

# **BOMBAY HIGH COURT**

D.P. Kelkar, Amalner

Vs.

Ambadas Keshav Bajaj

Special Civil Applns. Nos.1909 and 2239 of 1968

(Kotval, C.J. and Palekar, J.)

17.03.1970

## **JUDGMENT**

### **Kotval, C.J.**

1. These two special civil applications raise common questions of law of some importance and may be conveniently disposed of together. We are concerned in both these applications with orders passed by the Payment of Wages authority regarding the remuneration payable under the recently enacted Payment of Bonus Act (21 of 1965) which came into force on the 25th of September 1965. The principal points raised are regarding jurisdiction viz. whether the remuneration payable under the Act can be claimed before the authority under the Payment of Wages Act, and whether the petitioner Companies are exempt under the Bonus Act. For the purpose of the points raised the facts are also somewhat similar. The orders impugned however have been passed by two different authorities under the Payment of Wages Act.

2. The main argument was advanced in Special Civil Application No. 2239 of 1968 and we would first set forth briefly the facts of that Special Civil Application. The petitioner before us is the manager of the India United Mills Ltd.. No.1 Mill, of Bombay, which we shall hereafter refer to for the sake of brevity as the Indu Mills as it is popularly known. On 29th November 1965 the Indu Mills was taken under the management of an authorised controller under Section 18-A of the Industries (Development and Regulation) Act, 1951 by a notification of the Government of India. One M.D. Bhat was appointed as the authorised controller. We shall refer to the detailed provisions of this notification a little later. On 21st December, 1967 the 1st respondent Dhondu Mahadeo Ghadi an employee of the Indu Mills applied before the Authority appointed under the Payment of Wages Act for the area of Greater Bombay for the payment to him of the minimum bonus payable to him under the provisions of Section 10 of the Payment of Bonus Act. He claimed to be entitled to receive Es. 76.40 and Rs. 101.68 as bonus for the years 1965 and 1966. Though the amount claimed by this particular employee is small, the petitioner before us has

averred that upon the decision of this matter further claims by the other employees of the mills are likely to be made and that even if only the minimum bonus is payable to all the employees of the mills it will entail an amount of over Rs. 20 lakhs for the two years 1965 and 1966 although the company has suffered net losses of Rs. 1.75 crores and Rs. 1.83 crores in the said two years.

3. The facts relating to Special Civil Application No.1909 of 1968 are somewhat similar. There we are concerned with the Pratap Spinning, Weaving and Manufacturing Co. Ltd. of Amalner in Jalgaon District. The petitioner before us is D.P. Kelkar its general manager. The authorised controller was appointed to manage this mill by a notification dated 4th March 1963. He was one S.A. Kher. The initial appointment was for a period of 5 years but the management of the authorised controller has been continued from year to year and counsel informed us that the mill is still under the management and control of the authorised controller. The respondent No. 1 before us are the officials of the Rastriya Mill Workers Union of Amalner who claim to represent not only the 1st respondent Ambadas but also 773 other workers of this mill. On 26th December 1967 these workers put in a claim for the payment of the minimum bonus payable under the Act through the Union. They claimed a total sum of Rs. 1,20,312. The application was filed before the Authority under the Payment of Wages Act for the Amalner Taluka area at Amalner.

4. In both the cases the mills which were taken under the management of the authorized controller put in their written statements raising several preliminary objections to the jurisdiction of the Payment of Wages Authority and denying the claim of the workers to the payment of bonus. The arguments before us have more or less reiterated these objections in a more sophisticated form and we would therefore briefly set forth the arguments :-

5. The first contention has been that the Payment of Wages Act is concerned only with wages and nothing else and the amounts claimed as payable under the Bonus Act were not "wages" within the meaning of the Payment of Wages Act. Therefore the authority acting under the Payment of Wages Act had no jurisdiction to pass any orders with reference to the alleged bonus claimed. Secondly it was urged that the adjudication of the claim of the workers to the payments under the Bonus Act would involve or give rise to difficult and complicated questions of law which the Payment of Wages Authority should not ordinarily undertake to decide or alternatively was not competent to decide and therefore ought to have directed the workers to pursue their ordinary remedy under law. Thirdly that in any case Section 22 of the Bonus Act itself excludes the jurisdiction of the Payment of Wages Authority because it has created a special forum before which claims under the Bonus Act can be tried namely the Industrial Court. Therefore the Payment of Wages Authority will have no jurisdiction. Lastly it was urged that in any event these companies are expressly exempted under the Bonus Act as being establishments engaged in an industry "carried on by or under the authority of any department of the Central Government .....or a local authority" within the meaning of Section 32, Clause (iv) and that therefore the mills are exempt under Act

6. The authorities have turned down these preliminary objections and ordered the amounts claimed by the workmen to be paid in both the cases. It may be mentioned here that so far as the Indu Mills is concerned they had in their written statement only raised preliminary objections and claimed to reserve their right to file a supplementary written statement on merits but notwithstanding that reservation the Payment of Wages Authority has passed a final order ordering them to deposit the amount claimed by the workmen concerned within 15 days. It is unnecessary for the time being to recount the detailed reasoning of the authorities upon each of the points because as we deal with these points we shall be dealing also with these decisions and the reasoning by which they are supported.

7. Before we proceed to deal with the several points raised before us, it is necessary to say a word regarding the provisions both of the Bonus Act and the Industries (Development and Regulation) Act, 1951. The Payment of Bonus Act as its preamble states purports to provide for payment of bonus to the persons employed in certain establishments and for matters connected therewith. Section 1, sub-section (3) lays down that save as otherwise provided in the Act, it shall apply to every factory and to every other establishment in which twenty or more persons are employed on any day during an accounting year. "Accounting year" is defined in Section 2(1) in relation to a company as being the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not. In the case of the Indu Mills the accounting year ended on the 30th of June of each year. Section 3 virtually defines what is an establishment and it says that where an establishment consists of different departments or undertakings or has branches, all such departments or undertaking or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the Act. Then Sections 4 to 7 proceed to make detailed provision as to the computation of the bonus to be paid. By Section 4 the gross profits derived by an employer from an establishment is to be computed in accordance with the Second Schedule in the case of Companies such as we are concerned with. Section 5 shows how "available surplus" in respect of any accounting year is to be computed. At the same time "Available surplus" is defined in Section 2(6) as meaning available surplus as computed under Section 5. By Section 5. it is the gross profit of that year after deducting therefrom the sums referred to in Section 6 and the sums referred to in Section 6 are amounts by way of depreciation, development rebate or development allowance, any direct tax and any other sums specified in the First Schedule. Section 7 shows how any direct tax payable by the employer has to be computed. These sections providing for the computation of bonus have to be read along with the two definitions in Section 2 namely the definition of "available surplus" in sub-section (6) of Section 2 and of "allocable surplus" in sub-section (4) of Section 2. Then the subsequent sections of the Act proceed to declare the right of the employees to receive the bonus (Section 8) in what cases an employee is disqualified from receiving bonus (Section 9) and the duty of the employer to pay the minimum bonus (Section 10). Section 10 indicates what is "minimum bonus" and when it is payable and Section 11 deals with the payment of "maximum bonus".

