

(1985) 04 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 5230 of 1984

National Dairy Development Board

APPELLANT

Vs

National Dairy Development Board Employees Union,
Ahmedabad

RESPONDENT

Date of Decision : 15-04-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2
Industries (Development and Regulation) Act, 1951 — Section 18A
Payment of Bonus Act, 1965 — Section 32

Citation : (1986) 52 FLR 609 : (1985) 2 GLR 1415 : (1986) 1 LLJ 456

Hon'ble Judges : S.B. Majmudar, J;P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

Majmudar, J.—In this petition under Arts. 226 and 227 of the Constitution of India, which is, in substance, one under Art. 227 of the

Constitution, the petitioner National Dairy Development Board has sought intervention of this Court for quashing and setting aside the award. Part-

I dated 4th May, 1984 passed by the Industrial Tribunal, Ahmedabad, in Reference (I.T. No. 645 of 1980. The industrial dispute between the

petition Board and its workmen represented by the respondent Union came to be referred for adjudication of the Industrial Tribunal, Ahmedabad,

by the appropriate Government under S. 10(1)(d) of the Industrial Disputes Act, 1947. The said dispute pertained to the demand of the workmen

for payment of the bonus for the year 1979-80 at 20%. The contention of the petitioner Board was that it is not liable to pay any bonus to the

workmen and that the provisions of the Payment of Bonus Act, 1965, were not applicable to the petitioner Board in view of S. 32(iv) as well as S.

32(v)(c) of the Payment of Bonus Act, 1965. The petitioner Board, therefore,

requested the Industrial Tribunal to frame appropriate preliminary points and decide them first before going into the merits of the dispute between the parties. The request of the Board was accepted by the Industrial Tribunal. It decided the preliminary issues raised by the petitioner Board after hearing the petitioner as well as the workmen and after permitting both the sides to lead relevant evidence in support of the respective cases of the parties on these preliminary issues. The petitioner

Board raised three preliminary objections as under :

- i) that the petitioner Board was a research and education institution of National importance and not an industry within the meaning of S. 10 of the Industrial Disputes Act, 1947;
- ii) that the petitioner Board is an "industry carried on by or under the authority of any department of the Central Government" and so, it was exempt from the provisions of the Bonus Act by virtue of the provisions of S. 32(vi) of the Payment of Bonus Act, 1965;
- iii) that the petitioner Board was also exempt from the provisions of Payment of Bonus Act, 1965, in view of S. 32(v)(c).

These preliminary objections were overruled by the Industrial Tribunal and the Tribunal gave detailed reasons for overruling these preliminary

objections. This culminated into the impugned award - Part I which has been challenged before this Court. This petition earlier reached admission

hearing before P. S. Poti, C.J. (as he then was) and A. S. Qureshi, J. By their order dated 16th October 1984, this Court kept this petition

pending on the file of the Court awaiting ultimate decision of the Tribunal on merits of the controversy between the parties. It was observed that the

only question that the Industrial Tribunal will be now concerned will be the question of bonus for the year 1979-80, which, if the Industrial Tribunal

so decides, could be finally settled within two months from the date of the earlier order of this Court, viz. 16th October, 1984. Accordingly, this

petition was kept pending awaiting the finding of the Industrial Tribunal on merits. We are now told that the final decision has been reached by the

Industrial Tribunal and which, according to Mr. N. J. Mehta, awards minimum bonus for the concerned year. It is in this background that this

petition was further heard at the admission stage before us.

2. Mr. V. B. Patel, the learned counsel appearing for the petitioner, raised the

following contentions in support of the petition :

(i) that the petitioner Board is exempt from the provisions of the Payment of Bonus Act, 1965, in view of S. 32(iv);

(ii) that the petitioner Board is exempt from the provisions of the Payment of Bonus Act, 1965, also in view of S. 32(v)(c).

We may state at this stage that though various preliminary objections were raised before the Industrial Tribunal by the petitioner Board and which

have been overruled by the Industrial Tribunal as per the impugned award, Mr. Patel, highlighted the aforesaid two contentions. He fairly stated

that he did not want to challenge the decision rendered by the Tribunal on the question regarding the petitioner Board being an ""industry"" within the

meaning of the Industrial Disputes Act, 1947, Mr. Patel, the learned counsel for the petitioner, was justified in not pressing that contention in view

of the various decisions of the Supreme Court. We are only concerned with the twin contentions raised by Mr. Patel.

3. We have also heard Mr. N. J. Mehta, the learned counsel for the respondent Union, who has filed caveat in the present proceedings. Having

heard the learned counsel of both the sides, we have come to the conclusion that there is no merit in any of the two contentions canvassed by Mr.

Patel in support of the petition.

