**SUPREME COURT OF INDIA**

Sanghvi Jeevraj Ghewar Chand

Vs.

Madras Chillies, Grains and Kirana Merchants Workers Union

C.A.Nos.1630 and 1721 of 1967

(J. M. Shelat and K. S. Hegde, JJ.)

16.07.1968

**JUDGEMENT**

**SHELAT, J.:-**

1. In Civil Appeal No. 1630 of 1967, workmen engaged by certain chillies and kirana shops in Madras and who were members of the respondent Union made a demand on December 13, 1965 for bonus for the year 1964-65 equivalent to four months' wages. Conciliation proceedings having failed, the dispute was referred to the Industrial Tribunal, Madras. In Civil Appeal No. 1721 of 1967, the appellant company is admittedly an establishment in public sector to which Section 20 of the Payment of Bonus Act, 21 of 1965 (hereinafter referred to as the Act) does not apply. In both these cases, the Tribunals held that though the Act did not apply, in the first case by reason of Section 1 (3) and in the other by reason of Section 32 (x), the employees were entitled to claim bonus and awarded their claims in C. A. No. 1630 of 1967. These appeals by special leave challenge the correctness of the view taken by the Tribunals as to the scope and nature of the Act.

2. The question for decision in both the appeals is whether in view of the non-applicability of the

Act to establishments, not being factories and which employ less than 20 persons therein as the appellants in appeal No. 1630 of 1967 are, and the exemption of employees in an establishment in public sector though employing more than 20 persons as the appellant company in appeal No. 1721 of 1967, is under Section 32 (x) of the Act, the employees in both these establishments could claim bonus dehors the Act. The question depends upon the true view of certain provisions and the scope of the Act. But before we take ourselves the burden of construing upon provisions, it is necessary to refer briefly to the history of the question of bonus, the background and the circumstances in which the Act was passed. This is permissible for the limited purpose of appreciating the mischief Parliament had in mind and the remedy which it wanted to provide for preventing that mischief and not for tire purpose of aiding us in construing the provisions of the Act.

2A. As early as 1584, in Hevdon's case, (1584) 76 ER 637 it was said that "for the sure and true interpretation of all statutes in general" four things are to be considered: (i) What was the common law before the making of the Act, (ii) What was the mischief and defect for which the common law did not provide, (iii) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (iv) the true reason of the remedy. In Bengal Immunity Company Limited v. The State of Bihar, (1955) 2 SCR 603 = (AIR 1955 SC 661) this Court approved the rule in Hevdon's case, (1584) 76 ER 637 (supra) and in construing Article 286 of the Constitution observed at p. 633 (of SCR) = (at p. 675 of AIR) as follows:-

"In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Coustitution to cure that mischief."

In The Corporation of the City of Nagpur v. Its Employees, (1960) 2 SCR 942 = (AIR 1960 SC 675) the question was as to the meaning of the word "industry" in Section 2 (14) of the C. P. and Berar Industrial Disputes (Settlement) Act (23 of 1947). This Court said that "if the word were to be construed in its ordinary sense every calling, service, employment of an employee or any business, trade or calling of an employer would be an industry. But such a wide meaning appears to overreach the object for which the Act was passed. The Court, therefore, found it necessary to limit the scope of the said word having regard to the aim, scope and the object of the Act. Relying on the four tests laid down in Heydon's case, (1584) 76 ER 637 the Court considered the fundamental basis of the definition of industry, viz., relationship between employees and employers, the long title an the preamble of the Act showing the object of passing the Act, the historical background for passing it and held that "it is manifest that the Act was introduced as an important step in achieving social justice, to ameliorate the conditions of service of the labour in organised activities than to anything else and therefore the Act was not intended to reach the personal services which do not depend on the employment of labour force". Similarly in R. M. D. Chamarbaugwalla v. The Union of India, 1957 SCR 930 = (AIR 1957 SC 628) the question arose whether looking to the general words used in Section 2 (d) of the Prize Competitions Act, 42 of 1955 the words 'prize competition' included not merely competitions of a gambling nature but also those in which success depended in a substantial degree on skill. In construing the said definition, the Court gave a restricted meaning to

the words "prize competition" as meaning only competitions as were of a gambling nature. In doing so, the Court approved the principles of construction stated in the case of the Bengal Immunity Co. Ltd. (1955) 2 SCR 603 = (AlR 1955 SC 661) and told that "in interpreting an enactment the Court should ascertain the intention of the legislature not merely from a literal meaning of the words used but also from such matters us the history of the legislation, its purpose and the mischief it seeks to suppress". For considering the intention of Parliament not merely from the literal meaning of the definition in Section 2 (d) but also from the history of the legislation the Court looked into the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, how it could be and was evaded by the promoters of lotteries by shifting the venue of their business to the neighbouring State of Mysore, the concerted action taken by the adjoining States, the resolutions passed by each of them calling upon Parliament to undertake legislation, the fact of Parliament having passed the law and its preamble reciting the fact of the State legislatures having asked it to pass such a law. Having done that, the Court observed at p. 938 (of SCR) = (at p. 632 of AIR):