8. The effect of these provisions is that the employer is bound to pay to every employee in an accounting year a minimum bonus which is stated to be 4% of the salary or wage earned by the employee during the accounting year or forty rupees, whichever is higher. What is most important is however, that this bonus is payable "whether there are profits in the accounting year or not". It will thus appear that the payment of the minimum bonus under the Act is not dependent upon the establishment of the employer making a profit at all. On the contrary, even though the establishment may make a loss the payment of minimum bonus is compulsory under the Act so long as its requirements are fulfilled. The maximum bonus under Section 11 becomes payable only when the allocable surplus exceeds the amount of minimum bonus payable to the employee under Section 10 and the maximum bonus may be an amount which may be as much as 20% of the salary or wage earned by the employee during the accounting year.

9. By Section 12, no minimum or maximum bonus can be paid on salary in excess of Rs. 750/- per month. To ensure this provision has been made for employees drawing a salary or wage of more than Rs. 750/- per mensem in which case there is a special provision for calculation of bonus "as if his salary or wage were seven hundred and fifty rupees per mensem only." Certain special cases are provided for in Section 13 and Section 14 provides for the computation of the number of working days. Then we come to the important provisions regarding

"set on and set off of allocable surplus" contained in Section 15 of the Act. Where for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. Similarly where for any accounting year there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees and there is no amount or sufficient amount carried forward and set on under sub-section (1) of Section 15 which could be utilized for payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, is to be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule. The purpose of these provisions is clear. Where there are profits or allocable surplus, the allocable surplus must be set apart and utilised towards payment of the bonus under the Act subject to the limitations indicated. The balance has to be carried forward and when there are lean years and there is no available surplus or the allocable surplus falls short of the amount of minimum bonus, then the establishment can draw from the balance of the allocable surplus if any of the previous years. It is clear, however, that whether or not there is allocable surplus or available surplus, the minimum bonus has to be paid in any case.

10. Various other deductions are permitted where the employer has paid different kinds of bonus or made other payments. Deductions are also allowed for certain reasons such as misconduct (Section 18). Section 21 makes provisions for the recovery of the bonus due from an employer. It permits either the employee himself or any other person authorized by him in writing in that behalf or in the case of the death of the employee, his assignee or heirs to make an application to the appropriate Government for the recovery of the money due to him. This is a special remedy prescribed by the Act and is a very summary remedy because the power of the Government is indicated by the following words

".....and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue."

The first proviso to Section 21 says that every such application shall be made within one year from the date on which the money became due to the employee from the employer and the second proviso says that the period laid down by the first proviso may be extended if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. Though no doubt this is a power conferred upon the Government, the power is summary and drastic in the extreme and it affords a very effective remedy to the employee or his heirs for the recovery of the bonus payable under the Act. We shall deal separately with the provisions of Section 22 and Section 32 when we deal with the other points involved in these Special Civil Applications.

11. The first point raised on behalf of the employer petitioner before us has been that under the Payment of Wages Act it is only "wages" that can be recovered and the payments to be made under the Bonus Act do not constitute "wages". For this purpose it is necessary to turn to the Payment of Wages Act and some of its provisions, particularly the definition of "Wages" in Section 2(6) of the Payment of Wages Act. That definition runs as follows :-

"Section 2. In this Act, unless there is anything repugnant in the subject or context, -  
(vi) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes.  
(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);  
... ..

but does not include .....

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;"

What is urged on behalf of the petitioners is that the definition of "wages" in Clause (vi) of Section 2 is confined only to consensual remuneration and not remuneration imposed by any law. In other words the definition only applies to remuneration payable under the terms of a contract of employment between the employer and the employee and that it cannot apply to a payment to be made compulsorily under the provisions of the Payment of Bonus Act. It was urged that payment of remuneration by operation of law would not fall within the definition of "wages" under the Payment of Wages Act.

12. We are unable to accept this contention because, in the first place as the definition of "wages" stands today there are no words of limitation in that definition limiting it to an agreement or contract between the employer and the employee. The definition says "wages" means all remuneration expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable. Therefore every kind of remuneration would be included in this definition so long as it is payable to the employee if the terms of employment, express or implied, were fulfilled. The expression "if the terms of employment, express or implied, were fulfilled" would in the context in which it is found apply to the employee. The condition precedent for the application of the definition would therefore be "if the terms of employment, express or implied, were fulfilled" by the employee. These words cannot in the context in which they are found apply to an employer. With respect we are in agreement with the remarks made in a recent judgment of this court in *Balaram Abaji Patil v. M. C. Ragojiwalla*<sup>1</sup>, by Mr. Justice Tarkunde. He said that "the expression "if the terms of the contract of employment, express or implied, were fulfilled" refers only to such of the terms of the contract of employment as are required to be fulfilled by the employed person. The expression has no reference to the terms of the contract which are to be fulfilled by the employer". Therefore those words do not bring in the concept of contract or agreement of employment, so far as the employer is concerned.

13. A reference to the decision in *Balaram Abaji's* case, 62 Bom LR 807 : (AIR 1961 Bombay 59), also gives rise to another point which we would here emphasize. At the time when that decision was given the definition of "wages" was different. Prior to the amendment of the definition introduced by Act 68 of 1957 the definition was "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable ..... to a person employed in respect of his employment or of work done in such employment....." (the underlining is ours). The words "if the terms of the contract of employment" were, however, dropped by Section 3 (3) of the amendment Act 68 of 1957 and the words "terms of employment" were substituted. It seems to us that upon the point which has been argued, this amendment makes a crucial

difference. Now the words "the contract of" having been dropped, we do not see how it can still be argued that the definition is limited only to remuneration payable under an agreement or contract. It is clear that the amended definition would apply to all kinds of remuneration whether arising from a contract, an award, a settlement or under a statute. As stated in Balaram Abaji's case, 62 Bom LR 807 : (AIR 1961 Bombay 59), the definition as, it now stands makes no reference to the origin of the employer's obligation to pay the remuneration. When we consider the legislative history of the definition, the construction which we have put upon it is further reinforced.

14. It was next argued that there is an express exclusion which was not noticed by the Payment of Wages Authority when it held that the payment of the amount under the Bonus Act amounted to "wages". It was urged that Clause (c) includes in the definition of "wages" any additional remuneration payable under the terms of employment, whether called a bonus or by any other name. Sub-clause (1) does not include in the definition any bonus which does not form part of the remuneration under the terms of employment, and since this is a bonus not payable under the terms of employment, but under the terms of a statute there is an express exclusion.

15. The definition of "wages" in the Payment of Wages Act concerns itself primarily with the remuneration due to an employee. In the opening clause it includes in the definition of

<sup>1</sup>62 Bom LR 807 at p. 809 : (AIR 1961 Bom 59 at p. 60)

"wages" all remuneration, (whether by way of salary, allowances or otherwise). Then in Clause (c) it includes specifically "additional remuneration" and in Clause (1) it specifically excludes any bonus which does not form part of the remuneration payable. Thus throughout the emphasis is on remuneration. It is only on determining what is the remuneration payable to the employee that the applicability of the parent clause itself or the inclusive Clause (c) or the excluding Clause (1) can be judged. All remuneration including additional remuneration would amount to "wages" but the excluding clause excludes only such bonus as does not form part of the remuneration payable. In other words, when a payment whether called bonus or not, is such that it can hardly be called remuneration, it would not be included under the definition of "wages".

