Rashtriya Mill Mazdoor Sangh, Nagpur

Vs

Model Mills, Nagpur and Another

Civil Appeals Nos. 1619 to 1622 (Nl) of 1971

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

18.09.1984

JUDGMENT

DESAI, J. –

1. Bonus has a tantalizing influence on industrial workers. They look forward to it with a craving, the degree of which is immeasurable. And for the employees any form of bonus has such a tremendous attraction that the time-honoured concept of its being a profit-sharing formula to fill in the gap between the fair wage and the living wage in the case of industrial workmen has been for all practical purposes displaced by the Payment of Bonus Act and bonus telescoping into Government service where there being no production and therefore it cannot be an incentive for higher production. And yet the management of The Model Mills, Nagpur (Employer for short) has most successfully thwarted the meager expectation of minimum bonus to its workmen for full decades.

2. Rashtriya Mill Mazdoor Sangh, appellant herein, ('Union' for short) as an approved Union made four independent references under Section 73-A of the Bombay Industrial Relations Act, 1946 ('Act' for short) against Model Mills, Nagpur for grant of bonus for the period 1964-65 to 1967-68. A separate reference was made in respect of each accounting year. The Union as representative Union of the employees served a notice of change making the demand for bonus. The matter was taken into conciliation. The Conciliation Officer recorded a failure on June 23, 1969 and issued a certificate under Section 73-A of the Act certifying that the dispute was not capable of being settled by conciliation. Armed with the power of an approved Union, the Union made the aforementioned four references to the Industrial Court. The Union demanded bonus for each of the four accounting periods according to the provisions of the Payment of Bonus Act, 1965 ('Bonus Act' for short). The Union could not make a specific demand for bonus calculated at a certain percentage of the salary alleging that as it has not got the requisite information about financial position and balance sheet of the Employer, the Industrial Court should compute the bonus which becomes payable under the Bonus Act, and award the same to the workmen of the Employer.

3. The Employer resisted the reference on diverse grounds. It was contended that once a notified order is issued under Section 18-A of the Industries (Development and Regulation) Act, 1951 (IDR Act for short) appointing an authorised controller in respect of an industrial undertaking, it is run by the authorised controller under the authority of a Department of the Central Government and therefore, in view of the provision contained in Section 32(IV) of the Bonus Act its employees are excluded from the application of Bonus Act and the reference must accordingly be rejected.

4. This contention found favour with the Industrial Court. The learned Member with the consent of the parties directed that the issue with regard to the application of the Bonus Act may be tried as a

preliminary issue. The learned Member upheld the contention on behalf of the employer observing that having regard to the provision contained in Section 32(IV) of the Bonus Act read with Section 18-A of the IDR Act, the workmen employed by the employer are excluded from the operation of the Bonus Act as it is not applicable to the employer. The learned Member rejected the alternative contention that even if the workmen employed by the employer are not entitled to bonus under the Bonus Act, they are yet entitled to claim bonus apart from the Bonus Act as a norm of industrial relation observing that as the demand was made for bonus under the Bonus Act and the alternative demand was not made before the Conciliator, the scope of the references cannot be extended to cover the same. Accordingly, all the four references were rejected. Hence these appeals by special leave.

5. On the rival contentions following questions arise in these appeals :

> (1) On the appointment of an authorised controller under Section 18-A of the IDR Act by the Central Government in respect of an industrial undertaking, does it acquired the status of an establishment engaged in an industry carried on under the authority of the Department of Central Government.
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> (2) If the answer to the first question is in the affirmative, whether the employees employed in such industrial undertaking are excluded from the operation of the Bonus Act.

6. At the outset, a few statutory provisions which will have a bearing and impact on the issues under examination may be noticed.

7. The Industries (Development and Regulation) Act, 1951 was enacted to provide for development and regulation of scheduled industries. chapter III confers power on the Central Government for regulation of scheduled industries. 'Scheduled industry' is defined in Section 2(i) to mean any of the industries specified in the First Schedule. Textiles constitute a scheduled industry. Its entry is at plecitum 23 in First Schedule. Section 15 confers power on the Central Government to cause investigation to be made into scheduled industries or industrial undertaking for the purposes therein set out. Section 15-A confers similar power to direct investigation into the affairs of a company in liquidation owning an industrial undertaking. This specific power was conferred by introducing Section 15-A in the Act by the Amending Act 72 of 1971 because a company which is being wound up under the orders of the court cannot be directly dealt with by the Central Government without the intervention of the court. Section 16 confers power on the Central Government to give directions on completion of an investigation under Section 15 to the industrial undertaking for the following purposes :

> (a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;
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> (b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relates or relate;
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> (c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;
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> (d) controlling the prices, or regulating the distribution, of any article or class of

articles which have been the subject matter of investigation.

