

**(1977) 08 DEL CK 0021**

**In the Delhi High Court**

Greysam and Co.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

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**Date of Decision :** 17-08-1977

**Acts Referred:**

**Citation :** (1978) 2 LLJ 95

**Hon'ble Judges :** S.S. Chadha, J

**Bench :** Single Bench

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## **Judgement**

S.S. Chadha, J.—The question raised in this writ petition is whether the so-called " Inam" under the incentive scheme introduced in pursuance of a voluntary settlement reached between the petitioner and its employees and recorded on 26th October, 1956, is a part of " basic wages" for the purpose of calculating the contributions under the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the Act).

2. The facts lie in a very narrow compass and may now be stated. In 1961, the petitioner was brought within the purview of the Act and the Scheme framed there under. Section 6 of the Act provides for the contribution of the employer and the employees and this contribution is a specified percentage of the basic wages, dearness allowance and retaining allowance for the time being payable to each of the employees. An employer to whom the Act applies is under a duty, in view of para 30 of the scheme to pay both its share and employees' share of the contribution, irrespective of whether a demand has been made on it or not and whether the employees have or have not paid their share. On 26th October, 1965, a memorandum of settlement was recorded between the petitioner and its employees. Norms of production of various units and jobs were prescribed after negotiations with the employees and it was agreed that excess production will be rewarded by payment of incentives at the determined rates. A notice was also issued on 26th October, 1965, by the petitioner informing all employees about the framing of the production incentive (Inam) scheme which came into force immediately. It appears that in 1971 the petitioner's establishment was

inspected by an Inspector of respondent No. 1 and it revealed that the petitioner had failed to remit the Provident Fund money due in accordance with law. Respondent No. 1 believed that the payment made as Inam was part of basic wages. The Regional Provident Fund Commissioner called upon the petitioner in exercise of the powers conferred u/s 7A to furnish information about the details of the amount paid to the employees as Inam. During the pendency of the proceedings before respondent No. 1, the petitioner filed a representation dated 12th February, 1973, u/s 19A of the Act. By this representation the petitioner raised the question that the amount paid by him as Inam under the incentive scheme introduced on 26th October, 1965, should not be made part of the basic wages for the purpose of calculating the contributions under the Act and asked the Central Government to express its opinion. The Central Government by its order dated 26th April, 1975, directed that the incentive Inam disbursed to the employees by the petitioner forms part of the basic wages as envisaged by Section 2(b) of the Act and the representation of the petitioner u/s 19A of the Act was rejected. On 30th of May, 1975, respondent No. 1 issued another notice u/s 7A for determination of the dues/contributions of the provident fund as well as administration charges. On 9th June, 1975, the petitioner made a written submission before respondent No. 1. On 2nd July, 1975, the petitioner filed a petition before the Central Government seeking review of the order of the Central Government dated 26th April, 1975. On 7th July, 1975, the proceedings for determination u/s 7A of the Act were concluded by respondent No. 1 and the dues were determined. By letter dated 28th July, 1975, the petitioner was communicated the dues as determined by respondent No. 1. The present petition was filed on 28th August, 1975 and is seeking a writ of certiorari quashing the order dated 28th July, 1975, and further proceedings and/or actions pursuant thereto and for a declaration that the payment of Inam under the incentive scheme by virtue of the settlement dated 26th October, 1965, does not form part of the wages as defined under the Act.

3. Before dealing with the main question that falls for decision as to whether the Inam under the incentive scheme dated 26th October, 1965, is excluded from the definition of " basic wages " as given in the Act, I may deal with the feeble points raised by the counsel for the parties,

4. Mr. N.C. Sikri, learned Counsel for the petitioner, urges that there has been an abuse of the power of respondent No. 1 inasmuch as the matter was seized of by the Central Government by way of a review petition filed by the petitioner on 2nd July, 1975, seeking reconsideration of the order dated 26th April, 1975 and for this reason respondent No. 1 should have refrained from determining the dues during the pendency of the said review petition. Reliance was placed on T.R. Raghava Iyengar and Co. Vs. The Regional Provident Fund Commissioner, , Indian Mica and Micanite Industries Ltd. Vs. Union of India(UOI) and Another, and Metal Fabricators (India) v. B.D. Gupta (1975) Lab. I.C. 1707. Section 19A of the Act envisages a direction by the Central Government when any difficulty arises in giving effect to the provisions of the Act and if any doubt arises as to