16. The further question that remains is whether this is remuneration "payable under the terms of employment" and for this purpose it is necessary to go to the source of the payment namely the particular legislation which has given rise to this remuneration. Section 8 of the Payment of Bonus Act in terms says "Every employee shall be entitled to be paid - bonus, in accordance with the provisions of this Act....." subject to the condition laid down that he has worked for not less than thirty working days in that year. The section therefore clearly creates a right in the employee to be paid the bonus. Since every right has a corresponding duty, Section 10 lays down the corresponding duty of the employer to pay the bonus. It says

"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."

The section therefore categorically lays down the duty of the employer to pay the bonus indicated in the Act. The reference to Section 13 in Section 10 need not detain us, for it is a provision merely for the proportionate reduction in bonus in certain cases, with which we are not really concerned in the present case. This provision does not affect the existence of the duty to pay laid upon the employer by Section 10. Even in the case of maximum bonus referred to in Section 11, the words used are

"..... the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus ..... subject to a maximum of ....."

Here again, therefore, the duty of the employer to pay the maximum bonus subject to the conditions laid down is clearly defined. Section 19 lays down the time-limit for payment of the bonus and is also couched in a language which shows that it is the mandatory duty of the employer to do so. It begins with the words "all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer", within a period of eight months from the close of the accounting year or in the case of a dispute within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

17. In the Act therefore there is a right created in favor of the employee on the one hand and a duty enjoined upon the employer on the other hand to pay the bonus. It is clear, therefore that by this legislation a term of the employment has been introduced binding on the employer and in favor of the employee. The expression "term of employment" or "under the terms of employment" used in sub-section (vi) of Section 2 of the Payment of Wages Act, cannot, in our opinion, be read to imply merely contractual terms of employment. As we have said there is nothing in the definition as it stands to show that it refers only to contractual payment and would in the ordinary meaning of that expression include payments which it is the duty of the employer to pay whether under a contract or a statute or an award or settlement. The effect of the Payment of Bonus Act therefore, is to introduce a further term of employment as regards the payment of bonus. The requirement of the section therefore that whatever remuneration is payable must be payable under the terms of employment, is therefore satisfied. We must hold under the circumstances that the bonus payable under the Payment of Bonus Act 1965 amounts to "wages" within the definition in Section 2(vi). We say this however subject to what we will indicate hereafter.

18. The next question that arises is whether the Payment of Wages Authority before whom the employees had made their applications initially had the jurisdiction to pass the orders that they did, in respect of this remuneration an opportunity to the employer of being heard but there is nothing like a formal hearing nor has evidence to be recorded in the manner in which it is recorded in a Civil Court nor is the other procedure to be followed as is normally followed in a

Civil Court. In most of the cases which come before the Payment of Wages Authority, however, such a summary procedure would be suitable and expedient having regard to the purpose and object of the Act, but where a dispute arises and controversial and complicated questions of law are raised, involving a prolonged inquiry as in the present case it is clear that it was not intended by the Payment of Wages Act that such questions should also continue to be tried by the Payment of Wages Authority. The very nature of the jurisdiction conferred and the procedure prescribed preclude that being done. Sub-section (3) itself makes this clear by the use of the words "after such further inquiry (if any) as may be necessary, may.....have been intended to try as matters incidental to such a claim questions arising under the proviso to Section 25-FF. In our view it would be the Labour Court in such cases which would be the proper forum which can determine such questions ....."

(the underlining is ours)

It must therefore be taken as settled law that where complicated questions of fact or law are raised and a prolonged inquiry becomes necessary the Payment of Wages Authority would have no jurisdiction to decide the claim before it.

22. What is the position in the present case? We have already shown that the question whether the payment or remuneration under the Bonus Act constitutes "wages" within the definition in the Payment of Wages Act, is not a simple question in the present case but the other questions which have been raised on behalf of the employer are infinitely more complicated and difficult of solution. One of those questions with which we have yet to deal is whether this establishment governed as it is by the Industries (Development and Regulation) Act and being under the control and management of the authorized controller was an establishment which was exempted under the provisions of Section 32(iv) of the Payment of Bonus Act. The operative words are

"..... by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government ....."

The principal question which the Payment of Wages Authority would have to decide would therefore be whether the nature of the management and control imposed upon this Mill was such that it could be said that the establishment was being carried on under the authority of a department of the Central Government. That question in itself is, as we shall presently show, not a simple question but gives rise to complicated questions of law in that it requires careful consideration not only of the provisions of the Payment of Bonus Act but of the Industries (Development and Regulation) Act, 1951 and of the notification issued under that Act. Other questions that have been raised are as regards the true scope and effect of Section 22 of the Bonus Act, its effect upon Section 15 of the Payment of Wages Act and the important question whether these Mills are exempt under Section 32(iv). These would require consideration of several provisions of the Bonus Act and the question which has been actually argued whether the Bonus Act is a self-contained Code in itself. Surely it was never intended that such questions would under Section 15 fall within the purview of the Payment of Wages Authority. In this view

we do not think that the questions arising in these cases were fit for the Authority under the Payment of Wages Act to consider.

23. So far as we have viewed this question as if we were only concerned with the provisions of the Payment of Wages Act and even upon the provisions of that Act is clear that the Payment of Wages Authority would have no jurisdiction in a case like this where complicated questions of law arise and it is required to interpret the provisions of a new enactment, but when we come to consider the positive enactment contained in Section 22 of the Bonus Act, the position becomes clearer. Section 22 in terms says

"where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly".

24. The section in the first place applies only when a dispute arises between an employer and his employees with respect to the bonus payable under the Act. In making this provision the section, does not in any way affect or infringe any of the provisions of the Payment of Wages Act particularly Section 15 which confers jurisdiction upon the payment of Wages Authority. We have already shown that it was settled law that under Section 15 of the Payment of Wages Act, though no doubt all claims in respect of deductions from wages and delay in payment of wages are to be tried by the Payment of Wages Authority, where a dispute arises and there is a complicated question to be tried, that question should not ordinarily be tried by the Payment of Wages Authority. Section 22 of the Bonus Act says no more than this and to that extent would, in our opinion, be complementary to the law under the Payment of Wages Act. Any dispute arising between an employer and his employee with respect to the bonus payable under the Bonus Act would by implication be taken out of the jurisdiction of the Payment of Wages Authority and be relegated to the jurisdiction of the Authority under the Industrial Disputes Act. There is nothing in the Payment of Wages Act, particularly in Section 15 of the Act, to exclude the operation of any other laws. On the other hand Section 34, sub-section (1) of the Bonus Act excludes the operation of the other laws. Section 34(1) says

"save as otherwise provided in this section, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service made before the 29th May, 1965".

