
(1994) 07 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 19528 of 1984 with W.P. No's. 4550 of 1985 and 16210 of 1984

Bangalore Water Supply and Sewerage Board

APPELLANT

Vs

Workmen and others

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Bangalore Water Supply and Sewerage Act, 1964 — Section 16
Constitution of India, 1950 — Article 14
Payment of Bonus Act, 1965 — Section 32

Citation : (1995) 1 KarLJ 113

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : P.S. Manjunath and M.C. Narasimhan, for the Appellant; M/s Bhoopalam Associates and Shylendra Kumar, for the Respondent

Judgement

1. A joint request was made by the Management of the Bangalore Water Supply & Sewerage Board and its workmen to the State Government to make a Reference of the Dispute existing between them for adjudication to the Industrial Tribunal, Bangalore, Consequently, a Reference was made by the Government of Karnataka under No. SWL 579 LLD 70 dated 16th August 1979, to the Industrial Tribunal, Bangalore on the following points of dispute :-

"1) Are the workmen justified in demanding bonus from the management of Bangalore Water Supply and Sewerage Board ?

2) If not, to what relief the workmen are entitled ?"

2. On receipt of the Reference by the Tribunal it recorded evidence adduced by the parties and by its award dated 27th December, 1983 held that the employees of the Board excepting those engaged at its 4 pumping stations and two treatment plants, were not justified in demanding Bonus. In arriving at the said conclusion the Tribunal found that the Pumping Stations and the treatment plants, having been registered as Factories under the Factories Act, Employees

working at the said Stations and Plants were entitled to Bonus and the remaining Employees of the Board were not so entitled, not only because the Board was a non-profit making organisation but also because it was a local authority within the meaning of Section 32(iv) of the Payment of Bonus Act, 1965 (hereinafter referred to as the Act).

3. Both the Board as also its employees are aggrieved of the aforesaid Award, and have filed separate Petitions challenging the validity of the same. While Writ Petition No. 19528/84 has been filed by the Board, its employees have filed Writ Petition No. 4550/1985 & W.P. No. 16210/1984. In the Writ Petition filed by the Board it has challenged that part of the award by which employees working on its Pumping Stations and Plants have been held entitled to the payment of bonus. The Board contends that the said finding is legally unsustainable, keeping in view the fact that it is exempt for the operation of the Act by reason of Section 32(iv) and (v)(c) of the Act.

4. The employees of the Board on the other hand challenge that part of the award by which employees other than those working at the Pumping Stations and the treatment plants, have been held disentitled to the payment of bonus. They have questioned the finding of the Tribunal holding the Board to be a local authority within the meaning of Section 32(iv) and a non-profit making institution in terms of Section 32(v)(c) of the Act.

5. By a separate application moved by the petitioner employees in W.P. No. 4550/1984 certain additional grounds were urged besides challenging the Constitutional vires of Section 32(iv). Since the vires of an Act of the Parliament was questioned, the Union of India was added as a Respondent and the Central Government Standing counsel directed to take notice. In the course of the hearing it was noticed that even though additional grounds had been urged challenging the vires of Section 32(iv) of the Act (supra) yet, there was no specific prayer made in the Writ Petition for striking down the said provision as unconstitutional. Learned counsel for parties, however, agreed that the application urging additional grounds may be treated to be part of the Writ Petition and the treated to be part of the Writ Petition and the Petition decided on merits as if a prayer for striking down the said provision was formally made in the same.

6. I have heard the learned Counsel for parties and perused the records.

7. All told three primary questions arise for Determination of this Court in these two Petitions namely :

1) Whether the Bangalore Water Supply & Sewerage Board hereinafter referred to as the Board is a "Local Authority" within the meaning of Section 32(iv) of the Payment of Bonus Act and if so whether it is exempt from the payment of Bonus under the said Act to all its employees ?

2) Whether the Board aforesaid is an institution established not for purposes of

profit within the meaning of Section 32(v)(c) of the Bonus Act and is therefore not liable to pay Bonus to its employees ? and

3) Whether the provisions of Section 32(iv) of the Act are ultra vires of Article 14 of the constitution of India ?

8. Shri Prabhakar, appearing on behalf of the Board in both the Writ Petitions urged that the Board is a local authority within the meaning of Section 32(iv) of the Act and therefore exempt from the Payment of Bonus to its employees. He contended that while the finding returned by the Tribunal holding the Board to be a local authority was perfectly justified, it committed an error in over-looking the fact that employees engaged by a local authority in any establishment even if registered as a factory would be exempt from the rigors of the Act keeping in view the provisions of Section 1(iii) of the Act. He urged that Section 1 sub-section (iii) applied the provisions of the Act to every factory except as otherwise provided in the Act and that Section 32 was a provision to the contrary which made the Act inapplicable to any establishment even if registered under the factories Act, provided the same was being run by or under the authority of a local authority. The Tribunal according to the learned counsel was in error in holding that the Pumping Stations and the treatment plant of the Board having been registered as Factories under the Factories Act, would ipso facto to governed by the Bonus Act entitling the employees working in the said Stations to payment of bonus.

9. Shri Narasimhan, learned Counsel appearing on behalf of the employees in the two Petitions did not dispute the position that if the Board was a Local Authority within the meaning of Section 32(iv) and any one of its establishments was engaged in any Industry by or under its authority then the mere registration of the Pumping Stations and the treatment plants as Factories under the Factories Act, would not by itself entitle the employees working in the said Stations to the payment of bonus. He, however, strenuously urged that the Board was not a Local Authority within the meaning of said term as appearing in Section 32(iv) and therefore the question of its employees whether working in Pumping Stations and treatment plants, or otherwise being disentitled to the Payment of Bonus did not arise.