"Having regard to the circumstances under which the resolutions came to be passed, there cannot be any reasonable doubt that the law which the State Legislatures moved Parliament to enact under Article 252 (1) was one to control and regulate prize competitions of a gambling character. Competitions in which success depended substantially on skill could not have been in the minds of the legislatures which passed those resolutions. Those competitions had not been the subject of any controversy in Court. They all not done any harm to the public and had presented no problems to the States and at no time had there been any legislation directed to regulating them".

Though the court refused to look at the statement of objects and reasons for the purpose of construing Section 2 (d), it held that "having regard to the history of the legislation, the declared object thereof and the wording of the statute" the words had to be given a restricted meaning. In Central Bank of India v. Their Workmen, (1960) 1 SCR 200 = (AIR 1960 SC l2) the Court in construing Section 10 (1) (b) of the Banking Companies Act, 10 of 1949 again looked at the legislative history to ascertain the object of passing the Act and the mischief it sought to remedy, but declined to use the statement of objects and reasons to construe the Section on the ground that the statement could not control the actual words used in the Section. (Cf. also State of West Bengal v. Union of India, (1964) 1 SCR 371 = (AIR 1968 SC l24l).) S. Azeez Basha v. Union of India W. Ps. Nos. 84, 174, 188, 24l and 244 of 1966, D/- 20-10-1967 = (AIR 1968 SC 662) the petitioners challenged the validity of the Aligarh Muslim University (Amendment) Act, 62 of 1951 and the Aligarh Muslim University (Amendment) Act, 19 of 1965 as violating Article 30 (1) of the Constitution. This Court went into the history of the establishment of the University to ascertain whether it was set up by the Muslim minority and as such entitled to rights under Article 30 and held that it was not set up by the minority but in fact established by the Government of India by passing the Aligrah Muslim University Act, 1920 (Cf. Crawford on Statutory Construction (3rd Ed.) pages 482-483). There is thus ample authority justifying the Court in looking into the history of the legislation, not for the purpose of construing the Act but for the limited purpose of ascertaining the background, the conditions and the circumstances which led to its passing, the mischief it was intended to prevent and the remedy it furnished to prevent such mischief. The statement of objects and reasons also can be legitimately used for ascertaining the object which the legislative had in mind, though not for construing the Act.

3. What were the conditions prevailing at the time when the Act was passed and what was the object which Parliament had in mind in passing it? Bonus was originally regarded as a gratuitous payment by an employer to his employees. The practice of paying bonus as an ex gratia payment had its early roots in the textile industry in Bombay and Ahmedabad. In 1917 and 1918 an increase of 10 and 15 per cent of wages was granted as war bonus to the textile workers by the employers. In October, 1920, a Committee appointed by the Bombay Millowners recommended to the member mills payment of bonus equal to one month's pay. Similarly bonus was declared in 1921 and 1922. It appears that trading conditions in the industry having deteriorated, the mill owners declared in July 1923 that they would be unable to pay bonus for 1923. Thereupon a strike began which became general towards the end of January 1924. In February 1924, a bonus dispute Committee was appointed by the Government of Bombay to consider the nature of, the conditions and the basis of bonus which had been granted to the employees in the textile mills and to declare whether the employees had established any enforceable claim, customary, legal or equitable. The Committee held that they had not established any enforceable claim, customary, legal or equitable, to an annual payment of bonus which could be upheld in a Court. The years that followed were years of depression and no major dispute about bonus arose, although bonuses were given on ad hoc basis by a few industrial undertakings. During the Second World War, managements of textile mills paid cash bonus equivalent to a fraction of the surplus profit but this was also voluntary payment to keep labour contended, Disputes for payment of bonus for the years 1948 and 1949 arose in the Bombay textile industry. On the said dispute having been referred to the Industrial Court, that Court expressed the view that since both labour and capital contributed to the profits of the industry both were entitled to a legitimate return out of the profits and evolved a formula for charging certain prior liabilities on the gross profit of the accounting year and awarded a percentage of the balance as bonus. The Industrial Court excluded the mills which had suffered loss from the liability to pay bonus. In appeals against the said awards, the Labour Appellate Tribunal approved broadly the method of computing bonus as a fraction of the surplus profit. According to this formula, which has since been referred to as the Full Bench formula, the surplus available for distribution is to be determined after debiting certain prior charges from gross profits, viz. (1) provision for depreciation, (2) reservation for rehabilitation, (3) return of 6 per cent on paid-up capital, and (4) return on working capital at a rate lower than the one on the paid up capital. In Muir Mills Company v. Suti Mills Mazdoor Union, Kanpur, (1955)1 SCR 991 = (AIR 1955 SC 170), Baro Borough Municipality v. Its Workmen, 1957 SCR 38 = (AIR 1957 SC 110), The Shree Meenakshi Mills Ltd. v. The Workmen, 1958 SCR 878 = (AIR 1958 SC 153) and State of Mysore v. The Workers of Gold Mines, 1959 SCR 895 = (AIR 1958 SC 923) this Court laid down (1) that bonus was not a gratuitous payment nor a deferred wage, and (2) that where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus may legitimately be made by the workmen. The Court, however, did not examine the propriety nor the order of priorities as between the several charges and their relative importance nor did it examine the desirability of making any alterations in the said formula. These questions came to be examined for the first time in Associated Cement Companies Ltd. v. Its Workmen, 1959 SCR 925 = (AIR 1959 SC 967) where the said formula was generally approved. Since that decision, this Court has accepted in several cases the said formula. The principal features of the formula are that each year for which bonus is claimed is a self -contained unit, that bonus is to be computed on the profits of the establishment during that year, that the gross profits are to be determined after debiting the wages and dearness allowance paid to the employees and other items of expenditure against total receipts as disclosed by the profits and loss account, and that against such gross profits the aforesaid

