SUPREME COURT OF INDIA

Kizhakkayil Suhara

Vs.

Manhantavida Aboobacker (D) By Lrs.

(S.M. Quadri and S.N. Phukan JJ.)

26.09.2001

ORDER

1. In this appeal, by special leave, the order of the High Court of Kerala in C.R.P. No. 95 of 1995 dated October 11, 1996, is brought under challenge.

2. The appellants are the tenants of a shop room. The original tenant died and the appellants are his legal representatives (hereinafter they are referred to as "the tenants"). The respondents are the landlords. They filed an application under sub-section (3) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act') for eviction of the tenants on the ground that they bona fide need the premises for setting up business of their daughter and son-in-law who are dependent on them. The tenants contested the petition denying that the daughter and son-in-law are not dependent on the respondent. The tenants also denied the bona fide requirement of the landlords. The learned Rent Controller having considered the material placed on record found that the need of the landlords was bona fide and accordingly ordered eviction of the tenants on December 21, 1993. An appeal against the said judgment was unsuccessful before the Rent Control Appellate Authority (District Judge), Thalassery. The appeal having been dismissed on November 17, 1994, the tenants filed a revision petition vide C.R.P. No. 95 of 1995 in the High Court of Kerala which was also dismissed by the impugned order.

3. The short question that arises for consideration in this appeal is whether the respondents bona fide need the demised premises.

4. The respondents filed petition for eviction of the appellant under Section 11(3) of the Act which is set out hereunder:

"11(3). A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building for his own occupation or for the occupation by any member of his family dependent on him;

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons in any particular case it will be just and proper to

do so;

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no suitable building available in the locality for such person to carry on such trade or business;

Provided *** *** ***

Provided *** *** ***"

5. A plain reading of the provision of sub-section (3) of Section 11 shows that it enables a landlord to seek possession of the building from his tenant by making an application to the Rent Control Court if he bona fide needs the buildings for his own occupation or for the occupation by a member of his family dependent on him. The sub-section takes note of not only bona fide need of the landlord but also the need of the members of his family dependent on him. Where the landlords bona fide needs the building not for his own occupation but for occupation of a member of his family, it must be shown that such a member of his family is dependent on him. The mandate of the first and the second provisos is directed to the Rent Control Court. The first proviso directed that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied, for special reasons, in any particular case, that it will be just and proper to do so, it has to record the special reasons. The legislative mandate contained the second proviso is not to give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business. The third and the fourth provisos are not relevant for the present discussion.

6. The question now urged before us, namely, whether the daughter and son-in-law of the landlords, with three children, living separately, could be said to be dependent on the landlords was not put in issue in the Trial Court nor was it urged before the Appellate Court or the High Court. We cannot, therefore, permit Mr. Inam to raise it for the first time in this Court.

7. The next point urged by Mr. Inam is that the daughter of the respondents are having other non-residential and residential buildings of her own and therefore they are not entitled to the benefit of eviction of the building in view of the first proviso to sub-section (3) of Section 11. This plea also cannot be entertained because as pointed out by Mr. Iyyer no such plea was urged before the Rent Control Authorities or the High Court.

8. The case throughout proceeded on the ground whether the landlords needed the premises bona fide. On this ground we have heard the learned counsel for the parties. We are of the view that if the need of the landlords for his own occupation has to be bona fide so also need of the members of the family of the landlord dependent on him and should satisfy the test of being bona fide. In the instance case, it has to be determined whether the need of the daughter and son-in-law of the landlords who own non-residential buildings, can be said to be bona fide. Mr. Iyyer submits that this aspect was not adverted to in earlier stages of the proceedings. Inasmuch as the parties did not address their arguments on this aspect of the matter, we consider it just and appropriate to remand the case to the Rent Control Appellate Authority (District Judge) to give opportunity to the parties

of being heard and decide the question: Can the respondents be said to need the building bona fide if it is meant for the occupation of their dependent married daughter who owns residential and non-residential buildings?