10. The question whether the Board is a local authority within the meaning of Section 32(iv) will necessarily take us to the provisions of the Bangalore Water Supply & Sewerage Act, 1964, hereinafter referred to as the 1964 Act. In terms of Section 3 of the said Act, the Government was required to constitute a Board by the name of the "Bangalore Water Supply and Sewerage Board" consisting of not less than three but not more than 7 members appointed by the State Government. Section 9 of the 1964 Act, provides that the Board shall be a body corporate having perpetual succession and a common seal, with power subject to the provisions of this Act and the Rules made thereunder, to acquire, hold and dispose of property, both movable and immovable, and can sue or be sued in its name. Sub-section (2) of Section 9 of the Act, provides that the Board shall be

deemed to be a local authority for purposes of the said Act and the provision of the Land Acquisition Act, 1894. In terms of Section 15 of the Act, the Board is charged with the duty of providing a supply and improving the existing supply of water in the Bangalore Metropolitan Area and of making adequate provision for the sewerage and the disposal of the sewerage in the said area and for the efficient discharge of the said duty the Board has been empowered to exercise all such powers and perform all such functions as are conferred or imposed by or under the Act. The term "Metropolitan Area" within whose limits the Board is required to discharge these functions has been defined by Section 2 sub-section (1) to be the area of Bangalore District Urban, including such other areas adjacent thereto as the State Government may by notification from time to time specify. Section 16 of the Act provides for General Principles for Board's finance, whereas Section 2 vests authority in the Board to make Regulations not inconsistent with the Act for all or any of the matters set out in the said Section. A reference is greater detail to these provisions shall be made in the later part of this Judgment.

11. Now the term "Local Authority" has not been defined either by the Payment of Bonus Act or by the Bangalore Water Supply & Sewerage Act, 1964. The fact that Section 9 sub-section (2) of the 1964 Act makes the Board a local authority for purposes of the Bangalore Water Supply & Sewerage Act and the Land Acquisition Act, does not also lead us anywhere for it does not necessarily mean that the Board shall be deemed to be local authority even for the purposes of Payment of Bonus Act, merely because it is so for purposes of the Land Acquisition Act or the 1964 Act.

12. The General Clauses Act 1899 however defines a local authority as under :-

"Local Authority" shall mean a municipal committee, district board (body of port commissioners) or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

13. The term "local fund" has not been defined either by the General Clauses Act or by any other enactment.

14. A plain reading of the definition of the terms "Local Authority" would show that an Authority in order that it may be treated to be so must be in the nature or character of a Municipality, a District or Body of Port Commissioners. The expression "or other Authority" appearing after the specific terms like Municipal Committee, District Board or Body Port Commissioners, clearly suggests that the other authority must be possessing the distinctive attributes of a Municipal Committee, a District Board or Body of Port Commissioners and should either be entitled to or entrusted with the management of a Municipal or a local fund.

15. The question as to what are the essential distinctive attributes and characteristics of a local authority arose before the Supreme Court in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, In the said case Their Lordships were considering a near identical question namely whether the Delhi

Development Authority established under the Delhi Development Act, 1957, was a local authority within the meaning of Section 32(iv) of the Payment of Bonus Act. The Court upon a consideration of the definition of the term "Local Authority" as given in the General Clauses Act, identical the distinctive attributes and characteristics of a local authority. The Court ruled thus :-

"What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority. First, the authorities must have separate legal existence as Corporate bodies. They must not be mere Government agencies but must be legally independent entities. Next, they must function, in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of a area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by Statute with such Government functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc., etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

16. Applying the aforesaid test Their Lordships came to the conclusion that the Delhi Development Authority fulfilled all the tests to be treated a local authority for the purposes of Section 32(iv) of the Payment of Bonus Act.

17. Mr. Prabhakar, learned counsel appearing for the Board placed heavy reliance upon the aforesaid judgment and urged that the ratio thereof applied with full force to the present case as well. Mr. Narasimhan, on the contrary, tried to distinguish the Judgment of the Supreme Court primarily on the ground that the Delhi Development Authority had a representative character, whereas the Board in the present case does not enjoy that status. It was also urged that the Board does not have any power to tax, which according to the learned Counsel was an essential attribute of a local authority. It was further contended that the nature of the Bangalore Water Supply and Sewerage Board Fund was different from the fund which was being managed by the Delhi Development Authority, for while the Delhi Development Authority could use its fund for development or other activities the Board in the instant case can use the same only for the purposes prescribed under the Act.

18. These differences argued the learned Counsel robbed the Board of its character of being a local authority.

19. It is true that in the case of Delhi Development Authority, besides the Chairman and the Vice-Chairman, the authority was to consist of a certain number of official and non-official members. The non-official members were to include two representatives of the Municipal Corporation of Delhi to be elected by the Councillors and Aldermen of the Municipal Corporation and three representatives of the Metropolitan Council for the Union Territory of Delhi to be elected by the Members of the Metropolitan Council from among themselves based on which the Supreme Court held that there was an element of popular representation in the element of popular representation in the constitution of the Authority.