four items are to be deducted as prior charges. The formula was not based on any legal right or liability, its object being only to distribute profits after reasonable allocations for the aforesaid charges. Attempts were thereafter made from time to time to have the said formula revised but they were rejected first in A. C. C's case, 1959 SCR 925 = (AIR 1959 SC 967) (supra) and again in The Ahmedabad Miscellaneous Iudustrial Workers' Union v. The Ahmedabad Electricity Co. Ltd., (1962) 2 SCR 934 = (AIR 1962 SC 1255) where it was observed that the plea for revision raised an issue which affected all industries and, therefore, before any change was made all industries and their workmen had to be heard and their pleas considered. The Court, therefore, suggested that the question of revising the formula should be 'comprehensively considered by a high powered Commission". Taking up the aforesaid suggestion, the Government of India appointed a Commission, by its resolution dated December 6, 196l, the terms of reference whereof were, inter alia,

1. to define the concept of bonus and to consider in relation to industrial employment the question of payment of bonus based on profits and recommend principles for computation of such bonus and methods of payment;

2. to determine what the prior charges should be in different circumstances and how they should be calculated;

3. to determine conditions under which bonus payment should be made unitwise, industrywise and industry-cum-regionwise;

4. to consider whether there should be lower limits irrespective of loss in particular establishment and upper limits for distribution in one year and, if so, the manner to carry forward the profits and losses over a prescribed period; and

5. to suggest an appropriate machinery and method for settlement of bonus disputes.

After an elaborate enquiry, the Commission made the following amongst other recommendations:

1. That bonus was paid to the workers as share in the prosperity of the establishment and that the basic scheme of the bonus formula should be adhered to viz., determination of bonus as a percentage of gross profits reduced by the following prior charges, viz., normal depreciation allowable under the Indian Income Tax including multiple shifting allowance, income tax and super tax at the current standard rate applicable for the year for which tax is to be calculated but not super

profits tax, return on paid-up capital raised through preference shares at the actual rate of dividend payable, on other paid-up capital at 7 per cent and on reserves used as capital at 4 per cent. The Commission did not recommend provision for rehabilitation.

2. That 60 per cent of the available surplus should be distributed as bonus and excess should be carried forward and taken into account in the next year; the balance of 40 per cent should remain with the establishment into which should merge the saving in tax on bonus and the aggregate balance thus left to the establishment should be used for payment of gratuity, other necessary reserves, rehabilitation in addition to the provision made by way of depreciation in the prior charges, annual provision required for redemption of debentures, etc.