the matters referred to in that in the mind of the authority who has to deal with the matters. After the representation of the petitioner was rejected by the Central Government on 26th April, 1975, respondent No. 1 rightly did not feel any difficulty or doubt and was not bound to stay his hands till the review petition was determined by the Central Government. The authorities under the Act have a statutory duty to see that the compliance of the provisions of the Act and the scheme framed there under is made. Section 7A enjoins a duty on the Regional Provident Fund Commissioner to make determination of the dues. When the applicability of the scheme is not disputed and the only doubt existing in the mind of the petitioner has been cleared by the Central Government the Regional Provident Fund Commissioner was fully justified in proceeding to make the determination. I see no prejudice to the petitioner as ultimately the review was rejected on 23rd October, 1975. For this reason it is unnecessary for me to deal with the cited cases.

5. The next challenge is that the order dated 28th July, 1975, of respondent No. 1 determining the dues u/s 7A of the Act is non-speaking and is liable to be struck down on that short ground. Another facet of this submission is that the petitioner was not afforded a reasonable opportunity of being heard before the dues were determined by respondent No. 1. Reliance is placed on *Delhi Iron & Steel Stockists (CS) Association Private Ltd., Delhi v. Regional Provident Fund Commissioner* (1976) 50 F.J.R. 311, *Balasore Motor Association v. Regional Provident Fund Commissioner, Orissa* 1970-I L.L.J.-559 : (1969) 40 F.J.R. 595 and *Glamour v. Employees' Provident Fund Commissioner* (1974) 46 F.J.R. 238. These two submissions are based on factual fallacy. The respondents have placed on record the first notice dated 2nd August, 1971, Annexure R2, when information had been laid before the Regional Provident Fund Commissioner on the basis of which there was reason to believe that the petitioner had failed to furnish the prescribed returns and failed to remit the provident fund moneys due in accordance with the law. The petitioner was called to appear on 23rd August, 1971. On 23rd August, 1971, Mr. Puri, a representative of the petitioner, sought an adjournment which was granted. On the next date of hearing Mr. K.K. Tewari, chief accountant of the petitioner, appeared and stated about the payment made to the employees. It was stated that payments are made to employees for their work during the usual working hours, that the petitioner has laid down some specifications and quantum and that if anybody produces over and above this, he is paid at the specified rate and this they called as production bonus or incentive. The record of the proceedings produced and collectively marked as R3 shows that there have not been less than 30 hearings between 27th September, 1971 and 2nd December, 1974, in all in this matter. The record of proceedings of 9th June, 1975, shows that it was explained to Shri Tewari that the Government of India have examined the representation in detail and have pronounced their decision. Shri Tewari was called upon to produce the old records to assess the actual dues and on his request the case was adjourned to 7th July, 1975. On 7th July, 1975, Shri Tewari appeared when proceedings u/s 7A of the Act were held

for determination of the provident fund amount due. The record of these proceedings clearly show that the petitioner was given a reasonable opportunity of being heard.

6. As regards the challenge of non-speaking order, it is again contrary to the factual position. In the counter affidavit it is stated that the petitioner was fully aware of the basis of the assessment but was adopting the delaying tactics. This is not controverted in the rejoinder. The impugned letter dated 28th July, 1975, records the fact that the enquiry was held on 7th July, 1975, in the presence of the petitioner and the amount due was assessed on the basis of material produced before respondent No. 1 u/s 7A of the Act. It is then recorded that the Regional Provident Fund Commissioner by order determined dues from the petitioner as amounting to Rs. 1,85,738. The detailed order containing the reasons is dated 7th July, 1975, (Annexure R5 to the affidavit). It clearly indicates the basis of calculation on which the quantum of provident fund payable is determined. Section 6 of the Act provides for the contribution and this contribution is a specified percentage. The figures of the production incentive "Inam" paid by the petitioner from the year 1965 onwards were supplied by the petitioner and detailed in the order. The rest is only a matter of arithmetical calculation and is so tabulated in the detailed order dated 7th July, 1975. On facts, Therefore, the order of the Regional Provident Fund Commissioner, is a speaking order and for this reason I am not making any reference to the law laid down in the aforesaid three authorities.