20. But in the case before me, while, there is no elected representative on the Board, yet the scheme of Section 3(iii) of the Act sufficiently provides against the Board, becoming only a Satellite of the Government. The said provision enjoins upon the Government to nominate only such person as possesses the qualifications prescribed. In terms of Section 14 of the Act, the State Government, is required to constitute a Consultative Committee consisting of the members of the board and such other members not less than 3 in number and not more than 9 as the State Government may appoint after consultation with such representatives or bodies, representative of the following interests as the State Government thinks fit that is to say the Municipal corporation of the City of Bangalore, the Bangalore City Improvement Trust Board and consumers of water. The Committee so constituted is required to advice the Board on major questions of policy and schemes and to review the programmes and the working of the Board from time to time. The Board is required to place before the consultative Committee an Annual Financial Statement before submitting any such statement to the State Government u/s 17 of the Act.

21. It is thus apparent that while the Board is nominated by the Government, its functions are closely coordinated and reviewed by the Consultative Committee which has a representative character. Consultation with the representatives of bodies like the Municipal Corporation, City Improvement Trust and the Consumers of water does give to the Consultative Committee which is in the nature of an Apex Advisory body, a representative character. It is therefore incorrect to suggest that the Board in the present case is devoid of any representative character as suggested by Mr. Narasimhan so as to make the same only a Satellite or an extended arm of the Government.

22. Equally untenable is the other submission made by Mr. Narasimhan that the absence of a power to levy a tax is destructive of the board being a local authority. It is true that power to tax may in certain cases be one of the attributes of a local authority for it is not uncommon the Municipal Committees and District Boards, have been vested with the power to levy taxes yet the requirement of a power to tax, as an essential attribute of a local authority is not

applicable in such rigorous terms. The Supreme Court while repelling a similar contention in Jain's case (Supra) held that when the power to raise funds by the method of taxation is prescribed as an attribute of a local authority, taxation has to be understood not in a fine and narrow sense so as to include only those compulsory exactions of money imposed for public purposes and requiring no justification to sustain it, but in a broad generic sense as to also include fees levied essentially for services rendered. Their Lordships held that there was no generic difference between a tax and a fee both being compulsory exactions of money by public authority, and that in deciding the question whether an Authority is local authority the Court's concern is only to find out whether the public authority is authorised by statute to make a compulsory exaction of money and not with the further question whether the money so exacted is to be utilised for specific or general purposes.

23. In the instant case Section 16 of the Bangalore Water Supply and Sewerage Act, clearly authorises the Board to levy rates, fees, rental and other charges with power to vary such rates, fees, rental and other charges from time to time in order to provide sufficient revenue for the purposes mentioned in the said Section including the coverage of operating expenses, taxes and interest payments and to provide for adequate maintenance and depreciation etc. The very fact therefore that the Board does not enjoy the power to levy a tax in the strict sense of the term, does not make any material difference for a power to levy fees, charges, rates and rentals, has been considered to be sufficient to satisfy the attribute of the local authority being able to raise a fund. It is in this connection fruitful to refer to the following observations made by the Supreme Court in R. C. Jain's case (supra) :

"In the first place when it is said that one of the attributes of a local authority is the power to raise funds by the method of taxation, taxation is to be understood not in any fine and narrow sense as to include only those compulsory exactions of money imposed for public purpose and requiring no consideration to sustain it, but in a broad generic sense as to also include fees levied essentially for services rendered. It is now well recognised that there is no generic difference between a tax and a fee; both are compulsory exactions of money by public authority."

24. The distinction sought to be made between the R. C. Jain's case and the case at hand is therefore in my opinion without any difference.

25. It was next argued by Mr. Narasimhan that the nature of the fund which Bangalore Water Supply and Sewerage Board is required to manage was different from that of the fund which the Delhi Development Authority was managing. It was contended that whereas the Delhi Development was entitled to utilise the local fund for activities other than for the Development of Delhi Area, the Bangalore Water Supply and Sewerage Board is by reason of Section 16 of the Act under a statutory obligation to utilise the fund only for purposes specified in the said section such as payment of taxes and interests, payment of loan and other borrowings and operating expenses etc.

26. I find no merit even in this submission. As already pointed out earlier in deciding the question whether an Authority is a local authority, the Courts' concern is limited to finding out whether the public authority is authorised by Statute to make a compulsory exaction of money and not with the further question whether the money so exacted is to be utilised for any specific and general purposes. The very fact that the fund which the local authority is authorised to manage in terms of the enactment under which the Authority is created can be used only for specific purposes does not in my opinion change the character of the fund. The fund even in cases where the same is utilisable only for specified purposes remains a local fund. In order that local fund should be so termed, it is unnecessary that the local authority operating the same must have the power to utilise the same for any purpose in the discretion of the local authority. The statutory control of the discretion, does not in my opinion, change the character of the fund. The submission made by Mr. Narasimhan, must therefore fail.

27. Summarising therefore the Bangalore Water Supply and Sewerage Board must be deemed to be a local authority for it satisfies most, if not all, the attributes of a local authority. The Board it is indisputable is a body corporate in view of the provisions of Section 9 of the Act. It functions in a defined area namely the Bangalore Metropolitan Area as defined u/s 2(1) including the areas adjacent thereto which the Government may by Notification specify from time to time. The scheme of the Act no doubt envisages a nominated Board, but the role assigned to the Statutory Consultative Committee is significant and supervisory in character. The Consultative Committee appointed in terms of Section 14 has a representative character no matter the representation is by indirect method namely by the involvement of Municipal Corporation of the City of Bangalore, Bangalore City Improvement Trust Board and the Consumers of Water. The board so nominated enjoys certain degree of autonomy with freedom to decide the questions of policy regarding the subject entrusted to it by the Act affecting the areas administered by it. It is charged with the discharge of governmental functions and duties such as providing essential amenities like water and sewerage facilities to the inhabitants of the area. And finally the power to levy rates, charges and fees and to manage the fund so created for the purpose mentioned u/s 169 leaves, no doubt that the Board is a Local Authority within the meaning of the definition given in the General Clauses Act as also within the meaning of Section 32(iv) of the Payment of Bonus Act.