9. In this view of the matter the order under challenge is set aside. R.C.A. No. 88 of 1994 is restored to the file of the Appellate Authority for being disposed of in accordance with law. It is needless to mention that the Appellate Authority shall dispose of the case expeditiously.

10. The appeal is accordingly allowed. No doubts.

1973 AIR 2300, 1973 SCR (3) 850 (1973) 2 SCC 0277

The Workmen of H.M.T.

Vs.

The Presiding Officer, Nationaltribunal, Calcutta

(C.A.Vaidyialingam, A. Alagiriswami, I.D. Dua JJ.)

03.04.1973

JUDGMENT:

VAIDYIALINGAM, C.A.

CIVIL APPELLATE JURISDICTION Civil Appeal 'No. 389 of 1970.

Appeal by special leave from the award dated April, 16, 1969 of the National Tribunal, Calcutta in Ref. No. NIT-6 of 1967 published in the Gazette of India dated May 10, 1969. N. Sreekantan Nair, appellant No. 1 in person. Urmila Kapoor and K. Bansal for appellant No. 2. G. B. Pai, P. P. Bopanna, K. N. Bhatt and M. M. Kshatriya,. for respondents Nos. 2 to 7.

Ambrish Kumar and M. V. Goswami, for respondent No. 1. The Judgment of the Court was delivered by VAIDIALINGAM, J. This appeal by special leave by the workmen of the Hindustan Machine Tools, Unit, IV, Kalamassery, is directed against the award dated April 16, 1969, of the,

National Tribunal at Calcutta in Reference No. NIT 6 of 1967, holding that the appellants are not entitled to any bonus for the years.. 1964-65 to 1966-67.

By order dated October 17, 1967, the Central Government made a reference for adjudication of the disputes to the National 'Tribunal in the following manner:

"Whereas the Central Government is of opinion that an industrial dispute exists between the employers in respect of the establishments specified in Schedule I and their workmen in respect. of the matters specified in Schedule 11 hereto annexed and that the said dispute is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute;

And, whereas the Central Government is of opinion 'that the dispute should be adjudicated by a National 'Tribunal;

And, whereas the Central Government is of opinion that the said dispute is of such a nature that the Hindustan Machine Tools it Pinjore and the Hindustan Machine Tools at Hyderabad are likely to be interested in, or affected by, such disputes.

Now, therefore, in exercise of the powers conferred by section 7B, and sub-section (1A) and 5 of section 10, of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a National Tribunal of Calcutta, of which Shri S. K. Sen shall be 'the Presiding Officer, and refers the said disputes to the said National Tribunal for adjudication and includes in that reference, the Hindustan Machine Tools at Pinjore and the Hindustan Machine Tools at Hyderabad.

SCHEDULEI

(1) Hindustan Machine Tools, I, Bangalore. (2) Hindustan Machine Tools II, Bangalore. (3) Hindustan Machine, Tools IV, Kalamassery, Kerala.

SCHEDULEII

(1) Whether the demand of the workmen in the Hindustan Machine Tools 1 and 11 at Bangalore for payment of bonus at the rate of 20 per cent of their salary for the year 1966-67 is justified? If not, to what quantum of bonus are they entitled ?

(2) Whether the workmen of the Hindustan Machine Tools at Kalamassery, Pinjode and Hyderabad are entitled to any bonus and if so, what should be the quantum of such bonus ? (3) Whether the demand of the workmen of the Hindustan Machine Tools 1 and 11 of Bangalore and of the Hindustan Machine Tools IV at Kalamassery that the bonus should be cal- culated on the basis of a consolidated Profit and Loss Account for all the units and all activities and not on the basis of Profit and Loss Account of the separate units and separate activities is justified ?"

