

**(2002) 09 JH CK 0024**

**Jharkhand High Court**

**Case No:** CWJC No. 1722 of 1994 (R)

P.K. Bhadra and Co. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

**Date of Decision:** Sept. 6, 2002

**Citation:** (2002) 95 FLR 650 : (2003) 1 LLJ 351

**Hon'ble Judges:** M.Y. Eqbal, J

**Bench:** Single Bench

**Advocate:** Ganesh Prasad Singh and Ashok Kumar Sinha, for the Appellant; R.S. Mazumdar, G.A., Mahua Palit, JC to GA, Vijoy Pratap Singh Arun Kumar Singh and Sat Prakash, for the Respondent

**Final Decision:** Allowed

### **Judgement**

M.Y. Eqbal, J.

Head the parties.

2. The petitioners, who are five in number, are aggrieved by common order as contained in several letters being letter No. 1347 of 1351 all dated 21.5.1994 issued by the Deputy Labour Commissioner, whereby the petitioners were informed that the contract labourers working in Civil Maintenance of M/s. Tata Engineering and Locomotive Company Ltd. (in short "TELCO") are entitled to get bonus payable by their respective contractors- petitioners and they were directed to make payment of bonus for the years 1991-92 and 1992-93.

3. The petitioners" case is that they are contractors and are engaged in activities concerning repair, modification and maintenance of building in the TELCO Township at Jamshedpur. In connection with such building operational activities the petitioners have employed labourers. It appears that in 1991 a notice was issued for conciliation between the employers and employees on the issue whether building operation was excluded within the purview of Bonus Act but no conciliation could be arrived. However, in 1992 the Labour Commissioner issued a letter dated 10.6.1992

directing the Deputy Labour Commissioner and Assistant Labour Commissioner that they should see that statutory bonus should be paid to the contractor's labours engaged in Civil Maintenance by the contractors and on their failure action should be taken. The said letter dated 10.6.1992 was challenged by the petitioners in this Court by filing CWJC No. 2519/1992 (R). The writ petition was disposed of by a Division Bench of this Court on 26.2.1993 with certain observations. For better appreciation the order dated 26.2.1993 reads as under :--

"Heard counsel for the parties.

2. Having heard counsel for the parties at length, we are of the view that no interference is called for at this stage. Counsel for the petitioners contended that the impugned order (Annexure-1) is illegal inasmuch as Payment of Bonus Act does not apply to the industry concerned namely, building operation. He, therefore, submitted that the Labour Commissioner was not justified in directing the petitioners by the impugned order dated 10.6.1992 to pay bonus to their workmen, failing which legal action may be taken.

3. Counsel for the State as well as counsel for the workmen submitted that the impugned order is in the nature of mere suggestion. It is not an order which is either binding or required necessary compliance, because the order itself says that it is desirable that bonus be paid. It further states that in case bonus is not paid further action in accordance with law may have to be taken. Therefore, at this stage there is no need for the petitioners to agitate this question before this Court. In any event, if any action is taken and the petitioners are aggrieved by such action, they may, if so advised, seek legal remedy.

4. Mr. A.K. Sinha, counsel appearing on behalf of the workmen submitted that the question as to whether the operation carried on by the petitioners is a building operation or not is itself a question of fact, which has to be determined before the Payment of Bonus Act is made applicable to the workmen of the petitioners. He further submitted that in cases an industrial dispute is raised, that question may have to be gone into in that adjudication.

5. Having regard to the fact that the respondents as well as the petitioners are agreed that the impugned Annexure-1 is merely in the nature of suggestion, failing which appropriate action may have to be taken in future, we find no justification for quashing the same at this stage.

6. This writ application is, therefore, dismissed subject to the above observations, and with liberty to the petitioners to challenge any action that may be taken against them in future pursuant to Annexure-1."

4. In spite of the aforesaid order passed by the Divisional Bench the Deputy Labour Commissioner issued the impugned letters mainly on the basis of the letter dated 10.6.1992 issued by the labour commissioner. From perusal of the impugned letter

Annexure-3 it appears that Deputy Labour Commissioner without applying his mind and without looking into the relevant provisions of Bonus Act proceeded on the basis of the letter dated 10.6.1992 and also on the basis of the some suggestions/ opinions received from the Law Department or the Law Officer. In my opinion, in the light of the order passed by the Division Bench the impugned letters issued by the respondents is illegal and without jurisdiction. As observed in the aforesaid order passed by the Division Bench without giving opportunity of hearing to the petitioners and without deciding the issue whether the operation carried on by the petitioners is a building operation or not the petitioners could not have been saddled with the liability of payment of bonus under the said Act.

5. For the aforesaid reasons, this writ application is allowed the impugned orders dated 21.5.1994 as contained in Annexure-3 are quashed. However this order will not come in the way of the authorities under the Payment of Bonus Act to proceed in accordance with law against the petitioners. It is made clear that I have not expressed any opinion with regard to the fact as to whether nature of job carried on by the petitioners is building operation or by way of civil maintenance which is to be decided by the competent authority.