3. That the distinction between the basic wages and dearness allowance for the purpose of arriving at the bonus quantum should be done away with and bonus should be related to wages and dearness allowance taken together;

4. That minimum bonus should be 4 per cent of the total basic wage and dearness allowance paid during the year or Rs. 40 to each employee, whichever is higher, and in the case of children the minimum should be equivalent to 4% of their basic wage and dearness allowance, or Rs. 25 whichever is higher;

5. That the maximum bonus should be equivalent to 20 per cent of the total basic wage and dearness allowance paid during the year;

6. That the bonus formula proposed should be deemed to include bonus to employees drawing a total basic pay and dearness allowance upto Rs. 1600 p. m. regardless of whether they were workmen as defined in the Industrial Disputes Act, 1947 or other corresponding Act provided that quantum of bonus payable to employees drawing total basic pay and allowance over Rs. 750 p. m. should be limited to what it would be if their pay and dearness allowance were Rs. 750 p. m.

7. That the formula should not apply to new establishments until they recouped all early losses including arrears of normal depreciation subject to the time limit of 6 years; and

8. That the scheme should be applied to all bonus matters relating to the accounting year ending on any day in the calendar year 1962 except in those matters in which settlements had been reached or decisions had been given.

The fact that the Government of India accepted the majority of the Commission's recommendations is clear from the Statement of Objects and Reasons attached to Bill No. 49 of 1965 which they sponsored in Parliament. The Statement, inter alia, states that a "tripartite Commission was set up by the Government of India by resolution dated 6th December 1961 to consider in comprehensive manner the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's report containing the recommendations was received by the Government on 24th January, 1964. By resolution dated 2nd September, 1964, Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein". To implement these recommendations the Payment of Bonus Ordinance, 1965 was promulgated on May 29, 1965. Since the Ordinance was replaced by the present Act published on September 25, 1965, it is unnecessary to examine its provisions. Thus, bonus which was originally a voluntary payment acquired under the Full Bench formula the character of a right to share in the surplus profits enforceable through the machinery of the Industrial Disputes Act, 1947 and other corresponding Acts. Under the Act liability to pay bonus has now become a statutory obligation imposed on the employers. From the history of the legislation it is clear (1) that the Government set a Commission to consider comprehensively the entire question of bonus in all its aspects; and (2) that the Commission accordingly considered the concept of bonus, the method of computation, the machinery for enforcement and a statutory formula in place of the one evolved by industrial adjudication.

4. We proceed next to examine some of the provisions of the Act and its scheme.

5. The preamble of the Act states that it is to provide for payment of bonus in certain establishments and for matters connected therewith. Section 1 (3) provides that it shall apply "save as otherwise provided in the Act" to (a) every factory and (b) every other establishment in which 20 or more persons are employed on any day during the accounting year. We may note that this sub-section is in consonance with one of the Commission's recommendations, viz., that its bonus formula should not be applied to small shops and establishments which are not factories and which employ less than 20 persons. Having made clear that the Act is to apply only to those establishments mentioned in sub-section (3), sub- section (4) provides that the Act shall have effect in respect of the accounting year 1964 and every subsequent year. "Allocable surplus" under Section 2 (4) means 67 per cent in cases falling under clause (a) and 60 per cent in other cases of the available surplus. Section 2 (6) defines 'available surplus' to mean available surplus as computed under Sec. 5. Section 2 (15) defines "establishment in private sector" to mean any establishment other than an establishment in public sector. Section 2 (16) defines "establishment in public sector" as meaning (a) a Government company as defined in Section 617 of the Companies Act, 1956, and (b) a Corporation in which not less than 40 per cent of its capital is held by Government or the Reserve Bank of India or a Corporation owned by Government or the Reserve Bank of India. "Gross profits" as defined by Section 2 (18) means gross profits calculated under Section 4. Sections 4 and 5 provide for computation of gross profits and available surplus after deducting therefrom the sums referred to in Section 6, viz., depreciation admissible under Sec. 32 (1) of the Income-tax Act or the relevant Agricultural Income Tax Act, development rebate or development allowance admissible under the Income Tax Act and such other sums as are specified in the third Schedule. Section 7 deals with calculation of direct tax. Sections 8 and 9 deal with eligibility of and disqualification from receiving bonus. Sections 10 to 15 deal with minimum and maximum bonus and the provisions for 'set off and

'set on'. Sections 18,19, and 21 to 31 deal with certain procedural and allied matters. Section 20 deals with certain establishments in public sector to which the Act is made applicable in certain events. Section 32 excludes from the application of the Act certain categories of employees and certain establishments therein specified. Section 34 provides for the overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in terms of any award, agreement, settlement or contract of service made before May 29, 1965. Section 35 saves the provisions of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 or any scheme made thereunder. Section 35 empowers an appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishments if it is of opinion that it would not be in public interest to apply all or any of the provisions of the Act thereto, to exempt for such period as may be specified by it such establishment or class of establishments from all or any of the provisions of the Act. Section 39 provides as follows:-

"Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in a State."