7. Another argument raised by the counsel for the petitioner is that the petitioner cannot be made liable to pay share of the employees with retrospective effect. Reliance is placed on K.R. Subbaier Vs. The Regional Provident Fund Commissioner, . Section 6 of the Act provides that contributions shall be paid by the employer to the Fund at certain specified rates. Para 30 of the scheme provides that the employer shall in the first instance pay both contributions payable by himself and also on behalf of the members employed by him. Thus an employer to whom the Act applies owes a duty in view of para 30 of the scheme to pay both his share and the employees' share of contribution irrespective of the fact whether a demand has been made or not and whether the employees have or have not paid their shares. The consensus of judicial opinion is that the Act takes effect at once and the provisions of the Act became enforceable against the employer of an establishment with effect from the date on which the relevant clause of the scheme comes into force and it does not depend upon the discovery made by the authorities of the department and the issue of the notice calling upon the employer to make contributions according to the Act. The provisions of the Act as well as the scheme framed there under cast upon the employer an obligation to make contributions without any notice from the departmental authorities. It is the admitted case that the Act and the scheme were made applicable to the petitioner in the year, 1961 and the contributions were being made by the petitioner towards the provident fund. If the Inam was included in the wages as defined in the Act, then it was an obligation of the petitioner to

make the contributions without any notice from the department. If the petitioner has failed to deduct the share of contributions from the salary of the employees who have now left, then it is at its peril. The Madras case cited by the counsel for the petitioner is peculiar on its own facts and is clearly distinguishable. The question for consideration there was whether it was lawful on the part of the Regional Provident Fund Commissioner to call upon the petitioner there to fulfill the obligation under the Act for a period of 5 years prior to the issue of the notice. On facts it was found that no steps were taken by the statutory authorities till 1957 though the scheme came into operation on and from 1st November, 1952. The petitioner never admitted that the Act was applicable to its establishment, even after receipt of the notice. It is in these circumstances that the observations were made that the result of complying with the statement and scheme from the point of time prior to the date of demand by the authorities is a circumstance, not likely to have been contemplated by the Legislature. The scheme was applicable from the point of time when the authorities held that a particular unit is within the ambit of the Act and the scheme framed under it. In the case before me the applicability of the scheme to the petitioner is admitted from the year 1961. There is thus no force in this submission also.

8. 17th August, 1977 :The main question that falls for decision is as to whether the Inam is excluded from the definition of " basic wages " as defined in Section 2(b) of the Act. The definition may be reproduced :

"basic wages" means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) the cash value of any food concession ;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.

(iii) any presents made by the employer;

9. The term " basic wages" does not include, inter alias "bonus" The word "bonus" is used without any qualification, thus spelling out the intention of the Legislature that it covered every kind of bonus that may be payable to an employee. On facts, Therefore, it has to be determined whether the Inam that is paid under the settlement dated 26th October, 1965, is an incentive bonus so as to exclude it from the definition of the " basic wages ".

10. The preamble of the memorandum of settlement provides that workers had approached the management with the request for formulating a suitable incentive scheme of production for the factory. The plea raised was that there should be a distinction between an efficient and a slow worker and there should

be a proper scheme to award those who work zealously and conscientiously during the working hours and give more production than the normal during the prescribed working hours. It was also pointed out that this shall be beneficial even to the management inasmuch as production was likely to go up and the turnover will receive a hike, overheads remaining the same. In the interest of giving fillip to production and with a view to reward extra efficient employees with monetary benefits and in the interest of industrial peace and harmony, the terms of settlement were recorded. Under the terms of settlement the parties agreed that the normal production of a workman on various jobs and various departments shall be as indicated in each case in the statement enclosed with the settlement duly signed by the parties for identification and authentication. The management agreed under the settlement that any workman giving higher production than the norm as prescribed in the statement enclosed therewith will be rewarded at rates which shall be determined on pro-rata basis. Over production qualifying for payment of incentive was stated to be the excess over normal production during normal working hours without any overtime. The management reserved the right to amend/withdraw the scheme without any reason/notice at any time and the workmen shall have no objection to the same. The payment of the incentive under the scheme was made payable monthly, quarterly, half-yearly, even fortnightly as it may suit the convenience of the management.