It was therefore intended that the Bonus Act should have effect notwithstanding anything

contained in any other laws. Therefore even assuming that the Payment of Wages Act had provided for jurisdiction in a matter like this, we have held that it has not - still Section 34 would exclude the operation of the Payment of Wages Act, but we have already said that there is nothing in the Payment of Wages Act to indicate that the operation of any other law is excluded so far as the jurisdiction of the payment of wages authority is concerned.

25. Counsel on behalf of the employees, the respondents before us, urged that the ambit of Section 22 of the Bonus Act is very limited and that it only applies to any dispute between an employer and his employees with respect to the bonus payable under the Act, but in the present case he urged that there was no dispute whatsoever regarding the bonus payable under the Act, because as he said, none of the two employers had challenged the quantum of the bonus payable to the employees. He urged that though other disputes have been raised by the employers, these can hardly be said to be disputes with respect to the bonus payable, such as for instance, the main dispute raised in the present case whether the establishment was itself exempted or not from the provisions of the Bonus Act. The words of Section 22 which we have quoted refer to "any dispute with respect to the bonus payable" and it seems to us that the language employed does not limit itself directly to the quantum of the bonus payable under the Act only. When the section says "with respect to the bonus" it means necessarily disputes in connection with the bonus or connected with the bonus payable under the Act. That would be the normal connotation of the words "with respect to" and it seems to us that when the employer raises an issue such has been raised in the present case, that the establishment itself has been exempted and therefore no bonus is payable, it is a dispute with respect to the bonus payable under the Act.

26. The next contention on behalf of the employees was that it must be a dispute under the Act but what the employers were claiming in the present case was that they were not governed by the Act at all and it could hardly be said therefore that it was a dispute regarding the bonus payable under the Act. The claim made on behalf of the employers that they were not bound to pay the workers was not on the ground that they were not governed by the provisions of the Act. On the contrary, the claim of the employers also is that they are actually governed by the Act but the Act itself in terms exempts them by virtue of the provisions of Section 32 (iv) which says –

"32. Nothing in this Act shall apply to :-

.....

(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."

It is not exclusion from the provisions of the Act which had been canvassed on behalf of the employers but merely exemption as stated in the Act itself under this clause of Section

32. Therefore the dispute which the employers have raised in the present case will be a dispute under this Act and not "de hors" the Act. It seems to us therefore that the provisions of Section 22 would squarely apply to the dispute raised in the present case. That it is a dispute there can be

no doubt, and indeed that has not been challenged in the present case. If so, it seems to us that for both the reasons which we have stated above that dispute would be beyond the jurisdiction of the Payment of Wages Authority. The first reason is that normally it is not a question which under the Payment of Wages Act itself ought to be decided by the Payment of Wages Authority because it raises a complicated question of law and secondly that in any event Section 22 indicates a forum where such a dispute ought to be tried and therefore by implication ousts the jurisdiction of the Authority under the Payment of Wages Act.

27. The payment of Bonus Act is a special Act dealing with a special subject. It statutorily creates rights in favour of the employee and against the employer which the employee never enjoyed before namely the right to be paid what is called a bonus even though the establishment or undertaking may not be making profits at all. A "bonus" originally meant a boon or gift over and above what is normally due to the employee. It was in the nature of an extra dividend paid out of surplus profits. In the inception it was always paid ex-gratia by the employer but later legislation made the payment of bonus obligatory. Now the payment under this Act is also obligatory but it is payable "whether there are profits in the accounting year or not" (see Section 10). The payment has thus lost the essential characteristics of a bonus, yet it is called by that name in the Act. These are all steps taken by our legislatures within recent times in their attempts to remove economic imbalances and to restore social justice between employer and employee. It is also common knowledge that so far it was the Industrial Courts and Tribunals which adjudicated upon disputes regarding bonus and granted bonus to employees of a concern. No doubt they never granted bonus to employees of a concern which was being run at a loss and under the present Act what is called bonus is for the first time in the history of industrial relations made payable to employees of an establishment even though that establishment is running at a loss, but it is understandable that the function of deciding disputes regarding the new payment and granting it would also be entrusted to Industrial Court and Tribunals. In the present case so far as the Indu Mills are concerned, they have specifically stated that in the year 1965 they incurred a loss of Rs. 1,79,00,000/- and in the year 1966 a loss of Rupees 1,83,00,000/-. The Act, therefore, makes provision for the first time for an extraordinary right which was not within the contemplation of the Industrial Law before and was passed with the sole object of conferring only that right upon the employees and providing for it. When such a special statute containing special provisions also creates a special forum for the trial of disputes under the Act it is settled law that any dispute arising under that Act must go before the special Tribunal created under the Act. We hold for these reasons that the Payment of Wages Authority had no jurisdiction in the present case to try the dispute raised in these cases.

28. In its order in Special Civil Application No. 2239 of 1968 the Payment of Wages Authority answered this question against the employer in paragraph 8 thereof. A perusal of that paragraph will show that it only took into account the provisions of Section 22 of the Bonus Act but had no regard to the law as it prevailed under the Payment of Wages Act till that date and even thereafter. After referring to Section 22 of the Payment of Bonus Act the Authority went on to

say

"the disputes contemplated in this section which can be referred for adjudication for Industrial Tribunal are of two kinds; (1) regarding quantum of bonus which will be more than 4% but upto 20% of the total earnings, and (2) applicability of the Payment of Bonus Act to certain establishment in the public sector. Regarding the first point of quantum, there is no and cannot be any dispute about the payment of 4% bonus which is the minimum under the provisions under which the employer is obliged to pay irrespective of profit or loss within 8 months from the close of the accounting year. There is, therefore, hardly any dispute regarding the quantum of bonus. As regards the second point concerning the applicability of the Payment of Bonus Act to the concern of the opposite party, since the concern of the opposite party does not fall under the definition of "establishment in public sector" as given in Section 2(16) of the Payment of Bonus Act, there is no question of applicability of the Payment of Bonus Act. Section 22 is not attracted to the concern of the opposite party because the concern of the opposite party does not fall under the definition of "establishment in public sector" but is a private sector to which Section 22 will have no application."

29. These remarks which we have deliberately reproduced in extenso and which constitute the sole reasoning of the Authority show that it failed to grasp the effect of Section 22 altogether. In the first place we have shown that there is no reason why the first clause in Section 22 "any dispute ..... with respect to the bonus payable under this Act" should be limited only to the quantum of the bonus. The words are "with respect to the bonus" and not "any dispute regarding the amount of the bonus payable". This was the initial error in the interpretation. Next as regards the point raised on behalf of the employers that the exemption claimed by them under Section 32 raises a serious dispute, the Authority got rid of the contention by referring to the second clause of the opening words "with respect to the application of this Act to an establishment in public sector" and it observed that the establishment of the employers was not an establishment in the public sector. No doubt "establishment in public sector" is defined in Section 2 (16) in contradistinction with "establishment in private sector" which is defined in Section 2(15) of the Act, but we fail to see how either of these definitions or the second clause of Section 22 which we have quoted above, at all fell to be considered upon this question. The point which the employers had raised was that in terms of Section 32, Clause (iv) of the Act they were specifically exempted from the operation of the Act and therefore no bonus was payable under the Act. As such, the plea which they had taken was taken with respect to the bonus payable under the Act and fell to be considered only under the first clause of Section 22, "any dispute ..... with respect to the bonus payable under this Act." It could not fall under the second clause nor did counsel before us attempt to support it under the second clause which deals with application of the Act to an establishment in the public sector. Indeed counsel said that that was never urged on behalf of the employers. Therefore, the whole of the reasoning of the learned Authority in paragraph 8 of its order was futile. What the Authority failed to take into account or

consider was whether the dispute of the nature raised by the employers was a dispute with respect to the bonus payable under the Act falling under the first clause. It went wrong in its decision because it limited the first clause only to the quantum of the bonus.