28. Mr. Narasimhan, then argued that even if the Board is a Local Authority yet it will not be exempt from the Payment of Bonus to its employees because the said exemption is available only in a case where a local authority has an establishment which is (independent of other function of a sovereign nature) engaged in any industry. The submission was that the provisions of Section 32(iv) would not be applicable where the only activity which the local authority is engaged in is running of the industry. For the application of Section 32(iv) contended Mr. Narasimhan, it was necessary that the local authority must be

discharged functions in the nature of sovereign functions on the one hand and running an industry with the help of an establishment on the other. In any such case, submitted Mr. Narasimhan, it is the establishment of the local authority which is engaged in the running of the industry that alone will be exempt from the payment of Bonus to its employees under the Act.

In order to appreciate the merit of this submission it is necessary to reproduce Section 32(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."

29. The fact that Bangalore Water Supply and Sewerage Board is carrying on an industry within the meaning of the Industrial Disputes Act is not in dispute and rightly so because the matter stands concluded by the Judgment of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, In terms of Section 2 sub-section (22) of the Payment of Bonus Act words and expressions used therein but not defined by the said Act, shall have the meanings respectively assigned to them by the Industrial Disputes Act, 1947. The term "industry" as it appears in Section 32(iv) will therefore have to be given the same meaning as is given by the Industrial Disputes Act to the said expression. Consequently, the fact that the board is engaged in an industry or that its activities amount to carrying on of an industry within the meaning of Section 32(iv) is beyond dispute.

30. The question, however, is whether the absence of any sovereign functions in the Board's activities, would disentitle the Board from claiming the immunity available u/s 32(iv) of the Payment of Bonus Act. Mr. Narasimhan's submission that the Board could qualify for the benefit of Section 32(iv) only if besides the industry carried on by it, it was also engaged in some sovereign functions, does not impress me. There is nothing in the language employed in Section 32(iv) to suggest that a local authority which is entirely engaged in an industrial activity will not qualify for the benefit of the said provision.

31. Mr. Narasimhan, however, placed reliance upon a Judgment of the Supreme Court in Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Another, in support of his submission. In the said case an Authorised Controller was appointed to manage an industrial undertaking, the affairs whereof were not being properly handled by its Management. The question that arose was whether on account of the appointment of an Authorised Controller in terms of Section 18(9) of the Industries (Development and Regulation) Act, 1951, the employees of such an undertaking were excluded from the application of the Payment of bonus Act for the reason that they are or to have become the employees of an establishment in an industry carried on by or under the Authority of a Department of the Central Government. The Supreme Court negated the contention and held that the appointment of an Authorised Controller does not

make the establishment of the Industrial unit, an establishment under the Authority of a Department of the Central Government. Interpreting the expression "under the Authority of any Department of the Central Government", the Supreme Court observed thus :-

"The expression under the authority of any department of the Central Government would in ordinary parlance mean that the department is directly responsible for the management of the industrial undertaking. This responsibility may cover, amongst others, financial responsibility as well. Power to regulate management or control the management is entirely distinguishable from the power to run the industry under the authority of the department of the Central Government. The substitution of the management ordered under S. 18A does not tantamount to the industrial undertaking being taken over by the department of the Central Government. Nor could it be said to be run under the authority of the department of the Central Government."

32. The Court further held that the expression "carried on by or under the Authority of a Department of the Central Government" qualified the expression "Industry" and not the expression "establishment" as used in sub-section (iv) of Section 32 of the Payment of Bonus Act. The Court observed that the underlying principles behind Section 32(iv) was not to exclude the employees of some stray establishments from the operation of the Act but to exclude all employees of all establishments of any Industry which is carried on by or under the Authority of the Department of the Central Government. The true intentions behind the provisions of Section 32(iv) it was observed was to exclude employees employed in an establishment engaged in any "Industry" which is carried on by or under the authority of the Department of Central Government and since the Textile Industry with which the undertaking that had been brought under the Controller's jurisdictions was not being carried on under the authority of the Department of the Central Government, its employees could not be said to have become disentitled to the payment of Bonus. The following observations made by the Court are instructive in the matter :

"On the contrary it appears that the intention was to exclude employees employed in an establishment engaged in any industry which is carried on by under the authority of the department of the Central Government. It cannot be said that textile industry is being carried under the authority of the department of the Central Government. There may be employees in an Industrial undertaking engaged in textile industry which may have been established under the authority of the department of the Central Government. Ordinarily the Central Government would not like to treat an establishment set up by it in an industry in which there are other private sector establishment to differentiate and discriminate between employees of establishment engaged in the same industry. It, therefore, appears that the exception that is being carved out by Section 32(iv) is in respect of employees of an industrial undertaking engaged in an industry carried on by or under the authority of any department of the Central Government as a whole and

not individual establishments. All establishments in that industry which is carried on by or under the authority of the department of the Central government would be excluded from the operation of the bonus Act."