Although in Schedule I of the order of reference only the, Units at Bangalore and Kalamassery were referred to, nevertheless, copies of the reference were sent by the Central Government to the labour unions of the Hindustan Machine Tools Limited, Unit No. III at Pinjore (Haryana State) and Unit No. V at Hyderabpd as also to the H.M.T. Watch Factory at Bangalore. The unions representing the workmen of the five Units as well as the Watch Factory had filed statements before the National

Tribunal. The managements of these different Units had also filed statements opposing the claims of the unions. Before the proceedings commenced, the National Tribunal appears to have felt certain difficulties regarding the scope of the reference. In respect of item 1 of Schedule 11, the Tribunal felt a doubt whether it should also consider the question of bonus for any other year in respect of Units 1 and 11 at Bangalore. Similarly the Tribunal felt a doubt as to what was the particular year for which the claim for bonus is to be considered under item 2 of Schedule II. This doubt arose because no year had been mentioned in the reference under this item. For the purpose of getting clarification, the Tribunal invited the views of all the unions as well as the management. All parties agreed that when the reference was ambiguous or doubtful,. the scope of the reference can be gathered from the pleadings of the parties. Accepting the agreement of the parties, the Tribunal found from the pleadings that the workmen of the Hindustan Machine Tools, Units 1 and 11 at Bangalore, had been paid bonus at the rate of' 20 per cent for the years 1964-65 and 1965-66. Therefore, it held that the claim of these two Units under item I of Schedule II has to be considered only for the year 1966-67. Similarly in respect of item 2 of Schedule II of the reference, the Tribunal found that the workmen of Unit No. III at Pinjore claimed bonus for the years 1963-64 and 1964-65 according to the Full Bench Formula and for the years 1965-66 and 1966-67 under the provisions of the Payment of Bonus Act, 1965 (hereinafter to be referred to as the Act). Similarly the workmen of Unit No. IV' on the basis of bonus paid and payable to the Bangalore workmen. The workmen of Unit No. Vat Hyderabad claimed. bonus at 20 per cent for each of the years, 1965-66 and 1966-67. The workmen of the Watch Factory, who were getting bonus at the maximum rate of 20 per cent, did not require any further bonus to be paid. But that-Unit took up the position that the contention of the various unions who were claiming annual bonus on the basis of the consolidated balance sheets and profit and loss accounts, should be rejected.

Having crystallised the actual scope of the reference in the manner indicated above, the Tribunal proceeded to consider the questions that arose for consideration. At this stage it may be stated that the workmen of Unit No. IV at Kalamassery, the appellant before us, claimed bonus for the year 1963-64 and ,onwards on the basis of bonus paid and payable to the Bangalore workmen. It must also be stated that the claim of the appellants, as well as that of the workmen of Units Nos. 1 and 11 at Bangalore was for payment of bonus on the consolidated profit and loss account of all the units of the Hindustan Machine Tools Limited situated in Bangalore, Pinjore, Kalamassery and Hyderabad as well as of the Watch Factory.

In respect of item 1 of Schedule 11, the Tribunal held that the workmen of Units Nos. 1 and 11 at Bangalore are entitled only to the minimum bonus at 4 per cent under the Act and that their claim for payment at 20 per cent of their salary for the year 1966-67 has to be rejected. The Tribunal answered items Nos. 2 and 3 of Schedule 11 as follows :- My answer to item No. (2) is The workmen of the Hindustan Machine Tools at Kalamassery and Pinjore are entitled to the same rate of bonus as is paid to the Watch Factory and HMT 1 & 11 workmen during the year 1963-64. The factory 'at Hyderabad not having been started by March 31, 1964, becomes disentitled to the provisions of pre Bonus Act. Since during the Bonus Act period by virtue of the maintenance of separate accounts no branch or undertaking becomes entitled to the prosperity of, the company, the Hyderabad is not entitled to any bonus at all under the provisions of the Payment of Bonus Act. My answer to item No. (3) is The demand of the workmen of the Hindustan Machine Tools Ltd. 1 & 11 at Bangalore and of the Hindustan Machine Tools Ltd. No. IV at Kalamassery that bonus should be calculated on the basis of consolidated profit and loss accounts for all the units and for all the activities and not on the basis of the profit and loss accounts of the separate units and separate activities is justified, for the year 1963-64 only and not for the years 1964-65, 1965-66 and 1966-

67."