30. Surprising as it may seem, though the decision in Special Civil Application No. 1909 of 1968 was given by a different Authority, the reasoning on both the heads is reiterated in that order also in paragraphs 16 and 17 of the judgment, though the manner of consideration of the two points is different. In this case the Authority said

"Section 22 refers to the application of the Act only in connection with establishments in public sector. Only then a dispute as to application of the Act would be deemed to be an industrial dispute under Section 22. Admittedly the Pratap Company is not an establishment in the public sector as defined by Section 2(16) of the Bonus Act".

The Authority again failed to notice the first clause and the fact that the clause is separated from the second clause by the disjunctive "or".

31. With regard to the latter judgment (in Pratap Spinning, Weaving and Manufacturing Co.'s case) we may say that the Authority gave some further reasons as can be seen from the following observations at the end of paragraph 16 :

"Section 32 conceives of the non-application of the Act to certain classes of employees. Certainly this is far removed from the question of application of the Act under Section 20."

We have already dealt with this point but we must say that these observations amount to an incorrect reading of Section 32, Clause (iv). Section 32 does not conceive of any non-application of the Act to an employer. On the other hand, it is a provision of the Act itself and the Act itself creates an exemption. In other words it amounts to saying that the employer claims an exemption under the Act and not de hors the Act. The authority erred in observing that Section 32 conceives of non-application of the Act to certain classes of employees and because it took this incorrect view it also observed that the question was "far removed from the question of application of the Act under Section 20". Any dispute raised under Section 32 would be a question governing the applicability of the Act. We are unable to sustain the reasoning of either authority.

32. A further contention based upon the amendment to Section 15 (1) of the Payment of Wages Act, by Amendment Act 53 of 1964 was advanced. Of the several amendments made by that Act at the end of sub-section (1) of Section 15 for the words "of persons employed or paid in that area" the following words were substituted, "of persons employed or paid in that area, including all matters incidental to such claims". (the underlining is ours.) On the strength of the last clause which we have underlined it has been contended on behalf of the respondents that the jurisdiction of the Payment of Wages Authority after this amendment has been considerably enlarged.

Whereas previously the Authority was only confined to hearing and deciding claims arising out of deductions from wages or delay in the payment of wages, now the authority has jurisdiction to decide all matters incidental to such claims. Therefore the points which have been raised on behalf of the employers and which we have dealt with above could have been dealt with by the Payment of Wages Authority in the present case.

33. It seems to us that the amendment was brought in only for the purpose of clarifying what was already the law namely that the jurisdiction of the authority is confined to deciding all claims arising from deductions from wages or delay in the payment of wages and that would necessarily include, matters connected with the two questions and that is why it is referred to in the amendment as "all matters incidental to such claims". The amendment refers only to matters incidental - incidental to the claims arising out of deductions from wages or delay in the payment of wages and we do not think that when the amendment speaks of "matters incidental" it meant to include within the ambit of the jurisdiction of the payment of wages authority substantial questions as to the applicability of the Act or as to the applicability of exemptions created under the Act and similar other questions especially where complicated questions of law or fact arise. Despite the amendment we think the decision of the Supreme Court in AIR 1969 Supreme Court 590 and the principle laid down there would still govern the present case. So long as any complicated question of law or fact is likely to arise, even though "incidental", the matter cannot be tried by the payment of wages Authority. See para 10 at p. 596 of the report. For these reasons we are of the opinion that the payment of wages authority would not have jurisdiction to try the question raised in these two petitions before us and that the decisions of the authorities overruling the objection as to jurisdiction raised by the employers, were incorrect.

34. Then we turn to the third and the most important objection raised on behalf of the employers : The objection in both the cases was on the basis of the provisions of Section 32, sub-clause (iv) which runs as follows :-

"32. Nothing in this Act shall apply to -

(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."

It was the case of the employers before the Payment of Wages Authority that the applicants in both the cases were employed in an establishment engaged in an industry carried on by or under the authority of a department of the Central Government and therefore nothing contained in the Act would apply to such employees having regard to Section 32 of the Payment of Bonus Act. The exemption from the provisions of the Act is created in favor of an establishment engaged in any industry carried on by or under the authority of any department of the Central Government. The exemption is in favor of two categories, an establishment engaged in any industry carried on by the authority of any department of the central Government or carried on under the authority of

any department of the Central Government. Counsel on behalf of the employers did not rely on the word "by" but he emphasized that the cases of both the employers would fall under the words "under the authority of any department of the Central Government", because for an establishment to be carried on by the authority of any department of the Central Government would mean that any department of the Central Government should be directly running that establishment itself which is not the case here. The question then arises whether having regard to the facts and circumstances here the establishments of, these employers were on the date on which the applications were presented being carried on "under the authority of any department of the Central Government" and for this purpose it will be necessary to see firstly the two notifications which were issued taking these two establishments under the management of the authorised controllers and then to see what is the effect of those notifications having regard to the provisions of the Industries (Development and Regulation) Act under which the notifications were issued.

35. In the Indu Mills case the notification dated 29th November 1965 recites in the preamble that the Central Government was of the opinion that the Indu Mills an industrial undertaking was "being managed in a manner highly detrimental to public interest" and therefore action was being taken. The nature of the action is important. It was ordered as follows :

"now therefore in exercise of the powers conferred by Section 18-A of the said Act the Central Government hereby authorizes Shri M. D. Bhat (hereinafter referred to as the authorized controller) to take over the management of the whole of the said undertaking, namely, the India United Mills Ltd., Bombay, subject to the following terms and conditions, namely :-

(i) the Authorized Controller shall comply with all directions issued from time to time by the Central Government;

(ii) the Authorized Controller shall hold office for five years....."

By the second notification issued on the 26th of March 68 by which another authorized controller Sri S. D. Mehta was appointed, none of the provisions of the previous notification were affected and it continued to remain in force. Similarly in the Pratap Mills case the notification dated 4th March 1963 made identical recitals and an almost identical order. That notification was followed by a further notification dated 4th March 1968 whereby the term of the authorized controller was extended for a further period of one year but here the notification itself stated that the first notification dated 4th March 1963 "shall continue to have effect for a further period of one year from 4-3-1968."

36. Two points may be noted so far as the notifications are concerned; firstly that the entire management of the whole of the undertaking was taken over and vested in the authorized controller and secondly that the authorized controller was bound to comply with all the directions issued to him from time to time by the Central Government.