33. The view taken by the Court does not lend support to the interpretation which Mr. Narasimhan sought to place upon the provisions of Section 32(iv) of the Act for two distinct reason. In the first place the Supreme Court was not dealing with a case where a local authority was engaged in any industrial activity as is the case before me, and in the second place the view taken by the Court does suggest that in case an industry is being carried on either by the Government or a local authority itself, any such establishment which is engaged in any such industrial activity would be exempt from the application of the Bonus Act.

34. That takes me to the next submission of Mr. Prabhakar that the Board is exempt from the payment of Bonus u/s 32(v)(c) of the Payment of Bonus Act, as the same is an institution established not for purposes of profit. In support of his submission Mr. Prabhakar placed heavy reliance upon the finding returned by the Tribunal to the effect that the Board is not a profit making body. He also relied upon a judgment of the Supreme Court in *Workmen for Tirumala Tirupathi Devasthanams v. The Management and Anr.* 1980 Lab I.C. 389 and contended that the test of "Dominant Purposes" applied by the Apex Court in the said case when applied to the instant case, it was apparent that the "Dominant Purpose" behind the establishment of the Board was not to make profit.

35. Mr. Narasimhan, on the contrary, relied upon the judgment of the High Court of Maharashtra *Veej Mandal Kamgar Sangh Vs. Maharashtra State Electricity Board and others*, in *Tamil Nadu Water Supply and Drainage board Engineers Association etc. v. Tamil Nadu Water Supply and Drainage Board Engineers Association etc. Vs. State Government of T.N. and others*, and *Sabanayagam K. Vs. The Secretary to Government of Tamilnadu, Housing Department and Others*, in support of his contention that the Board should be treated to have been established for purposes of profit and was therefore not covered by the provisions of Section 32(v)(c) of the Payment of Bonus Act.

36. Even when I am inclined to agree with the submission of Mr. Prabhakar that the "Dominant Purpose" behind the establishment of the board under the provisions of the Bangalore Water Supply & Sewerage Act, 1964, was not to earn profit yet in the light of the view that I have taken on the first question and held that the Board is a "Local Authority" within the meaning of Section 32(iv). I consider it unnecessary to go into the merits of the rival submissions made before me on this point. I, therefore, leave the said question open.

37. Then comes the question of Constitutional validity of Section 32(iv) of the Payment of bonus Act. Mr. Narasimhan, learned Counsel appearing for the employees strenuously submitted that the object behind the payment of bonus was to bridge the gap between the actual and living wage paid to the employees

working in different establishments. It was contended that if that be object, the classification brought about by the Section 32(iv) of the Payment of Bonus Act, between employees employed in an industry established by or under the Authority of the Local Authority and those employed in any other establishment was unfair, irrational and discriminatory. Mr. Narasimhan, urged that there was no intelligible differentia between the employees of a "Local Authority" engaged in an industry and those engaged by any other Industrial concern, nor was there any nexus between the classification brought about by Section 32(iv) and the object sought to be achieved by the Act. The need to bridge the gap between the actual wage and the living wage was the same, contended Mr. Narasimhan whether the employee was engaged by a "Local Authority" for its industrial activity or by any other private or public sector establishment. Denial of the beneficial provisions of the Act to the employees of the "Local Authority" even when the said employees were engaged in an industrial activity was, according to Mr. Narasimhan, a violation of the Fundamental Right guaranteed under Article 14 of the Constitution. The classification according to him being unsustainable, the provisions of Section 32(iv) in so far as the same singled out the employees of a "Local Authority" deserved to be quashed.

38. Before advertng to an analysis of the provisions of the Act, it is necessary to keep in mind the principles which govern the examination of a challenge to a Legislation based on Article 14 of the Constitution. It is now well settled that what Article 14 forbids is class Legislation and not reasonable classification for purposes of Legislation. It is equally well settled that in order to pass the test of permissible classification, two conditions must be satisfied namely; 1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and 2) that the differentia must have a rational nexus to the object sought to be achieved by the Statute in question. That classifications may be founded on different basis such as geographical considerations or according to the objects or occupation or the like is also no longer res integra. The Decisions of the Apex court further establish : 1) that a law may be Constitutionally valid even when it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to other that single individual can be treated as a class by himself; 2) that there is always a presumption in favour of the Constitutionality of an enactment and the burden lies heavily upon him who attacks it to show that there has been an infraction of a Constitutional guarantees; 3) that the Legislature is always presumed to understand and correctly appreciate the needs of its people and that its laws are directed to problems made manifest by experience; 4) that its discriminations are based on adequate grounds; 5) that the Legislature is free to recognise the degree of harm and may confine its restrictions to those cases where the need is deemed to be the clearest; and 6) that in order to sustain the presumption of Constitutionality a Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume

every state of facts which can be conceived existing at the time of legislation.

39. In *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, the Supreme Court evolved the tests to be applied while examining the Constitutional validity of a law in terms of Article 14 of the Constitution, thus :-

"When a law is challenged as violative of Article 14 it is necessary in the first place to ascertain the policy underlying the statute the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (i) whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and (ii) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object."