11. It would thus be seen that the normal production of a workman on various jobs and various departments was specified in the memorandum of settlement. Over production qualifying for payment of incentive was excess over normal production during the normal working hours. It would be noted that the Inam is payment of incentive at pre-determined rates depending upon the higher production and is in addition to wages. In effect, it is in the nature of reward for labour not arising out of the contract of employment but depending upon the excess production over and above the norms specified. It is the admitted case of the parties that the petitioner's establishment is covered by the Minimum Wages Act and as such the statutory wages are payable to its employees. The question of payment of wages below the capacity of a worker cannot arise. If there is any such dispute relating to wages then it has necessarily to be raised as a dispute under the Industrial Disputes Act, 1947, before a competent Tribunal. The settlement for payment of inam/incentive funds was arrived at between the petitioner and its employees by way of collective bargaining probably in the interest of industrial peace and harmonious relations and to give boost to the production. It could not be a dispute relating to the wages in which the settlement was arrived at. The settlement could be arrived at during the course of conciliation proceedings under the Industrial Disputes Act and it became binding on a workman u/s 18(iii) of the said Act. u/s 18(i) of the said Act a settlement can also be arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceedings, and such a settlement is binding on the parties. Section 19(2) of the said Act makes

provision for terminating a settlement and provides that it shall continue to be binding until then. The agreement arrived at between the petitioner and its employees under the settlement dated 26th October, 1965, was binding on the parties. It was terminable as any other settlement reached under the provisions of the Industrial Disputes Act but it could not have the effect of altering the contract of employment as regards the wages. The amount as calculated in accordance with the settlement of 26th October, 1965, became payable to the employees but it could not be said to form part of the basic wages as defined under the Act as the bonus is excluded from the definition of basic wages. Any payment for production above the normal would be payable as production bonus and would be covered by the law laid down by the Supreme Court in *Bridge and Roof Co. (India) Ltd. v. Union of India* 1962-II L.L.J. 490 : (supra) (1962) 23 F.J.R. 550.

12. In *Bridge and Roof Co. (India) Ltd.* case, the company had a production bonus scheme in force which provided for payment of production bonus over and above the wages fixed by the major engineering award of 1958, published in the Calcutta Gazette dated November 5, 1958, which governs 74 major engineering concerns in that region including the company. That award is still in force and has fixed basic wages and dearness allowance on time rate basis for the entire major engineering industry. In addition to basic wages and dearness allowance payable under the award, the company has two production bonus schemes, one for the hourly rated workers and the other for the rest. The main contention of the company there was that bonus without any qualification has been excepted from the term "basic wages" in the definition in Section 2(b) of the Act. Therefore, all kinds of bonus whether it be profit bonus or production bonus or attendance bonus or festival bonus either as an implied condition of service or as a customary payment, are excluded from "basic wages". The stand of Union of India before the Supreme Court was that production bonus being in the nature of an incentive wage is included in the terms "all emoluments" in the definition of "basic wages", for production bonus is earned by an employee while on duty in accordance with the terms of the contract of employment. It was further submitted that when the word "bonus" was used in Clause (ii) of the exceptions to Section 2(b) it only referred to profit bonus, as it was well established before 1952 that the use of the word "bonus" without any qualification referred to profit bonus only in industrial adjudications. Therefore, when cl. (ii) of the exceptions to Section 2(6) excepted "bonus" without any qualification it referred only to profit bonus and not to any other kind of bonus. The Supreme Court considered the rival contentions of the parties before it and held (at pages 556-557) :

...Now the word "bonus" has been used in this clause without any qualification. Therefore, it would not be improper to infer that when the word "bonus" was used without any qualification in the clause, the Legislature had in mind every kind of bonus that may be payable to an employee. It is not disputed on behalf of the respondents that bonuses other than profit bonus were in force and well-known before the Act came to be passed in 1952. For example, the Coal Mines