37. These notifications were as stated therein issued under the provisions of Section 18-A of the

Industries (Development and Regulation) Act, 1951. As a result of the issue of the notifications under the provisions of Chapter III-A of that Act various legal consequences flowed from the provisions of the law itself. It is necessary to notice some of these consequences, particularly those indicated in Sections 18-A (1) (b); 18-B and 18-E (1) and (2). All these sections are to be found in Chapter III-A. That Chapter was not to be found in the Act as originally enacted. Its provisions were introduced by the Amendment Act 26 of 1953 with effect from 1st October 1953. The heading of the Chapter is "Direct Management or Control of Industrial Undertakings" by the Central Government in certain cases. Its provisions were thus introduced to provide for "management" and "control" by or "under" the Central Government.

38. By virtue of the notifications read with the provisions of Section 18-A the authorized controller was authorized to take over the management of the whole of the undertaking of the petitioners. The fullest possible control was also imposed because the authorized controller was directed to comply with all the directions issued from time to time by the central Government. The consequence of such a notification is mentioned in Section 18-B, and the major consequences with which we are concerned are those indicated in Clauses (a), (b) and (e) of subsection (1) of Section 18-B. By Clause (a) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order are deemed to have vacated their offices as such. This clause creates a fiction by which persons already occupying offices as managers or directors are deemed no longer to be managers or directors. They are deemed to have vacated their offices. The consequence is drastic in the extreme. From the moment the notification is issued its effect is automatic and those in charge of the management particularly the directors cease to be directors altogether. Similarly under Clause (b) of Section 18-B (1) 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". Once again by a fiction a contract which is in existence is directed to be deemed not to be in existence. Under Clause (e) a further substitution takes place. In place of the directors the authorized controller is substituted. Clause (e) provides that

"the persons, if any, authorized 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 the industrial undertaking duly constituted under the Indian Companies Act, 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."

In other words, not only is the power of the manager and director put an end to, not only are all the contracts which the manager and director entered into put an end to but by the automatic operation of Clause (e) the persons put in management alone are entitled to exercise all the powers of the directors and no exception is made because of the words

"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."

In other words, in whatever form or shape the power of the directors is derived and from whatever source, that power is put an end to. We stress this particular provision here because in the judgments of the Payment of Wages Authority in both the cases there are observations made by the authorities that the memorandum and articles of association of the company have not been put an end to and continue to operate suggesting thereby that the corporate existence of the company in substance is continued. Clause (e) in our opinion takes away the substance of the power conferred by the memorandum and articles of association because it puts an end to the powers of the manager and directors and all contracts entered into with them and instead in terms says that the persons authorized to be in management shall be the directors. This is one of the crucial errors which we find made in the judgments of the authorities in the two cases.

39. While Clause (e) of Section 18-B talks of "the persons, if any, authorised under Section 18-A" who become the directors of the industrial undertaking, where only one person is appointed as in the instant cases, it is clear that all the powers of the directors vest in that one person who becomes the sole person in management and control and is substituted for the directors. Sub-section (4) further makes the position abundantly clear. It says that

"The person or body of persons authorized under Section 18-A shall, notwithstanding anything contained in the memorandum or articles of association of the industrial undertaking, exercise his or their functions in accordance with such directions as may be given by the Central Government so, however that he or they, shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions for the authority carrying on the undertaking except in so far as may be specifically provided by the notified order".

It is this sub-section which establishes the nexus between the Central Government and the industrial undertaking taken over. It provides affirmatively that the authorized controller who has been appointed in the present case must exercise his functions in accordance with the directions given by the Central Government and negatively that

"he shall not have power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions the authority carrying on the undertaking except in so far as be specifically provided by the notified order".

Thus we may again stress that the memorandum and articles of association of the industrial undertaking are effectively and substantially put an end to by the use of the words

"notwithstanding anything contained in the memorandum and articles of association". These being the matters in which the memorandum and articles of association of the industrial undertaking are modified, we can hardly see much substance in what would be left out of the normal memorandum and articles of association of a company.

40. Before we leave these two sections, it is of interest to notice that throughout the expression used is "undertaking" and not "establishment engaged in any industry" as in sub-section (iv) of Section 32 of the Payment of Bonus Act. Though no particular point was made on this difference in verbiage we can only say that the expression "establishment engaged in any industry" would be of a much wider connotation than the expression. "Industrial undertaking."

41. Then we turn to the important provisions of Section 18-E of the Industries (Development and Regulation) Act, 1951. It purports to provide for the application of Act VII of 1913, that is to say the Indian Companies Act. It says that where the management of an industrial undertaking, being a company as defined in the Indian Companies Act 1913, is taken over by the Central Government, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such undertaking, the following three important consequences ensue :-

"(a) that it shall not be lawful for the share holders of such undertaking or any other persons to nominate or appoint any person to be a director of the undertaking;  
(b) that no resolution passed at any meeting of the shareholders of such undertaking shall be given effect to unless approved by the Central Government, and  
(c) that no proceeding for the winding up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government." We have already seen that Section 18-B provides that consequent upon the issue of a notification under Section 18-A the powers of the directors automatically cease and their offices are deemed to be vacated and also that any contract between them and the company is deemed to have been terminated and the authorized controller steps in as the sole director of the company. Section 18-E prohibits the shareholders from nominating or appointing any person to be a director, so that even if the share-holders pass such a resolution it will be illegal. Secondly Clause (b) drastically controls the powers of the share-holders to pass resolutions because it says that no resolution passed at any meeting of the share-holders can be given effect to unless approved by the Central Government. This in itself shows to what extent the control of the Central Government is established. Lastly even assuming that the share-holders pass a resolution to wind up the company, which of course would under Clause (b) be ineffective without sanction still no proceeding for the winding up of the undertaking or for the appointment of a receiver can lie in any court except with the consent of the Central Government.

42. Such is the drastic effect and the vast power assumed by the Central Government and partially conferred upon the authorized controller functioning under the authority of the Central

Government. It is clear that the principal officers of the company namely the manager and the director are wiped out of existence and the authorized controller substituted. The plenary body which usually has the plenary authority in a company, and appoints the directors viz the share-holders is no doubt continued but it is an ineffective and powerless body of share-holders, for they cannot discharge their main function namely of appointing directors through whom the company is usually managed and they cannot pass any effective resolutions without the consent of the Central Government. They are only share-holders in name and have none of the usual power and authority of the share-holders under the Companies Act. What is worse, they cannot resolve that the company's business should be put an end to because they cannot pass a winding up resolution without the consent of the Central Government, nor can any proceeding for winding up lie without the consent of the Central Government.

43. It is clear upon these provisions that the management and control is completely taken away from the directors and substantially from the share-holders and the effective management and control of the Central Government through the authorized controller substituted. It is impossible not to hold in a case like this that the industrial undertaking is being carried on under the authority of the Central Government.