40. What then is the object which the Payment of Bonus Act intends to achieve is the first question that would arise. The term "Bonus" has not been defined by the Payment of Bonus Act nor has the said term been defined by any other enactment. The Bonus Commission when asked to provide a definition to the concept of "bonus" also found it difficult to do so, in rigid terms. It was suggested that it was possible only to urge that once profits exceed a certain based labour should legitimately have a share in them. The commission felt that the term "Bonus" should be construed as sharing by the workers the prosperity of the concern in which they were employed. Such a sharing, it felt, had the advantage of law paid workers augmenting their earnings and thereby bridging the gap between the actual wage and the need based wage. Even the Bonus Review Committee, appointed by the Government in its Report submitted in the year 1974 expressed its reservations in accepting the theory that payment of Bonus was intended to bridge the gap between the actual wages and the living wages. The Commission concluded that the gap theory would also imply that Bonus would diminish as the living wages is approached and would cease when the living wage is reached and that an industry which pays the living wage need not pay bonus. It was pointed out that the highest bonuses are paid, under Awards and agreements, to workmen in industries where the wages are high; and since bonus is ordinarily paid at a uniform rate no distinction is made between workmen drawing a low wage and those who may be drawing what may be considered in the circumstances of a particular time and place, to be already living wage. The gap theory also implies that if an industry or concern can afford to pay the living wage, it should do so as a wage rather than as Bonus.

41. After discussing the linkage of Bonus to production and productivity, the Committee left it to the Parliament to bring a suitable legislation in this regard holding that though payment is linked to production, making the same exclusively so, or totally de-linking it from production are both to be avoided in preference to a middle course. Committee also supported the continuance of the provisions of the Act excluding the employees of the Reserve Bank from the Scope of payment of Bonus Act u/s 32(viii), but recommended the abolition of

the exemption in favour of the public sector undertakings which recommendation was accepted resulting in the omission of Section 32(x) from the Act by amending Act No. 23/1976 retrospectively with effect from 29th May, 1975.

42. In so far as the question of retaining exemption in favour of Departmentally run Government Industries and Commercial undertakings and the retention of Section 32(iv) the Committee recommended that the said exemption should continue having regard to the anomalies that may result if exemption is taken away. The Committee found that the withdrawal of exemption would give an undue advantage to such of the employees as are working in the Departmentally run Industrial and Commercial undertakings over other government employees. This was so for the reason that while fixing wages of the Government employees based on the Pay Commission recommendations various aspects, such as cost of living, living wages etc., are taken into consideration together with the fact that such Government employees are not entitled to Bonus in view of Section 32(iv) of the Act.

43. In *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, Constitutional validity of the Payment of Bonus Act, was challenged on the ground that the same was a fraud on the Constitution and a colourable exercise of legislative power. While examining the merits of the challenge the Supreme Court noticed that the Scheme of the Payment of bonus Act was four dimensional namely : 1) to impose statutory liability upon the employer of every establishment covered by the Act to pay bonus to employees in the establishment; 2) to define the principle of payment of bonus according to the prescribed Formula; 3) to provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of "set-off" and "set-on" and 4) to provide machinery for enforcement of the liability for payment of bonus. The Court held that the object of the Act was to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the capital, management and labour. While dealing with an argument that Section 10 of the Act granted an additional wage to the employee even when the establishment does not have on a year's working, adequate allocable surplus justifying payment of Bonus, the Supreme Court observed thus :

"The object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour, Parliament has provided that bonus in a given year shall not exceed 1/5th and shall not be less the 1/25th of the total earning of each individual employee, and has directed that the excess share shall be carried forward to the next year, and that the amount paid by way of minimum bonus not absorbed by the available profits shall be carried to the next year and be set off against the profit of the succeeding years. The scheme of prescribing maximum and minimum rates of bonus together with the scheme of "set off" and "set on" not only secures the right of labour to share in the prosperity of the

establishment, but also ensures a reasonable degree of uniformity."

44. The Court finally repelled the challenge to Section 10 and criticism levelled against the scheme provided by the said provision holding that the wisdom of a scheme selected by the Legislature may be open to debate or it may be demonstrated that a better scheme could have been chosen yet unless the enactment failed to satisfy the dual test of intelligible differentia for classification and a rational nexus of legislation with the object which law seeks to achieve the same will not be subjected to judicial interference under Article 14 of the Constitution. Invalidity of the Legislation it was held is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view. Equal treatment of unequal objects or persons is not liable to be struck down as discriminatory unless there is simultaneous absence of an intelligible differentia and a rational nexus with the object intended to be achieved by the law.

45. It is therefore apparent that while the term "Bonus" is not capable of any precise definition nor has any such definition been safely attempted so far, yet the object behind payment of Bonus is to share the prosperity of an establishment with the Labour who has participated in producing such prosperity and to maintain industrial peace. The submission of Mr. Narasimhan, that the entire object behind the Act was to bridge the gap between the actual wage and living wage is not supported by any judicial pronouncement or any other rational or acceptable hypothesis.

46. Having thus identified the policy and the object of the Act, the Court has to apply the dual test for examining the validity of the impugned provision namely :- 1) Whether the classification is based upon an intelligible differential between those grouped together for the grant of benefit under the Act and others taken out of the group and 2) Whether the basis of differentiation has any rational nexus or relation with the avowed policy and the object sought to be achieved by the Act.

47. A close look at the provisions of Section 32 would reveal that the classes of employees to which the Act, has been made inapplicable are clearly distinguishable from the employees employed in any other bonus paying establishment. In particular Section 32(iv) excludes the employees employed by an establishment running an industry by or under the Authority of a Department of the Central government or State Government or a Local Authority. Now these employees are doubtless a distinct class by themselves different from other employees who may be engaged in any other establishment running an industry and entitled to receive bonus. The classification of employees of a Government run establishment or those run by a Local Authority in contradistinction to other establishments to which the Act applied cannot be said to be without a rational differentia, nor can any such classification be said to be without a reasonable basis. What distinguishes an employee of State Government or the Central government Department and equally so an employee of the Local Authority from

other employees is the very nature of employment, the nature of the duties discharged by them, the statutory and other regulatory control over the terms of their employment, the method adopted for fixation and revision of their Pay Scales, the security of their employment and other safe-guards which they enjoy under the Constitution.