It may be stated that none of the workmen aggrieved by one or other or all the findings of the Tribunal on items 1, 2 and 3, excepting the workmen of Unit No. IV at Kalamassery, have come up in appeal. The net result of the above finding so far as Unit No. IV at Kalamassery, which is the appellant, is that its workmen are eligible for bonus for the year 1963-64 at the same rate of bonus that has been paid to the workmen of the Watch Factory and Units Nos. 1 and 11 at Bangalore for the said year. The workmen of Unit No. IV are not entitled to claim bonus for the years 1964-65 to 1966-67 on the basis of the consolidated profit and loss accounts of all the Units of the Hindustan Machine Tools but only on the basis of the separate profit and loss account maintained for Unit No. IV. After a consideration of the evidence, oral and documentary, the Tribunal held that the said Unit was not entitled to any bonus at all for these three years.

The workmen of Unit No. IV challenged the disallowance of bonus for the year 1964-65 to 1966-67. At the time of granting special leave, the counsel for the management, respondents 2 to 7 herein, appears, to have represented that there are certain findings recorded in the award which are challenged by the management. In view of this representation, this Court passed an order on February 24, 1970, permitting the management to bring to the notice of the learned Judges hearing the appeal the various findings which the management proposes to challenge provided notice has been given to the workmen concerned by putting them in the statement of case. Accordingly the management has raised in its statement of case, by- way of cross- objections, its grounds of attack on certain findings. Mainly two matters have been referred, namely-- (1) the finding of the Tribunal that there was functional integrality of all the units for the period 1963-64 and the award in consequence of bonus to all the units at the rate that has been paid to Units Nos. 1 and 11, and

(2) the statement made by the Tribunal in paragraph 25 of the award about payment of bonus to the Watch Factory employees.

These points have been pressed before us by the learned counsel for the management.

We will first take up the point regarding the disallowance of bonus for the years 1964-65 to 1966-67 arising in the union's appeal. Mr. N. Sreekantan Nair, the President of the Employees Federation, Appellant No. 1, has argued the case in person on behalf of the appellants. It must be stated to his credit that he has placed the case before us as lucidly and candidly as possible. According to Mr. Nair the finding of the Tribunal that the various units of the Hindustan Machine Tools Limited located in the different regions, are different establishments and that the management has been having separate profit and loss accounts for each of these Units and that it is only on that basis that bonus will have to be calculated, is erroneous. According to Mr. Nair the management, with a view to defeat the legitimate rights of the workmen, have made it appear that there are separate profit and loss accounts maintained for each of the Units, while in reality it is not so. According to him it is only a camouflage adopted by the management to circumvent the provisions of the Act. Even assuming that separate balance sheets and profit and loss accounts are maintained for each of the Units, he contended that in law the workmen of Unit No. IV at Kalamassery are entitled to the minimum bonus for these years under section 10 of the Act. The reliance placed on section 16 by the Tribunal for disallowing such a claim is erroneous. Mr. G. B. Pai, learned counsel for the management, on the other hand, has referred to the material provisions of the Act and also to the evidence on record in support of his contention that the five Units in the different regions and the Watch Factory are all different entities having their own profit and loss accounts and balance sheets.

The management, according to the counsel, has not done any thing to defeat the provisions of the Act. The counsel urged that the view of the Tribunal that Unit No. IV is exempt from payment of bonus for the years 1964-65 to 1966-67 based upon section 16, is correct. Section 10 also, the counsel pointed out, will not help the appellants. The history of the Hindustan Machine Tools Limited and the establishment of the five Units at Bangalore, Pinjore, Kalamassery and Hyderabad as well as of the Watch Factory has been very elaborately dealt with by the Tribunal in the award. Nobody has raised any dispute regarding the various matters referred to by the Tribunal. Therefore, we do not propose to cover the ground over again. From the evidence, the following facts are also clear:-

The H.M.T. was incorporated in 1953. The Unit 1 in Bangalore was started in 1953, but production and sale began in 1956-57. No. 11 Unit of Bangalore was started in April, 1960. Production and sale from that Unit started in May, 1961. The third Unit at Pinjore in Haryana was started in May, 1962. Production and sale at that Unit started in the year 1964-65. The 4th Unit at Kalamassery was started in July 1963. Production and sale started at that Unit from 1965-66. The 5th Unit of the H.M.T. at Hyderabad was started in May, 1964 and production and sale at that Unit started in 1966-67. The Watch Factory at Bangalore was started in September, 1961 and indigenous production of watches started in 1963.