44. We have used the expression "authority of the Central Government" only to indicate that the effective control is ultimately that of the Central Government though the words used in Clause (iv) of Section 32 are "of any department of the Central Government", but we do not think that any palpable difference is made by that expression. After all, the Central Government, though it is a legal entity, functions through departments and under its rules of business and therefore the expression "any department of the Central Government" has been used in Section 32 (iv). So long as therefore the control of the Central Government is clearly shown, it is the control of a department of the Central Government. In this case the Department is the Ministry of Commerce and Industry as indicated in the heading of the two notifications concerned.

45. Considerable stress was laid on behalf of the workers upon sub-section (2) of Section 18-E which is so to say a saving clause saving the powers of the undertaking which happens to be a company. Sub-section (2) merely says

"subject to the provisions contained in sub-section (1), and to the other provisions contained in this 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."

No doubt the Companies Act continues to apply but the conditions and limitations with which its operation is circumscribed are so numerous and drastic as to make the solemn statement that

"the Indian Companies Act 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", more or less chimerical. As we have shown, every vestige and substance of power is taken away under the provisions of Sections 18-B and 18-E. The directors cease to function, the shareholders cannot pass effective resolutions unless approved by the Central Government; the share-holders cannot appoint directors under any circumstances; the authorized controller is given the control and management in place of the directors, and no proceeding for winding up can lie even though resolutions are passed to that effect without the consent of the Central Government. What remains of the powers of the directors of the company after these provisions come into operation, it is difficult to envisage. The authorized controller is not fettered by limitations. On the other hand he enjoys all the powers under the Companies Act subject to the overriding powers of the Central Government to give powers or to create exceptions, restrictions or limitations upon those powers under the Companies Act. Three conclusions may be drawn from these provisions. Firstly that after the notifications and the operation of these sections come into force, what is left of the company is the mere outward shell of incorporation and every vestige of power to manage and control is taken away from the directors and share-holders. Secondly the authorized controller becomes all powerful and enjoys all the authority under the Companies Act except to the extent that he is controlled by the Central Government. Thirdly the plenary and overriding power of the Central Government to give directions and to make exceptions, restrictions and limitations to the Indian Companies Act and thereby further to control the authorized controller and the company is absolute and unrestricted. We have no manner of doubt that under this dispensation the establishments of which the management and control were taken away in the cases before us, were carried on under the authority of a department of the Central Government.

46. An argument was advanced as to whether the establishments were being carried on "directly" under the authority of any department of the Central Government. It was contended that when the Act says "carried on under the authority of any department of the Central Government" it meant directly under the authority of a department of the Central Government but that in the instant cases it was not directly run by any department of the Central Government but through the authorized controller. We have already referred to the two notifications and to the provisions of the law contained in Sections 18-A, 18-B and 18-E of the Industries (Development and Regulation) Act, 1951 and the authorized controller is in no sense appointed as an agent or representative of the Government. He is a controller authorized by the Central Government and has to comply with all directions issued from time to time by the Central Government. The management and control therefore, is directly under the department of the Central Government concerned and not under a person who has any independent authority of his own. In every matter and in every respect in which the authorized controller can act in the management of the

company it is the Central Government who is the authority to issue directions or to control his actions. He is therefore the person authorized and not an agent of Government. The establishment therefore, it must be held, is being carried on directly under the authority of a department of the Central Government. The argument moreover ignores the distinction drawn by the section itself by the use of the words "by" and "under" in contradistinction to each other.

47. The view we have taken is supported by the principles laid down in two of the cases which were referred to *Abdul Rehman Abdul Gafur v. E. Paul*<sup>2</sup>, (decision of a single Judge of this Court) and *Secretary, Indian Naval Canteen Control Board, New Delhi v. Industrial Tribunal, Ernakulam*<sup>3</sup>, though upon the facts a contrary conclusion was reached. In both these cases dealing with the identical phrase "under the authority of the Central Government" to be found in the definition of "appropriate Government" in Section 2(a) (i) of the Industrial Disputes Act, the Court held that the phrase means and is intended to apply to industries carried on directly under the authority of the Central Government. In our opinion, upon the circumstances we have set forth here and having regard to the provisions of the Industries (Development and Regulation) Act, it is amply established that both these undertakings were being directly run under a department of the Central Government. In the two cases that fact was negatived, but the circumstances in each of those two cases were quite different. In one case the Mazgaon Dock Limited was continuing as an incorporated public limited company and exercising all its powers through a board of directors although the capital belonged entirely to the Government. In the Kerala case the undertaking involved was the Indian Naval Canteen Service functioning under its own constitution created by a trust. The circumstances here are entirely different. We, however accept with respect, the interpretation put in these two decisions upon the words "carried on under the authority of the Central Government" as meaning "carried on directly under the authority of the Central Government". While we

<sup>2</sup>65 Bom LR 20 : (AIR 1963 Bom 267)

<sup>3</sup> AIR 1966 Ker 94

have thus agreed with the principle laid down in these two authorities, we may say that we must not be understood to have accepted all that has been decided in the Kerala case. Particularly we refer to the observations in para 7 of that case that

"the question as to whether a particular industry is carried on by or under the authority of the Central Government is essentially a question of fact depending on the circumstances of each case."

In our opinion, that observation in that case was hardly necessary and was casual observation, but we wish to make it clear that we are unable to accept that observation. In our opinion, the question whether a particular industry is carried on by or under the authority of the Central Government is a mixed question of law and fact.

48. In a decision of the Supreme Court in *Heavy Engineering Mazdoor Union v. State of Bihar*<sup>4</sup>, a similar question arose with reference to a public limited company, the Heavy Engineering

Corporation Ltd., Ranchi of which the entire share capital belonged to the Central Government and all its shares were registered in the name of the President of India. An industrial dispute having arisen between the company and the union representing its workers, the dispute was referred to the Industrial Tribunal by the Government of the State of Bihar and the reference was challenged on the ground that the appropriate Government who made the reference under Section 10 of the Industrial Disputes Act was the Central Government and not the State Government. In the Industrial Disputes Act "appropriate Government" is defined in Section 2(a) (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government. The question was whether the Heavy Engineering Corporation Ltd. was an industry carried on by or under the authority of the Central Government. The Supreme Court pointed out that the company and its shareholders were continuing to function as a company and they constituted distinct entities. They held that the mere fact that the entire share capital of the Heavy Engineering Corporation Ltd., Ranchi, was contributed by the Central Government and the fact that all its shares were held by the President and certain officers of the Central Government made no difference and that the industry was not being carried on by or under the authority of the Central Government. The circumstances here are as we have pointed out entirely different and so are the provisions of law and the notifications under which these two Mills are being managed and controlled, but some of the observations which the Supreme Court made are of value upon the points before us. On the question what constitutes "authority" within the meaning of the expression "by or under the authority of the Central Government" the Supreme Court pointed out at p. 85 :-

"It is an undisputed fact that the company was incorporated under the Companies Act and it is the company so incorporated which carried on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways ..... That being the position, the question then is, is the undertaking carried on under the authority of the Central Government? There being nothing in Section 2 (a) to the contrary, the word "authority" must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to

<sup>4</sup> AIR 1970 SC page 82

another to do an act. A person is said to be authorized or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, "to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act ..... There clearly arises in such a case the relationship of a principal and an agent. The words "under the authority of" mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association." The passage serves to

highlight the sharp difference between the position as it existed in that case and the position as it exists in the present case under the notifications and the provisions of law to which we have referred above. In the present case we have shown that not only the powers of the directors are taken away and the powers of the shareholders severely curbed, but the authorized controller is substituted as a director and is in the real management and control and the memorandum and articles of association of the company are either abrogated or modified to a very substantial measure. The distinction between that case and the present serves to emphasize that the present undertakings are being carried on under the authority of a department of the Central Government.