Chapter III-A which was introduced by Amending Act 26 of 1953 conferred power on the Central Government to assume management or control of an industrial undertaking in certain cases. Section 18-A(1) is relevant for the present purpose and it may be extracted :

> 18-A(1) If the Central Government is of opinion that -
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> (a) an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions, or
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> (b) an industrial undertaking in respect of which an investigation has been made under Section 15 (whether or not any directions have been issued to the undertaking in pursuance of Section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

Section 18-A confers power on the Central Government either to assume management of an industrial undertaking or to control its management. The power to assume management of an industrial undertaking can be exercised by a notified order appointing an authorised controller to take over the management of the whole or any part of the undertaking. The Central Government may exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order. Section 18-B provides for the consequences that may ensue on the issue of a notified order under Section 18-A authorising the taking over of the management of an industrial undertaking. Two of consequences worth noticing are those set out in clauses (b) and (e) of Section 18-B(1). They may be extracted :

> (b) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;
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> (e) the persons, if any, authorised under Section 18-A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of industrial undertaking duly constituted under the Indian Companies Act, 1913 (7 of 1913), and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source,

Section 18-E provides for continued application of the Companies Act then in force to the industrial undertaking in respect of which an authorised controller is appointed under Section 18-A subject to the limitations therein specified as it applied prior to the issue of the notified order. Section 18-F conferred power on the Central Government to cancel the notified order.

8. Section 32(iv) of the Bonus Act reads as under :

> Nothing in this Act shall apply to -

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(iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority.

9. The question is : whether on the issue of a notified order under Section 18-A appointing an authorised controller in respect of an industrial undertaking governed by the IDR Act, the employees of such undertaking are excluded from the application of the Bonus Act for the only reason that they are or have become the employees of an establishment in an industry carried on under the authority of the department of Central Government. The Bonus Act provides for payment of bonus to person employed in certain establishment and for matters connected therewith. Sub-section (3) of Section 1 provides that save as otherwise provided in the Bonus Act, it shall apply to - (a) every factory; and (b) every other establishment in which twenty or more persons are employed on any day during an accounting year. Section 32 excludes the application of the Bonus Act to the employees therein enumerated. Excluding Section 32 for the time being, it cannot be disputed that the Bonus Act would apply to the industrial undertaking of the employer. Is the application of Bonus Act excluded on the ground that on the issuance of a notified order appointing an authorised controller under Section 18-A of the IDR, because the employees of the respondents can be said to have been employed by an establishment engaged in any industry carried on or by or under the authority of any department of the Central Government. Can it be said that on the appointment of an authorised controller, the industrial undertaking of the respondent acquired the status of an establishment engaged in textile industry carried on by or under the authority of a department of the Central Government ? In order to attract Section 32(iv) it must be shown that the employees sought to be excluded from the operation of the Bonus Act have been employed by an establishment engaged in any industry carried on by or under the authority of the department of the Central Government. It was conceded that it cannot be said that on the appointment of an authorised controller, the industrial undertaking acquired the status of an establishment engaged in textile industry carried on by the department of the Central Government. It was, however, strenuously urged that it was an establishment engaged in the industry carried on under the authority of the department of the Central Government. Shorn of embellishment, the question is : whether on the appointment of an authorised controller, did the industrial undertaking acquire the status of an establishment engaged in the industry which is carried on under the authority of the department of the Central Government ?