Provident Fund and Bonus Scheme Act. No. 46 of 1948, provided for payment of bonus depending on attendance of employees during any period. Besides the attendance bonus, four other kinds of bonus had been evolved under industrial law even before 1952 and were in force in various concerns in various industries. There was first production bonus, which was in force in some concerns long before 1952 (see *Titaghur Paper Mills Co. Ltd. Vs. Its Workmen*, ) Then there was festival or puja bonus which was in force as an implied term of employment long before 1952 (see *Ispahani Ltd., Calcutta Vs. Ispahani Employees' Union*, . Then there was customary bonus in connection with some festival (see *The Graham Trading Co. (India) Ltd. Vs. Its Workmen*, . And lastly, there was profit bonus the principles underlying which and the determination of whose quantum were evolved by the Labour Appellate Tribunal in the *Millowner's Association v. Rashtriya Mill Mazdoor Sangh* 1950- L.L.J. 1247 : 2 F.J.R. 107. The Legislature, Therefore, could not have been unaware that these different kinds of bonus were being paid by different concerns in different industries, when it passed the Act in 1952. Therefore, unless the contention on behalf of the respondents that bonus when it was used without qualification can only mean profit bonus is sound, it must be held that when the Legislature used the term "bonus" without any qualification in Clause 1(ii) of the exceptional in Section 2(6), it must be referring to every kind of bonus which was prevalent in the industrial field before 1952.

13. The Supreme Court then considered the production bonus scheme of that company and found that the core of such a plan is that there is a base or a standard above which extra payment is earned for extra production in addition to the basic wages which is the payment for work up to the base or standard. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance. The scheme in force in the company was held as a typical scheme of production bonus of this kind with a base or standard to which basic wages as time wages are paid and, thereafter, extra payments are made for superior performance. This extra payment may be called incentive wage and is also called production bonus. In all such cases, however, the workers are not bound to produce anything beyond the base or standard that is set out. The performance may even fall below the base or standard but the minimum basic wages will have to be paid whether the base or standard is reached or not. When, however, the workers produce beyond base or standard what they earn is not basic wages but production bonus or incentive wage. It is this production bonus which was held as outside the definition of "basic wages" in Section 2(b). In *Abdul Aziz Aminudin Vs. State of Maharashtra*, , the Supreme Court again reiterated its stand and held that the portion of the payment which was made by the company for production above the "union" would be production bonus and would be excluded from the term "basic wages" as defined in 2(b).

14. In view of the law laid down by the Supreme Court in the *Bridge and Roof Co. (India) Ltd.*, case, (supra) I am of the considered opinion that the Inam under the incentive scheme in pursuance of the voluntary settlement reached



between the petitioner and its employees and recorded on 26th October, 1965, is an incentive bonus or production bonus and is excluded from the definition of basic wages u/s 2(b). The terms of settlement dated 26th October, 1965, is more or less same as regards the nature of payment and has to be held as outside the definition of Section 2(b) of the Act.

15. I may now notice a preliminary objection raised by Shri Lokur, the learned Counsel for the respondents. I had purposely deferred it. The objection is that the question whether the payments made of the employees regularly by way of Inam under the settlement relied upon by the petitioner constitute basic wages for purposes of the Act is basically a question of fact on which the appropriate authority has, after giving to the petitioner an opportunity of being heard, gave a decision u/s 19A of the Act, that on the facts and in the circumstances of the case the so-called incentive Inam formed part of the basic wages. This decision is urged as final and not open to challenge in proceedings under Article 226 of the Constitution of India. For the same reason, the decision of respondent No. 1 on facts rendered in the impugned order dated 28th July, 1975, is contended as having a final effect. It is not disputed that the proceedings u/s 19A before the Central Government are quasi-judicial proceedings. It is well-settled that no authority, much less a judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion that the quasi-judicial authority has clutched at the jurisdiction by deciding the jurisdictional fact erroneously, then the aggrieved person is entitled to the writ of certiorari prayed for by him. It is incomprehensible that respondent No. 1, a quasi-judicial authority, can erroneously decide a jurisdictional fact and, thereafter proceed to determine the contributions of the provident fund and the administrative charges as has been done by respondent No. 1.

16. The findings recorded by Central Government u/s 19A of the Act and respondent No, 1 are identical. In fact, the finding recorded by respondent No. 1 is in pursuance of the opinion expressed by the Central Government u/s 19A of the Act. I would, Therefore, deal with the findings recorded while rendering the opinion by the Central Government u/s 19A. The finding recorded is :

From the evidence adduced before me and noticed above I find that there was an attempt on the part of the petitioner-company to under-rate the average or normal output of the employees thereby enabling them to fix a lower rate of wages in an artificial manner and to give the inam to these employees separately obviously to compensate them for the low wages. Hence, the introduction of the incentive inam is a subterfuge adopted by the petitioner-company to reduce their contributions to the provident fund to a low level.

