

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15379 of 2017

M/s Magadh Sugar and Cenergy Ltd. Unit Bharat Sugar Mills erstwhile known as M/s Bharat Sugar Mills (proprietor Upper Ganges Sugar and Industries Limited), At, P.O. & P.S. Sidhwalia, District- Gopalganj through its Executive President Sri Balwant Singh Garewal, son of Late Hardeo Singh Garewal, Son of Late Hardeo Singh Garewal.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Law and Justice, Government of India, New Delhi.
2. The Government of Bihar through Principal Secretary, Labour Resources Department, Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The deputy Labour Commissioner, Tirhut Division, Muzaffarpur.
5. The Deputy Labour Commissioner-Cum-Conciliation Officer, I/C Saran Division, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Respondent/s : A.C. to A.A.G. 6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 25.09.2023

1. Heard learned counsel for the petitioner, learned counsel for the Union of India and learned counsel for the State of Bihar.



2. The petitioner, a Company registered under the Indian Companies Act, 1956 has challenged the validity and especially the retrospective applicability of the Payment of Bonus (Amendment) Act, 2015, which was published in the Gazette of India (Extraordinary) on 1.01.2016 and was made retrospectively applicable with effect from 1.04.2014.

3. The Payment of Bonus (Amendment) Act, 2015 ('Amending Act, 2015' in short) by which sections 2(13), 12 and 38 of the Payment of Bonus Act, 1965 were amended is reproduced hereinbelow for ready reference.

"New Delhi, the 1st January 2016/Pausha 11, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 31st December, 2015, and is hereby published for general information:-

THE PAYMENT OF BONUS (AMENDMENT) ACT, 2015

No. 6 OF 2016

[31st December, 2015.]

An Act further to amend the Payment of Bonus Act, 1965.

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows-

1.(1) This Act may be called the Payment of Bonus (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 1st day of April, 2014.

2. In section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act), in clause (13), for the words "ten thousand rupees", the words "twenty-one thousand rupees" shall be substituted.

3. In section 12 of the principal Act,-

(i) for the words "three thousand and five hundred rupees" at both the places where they occur, the words



"seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher" shall respectively be substituted;

(ii) the following Explanation shall be inserted at the end, namely:-

‘Explanation.- For the purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act. 1948”

4. In section 38 of the principal Act, for sub-section (1), the following sub-section shall be submitted namely:-

"(1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the provisions of this Act""

4. It is submitted by learned counsel for the petitioner that the petitioner, which is a Company registered under the Indian Companies Act, having its sugar factory in the district of Gopalganj (Bihar) is engaged in the business of manufacture and sale of sugar. The Payment of Bonus Act, 1965 (hereinafter referred to as ‘the Act’), is applicable on the petitioner and accordingly for the period 2014-15 the petitioner paid to its employees bonus in terms of the provisions of the Act. Learned counsel submitted that the profit, production and productivity of sugar for the period 2014-15 having already been calculated and payment made, the enactment creates an additional financial liability which has retrospective application.



The same being confiscatory in nature and imposing enforceable financial burden is ultra-virus Article 14 of the Constitution. It also takes away vested right accrued in favour of the dealers and the petitioner is thus entitled for refund. Learned counsel in support of his contention places reliance on the judgment of the Hon'ble Supreme Court in the case of **Jayam and Company versus Assistant Commissioner and another; (2016) 15 SCC125.**

5. Learned counsel for the Respondent-Union of India referring to the counter affidavit filed by the Assistant Labour Commissioner submits that reading of Articles 245 and 246 along with Article 43 of the Constitution, it would be evident that the Parliament has the power to make laws ensuring living wages adequate to maintain a decent standard of life; which includes power to enact law having retrospective effect. The instant Amending Act, 2015 has been enacted to protect the interest of the workers working in the scheduled employments. Learned counsel refers to the statement of object and reasons of both the Act as also the Amending Act, 2015. It is submitted that the Amending Act, 2015 being within the legislative competence of the Parliament, there is no merit in the writ application and the same be dismissed.



6. Having heard learned counsel for the parties and having perused the material on record, it may be stated that the Payment of Bonus Act, 1965 was enacted on receipt of the report of the Tripartite Commission set up by the Government of India on 6.12.1961 to consider the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Act was later amended from time to time.