49. Another aspect of the same point was stressed on behalf of the employers - and we think very rightly. Under the provisions of the Companies Act the management and control which the directors exercise is exercised for the benefit of the share-holders of the company. This is clear upon the authorities. The principle is found stated in Palmer's Company Law, 21st Edition, page 530 under the heading "in whose interest the powers have to be exercised. The Second Savoy Hotel Investigation and is thus stated in Gower's Principles of Modern Company Law, 3rd Edition, page 521." But what exactly is meant by saying that they must act in the interests of the company? Despite the separate personality of the company it is clear that directors are not expected to act on the basis of what is for the economic advantage of the corporate entity, disregarding the interests of the members. They are, for example, clearly entitled to recommend the payment of dividends to the members and are not expected to deny them a return on their money by ploughing back all the profits so as to increase the size and wealth of the company. It has been said that "the company" does not mean

"the sectional interest of some (it may be a majority) of the present members or even ..... of all the present members, but of present and future members of the company ..... on the footing that it would be continued as a going concern, (balancing) a longterm view against short term interests of present members".

If, as will normally be the case, the directors themselves are share-holders they are clearly entitled to have regard to their own interests as such and not to think only of the others. As it was happily put in an Australian case, they are

"not required by the law to live in an unreal region of detached altruism and to act in a vague mood of ideal abstraction from obvious facts which must be present to the mind of any honest and intelligent man when he exercises his powers as a director. But it is apparently only the interests of the members, present and future, to which they are entitled to have regard, the interests of the employees, the consumers of the company's products or the nation as a whole are legally irrelevant".

The same principle is to be found laid down in the decisions in *Parke v. Daily News Ltd*<sup>5</sup>, and in *Hogg v. Cramphorn Ltd*<sup>6</sup>, That being the position of a normal company functioning under the

Companies Act, it is clear that the Industries (Development and Regulation) Act, 1951 and the drastic provisions which it has made in Chapter III-A effect a radical departure. The Industries (Development and Regulation) Act makes a categorical declaration as to the expediency of control by the Union of certain industries and Section 2 thereof says that

"it is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

The very purpose of the enactment therefore is a public purpose and not the purpose of the company or its shareholders. Since we have shown that the company is managed and controlled for the benefit of the share-holders it is clear that the very fundamental principle involved in the constitution and functioning of companies has been given a go-by by the provisions contained in Chapter III-A of direct management and control of industrial undertakings by the Central Government. It can hardly therefore be said that the company qua company continues to exist in its pristine form though the mere outward shell or legal form of it is by sub-section (2) of Section 18-B made to continue. This itself illustrates powerfully that the company is not being carried on as a company but is carried on for a completely different purpose under the authority of a department of the Central Government. We hold that Section 32. sub-clause (iv) applies to both these companies and that they would therefore be exempt under that provision from the provisions of the Payment of Bonus Act. Nothing contain-in the Act would therefore apply to them. The Payment of Wages Authority therefore went wrong in granting the claims of the workmen in both the cases.

50. Some contentions raised on behalf of the employees may now be noticed. It was urged first of all that when Clause (iv) of Section 32 uses the expression

"employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government" what is implied is that the industry qua industry must be carried on by or under the authority of any department of the Central Government and not an establishment engaged in any industry. In other words, the contention is that the words "carried on by or under the authority of any department of the Central Government" qualify "industry" and not "an establishment engaged in any industry". Upon this construction it was urged that the whole of the textile industry is not being carried

<sup>5</sup>(1962) 1 Ch 927 at p. 963

<sup>6</sup>(1967) 1 Ch 254 and 267

on by or under the authority of any department of the Central Government and unless that happens Clause (iv) of Section 32 would not be attracted. The argument has only got to be stated to be rejected. In the first place if we were to place that construction upon Clause (iv) we would be depriving the words "an establishment engaged in" of all meaning, because if the words "carried on by or under the authority of any department of the Central Government" were held to qualify only the word "industry" then it will at once

appear that the words "by an establishment engaged in" would become redundant. We cannot give that construction for we cannot hold that any words used in a statute are redundant unless necessity compels us to do so. In the present case we think that those words have a meaning. The Legislature has used a composite expression, though a somewhat cumbersome expression "an establishment engaged in any industry" to indicate the subject of the clause "carried on by or under the authority of any department of the Central Government." In our opinion, "an establishment engaged in any industry" is a composite expression to which the clause "carried on by or under the authority of any department of the Central Government" is a qualification. Instead of using a more "compendious expression establishment," the draftsman has in the interests of extra clarity used the expression "establishment engaged in any industry". This construction is reinforced on a consideration of other provisions of the Act particularly the preamble to the Act, sub-section (3) of Section 1 and Section 3, Section 4(b) read with Schedule 2 and Sections 5 and 6 read with Schedule 3. A perusal of these provisions of the Payment of Bonus Act will show that the Act never contemplated applying this provision to an industry but only to an establishment. It purports to be an Act for the payment of bonus to persons employed in certain establishment and for matters connected therewith and the main object and purpose of the Act also reinforces the construction which we have placed upon Clause (iv) of Section 32.

51. In order to get out of the impact of Clause (iv) of Section 32 an attempt was further made to limit the applicability of Section 32, Clause (iv) by saying that the provisions of Chapter III-A, particularly Sections 18-A, 18-B and 18-E to which we have referred, were all provisions which confer powers which were merely supplementary to the normal powers under the Companies Act such as for instance, the power of the Central Government under Sections 408 and 409 of the Companies Act and that therefore the company qua company continues to have the normal powers of control enjoined by the Central Government. We cannot appreciate such an argument because the powers conferred upon the Central Government under Sections 408 and 409 of the Companies Act are in no way comparable to the powers assumed by the Central Government under Chapter III-A of the Industries (Development and Regulation) Act. It is unnecessary to deal in detail with these powers, but a mere perusal of Sections 408 and 409 will show that one gives power to the Central Government to appoint directors and the other to stay operation of any action taken detrimental to public limited companies. Such powers are powers of supervision and are in no way comparable to the powers of control and management given to the Central Government under Chapter III-A of the Industries (Development and Regulation) Act. We are unable to accept this contention.

52. In the result, we hold that the Payment of Wages Authority had no jurisdiction to grant the reliefs which it has granted and in any case that relief cannot be granted all to the respondents workers in either of the two cases before us because both the petitioner companies were exempt under the provisions of Section 32, Clause (iv) from the provisions of the Payment of Bonus Act.

We set aside the orders of the Payment of Wages Authority in both the cases. The applications of the workmen in both the cases shall stand dismissed. There shall be no order as to costs. Applications dismissed.