From what is stated above, it will be seen that Unit No. 4 at Kalamassery, with which we are concerned, was started in July, 1963. But that Unit commenced production and sale of its. articles only from 1965-66. This aspect will have considerable bearing when we consider the impact of section

16. It is now necessary to refer to the material provisions of the Act. The Act by virtue of section 1(4) applies to a factory or department in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. Therefore, there can be no controversy that the periods with which we are concerned, namely, 1964-65 to 1966-67, are governed by the Act. The terms 'employees', 'employer', 'establishment in private sector' and 'establishment in public sector' arc, defined in clauses 13, 14, 15 and 16 respectively of section 2. Section 3 dealing with establishments, so as to include departments, undertakings and branches, is as follows :- Establishments to include departments, undertakings and branches

3. "Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part 7-L797 Sup. CI/73 of the establishment for the purpose of computation of bonus."

Section 8 dealing with the eligibility for bonus is as follows

Eligibility for bonus

8. "Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in

'accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year."

Section 13 relating to proportionate reduction in bonus in certain cases is as follows:-

Proportionate reduction in bonus in certain cases

13. "Where an employee has not worked for all the working days in any accounting year, the minimum bonus of forty rupees or, as the case may be, of twenty five rupees, if such bonus is higher than four per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced."

Section 10 dealing with payment of minimum bonus runs follows:-

Payment of minimum bonus

10. "Subject to the provisions of sections 8 and 13, every employer shall be bound to pay to every employee in an accounting year a minimum bonus which shall be four per cent of the salary or wage earned by the employee during the accounting year or forty rupees, whichever is higher, whether there are profits in the accounting year or not;

'Provided that where such employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "forty rupees", the words "twenty-five rupees" were substituted."

We have earlier referred to sections 3 and 13 as section 10 is subject to those two sections. Section 11 provides for payment of the maximum bonus of 20 per cent of the salary or wages in the circumstances mentioned therein. Section 16, which contains special provisions with respect to certain establishments, is follows Special provisions with respect to certain establishments

16 (1) "Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only--

(a) from the accounting year in which the employer derives profit from such establishment; or

(b) from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, whichever is earlier :

Provided that in the case of any such estab- lishment the employees thereof shall not, save as otherwise provided in section 33, be entitled to be paid bonus under this Act in respect of any accounting year prior to the accounting year commencing on any day in the year 1964.

Explanation I :-For the purpose of this section. an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II---For the purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting- year unless---

(a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act, or as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III.-For the purpose of clause (b), sale of the goods produced or manufactured during the course of the trial run of any factory or of the prospecting stage of any mine or an oil-field shall not be :taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-section (1) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches, irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid." The only other section, which requires to be noted, is section 20, which makes the Act applicable to establishments in public sector in certain cases. The Hindustan Machine Tools Ltd. is an establishment in public sector and there is no controversy that by virtue of section 20, the Act applies and it will be liable to pay bonus, if circumstances justify the same.