48. In *Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union and Another*, one of the questions that arose for consideration of the Apex Court was whether the exclusion of certain establishments from the operation of the Act was discriminatory. The Court upon a review of the Scheme and the object of the Act, came to conclusion that the exemption envisaged by Section 32 of the Act, were enacted with a deliberate object namely not to subject the exempted establishments to the burden of Bonus particularly since the establishments so exempted are carrying on their activities without any profit motive and are run primarily for better public service. It is fruitful in this connection to quote the following passage from the said judgment :-

"It appears to us that the exemption is enacted with a deliberate object, viz., not to subject establishments to the burden of bonus which are conducted without any profit motive and are run for public benefit. The exemption in Section 32(x) is, however, a limited one, for u/s 20 if a public sector establishment were in any accounting year to sell goods produced or manufactured by it in competition with an establishment in private sector and the income from such sale is not less than the 20 per cent of its gross income. It would be liable to pay bonus under the Act. Once again it is clear that in exempting public sector establishments Parliament had a definite policy in mind.

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

been exempted on the ground of (a) absence of any profit motive (b) their being of educational, charitable or public nature, and (c) their being establishments in public sector carried on in public interest. Building contractors appear to have been exempted because of their work being contract job work, the infeasibility of applying the formula evolved in the Act and the problem of employees of such contractors being more of evolving and enforcing a proper wage structure rather than of payment of bonus to them."

49. The fact that the activities of the Respondent-Board are public in nature and the service provided by it is a public utility service cannot be disputed. The term "Public Utility Service" as defined in Section 2(n) of Industrial Disputes Act includes any industry which supplies power, light or water to the public or any system of public conservancy or sanitation. The service rendered by the Board in the instant case is not only public in nature but is carried on in public interest. That being so, the exemption provided by Section 32(iv) of the Payment of Bonus Act to the Board from the payment of Bonus to its employees is a reasonable classification based on an intelligible differentia. The said classification has a reasonable nexus with the object sought to be achieved by the Act namely not to burden the establishments carrying on duties of public nature or providing service in public interest to the burden of payment of bonus. The classification made by the Act therefore satisfies the dual test namely the classification is based on an intelligible differentia and the same has a reasonable nexus to the object sought to be achieved by the Act.

50. There is yet another aspect of the matter which cannot be over-looked. Equality, it is well settled, means equality in similar circumstances between the same class of persons for same purpose and objects. The rule of equality does not operate amongst unequals. Only likes can be treated alike. Though even among likes also the Legislature or Executive may classify on the basis of the distinctions which are real. As held by their Lordships of the Supreme Court in *State of West Bengal and Another Vs. Rash Behari Sarkar and Another*, even likes can be treated differently for good and valid reasons.

51. In order therefore that the Rule of equality is attracted, it must first be demonstrated by the petitioners that they are situated similarly as others who are entitled to the benefit of the payment of Bonus in identical circumstances. For this the petitioners must provide the requisite information and particulars to show the similarity of their situation with others who have been treated differently by the Act. No such material has however been placed on record by the petitioners in the present case to show that they are similarly circumstance as employees of other establishments where bonus is being paid by the employer.

52. In *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, in an identical situation, the Supreme Court declined to examine the question of the vires of Section 32 of the Payment of bonus Act, for want of sufficient particulars enabling it to examine the said question. The Court in this connection observed thus :-

"The plea of invalidity of Ss. 32, 36 and 37 may be dealt with first. it is true that several classes of employees set out in Cls. (i) to (xi) of S. 32 are excluded from the operation of the Act. But the petitions and the affidavits in support filed in this Court are singularly lacking in particulars showing how the employees in the specified establishment or classes of establishments were similarly situate and that discrimination was practiced by excluding those specified classes of employees from the operation of the Act while making it applicable to others. Neither the employees, nor the government of India have chosen to place before us any materials on which the questions as to the vires of the provisions of S. 32 which excludes from the operation of the Act certain specified classes of employees, can be determined. There is a presumption of constitutionality of a statute when the challenge is founded on Art. 14 of the Constitution, and the onus of providing unconstitutionality of the statute lies upon the persons challenging it. Again many classes of employees are excluded by S. 32 and neither those employees nor their employers have been impleaded before us. Each class of employees specified in S. 32 requires separate treatment having regard to special circumstances and conditions governing their employment. We therefore decline to express any opinion on the plea of unconstitutionality raised before us in respect of the inapplicability of the Act to employees described in S. 32."

53. The position in the case before me is no different in so far as the absence of particulars showing the alleged discrimination between the employees of the Respondent-Board and employees engaged in other establishments receiving bonus is concerned. The presumption of Constitutionality of the statute therefore remains un-rebutted requiring no interference from this Court with the provision called in question.