10. IDR Act was enacted as its long title shows to confer power on the Central Government to provide for development and regulations of scheduled industries. The Statement of Objects and Reasons shows that the object behind the enactment was to provide the Central Government with the means of implementing their industrial policy and for that purpose to extend the control of the Central Government over the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. The Act amongst others confers power on the Central Government for regulating the production and development of the scheduled industries. Broad scheme of the Act shows that with a view to regulating the industrial expansion of this country on the threshold of development and to lay the infrastructure for the same, the Central Government was armed with powers to order investigation into the affairs of the industrial undertaking as also, if necessary of a scheduled industry as a whole. The investigation may be caused to be made where there has been or likely to be a substantial fall in the volume of production or marked deterioration in the quality of article or an unwarranted rise in the price or for conserving any resources of

national importance. On receipt of the report of investigation, the Central Government could give necessary directions. These directions are statutory in character and they may be disobeyed on the pain of the management being divested from those in charge and vested in authorised controller, who may be appointed by the Central Government. Therefore, the Act provides not for taking over of the industrial undertakings. It provides for control of management by giving directions or for change of management. Where the industrial undertaking is owned by a company governed by the Companies Act in force at the relevant time, the management would generally vest in the Board of Directors, and/or the Managing Director, as the case may be. Where it is a firm or a proprietary concern the partners or the proprietor, as the case may be, would be in the saddle of management. On the issue of a notified order appointing an authorised controller, the person in charge of management including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order, shall be deemed to have vacated their offices as such. [Section 18-B(1)(a)]. Further the contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated. [Section 18-B(1)(b)]. But the most important consequence that ensues on the issue of a notified order is to confer by a deeming fiction the position and powers of a director as duly constituted under the Companies Act on the authorised controller and he alone shall be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the Companies Act or from the memorandum or article of association of the industrial undertaking or from any other source. [Section 18-B(1)(e)]. Further subject to the limitation specified in Section 18-E, the Companies Act in force at the relevant time will continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under Section 18-A.

11. Thus the significant consequence that ensues on the issue of a notified order appointing authorised controller is to divert the management from the present managers and to vest it in the authorised controller. Undoubtedly, the heading of Chapter III-A appears to be slightly misleading when it says that the Central Government on the issue of a notified order assumes direct management of the industrial undertaking. In effect on the issuance of a notified order, only the management of the industrial undertaking undergoes a change. This change of management does not tantamount to either acquisition of the industrial undertaking or a take-over of its ownership because if that was to be the intended effect of change of management, the Act would have been subjected to challenge of Articles 31 and 19(1)(f) of the Constitution. One can say confidently that that was not intended to be the effect of appointment of an authorised controller. The industrial undertaking continues to be governed by the Companies Act or the Partnership Act or the relevant provisions of law applicable to a proprietary concern. The only change is the removal of managers and appointment of another manager and to safeguard his position restriction on the rights of shareholders or partners or original proprietor. This is the net effect of the appointment of an authorised controller by a notified order.

12. Can it then be said that on the issue of a notified order appointing an authorised controller, the industrial undertaking is engaged in the industry carried on under the authority of the department of the Central Government. The expression "under the authority of any department of the Central Government" would in ordinary parlance mean that the department is directly responsible for the management of the industrial undertaking. This responsibility may cover, amongst others, financial responsibility as well. Power to regulate management or control the management is entirely distinguishable from the power to run the industry under the authority of the department of the Central Government. The substitution of the management ordered under Section 18-A does not tantamount to the industrial undertaking being taken over by the department of the Central

Government. Nor could it be said to be run under the authority of the department of the Central Government. In fact, as the authorised controller enjoys all the powers of directors conferred by the relevant provisions of the Companies Act, he can exercise that power subject of course to any restriction or limitation on his power specified in the notified order or under the general supervision of the Central Government. But this power is subject to the in-built limitation that it can be exercised for regulating the management of the industrial undertaking. Neither its identity nor its ownership is affected in any manner. This change in personnel of management of the industrial undertaking for a specified period can never make the industrial undertaking one engaged in an industry carried on under the authority of the Central Government. On a pure grammatical construction, the expression "establishment engaged in an industry carried on under the authority of the department of the Central Government" cannot take in one in respect of which the Central Government in exercise of the power conferred by IDR Act directed a change of management.