6. It will be noticed that Section 29 provides that where a dispute arises between an employer and his employees (1) with respect to the bonus payable under the Act, or (2) with respect to the application of the Act, such a dispute shall be deemed to be and industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation an settlement of industrial disputes in force in a State and the provisions of that Act and such law, as the case may be, shall, save as otherwise expressly provided, apply accordingly. An Industrial Dispute under the Industrial Disputes Act would be between a workman as defined in that Act and his employer and the dispute can be an industrial dispute if it is one as defined therein. But the definition of an "employee" under Sec. 2 (13) of this Act is wider than that of a "workman" under the industrial Disputes Act. A dispute between an employer and an employee, therefore, may not fall under the Industrial Disputes Act and in such a case the Act would not apply and its machinery for investigation and settlement would not be available. That being so, and in order that such machinery for investigation and settlement may be available, Section 22 has been enacted to create a legal fiction whereunder such disputes are deemed to be industrial disputes under the Industrial Disputes Act or any other corresponding law. For the purposes of such disputes the provisions of the Iudustrial Disputes Act or such other law are made applicable. The effect of Section 22 thus is (1) to make the disputes referred to therein industrial disputes within the meaning of the Industrial Disputes Act or other corresponding law and (2) having so done to apply the provisions of that Act or other corresponding law for investigation and settlement of such disputes. But the application of Section 22 is limited only to the two types of disputes referred to therein and not to others. Section 39, on the other hand, provides that "save as otherwise expressly provided" the provisions of the Act shall be in addition to and not in derogation of the Industrial Disputes Act or any corresponding law relating to investigation and settlement of industrial disputes in force in a State. Except for providing for recovery of bonus due under a settlement, award, or agreement as an arrear of land revenue as laid down in Section 21, the Act does not provide any machinery for the investigation and settlement of disputes between an employer and an employee. If a dispute, for instance, were to arise as regards the quantum of available surplus, such a dispute not being one

falling under Section 22, Parliament had to make a provision for investigation and settlement thereof. Though such a dispute would not be an industrial dispute as defined by the Industrial Disputes Act or other corresponding Act in force in a State, Section 39 by providing that the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act or such corresponding law makes available the machinery in that Act or the corresponding act available for investigation and settlement of industrial disputes thereunder for deciding the disputes arising under this Act. As already seen Section 22 artificially makes two kinds of disputes therein referred to industrial disputes and having done so applies the provisions of the Industrial Disputes Act and other corresponding act in force for their investigation and settlement. But what about the remaining disputes? As the Act does not provide any machinery for their investigation and settlement, Parliament by enacting Section 39 has sought to apply the provisions of those Acts for investigation and settlement of the remaining disputes, though such disputes are not industrial disputes as defined in those Acts. Though, the words "in force in a State" after the words "or any corresponding law relating to investigation and settlement of industrial disputes" appear to qualify the words "any corresponding law " and not the Industrial Disputes Act, the Industrial Disputes Act is primarily a law relating to investigation and settlement of industrial disputes and provides machinery therefor. Therefore the distinction there made between that Act and the other laws does not seem to be of much point.It is thus clear that by providing in Section 39 that the provisions of this Act shall be in addition to and not in derogation of those Acts, Parliament wanted to avail of those Acts for investigation and settlement of disputes which may arise under this Act. The distinction between Section 22 and Section 39, therefore, is that whereas Section 22 by fiction makes the disputes referred to therein industrial disputes and applies the provisions of the Industrial Disputes Act and other corresponding laws for the investigation and settlement thereof, Section 39 makes available for the rest of the disputes the machinery provided in that Act and other corresponding laws for adjudication of disputes arising under this Act. Therefore, there is no question of a right to bonus under the Industrial Disputes Act or other corresponding Acts having been retained or saved by Section 39. Neither the Industrial Disputes Act nor any of the other corresponding laws provides for a right to bonus. Item 5 in Schedule 3 to the Industrial Disputes Act deals with jurisdiction of tribunals set up under Sections 7, 7-A and 7-B of that Act, but does not provide for any right to bonus. Such a right is statutorily provided for the first time by this Act.