We will now consider the contention of Mr. Nair that under section 10 the Unit No. IV is bound to pay the minimum bonus of 4 per cent for the years in question without reference to any other circumstance. According to him the only provisions, which have to be considered for applying section 10, are, as mentioned therein, the two provisions, namely, sections 8 and 13. The contention of Mr. Nair is that the workmen of Unit No. IV satisfy the requirements of sections 8 and 13 and, therefore, they are, as of right, entitled to get the minimum bonus. Mr. Nair further urged that a reference to section 16 is absolutely immaterial for the purpose of considering the applicability of section 10. Section 16, according to him, will come into play only when the workmen claim bonus at a rate higher than the minimum of 4 per cent provided under section 10. This aspect, according to him, has not been at all considered by this Court, when dealing with section 16 of the Act. A reading of section 10, isolated from the other provisions of the Act, may appear to lend support to the contention of Mr. Nair that an employee, if he satisfies the requirements of sections 8 and 13, will be entitled to get the minimum bonus. No doubt, Mr. G. B. Pai, learned counsel, has pointed out that the employees of Unit No. IV do not even satisfy the requirements of sections 8 and 13. That apart, though section 10 has not been made subject to section 16, in our opinion, the two provisions will have to be read harmoniously so as to give effect to the purpose of the Act. Section 10 will apply to all those units, which are otherwise bound to pay bonus, irrespective of the fact whether the units make profit or incur loss. Section 16, in our opinion, has to be read as an

exception to section 10. In particular, it will be noted that section 16(1), after referring to an establishment newly set up, whether before or after the commencement of the Act, states that ",the employees of such establishment shall be entitled to be paid bonus under this Act only...... It cannot be controverted that payment of even the minimum bonus under section 10 or bonus upto the maximum of 20 per cent, as per section II, will both be "payment of bonus under this Act", as contemplated by section 16. Similarly, eligibility for bonus under section 8 "in accordance with the provisions of this Act", can be related only to those cases where the bonus is payable either under section 10 or under section

11. Section 16(1) gives a total exemption to the establishments in the circumstances mentioned therein from payment of bonus which include the minimum bonus also. When the section says that an employee of the establishment referred to in section 16 shall be entitled "to be paid bonus under this Act" only if the conditions mentioned therein are satisfied, it is idle to contend that, notwith-standing the exemption granted under section 16, the establishment referred to therein is still bound to pay a minimum bonus. No doubt that liability to pay the minimum bonus, at any rate, will certainly attach itself to the particular establishment, if one or other of the conditions mentioned in sub-clauses (a) or (b) of section 16(1) come into play. Under such circumstances, it will be open to an employee to claim not only the minimum bonus but also bonus at a higher rate upto the maximum of 20 per cent, if circumstances permit. Mr. Nair is no doubt right in his contention that section 10 has not been referred to by this Court, when dealing with section 16. The reason for such non-consideration is because no such argument, as is now placed before us, appears to have been raised before this Court. Now that such a contention has been raised, we have dealt with it. According to us, if section 16(1) applies, however, hard the result may be, section 10 will not entitle an employee to get even the minimum bonus under section 10. Therefore, the, contention of Mr. Nair that in any event the minimum bonus under section 10 should have been awarded, cannot be accepted. In this connection we may also refer to the decision of this Court in Alloy Steel Project v. The Workmen(1). The question was whether the Alloy Steel Project, which was started in 1961 and went into production in 1964-65 and did not earn profits upto 1967-68, was liable to pay bonus at the minimum rate under the Act for the year 1965-66. On behalf of the Alloy Steel Project, exemption from payment of bonus was claimed' under section 16(1) of the Act on the ground that it was a new establishment and had not made profits. This Court held that the said Unit was not liable to pay even the minimum bonus, as claimed by the workmen, in view of the provisions of section 16(1) of the Act. It is no doubt true that there is no reference in this decision to section 10, That is why we have stated earlier that a contention, similar to that advanced by Mr. Nair, was not raised before this Court.

The next question that arises for consideration is whether the Tribunal was justified in rejecting the claim for bonus for the years 1964-65 to 1966-67. We have already referred to the fact that Unit No. IV was started in July 1963, but production and sale started only from 1965-66. Therefore, the question is whether it is liable to be treated as part of the establishment of H.M.T. under section 3 or whether it is entitled to exemption from payment of bonus under section