4. Before we proceed to deal with these contentions, we may mention that our intervention is invoked under Art. 227 of the Constitution. It is now

well settled that even if two views are possible on any question decided by the Tribunal below, this Court would not be entitled to interfere under

Arts. 226 - 227 of the Constitution, vide *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, . It was held in

that case :

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be

said to be an error apparent on the face of the record, where an alleged error is far from self-evident and if it can be established, it has to be

established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the

powers of the superior court to issue such a writ.

It was further held that :

... the alleged error in the judgment of the Bombay Revenue Tribunal, namely, that an order for possession should not be made unless a previous notice required by S. 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, had been given, was not an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.

In the latest decision reported in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, . Sen, J. speaking for the Supreme Court has laid down the limited contours of the jurisdiction of the Supreme Court under Constitution of India as under :

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory

jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited ""to seeing that an inferior Court or Tribunal functions within

the limits of its authority"" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory

power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the

determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

Consequently, in the light of the aforesaid decision and the limited scope of the present proceedings, we have to examine the two contentions

canvassed before us by Mr. Patel.

5. So far as the first contention of Mr. Patel is concerned, S. 32 of the Payment of Bonus Act, 1965, lays down various exceptional cases in which

the provisions of Payment of Bonus Act would not apply to the industries or the establishments covered by these exceptions. So far as the

petitioner Board is concerned, the exception engrafted in S. 32(vi) has been pressed into service in support of the contention raised by Mr. Patel.

It reads as under :

Nothing in this Act shall apply to :-

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

Government,....."".

Placing reliance on the Memorandum of Association and rules and regulations of the Board. Mr. Patel submitted that the petitioner Board, though

an autonomous body, is really working as a limb of the Central Government. Therefore, it is engaged in an "industry carried on by or under the authority of any department of the Central Government". viz. the agricultural Ministry, and therefore, it has qualified for exemption under S. 32(iv) of the Act. This objection has been considered in details by the Industrial Tribunal in paragraphs 8 to 12 of the judgment. We have carefully gone through the reasons given by the Tribunal for repelling this contention as found in these paragraphs of the judgment. We entirely agree with the reasons given by the Tribunal for overruling this objection. Findings reached by the Tribunal on this objection are well borne out on the record of the case. It is true that this petitioner Board has been constituted to cater to the diverse objectives mentioned in para 3 of the Memorandum of Association. It is also true that the activities of the Board are also being carried out subject to the directions issued by the Central Government from time to time. However, the fact remains that it is an autonomous body registered under the provisions of The Societies Registration Act, 1860, and as a charitable trust under the Bombay Public Trust Act, 1950, and it is governed by its own Memorandum of Association. It is not as if that it is a department of the Government.

6. The Tribunal in para 5 of the impugned judgment has discussed in detail the diverse commercial and industrial activities carried out by the Board throughout the country. Annual reports of the Board for last number of years clearly bring out this position. It will be profitable to extract the relevant contents of para 5 as under :

As seen from the annual reports, the major activities of the Board cover project planning, project implementation, management information and economic analysis, manpower development, research and development and procurement of equipment and supplies. Project planning includes feasibility studies and engineering planning. In the annual report for 1977-78, it has been stated at page 17, that the engineering division at the Board's Head Office is responsible for planning new dairy and cattle feed plants. During 1977-78, the Board has worked on the plans and designs of 4 feeder dairies, 5 feeder balancing dairies, 5 liquid milk plants, 11 cattle feed plants, 16 chilling centres and 2 food storage projects. The Board has created the Indian Machinery Company to strengthen its service vis-a-vis

design and manufacture of dairy equipment. An assembly shop was established at Vithal Udyognagar Industrial Estate. The shop is equipped with basic machine tools, welding equipments, etc. (See page 20 of annual report of 1977-78). During 1977-78, the Board had worked on the execution of 10 feeder balancing centres, 6 cattle feed plants, 7 liquid milk plants, 16 chilling centres, 1 slaughter house and 2 godowns and cold stores (See page 21 and 22). In June, 1976, "Shrikhand", a milk product and "Chaisathi", a tea enricher were launched under the brand name (property of the Indian Dairy Corporation) has been licensed to the Baroda Dairy for manufacture of projects under it.

....

During 1978-79 also, the Board has worked on plants and designs of several dairy plants, cattle feed plants, chilling centres, etc., details of which are given on pages 20 and 21 of the report. Details of the work done on execution of projects are given on pages 22, 23 and 24. The annual report for 1979-80 shows that action was initiated to set up a separate Sugam unit adjacent to the Baroda Dairy, to manufacture and market a wider range of higher margin and socially oriented products. This unit will be managed by the Board for a period of 8 years before it is handed over to the Baroda Dairy as a viable entity. The report for 1981-82 shows that on Dussehra Day, the Sugam Dairy launched the marketing of Gulab Jamun in Baroda (page 5 of 1982, 63 tonnes of Gulab Jamun were sold). (See page 21 of annual report for 1981-82). It is also seen that 572 tonnes of "Shrikhand" were sold in 1981-82. The Board also manages through a management committee the paper laminating plant project at Itola near Baroda (See p. 22). This plant is a highly sophisticated printing plant using the most modern equipment to provide the specially treated, leakage proof paper for packing long life milk.