6A. Mr. Ramamurti and Mr. Gokhale for the respondents, however, sought to make the following points:

1. The Act applies only to certain establishments and its preamble and Section 1 (3) show to which of them it is expressly made applicable;

2.Under Section 1(3), the Act is made applicable to all factories and establishments in which 20 or more persons are employed except those "otherwise provided in the Act". It means that the Act does not apply (i) to factories and establishments otherwise provided in the Act, and (ii) to establishments which have less than 20 persons employed. The Act, therefore, is not a comprehensive Act but applies only to factories and establishments covered by Section 1 (3);

3. There is no categorical provision in the Act depriving the employees of factories and establishments not covered by or otherwise saved in the Act of bonus which they would be entitled to under any other law;

4. That being so, the employees of establishments to which the Act is not made applicable would still be entitled to bonus under a law other than the Act although they are not entitled to the benefit of the Act;

5. Parliament was aware of the fact that employees in establishments other than those to which the Act applies were getting bonus under adjudication provided by the industrial Disputes Act and other similar Acts. If it intended to deprive them of such bonus surely it would have expressed so in the Act;

6. Section 39 in clear terms saves the right to claim bonus under the Industrial Disputes Act or any corresponding law by providing that the provisions of this Act shall be in addition to and not in derogation of the provisions of those Acts.

7. It is true that the preamble states that the Act is to provide for payment of bonus to persons employed in certain establishments and Section 1(3) provides that the Act is to apply, save as otherwise provided therein, to factories and every other establishment in which 20 or more persons are employed. Sub-section (4) of Section 1, also provides that the Act is to have effect in relation to such factories and establishments from the accounting year commencing on any day in 1964 and every subsequent accounting year. But these provisions do not, for that reason, necessarily mean that the Act was not intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus and the persons to whom it should apply. Even where an act deals comprehensively with a particular subject-matter, the legislature can surely provide that it shall apply to particular persons or groups of persons or to specified institutions only. Therefore, the fact that the preamble states that the Act shall apply to certain establishments does not necessarily mean that it was not intended to be a comprehensive provision dealing with the subject-matter of bonus. While dealing with the subject-matter of bonus the legislautre can lay down as a matter of policy that it will exclude from its application certain types of establishments and also provide for exemption of certain other types of establishments even though such establishments would otherwise fall within the scope of the Act. The exclusion of establishments where less than 20 persons are employed in Section 1 (3) therefore it is not a criterion suggesting that Parliament has not dealt with the subject-matter of bonus comprehensively in the Act.

7A. As already seen, there was until the enactment of this Act no statute under which payment of bonus was a statutory obligation on the part of an employer or a statutory right therefore of an

employee. Under the Industrial Disputes Act, 1947 and other corresponding Acts, workmen of industrial establishments as defined therein could raise an industrial dispute and demand by way of bonus a proportionate share in profits and Industrial Tribunals could under those Acts adjudicate such disputes and oblige the employers to pay bonus on the principle that both capital and labour had contributed to the making of the profits and, therefore, both were entitled to a share therein. The right to the payment of bonus and the obligation to pay it arose on principles of equity and fairness in settling such disputes under the machinery provided by the Industrial Acts and not as a statutory right and liability as provided for the first time by the present Act. In providing such statutory liability, Parliament has laid down a statutory formula on which bonus would be calculated irrespective of whether the establishment in question has during a particular accounting year made profit or not. It can further lay down that the formula it has evolved and the statutory liability it provides in the Act shall apply only to certain establishment and not to all. Since there was no such statutory obligation under any previous Act, there would not be any question of Parliament having to delete either such obligation or right. In such circumstances, since Parliament is providing for such a right and obligation for the first time there would be no question also of its having to insert in the Act an express provision of exclusion. In other words, it has not to provide by express words that henceforth no bonus shall be payable under the Industrial Disputes Act or other corresponding Act as those Acts did not confer any statutory right to bonus.

8. It will be noticed that though the Industrial Disputes Act confers substantive rights on workmen with regard to lay off, retrenchment compensation, etc. it does not create or confer any such statutory right as to payment to bonus. Bonus was so far the creature of industrial adjudication and was made payable by the employers under the machinery provided under that Act and other corresponding Acts enacted for investigation and settlement of disputes raised thereunder. There was, therefore, no question of Parliament having to delete or modify Item 5 in the Third Schedule to Industrial Disputes Act or any such provision in any corresponding Act or its having to exclude any right to bonus thereunder by any categorical exclusion in the present Act.

9. But the argument was that if the Act were to be held as an exhaustive statute dealing with the subject of bonus, three results would follow which could never have been expected much less intended by Parliament. These results would be: (1) that employees in establishments engaging less than 20 persons would get no bonus at all either under the Act or under industrial adjudication provided for by the Industrial Disputes Act and other corresponding Acts. Since such employees were so far getting bonus as a result of industrial adjudication, Parliament could never have intended to deprive them of such benefit; (ii) that employees in public sector Corporations and Companies would get no bonus either under the Act or under the Industrial Disputes Act or other corresponding law, and (iii) that such a construction would have the effect of impliedly repealing and negating the provisions of the Industrial Disputes Act and other corresponding laws.