16. We have already extracted section 3. It is to be noted that the principal part of section 3 lays down that different departments or undertakings or branches of an establishment are to be treated as parts of, the same establishment for the purpose of computation of bonus under the Act. From the main provision an exception is carved out by the proviso and there is a further exception to the proviso itself. The sum and substance of section 3 is that an establishment initially takes in all establishments, undertakings and branches for the purpose of computation of bonus. But if, in

respect of any department, undertaking or branch separate balance sheet land profit and loss account are prepared and maintained for any accounting year, then for that particular year; computation of bonus shall. be by treating it as a separate establishment. But this will be subject to a further exception that immediately before the commencement of that accounting year, namely, the accounting year in which a separate balance sheet and profit and loss account is prepared and maintained, such a department or undertaking or branch has not been treated as part of the establishment for the purpose of computation of bonus. In this , case Units 1 and 11 alone have been always treated together for the purpose of computation of bonus. All the other three Units and (1) [1971] 35. C. R. 629 the Watch Factory at Bangalore have each been treated sepa- rately and each of them has been having a separate balance sheet and profit and loss account. This is the evidence on record, which has been accepted by the Tribunal. We see no reason to differ from this finding.

The Controller of Finance of the management, MW 1, has given in detail the various dates when these several units were started and production and sales began. He has deposed that H.M.T. Units Nos. 1 and 11 at Bangalore were alone treated as one for the purpose of maintenance of accounts and that H.M.T. Units Nos. 111, IV and V and the Watch Factory were all having separate and independent profit and loss accounts and balance sheets. This practice has been followed from the inception of the different Units. A consolidated balance sheet and profit and loss account was only being prepared for the purpose of the Companies Act. There is no evidence that any of the units or undertakings fell within the exception to the proviso in section 3 and that in such branches, immediately before the commencement of the accounting year 1964-65, separate balance sheets and profit and loss accounts for purposes of computation of bonus were prepared and maintained. If that was the case, it may well be stated that the appellant-unit was treated as part of the establishment, in this case the H.M.T., for purposes of computation of bonus. In fact the evidence of MW 1 is that no profit bonus was ever paid to any of the employees of even H.M.T. Units Nos. 1 and 11 prior to 1964-65. What was paid was only production bonus on the basis of individual performance. Section 3 is the key to the Act, as it fixes the property which is to provide the allocable surplus for the distribution of bonus in terms of the Act. As the different Units in this case had been treated separately for the purpose of computation of bonus and separate balance sheets and profit and loss accounts had been prepared in respect thereof, the Units will not lose their separate identity as establishments because of the main provision of section 3 (see Delhi Cloth & General Mills Co. Ltd. v. Workmen(1). As Unit No. IV is a different establishment coming under the proviso and not falling under the exception to the proviso to section 3, the main part of section 3 will not assist the appellants.

Then the question is regarding the applicability of section

16. The evidence of MW 1, which has been accepted by the Tribunal, is to the effect that Unit No. IV was started in July 1963 and production and sale commenced only from 1965-66. Section 16(1) grants exemption from payment of bonus to establishments newly set up for a period of six years following the accounting (1) [1972] (1) S. C. R. 594. year in which the goods produced or manufactured are sold for the first time and, in the alternative, upto the year when the new establishment results in profit, whichever is earlier. Unit No. IV is to be treated as an establishment newly set up, as contemplated under section 16(1). If so, the exemption claimed would be fully justified because the contingency contemplated under subclause (a) or (b) of section 16(1) has not happened during the relevant years, 1964-65 to 1966-67. Even if Unit No. IV is considered to be a new department, undertaking or branch set up by the existing establishment, namely, the Hindustan Machine Tools Ltd., section 16(2) makes the provisions of sub-section (1) apply to such units. The

proviso to sub-section (2) of section 16 does not stand in the way of the management's claim for exemption because there is no evidence that for any year, after Unit No. IV was set up, bonus was paid to the employees of all the Units on the basis of consolidated profits of all such Units. In fact the evidence, as we. have already stated, is contra. No doubt it is in evidence that the employees of the Head Office have been treated at par with the employees of Units 1 and 11 at Bangalore. In the case of the Head Office, calculation of bonus on the basis of consolidated accounts is justified; but that does not affect the principle to be applied to the separate units for which separate accounts, separate balance sheets and separate profit and loss accounts are maintained. The proviso to sub-section (2) of section 16 will come in the way of the management only if bonus is paid in any year to the employees of all the Units on the basis of the consolidated accounts. That is not the evidence in this case. We may also state that the evidence in this regard has been very elaborately considered by the Tribunal and we agree with the conclusions arrived at by it. Therefore, the exemption claimed under section 16 (1) by the management for the years 1964-65 to 1966-67 in respect of Unit No. IV, the appellant, has been correctly accepted by the Tribunal. This disposes of the points raised by the appellant in the appeal.