No evidence was adduced before the Central Government and noticed in the order dated 26th April, 1975, which could support the finding that the petitioner has under-rated the average or normal output of the employees. Similarly, no

evidence was adduced and noticed in the order dated 26th April, 1975, fixing a lower rate of wages in an artificial manner. The third finding that it was to give the Inam to these employees separately obviously to compensate them for the low wages is an inference drawn from the earlier two findings which is not based on any evidence adduced and noticed in the order as stated. The petitioner was given a hearing by the Central Government and during the hearing the representation dated 7th March, 1975, along with its enclosures was presented. This is Annexure P 10 B. The petitioner had submitted a statement of minimum wages paid by it as compared to the Minimum Wages Act and notifications of Delhi Administration. The Government has fixed different rates of minimum wages for different jobs and the workers have been classified into various categories depending upon the nature of their duties and wages have been laid down accordingly. The statement shows that the wages paid by the petitioner are higher than the minimum wages prescribed by the State Government. The petitioner also submitted a statement indicating the pay particulars of its employees as from 1970 and the production incentive Inam paid to the employees. The petitioner had also taken along the register of payment of wages for the period from 1970 up to date for inspection of the Central Government. The production incentive Inam is invariably less than the wages and salaries and in some months it is nil. On this material on the record, and which should have been before the Central Government, no reasonable person could have come to the conclusion that a lower rate of wages have been fixed in an artificial manner. The workers have not come forward to support this finding of artificial wages. The finding recorded by the Central Government that the fixing of low rate of wages was in an artificial manner is clearly perverse, No material is discussed in the impugned order to base its finding.

17. The finding that the petitioner has underrated the average\* of normal output of the employees is again a pure conjecture and surmise and is not supported by any evidence before the Central Government. There is no reference or discussion of any evidence but still the Central Government states about evidence adduced and noticed. No evidence which was available before the Central Government is shown at the hearing. Such a finding of fact which has been arrived at with the sole purpose of clutching the jurisdiction for inclusion of the production incentive Inam in the definition of basic wages cannot oust the jurisdiction of this Court.

18. In *Bridge and Roof Co. (India) Ltd. case*, (supra) the finding was recorded by the Central Government on a representation also u/s 19A of the Act. The Supreme Court expressed the opinion that production bonus in that case was of a type excluded from the definition of "basic wages" in Section 2(b) and, Therefore, the decision of the Central Government which was presumably u/s 19 of the Act, to remove the difficulties arising out of giving effect to the provisions of the Act, by which such a bonus has been included in the definition of "basic wages" was held as incorrect. The decision of the Central Government was set aside by the Supreme Court on a writ petition under Article 32 of the Constitution. The findings recorded by the Central Government and respondent

No. 1 are, Therefore, open to judicial review in a petition under Article 226 of the Constitution and, Therefore, I have gone into them.

19. Another argument raised by Mr. Lokur is that the petitioner did not claim the relief in the writ petition for quashing the decision of the Central Government dated 26th April, 1975. The petitioner has prayed for passing such other orders and giving directions and relief as the Court may deem just and proper in the circumstances of the case. The petitioner has specifically asked for a declaration that the payment of Inam under the incentive scheme by virtue of the settlement dated 26th October, 1965 paid by the petitioner to the employees does not attract the provisions of the Act and that the petitioner is not liable to deduct and pay any contribution including the administrative charges under the Act. In the face of this relief of declaration claimed by the petitioner the argument of Mr. Lokur is highly hypertechnical. The Court has inherent power to modify the relief and grant it to the petitioner, if it is just, fit and proper in the circumstances of the case.

20. In the result I hold that the payment of inam under the incentive scheme by virtue of the memorandum of settlement dated 26th October, 1965, is not included in the definition of " basic wages " as contained in Section 2(b) of the Act. As a consequence I quash the decision of the Central Government in the order dated 26th April, 1975, and the determination of the dues u/s 7A by respondent No. 1 in the impugned orders dated 7th July, 1975 and 28th July, 1975 and all proceedings for recovery of the dues taken pursuant thereto.

21. As the question of interpretation of the payment of Inam by virtue of memorandum of settlement dated 26th October, 1965, is involved in the present case, I would leave the parties to bear their own costs.