Petitioners.
Mr.J.S.Bhate a/w Ms.Neeta Masurkar & Mr.N.R. Prajapati, for
Union of India.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

23rd JUNE, 2017

P.C. :

1. The petitioner is a limited company incorporated under the Companies Act. The petitioner has filed this Petition seeking the following reliefs.

“(a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or other writ, direction or order under Article 226 of the Constitution of India declaring that the provisions of the Payment of Bonus (Amendment) Act 1995 being Act No. 34 of 1995 enacted on 30th August 1995 enforcing with retrospective effect from 1st April 1993 are void ab-initio and violative of Articles 14 and 19(1)(g) of the Constitution of India, and/or direct the respondent to forbear from implementing or enforcing the amended provisions of the Act to the petitioner company.”

2. The respondent – Union of India promulgated an Ordinance No. 8 of 1995 amending the Payment of Bonus Act 1965 and substituting the words “Three Thousand Five Hundred” in place of “Two Thousand Five Hundred” rupees in section 2(13) of the Payment of Bonus Act as also in section 12 for the words “Two Thousand Five Hundred” in place of “one thousand six hundred” giving retrospective effect from 1st April 1993. On 30/09/1995 the respondent – Union of India replaced the Ordinance and enacted the Payment of Bonus (Amendment) Act, 1995 being Act 34 of 1995 giving retrospective effect from 01/04/1993.

3. The grievance of the petitioners is that it has already made payment for the year 1993-94 in accordance with the provisions of the Payment of Bonus Act 1965 long back for its 129 employees. In view of amended provisions of Payment of Bonus Act, considering the number of employees, the additional burden on the petitioners for the payment of bonus comes to Rs. 14.57 lacs. The petitioners have therefore challenged the

retrospective effect of the Payment of Bonus (Amendment) Act 1995 being Act No.34 of 1995 as violative of Articles 14 and 19 (1)(g) of the Constitution.

4. The issue raised in the Petition has been considered by the Division Bench of High Court of Rajasthan in the case of **J.K. Acrylics Vs. Union of India 1997 II CLR 881**. The Rajasthan High Court held that Parliament has power and competence to legislate with retrospective effect and only safeguard is that the law should be reasonable and must not be violative of any of the fundamental rights guaranteed under the Constitution and held that there was no vested right of the petitioners which have been violated and the challenge could not be sustained. The Andhra Pradesh High Court by **judgment and order dated 04/06/2007 in Writ Petition No. 23483 of 1995**, has also considered this issue and held that amendment does not suffer from any constitutional infirmity.

5. We respectfully agree and follow the aforesaid judgments of the Rajasthan and Andhra Pradesh High Courts

and accordingly, dismiss the Petition. Rule to stand discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)