We have already referred to the permission granted by this Court by its order dated February 24, 1970, to the respondents to attack certain findings. Accordingly the respondents have attacked two of the findings recorded by the Tribunal which we have set out earlier. For the accounting year 1963-64, which is the pre-Bonus Act period, the direction of the Tribunal is that Unit No. IV, the appellant, is to get bonus on the basis of the consolidated profit and loss accounts of all the Units in the same manner as was paid to the Watch Factory and H.M.T. Units Nos. 1 and 11 for the said year. The Tribunal has recorded a finding that during this period there was unity of ownership, management and control and also functional integrality and, therefore, all the Units as well as the Watch Factory have to be termed as one establishment and bonus will have to be calculated according to the Full Bench Formula on the consolidated profit and loss accounts of all the Units. This finding is attacked by Mr. G. B. Pai, learned counsel for the respondents. But it is not necessary for us to consider the correctness or otherwise of this finding in view of the fact that we are accepting another contention of his relating to this year. According to the learned counsel the evidence that has been accepted by the Tribunal itself, clearly shows that there was no profit bonus paid prior to 1964-65 to either H.M.T Units 1 and 11 or the Watch Factory in Bangalore. It was only from and after 1964-65 that bonus was paid to those Units in accordance with the Act. Mr. Pai's contention is supported by the evidence of MW 1. From the evidence of this witness it is clear that no profit bonus was paid to the above Units prior to 1964-65 and what was paid was only production bonus based on individual performance. Apart from the evidence of this witness, there is also an agreement Ext. 3 dated August 10, 1962, between the management and the workmen of Units Nos. 1 and 11 at Bangalore. That agreement provides for payment of deferred annual bonus. The quantum of such bonus as well as the circumstances under which it is to be paid to each worker, has also been detailed in the said agreement. The Tribunal, unfortunately, missed these items of evidence and has proceeded on the assumption that profit bonus for the year 1963-64 was paid to the workmen of these Units on the basis of the Full Bench Formula. This reasoning is erroneous. Hence the direction of the Tribunal that profit bonus is to be paid to Unit No. IV, as was paid to the Units at Bangalore, is clearly erroneous, as it is totally unworkable. Even otherwise the finding of the Tribunal that all the Units were treated as part of one establishment for purposes of bonus for the year 1963-64, is also erroneous. For the above reasons, the direction of the Tribunal for payment of bonus for the year 1963-64 to Unit No. IV has to be set aside.

The second finding that has been attacked by Mr. Pai is the statement, contained in paragraph 25 of

the award that, it appears from Ext. A(2), the balance sheet and the profit and loss account for the year 1963-64, an amount of Rs. 18,80,902/- was paid as bonus to the employees of the Watch Factory and Units Nos. 1 and 11 at Bangalore. A personal of the entry in Ext. A(2) shows that the particular entry regarding this amount relates to payments made to Units Nos. 1 and 11 and not to the Watch Factory. It will be seen that no claim whatsoever was put forward before the Tribunal by the workmen of the Watch Factory. We have already referred to the stand taken by the workmen of the Watch Factory, who were getting bonus at the maximum rate, that they wanted the claim of the other unions for bonus on consolidated balance sheets and profits and loss accounts to be rejected.

In the result the appeal is dismissed. The finding recorded against the management on the points referred to above are also set aside. The position will be that the claim of the appellant, Unit No. IV, for payment of bonus for the years 1963-64 to 1966-67 will stand rejected. There will be no order as to costs

G.C. Appeal dismissed.