13. The conclusion in the preceding paragraph can be reached by a different route.

14. Under Section 16 of the IDR Act, the Central Government enjoys wide powers to issue directions to the industrial undertaking as may be appropriate in the circumstances for all or any of the purposes set out in various sub-clauses of Section 16(1). The scheme of the Act shows that while retaining the original management, the Central Government gives necessary directions for the aforementioned purposes to achieve a certain result. IF the desired result is not achieved, the Central Government enjoys a consequential power of changing the management by appointing an authorised controller so as to achieve the same result. This power to give directions without appointing an authorised controller or to appoint an authorised controller giving him specified directions is of a regulatory nature to be exercised with a view to regulating the managerial functions of the management of an industrial undertaking so as to achieve certain objects or to rectify the mismanagement in larger national interest without in any manner affecting the identity, the status or the ownership of industrial undertaking. It could by no stretch of imagination be urged that on the exercise of the power to give directions under Section 16, the industrial undertaking could be said to be engaged in any industry carried on under the authority of the department of the Central Government. Ipso facto the appointment of an authorised controller would not make the industrial undertaking one run under the authority of the department of the Central Government. While exercising power of giving directions under Section 16 the existing management is subjected to regulatory control, failing which the management has to be replaced to carry out the directions. In either case the industrial undertaking retains its identity, personality and status unchanged. On a pure grammatical construction of sub-section (4) of Section 32, it cannot be said that on the appointment of an authorised controller the industrial undertaking acquires the status of being engaged in any industry carried on under the authority of the department of the Central Government.

15. Viewed from a slightly different angle, it appears that the expression "carried on by or under the authority of any department of the Central Government" qualifies the expression 'industry' and not the expression 'establishment' as used in sub-section (4) of the Section 32 of the Bonus Act. Again on a pure grammatical construction, it appears that where an industry is being carried on under the authority of any department of the Central Government, the employees employed in an establishment in such an industry would be excluded from the operation of Bonus Act. The underlying purpose of Section 32(iv) is not to exclude the employees of some stray establishment from the operation of the Act but to exclude all employees of all establishments in any industry which is carried on under the authority of the department of the Central Government. If the expression "carried on by or under the authority of the department of the Central Government"

qualifies the expression 'establishment' it would lead to a startling result unintended by the framers of the Bonus act. Let us illustrate it. There are two industrial undertakings engaged in the same industry situated side by side. In one case the management being incompetent or remiss, an authorised controller is appointed. If the construction canvassed for on behalf of the respondent is accepted the employees of one would be excluded from the application of the Bonus Act and not the other though both are industrial undertakings engaged in the same industry. The framers of the Bonus Act which went to the length of making payment of bonus obligatory on industrial undertakings incurring losses could not have intended to treat the employees with such gross discrimination. On the contrary, it appears that the intention was to exclude employees employed in an establishment engaged in any industry which is carried on by or under the authority of the department of the Central Government. It cannot be said that textile industry is being carried on under the authority of the department of the Central Government. There may be employees in an industrial undertaking engaged in textile industry which may have been established under the authority of the department of the Central Government. Ordinarily the Central Government would not like to treat an establishment set up by it in an industry in which there are other private sector establishments to differentiate and discriminate between employees of establishments engaged in the same industry. It, therefore, appears that the exception that is being carved out by Section 32(4) is in respect of employees of an industrial undertaking engaged in an industry carried on by or under the authority of any department of the Central Government as a whole and not individual establishments. All establishments in that industry which is carried on by or under the authority of the department of the Central Government would be excluded from the operation of the Bonus Act.

16. Having examined the matter on principle, let us turn to some precedents to which our attention was drawn.

17. Section 2(a) of the Industrial Disputes Act, 1947 defines 'appropriate Government' to mean (leaving aside the words which are not relevant for our purpose) "in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government,..... the Central Government". The expression used is "any industry carried on by or under the authority of the Central Government". This expression came up for consideration before this Court in the context of an industrial dispute involving a Government company as comprehended within the meaning of the expression in Section 617 of the Companies Act. Government company is defined to mean "any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined". An interesting question that came up for consideration before this Court was whether in respect of an industrial dispute between such Government company and its workmen, which is the appropriate Government which can make a reference of the industrial dispute for adjudication under Section 10(1) of the Industrial Disputes Act, 1947. In respect of such Government company this Court in Heavy Engineering Mazdoor Union v. State of Bihar ((1969 3 SCR 995 : (1969) 1 SCC 765 : AIR 1970 SC 82) interpreting the expression 'under the authority of' held that the expression means "pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master". The Court proceeded to examine the personality of an incorporated company which the law recognises as juristic person, separate and distinct from its members. The Court concluded that "a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State". In reaching this conclusion, the Court approved the view of the Calcutta High Court in Carlsbad Mineral Water Mfg. Co. Ltd. v. P.K. Sarkar ((1952) 1 LLJ 488 : AIR 1952 Cal 6 : 55 Cal WN 514)