10. Though Section 1 (3) excludes an establishment other than a factory having less than 20 employees from the application of the Act, establishments which are factories irrespective of the number of persons employed therein and all establishments which are not factories but are having 20 or more employees are covered by the Act. Thereore, only small establishments having less than

20 employees and which are not factories are excluded. Even in such cases if any establishment were to have 20 or more persons employed therein on any day in any accounting year, the Act would apply to such an establishment. It is, therefore, clear that Parliament by enacting Section 1 (3) excluded only petty establishments.

11. We are not impressed by the argument that Parliament in excluding such petty establishments could not have intended that employees therein who were getting bonus under the Full Bench Formula should lose that benefit. As aforesaid, Parliament was evolving for the first time a statutory formula in regard to bonus and laying down a legislative policy in regard thereto as to the classes of persons who would be entitled to bonus thereunder. It laid down the definition of an 'employee' far more wider than the definition of a 'workman' in the Industrial Disputes Act and the other corresponding Acts. If, while doing so, it expressly excluded as a matter of policy certain petty establishments in view of the recommendation of the Commission in that regard, viz., that the application of the Act would lead to harassment of petty proprietors and disharmony between them and their employees, it cannot be said that Parliament did not intend or was not aware of the results of exclusion of employees of such petty establishments.

12. It is true that the construction canvassed on behalf of the appellants leads, as argued by counsel for the respondents, to employees in public sector concerns being deprived of bonus which they would be getting by raising a dispute under the Industrial Disputes Act and other corresponding statutes. But such a result occurs in consequence of the exemption of establishments in public sector from the Act, though such establishments but for Section 32 (x) would have otherwise fallen within the purview of the Act. It appears to us at the exemption is enacted with a deliberate object, viz., not to subject such establishments to the burden of bonus which are conducted without any profit motive and are run for public benefit. The exemption in Sec. 32 (x) is, however, a limited one, for, under Section 20 if a public sector establishment were in any accounting year to sell goods produced or manufactured by it in competition with an establishment in private sector and the income from such sale is not less than the 20 per cent of its gross income, it would be liable to pay bonus under the Act. Once again it is clear that in exempting public sector establishments, Parliament had a definite policy in mind.

13. This policy becomes all the more discernible when the various other categories of establishments exempted from the Act by Section 32 are examined. An insurer carrying on general insurance business is exempted under clause (i) in view of certain provisions of the Insurance Act, 1936 and the Insurance (Amendment) Act, 1950. In view of these provisions the Full Bench formula could not be and was not in fact applied at any time to such insurance establishments. The Life Insurance Corporation of India is exempted under clause (i) because of its being a public sector concern having no profit motive and conducted in public interest. Clause (ii) of Section 32 exempts shipping companies employing seamen in view of Section 159 (9) of the Merchant Shipping Act, 1958 under which the Industrial Disputes Act was inapplicable to such seamen, the disadvantages that Indian Shipping Companies vis-a-vis foreign companies engaged in shipping would be put to if they were made to pay bonus and the obvious difficulties in applying the Act to such foreign companies engaging Indian seamen. The exemption in respect of stevedore labour

contained in clause (iii) also seems to have been provided for in view of the peculiar nature of employment, the difficulty of calculating profits according to the normal methods and other such difficulties. The rest of the categories of establishments set out in Section 32 appear to have been exempted on the ground of (a) absence of any profit motive, (b) their being of educational, charitable or public nature, and (c) their being establishments in public sector carried on in public interest. Building contractors appear to have been exempted because of their work being contract job work, the infesibility of applying the formula evolved in the Act and the problem of employees of such contractors being more of evolving and enforcing a proper wage structure rather than of payment of bonus to them.

14. It seems to us that if we were to accept the contention that the object of Section 32 was only to exempt the establishments therein enumerated from the application of the bonus formula enacted in the Act, but that the employees of those establishments were left at liberty to claim and get bonus under the machinery provided by the Industrial Disputes Act and other corresponding Acts, the very object of enacting Section 32 would be frustrated. Surely, Parliament could not have intended to exempt those establishments from the burden of bonus payable under the Act and yet have left the door open for their employees to raise industrial disputes and get bonus under the Full Bench Formula which it has rejected by laying down a different stautory formula in the Act. For instance, is it to be contemplated that thought the Act by Sec. 32 exempts institutions such as the Universities or the Indian Red Cross Society or hospitals, or any of the establishments set out in clause (ix) of that Section, they would still be liable to pay bonus if the employees of those institutions were to raise a dispute under the Industrial Disputes Act and claim bonus in accordance with the Full Bench Formula? The legislature would in that case be giving exemption by one hand and taking it away by the other, thus frustrating the very object of Section 32. Where, on the other hand, Parliament intended to retain a previous provision of law under which bonus was payable or was being paid it has expressly saved such provision. Thus, under Section 35 the Coal Mines Provident Fund and Bonus Schemes Act, 1946 and any scheme made thereunder are saved. If, therefore, Parliament wanted to retain the right to claim bonus by way of industrial adjudication for those who are either excluded or exempted from the Act it would have made an express saving provision to that effect as it has done for employees in Coal Mines.