54. Mr. Prabhakar, learned Counsel appearing for the Board, however, urged that there are certain distinctive features about the employees of the Respondent-Board which clearly distinguish them from employees engaged in other establishments receiving bonus. He submitted that the employees of the Board are holding pensionable jobs and are entitled to receive death-cum-retirement benefits in the same fashion as other government employees. Mr. Narasimhan, learned counsel for petitioner did not dispute this fact. It was also note disputed that while the salaries of the Government employees are fixed on the basis of the report of the Pay Commission appointed for that purpose, the salaries of the employees of the Respondent-Board are fixed on the basis of agreements between the Board and its employees in which settlements the pay scales admissible to the Government employees are given due weight and consideration. Mr. Prabhakar in fact suggested that the employees of the Board are placed in pay scales which are comparable to those that are admissible to government employees working on similar posts. Be that as it may, the fact remains that while there are no similarities pointed out by the petitioner-employees the Respondents have shown dissimilarities which by themselves how that the employees of the Board and those working in other establishments

paying Bonus cannot be treated to be belonging to the class nor can the impugned provision of Section 32(iv) be said to be discriminatory if the same treats them as two different groups identifiable differently.

55. In *Mohmedalli and Others Vs. Union of India (UOI) and Another*, Section 16 of the Employees' Provident Fund Act, 1952 was challenged on the ground that the same was discriminatory in nature inasmuch as if exempted the establishments registered under the Co-operative Societies Act and other establishments employing 50 or more persons, until the expiry of 3 years from the date on which the establishment was set-up. Repelling the challenge, the Apex Court held that the classification made by the Section 16 was based on an intelligible differentia. The Court held that the classification of new establishments was intended to save newly started establishment from the additional burden of making contribution of Provident Fund in respect of its employees.

56. In *Pathumma and Others Vs. State of Kerala and Others*, the Kerala Agriculturists Debt Relief Act was challenged inter alia on the ground that the same was violative of Article 14. It was contended that the special treatment afforded to debtors u/s 20 of the said Act, was wholly discriminatory and violative of Article 14. Rejecting the contention the Apex Court held that equality before law did not mean that the same set of law should apply to all persons under every circumstances ignoring the differences and disparities between men and things. The Court observed thus :-

"A reasonable classification is inherent in the very concept of equality, because all persons living on this earth are not alike and have different problems. Some may be wealthy; some may be poor, some may be educated; some may be uneducated; some may be highly advanced and others may be economically backward. It is for the State to make a reasonable classification which must fulfil two conditions : (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. (2) The differentia must have a reasonable nexus to the object sought to be achieved by the statute."

57. The Court then proceeded to uphold the classification made by the provisions of the Act and held that poverty and economic backwardness of the agriculturists debtors and their miserable conditions in which they live justify their being treated as a separate category or class for a differential treatment in public interest. It was also pointed out that while making a classification, the Legislature cannot be expected to provide an abstract symmetry but the classes have to be set apart according to the necessities and exigencies of the Society as directed by experience and surrounding circumstances. All that is necessary is that the classification should not be arbitrary, artificial or illusory.

58. In *State of West Bengal and Another v. Rash Behari Sarkar and Anr. (supra)* the question that fell for consideration was : Whether a classification amongst

groups performing shows for monetary gains and a similar group playing shows of similar type for cultural activities could be said to be arbitrary for purposes of granting exemption from payment of Entertainment Tax under Bengal Amusements Tax Act, 1922. The Supreme Court held that dramatic performances for monetary gains and otherwise are different and stand on different footing. The Court held that even though both the groups may be carrying out the legislative object of promoting social and educational activities and, therefore, may be treated to be likes but the distinction between the two monetary gains and otherwise is real and intelligible. The Court observed thus :-

"Dramatic performance for monetary gains and otherwise are different and stand on different footing. May be that both the groups carry out the legislative objective of promoting social and educational activities a, therefore they are likes but the distinction between the two on monetary gains and otherwise is real and intelligible. The test is not, if even, the professional group by its performance is serving social or educational purpose but if the two groups can reasonably stand on their won. If the classification is valid, then the executive action of exempting one and not the other does not violate Article 14. The basic distinction is on the nature and purpose of activities performed by the two. A commercial or profit-making venture has always been considered to be a class different than the one engaged in non-commercial activities."

59. It must therefore be taken as settled that the nature of duties whether the same are in public interest or otherwise, as also the motivation behind the performance of the duties namely whether they are for monetary gain or otherwise are important and distinctive features based on which a classification can be validly made, between two groups both of whom may be otherwise performing similar nature of functions or carrying on a similar activity. When seen in that light and background, it is apparent, that the classification of employees of a local authority engaged in an industrial activity carried on in a public interest without the dominant purpose of making monetary gain would be Constitutionally permissible. The differentia between such employees and others who are entitled to Bonus, is intelligible and reasonable, and the classification so made has a nexus with the object which the Act intends to achieve namely not burden such establishments run in public interest, with an additional liability by way of payment of Bonus. The challenge to the Constitutional validity of the provisions of Section 32(iv) must therefore fail.

60. In the result, I make the following order :-

(a) Writ Petition No. 19528/1984 filed by the Bangalore Water Supply & Sewerage Board is allowed and the award of the Industrial Tribunal dated 27-12-1983 in so far as the same holds the employees of the Board working at its Pumping Stations and the Treatments Plants entitled to payment of Bonus is hereby quashed.

(b) Writ Petitions Nos. 4550/85 & 16210/84, filed by the Workmen of the

B.W.S.S.B., claiming a right to payment of Bonus from the Board are dismissed;

(c) The Reference made to the Labour Tribunal shall stand answered in the negative and the claims of the employees rejected.

61. The parties shall however bear their own costs.