wherein the Calcutta High Court had held that a business which is carried on by or under the authority of the Central Government must be a Government business. The High Court had further held that in an industry to be carried on under the authority of the Central Government, it must be an industry belonging to the Central Government that is to say its own undertaking. Recalling here what is stated hereinbefore that on the change of management by appointment of an authorised controller, the industrial undertaking retains its identity and continues to be governed by the Companies Act or the Partnership Act, as the case may be, and there merely takes place only a change in the personnel of management but the substitute management, say the authorised controller appointed by the Central Government is to be presumed to be a Director for the purposes of the Bonus Act, the conclusion is inescapable that the business remains that of the industrial undertaking and does not become one of the Central Government. The fact that the authorised controller is appointed by the Central Government and that he has to work subject to the directions of the Central Government does not render the industrial undertaking an agent of the Central Government and therefore, could not be said to be an establishment engaged in an industry carried on by or under the authority of the Central Government. In fact, this decision should conclude the point. However, as out attention was drawn to some recent decisions wherein the same expression came up for consideration, we may briefly refer to them.

18. In Workmen, Karnataka P.F. Employees Union v. Additional Industrial Tribunal ((1983) 2 LLJ 108 (Kant)) the Karnataka High Court held that even if the Provident Fund organisation is an instrumentality of the State and therefore answers the definition of the expression 'State' in Article 12 of Constitution, it cannot be said that it is an industry carried on by or under the authority of the Central Government, for the propose of determining which is the appropriate Government in respect of an industrial dispute between such instrumentality of the State and its workman.

19. In Swadeshi Cotton Mills Thozhilalar Shemalana Padukappu Union v. National Textile Corporation Ltd. ((1984) 1 LLJ 140) the Union in its writ petition contended that as the National Textile Corporation (a Government of India Undertaking) was appointed as the authorised controller of the Swadeshi Cotton Mills under Section 18-A of the IDR Act on April 13, 1978, the appropriate Government in respect of such mill would be the Central Government and the State Government had no power to appoint the Conciliation Officer under the Industrial disputes Act. Repelling this contention, it was held that appointment of an authorised controller under Section 18-A by a notified order would not make the industrial undertaking an undertaking of the Central Government because by the appointment of the authorised controller, the management of the industrial undertaking is changed to achieve a certain purpose and that too is a temporary phase. It was held that at any rate of appointment of an authorised controller does not vest the ownership of the industrial undertaking in the Central Government. Ownership is something more than management. Control of the whole or of a part of the industrial undertaking by the Central Government will not make the industrial undertaking an undertaking of the Central Government itself.

20. In Bihar Khadi Gramodyog Sangh, Muzaffarpur v. State of Bihar (1977 Lab IC 466 : 1976 Pat LJR 281) Patna High Court held that even though the Sangh was set up under the Khadi and Village Industries Commission, yet it is not an industry carried on under the authority of the Central Government and the appropriate Government would be the State Government. Same view was also taken by the Bombay High Court in Abdul Rehman Abdul Gafur v. Paul (Mrs E.) ((1962) 2 LLJ 693 : AIR 1963 Bom 267 : 65 Bom LR 20 : 1963 Mah LJ 261)

21. In Bharat Glass Works (Pvt.) Ltd. v. State of W.B. ((1958) 1 LLJ 467 : AIR 1957 Cal 347 : ILR (1958) 1 Cal 369 : (1957-58) 12 FJR 222) the Calcutta High Court after following the earlier

decision in Carlsbad Mineral Water Mfg. Co. Ltd. ((1952) 1 LLJ 488 : AIR 1952 Cal 6 : 55 Cal WN 514) repelled the contention that even though the appellant was a controlled undertaking in a scheduled industry under the IDR Act, it was not an industry carried on under the authority of the Central Government and therefore, the appropriate Government in respect of it would be the State Government. It is not necessary to multiply the decisions any more. But the same view appears to have been taken in the Indian Nawal Canteen Control Board v. Industrial Tribunal, Ernakulam ((1965) 2 LLJ 366).