15. Besides, the construction suggested on behalf of the respondents, if accepted, would result in certain anomalies. Take two establishments in the same trade or industry, one engaging 20 or more persons and the other less than 20. The Act would be applicable to the former but not to the latter. If the respondents were to be right in their contention the employer in the former case would be liable to pay bonus at the rates laid down by the Act, i. e. , at the rate of 4 per cent minimum and 20 per cent maximum, but in the latter case the Act would not apply and though his establishment is a smaller one, on the basis of the Full Bench Formula there would be a possibility of his having to pay bonus at a higher rate than 20 per cent, depending upon the quantum of profit made in that particular accounting year.

16. Section 32 (vii) exempts from the applicability of the Act those employees who have entered before May 29, 1965 into an agreement or settlement with their employers for payment of bonus

linked with production or productivity in lieu of bonus based on profits and who may enter after that date into such agreement or settlement for the period for which such agreement or settlement is in operation. Can it be said that in cases where there is such an agreement or settlement in operation, though this clause expressly excludes such employees from claiming bonus under the Act during such period, the employees in such cases can still resort to the Industrial Disputes Act and claim bonus on the basis of the Full Bench Formula? The answer is obviously in the negative for the object in enacting clause (vii) is to let the parties work out such an agreement or settlement. It cannot be that despite this position, Parliament intended that those employees had still the option of throwing aside such an agreement or settlement, raise a dispute under the Industrial Disputes Act and claim bonus under the Full Bench Formula. The contention, therefore, that the exemption under Section 32 excludes those employees from claiming bonus under the Act only and not from claiming bonus under the Industrial Disputes Act or such other Act is not correct. This conclusion is buttressed by the provisions of Section 36 which empower the appropriate Government to exempt for a specified period an establishment or class of establishments from the operation of the Act, if it is of the opinion that it is not in public interest to apply all or any of the provisions of the Act to such establishment or class of establishments, Since the appropriate Government can exempt such an establishment or establishments from the operation of the Act on the ground of public interest only, it cannot surely be that Parliament still intended that the employees of such exempted establishment or establishments can claim bonus through industrial adjudication under the Industrial Disputes Act or any such corresponding law.

17. We are also not impressed by the contention that the fact that Section 39 provides that the provisions of this Act are in addition to and not in derogation of the Industrial Disputes Act or any other corresponding law shows that Parliament did not wish to do away with the right to payment of bonus altogether to those who cannot either by reason of exclusion or exemption from the Act claim bonus under the Act. Such a construction is fallacious on two grounds. Firstly because it assumes wrongly that the Industrial Disputes Act or any other law corresponding to it provided for a statutory right to payment of bonus. All that those Acts provided for, apart from rights in respect of lay out, retrenchment etc., a machinery for investigation and settlement of disputes arising between workmen and their employers. It is, therefore, incorrect to say that the right to bonus under this Act is in addition to and not in derogation of any right to bonus under those Acts. Secondly, Section 39 became necessary because the Act does not provide any machinery or procedure for investigation and settlement of disputes which may raise between employers and employees. In the absence of any such provision Parliament intended that the machinery and procedure under those Acts should be made available for the adjudication of disputes arising under or in the operation of the Act. If, for instance, there is a dispute as to the computation of allocable surplus or as to quantum of bonus, or as to whether in view of Section 20 an establishment in public sector is liable to pay bonus, such a dispute is to be adjudicated under the machinery provided by the Industrial Disputes Act or other corresponding Acts.

18. Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and its scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either, as to exclusion or

exemption to raise a dispute with regard to bonus through industrial adjudication under the Industrial Disputes Act or other corresponding law.

19. We are, therefore, of the view that the construction given to the Act by the Tribunals was not correct and the orders passed by them have to be set aside. The appeals are allowed, but as the question as to the scope of the Act is raised in these appeals for the first time, there will be no order as to costs.

Appeals allowed.