7. The statement of object and reasons of the Amending Act, 2015 states that the Central Government had been receiving representations for enhancement of the ceiling as provided under section 2(13) of the Act. After due consideration it had decided to enhance the eligibility limit for payment of bonus from Rs.10,000/- per mensem to Rs. 21,000/- per mensem. The Central Government had also decided to raise the calculation ceiling as provided under section 12 of the Act from Rs.3,500/- per mensem to Rs.7000/- per mensem or the minimum wage for the Scheduled employment, as fixed by the appropriate Government whichever is higher. Accordingly, amendments were made in sections 2(13) and 12 of the Act.

8. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of



Jayam and Company (supra). In the said case challenge was to an amendment brought about by the Amendment Act, 22 of 2010 by which a new sub section (20) of section 19 was inserted to the VAT Act. Although the provision came into force on 19.8.2010 but the same was given retrospective effect from 1.1.2007. The amendment was struck down by the Hon'ble Supreme Court holding that sub section (20) of section 19 was altogether a new provision introduced for determining the input tax in a specified situation and before the said amendment, the manner of calculation of the input tax credit was entirely different.

9. The Hon'ble Supreme Court in the said case of **Jayam and Company** (supra), on the retrospective application of a fiscal legislation, held as follows:-

“14. With this, let us advert to the issue on retrospectivity. No doubt, when it comes to fiscal legislation, the legislature has power to make the provision retrospectively. In R.C. Tobacco (P) Ltd. v. Union of India [R.C. Tobacco (P) Ltd. v. Union of India, this Court stated broad legal principles while testing a retrospective statute, in the following manner: (SCC pp. 737-38 & 740, paras 21-22 & 28)

“(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The unreasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to



be unreasonable as to violate constitutional norms;

(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectivity.” (Jayam and Co. case [Jayam and Co. case , SCC OnLine Mad para 85) ”

10. So far as the facts of the instant case are concerned, by the Amending Act, 2015 amendments have been brought about in sections 2(13) and 12 of the Act. As stated above, by amendment in section 2(13), instead of Rs. 10,000/- per mensem persons employed on a salary or wage not exceeding Rs.21,000/- per mensem have been brought under the definition of the word ‘employee’. Further the calculation of bonus with respect to certain employees, which was done under section 12 of the Act has been amended to be done taking his minimum wage for the Scheduled employment to be Rs. 7000/- per mensem in place of Rs. 3500/- per mensem which existed prior to amendment. Though the amending Act has been published in the gazette on 1.1.2016, the same is deemed to have come into force with effect from 1.4.2014 ie with effect



from the financial year 2014-15.

11. There is no dispute with respect to the legislative competence of the Union of India in bringing about the amendment nor can the same be said to be unreasonable or violative of any of the provisions of the Constitution. The Hon'ble Supreme Court in paragraph no. 13 of **Jayam and Company** (supra) has held that in a challenge to constitutional validity of the provisions of a statute, the Court exercising 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. With respect to the contention of learned counsel for the petitioner that the retrospective application of amendment not be such that it takes away an existing right or creates a new obligation as in the present case, it may be stated that though the instant amendment was brought into effect by publication of the same in the gazette on 1.1.2016 and deemed to have come into force with effect from 1.04.2014, the period for which the difference of bonus is to be calculated with respect to the certain employees in view of the Amending Act, 2015 relates to financial year 2014-15.

12. The Payment of Bonus Act provides for payment of bonus on the basis of profit or on the basis of



production or productivity and matters connected therewith. The Amending Act only seeks to bring in more employees under its ambit by raising the quantum of salary or wage to Rs.21,000/- from Rs.10,00/- and also to enhance the limit of salary or wage on which the bonus would be payable. As per the amendment, though employees with salary not exceeding Rs.21,000/- would be covered those who draw more than Rs.7,500/- would be entitled to bonus only on Rs.7,500/- or the minimum wage fixed by the appropriate Government; whichever is higher. The financial liability cast on the employer is on the profits or productivity achieved in the establishment, which is only on account of and directly related to the work put in by the employee. The retrospective operation is only for one financial year and the beneficial, welfare legislation cannot be termed to be unduly oppressive or confiscatory. Thus, the provisions of the Amending Act, 2015 cannot be said to be either unreasonable nor such that it creates an unforeseeable financial burden for the past period.

13. In view of the facts and circumstances of the case, the Court finds that the petitioner has not made out any case for interference in the Payment of Bonus (Amendment) Act, 2015 and to hold the same as ultra virus the Constitution of



India.

14. There being no merit in the instant application,
the same is dismissed.

(Partha Sarthy, J)

I agree
K. Vinod Chandran, CJ

(K. Vinod Chandran, CJ)

Bibhash

AFR/NAFR	
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