22. A different note was sounded by the Bombay High Court in D. P. Kelkar, Amalner v. Ambadas Keshav Bajaj (AIR 1971 Bom 124 : 73 Bom LR 260 :1971 Lab IC 429). In that case the employees of the India United Mills Ltd. approached the authority under the Payment of Wages Act for directing the employer to pay minimum bonus under the Bonus Act. It was contended on behalf of the employer that the employer-mill was managed by an authorised controller appointed under Section 18-A of the IDR Act and therefore, the workmen of the employer are employees employed by an establishment engaged in an industry carried on under the authority of the Central Government and consequently they were excluded from the operation of the Bonus Act in view of the provision contained in Section 32(iv). The authority under the Payment of Wages Act negatived the contention. The matter came up before the High Court in two writ petitions under Article 226 of the Constitution. The High Court rejected the construction canvassed before it that the expression "carried on by or under the authority of any department of the Central Government" qualified the expression 'industry' and not an 'establishment' engaged in an industry. After rejecting this plain grammatical construction for reasons which do not commend to us, the High Court held that where the Central Government appointed an authorised controller under the IDR Act, the industrial undertaking could be said to be engaged in an industry carried on under the authority of the Central Government. The High Court distinguished the decision of this Court in Heavy Engineering Mazdoor Union ((1969) 3 SCR 995 : (1969) 1 SCC 765 : AIR 1970 SC 82) observing that in the facts before the Supreme Court, the company was one registered under the companies Act and that it being an incorporated company, it has an independent existence while where the authorised controller is appointed, the management is taken over by the Central Government. We are unable to appreciate this view of the High Court for the reason that the High Court completely overlooked the purpose and intendment of appointing an authorised controller, its effect on the continued existence of the industrial undertaking and the deeming fiction enacted in Section 18-B and the limitation on the powers of the shareholders placed by Section 18-E. The High Court failed to notice the provision contained in sub-section (2) of Section 18-E which clearly provides that "subject to the provisions contained in sub-section (1) and to the other provisions contained in the Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913 shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under Section 18-A". This very important provision which gives the clue to the expression "carried on under the authority of the Central Government" was not taken note of by the High Court. Therefore, the said view of the Bombay High Court does not commend to us and must be overruled.

23. If on the issue of a notified order appointing an authorised controller under Section 18-A, the management of the industrial undertaking undergoes a change, yet it does not become an establishment engaged in an industry carried by the department of the Central Government, its employees would not be excluded from the operation of the Bonus Act as provided in Section 32(4).

24. The Tribunal therefore, was clearly in error in rejecting the references holding that the workmen

of the respondent were excluded from the operation of the Bonus Act. The Award of the Tribunal rejecting the reference will have to be quashed and set aside and the matter remitted to the Industrial Tribunal for disposing of the same on merits.

25. An incident argument was that the National Textile Corporation which has taken over the respondent-Company would not be liable for the period when the authorised controller was in charge of the management of the respondent-Company. This contention has merely to be stated to be rejected. Section 5(1) of the Sick Textile Undertakings (Nationalisation) Act, 1974 provides that "every liability, other than the liability specified in sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation". Sub-clause (c) of sub-section (2) of Section 5 provides that "wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government, shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when payment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable". The appointed day has been specified as the first day of April 1974. The expression "wages, salaries and other dues of the employees" would without a doubt include statutory bonus payable under the Bonus Act. This liability arose for the period after the management of the undertaking had been taken over by the Central Government by appointing an authorised controller under Section 18-A. Therefore, the liability to pay the bonus if awarded would be of the National Textile Corporation. The contention of the National Textile Corporation that it is not liable to pay bonus must be rejected.

26. Accordingly, these appeals succeed and are allowed and the four awards of the Industrial Court, Maharashtra, Nagpur Bench dated November 27, 1970 in all the four references are quashed and set aside and all the four matters are remitted to the Industrial Court for disposal according to law on merits. As the cases are very old, the Industrial Court is directed to dispose of the same within the period of four months from receipt of this order. The respondent shall pay the costs of the appellant quantified at Rs 2000.

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