....

The Board had assumed responsibility for management of the Sabarmati Ashram Gaushala in July 1973 for a period of 20 years. The Delhi Mother Dairy, Patna Dairy Project and the Calcutta Mother Dairy are managed by the Board. An oil-seeds and vegetable oil project was initiated by the Board and an oil seeds and vegetable oil wing established in 1977. It aims at restricting the oil seeds and vegetable oil sector by bringing

about changes in the production and marketing of oilseeds and vegetable oil on the lines of Operation Flood. The Board assumed interim

management of the Bhavnagar Vegetable Products (In Liquidation) by an order of the High Court of Gujarat in December, 1977 (see page 50 of

the annual report for 1978-79). The Board also organises training programmes for giving training in dairying and related fields. An amount of Rs.

12,99,922/- has been shown as training fees for 1981-82 as against Rs. 13,03,523 for 1980-81. It also handles the procurement of equipment

and supplies needed for the various projects. The accounts for 1981-82 show that service charges received by the Board during the year were Rs.

2,44,29,289/- as against Rs. 1,78,32,631/- in 1980-81. The total staff strength inclusive of professionals of the Board which was 39 in 1969 has

increased to 1189 in 1982 (See page 11 of annual report for 1981-82).

It is, therefore, obvious that the petitioner Board carries on diverse commercial and industrial activities as per its own articles and bye-laws, as a

separate juristic person.

7. A *pari materia* phrase like the phrase "under the authority of any department of the Central Government" as employed by S. 32(iv) of the

Payment of Bonus Act came to be interpreted by the Supreme Court in the case of Heavy Engineering Mazdoor Union v. State of Bihar and

others, reported in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, . In that decision, the Supreme Court was concerned with

the interpretation of the clause "industry carried on... under the authority of the Central Government" as found in S. 2(a) of the Industrial Disputes

Act, 1947. Shelat, J., speaking for the Supreme Court in the aforesaid decision made the following pertinent observation in paras 4 and 5 of the

report (at page 552) :

There being nothing in S. 2(a) to the contrary, the word "authority" must be construed according to its ordinary meaning and therefore must mean

legal power given by one person to another to do an act. A person is said to be authorised or to have an authority when he is in such a position

that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same

effect as if the person granting the authority had for himself done the act. There clearly arises in such a case the relationship of a principal and an

agent. The words "under the authority of mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master.

It has been further observed in the said decision as under at p. 553.

The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so

provides, such a corporation can easily be identified as the agent of the State. In the absence of a statutory provision, however, a commercial

corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not

be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for

information, to give directions, which are binding on the directors and to supervise over the conduct of the business of the corporation does not

render the corporation an agent of the Government.

In view of the aforesaid decision of the Supreme Court, it is obvious that before an industry can be said to have been run ""under the authority of

the Central Government or the ""department of the Central Government"", it must be shown that the said industry is run by an authority which is

acting as an agent of the Central Government or its department, as the case may be.

8. On the facts of the present case, it is impossible to hold that the petitioner Board which is an autonomous authority governed by its own bye-

laws and regulations is acting as an agent of any of the departments of the Central Government. Consequently, it must be held that the petitioner

Board is not running any industry under the authority of the department of the Central Government. It is also pertinent to note that in Heavy

Engineering Mazdoor Union's case (supra), the extent of the control exercised by the Central Government on the working of Heavy Engineering

Corporation Ltd., Ranchi, which was company incorporated under the Companies Act, 1956, was more rigorous and vigorous as compared to

the control which the Central Government, Agricultural Department, is expected to exercise over the working of the petitioner Board. In para 5 of

the report, Shelat, J. speaking for the Supreme Court observed that ""It is true that besides the Central Government having contributed the entire

share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to

appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived

from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central

Government." Despite these circumstances, it was held that Heavy Engineering Corporation Ltd., Ranchi, was not an agent of the Central

Government.

9. On the facts of the present case, looking to the memorandum of association and articles of association of the petitioner Board, it becomes at

once clear that the extent of the control exercised by the Central Government's agricultural department in the working of the petitioner Board is not

that extensive as in the case of Heavy Engineering Corporation Ltd., Ranchi. Consequently, the ratio of the decision of the Supreme Court holding

the said company not to be an agent of the Central Government and therefore not covered by the provisions of S. 2(a) of the Industrial Disputes

Act, 1947, would apply with greater vigour to the facts of the present case and, therefore, it must be held that the petitioner Board is not running

any "industry" "under the authority of", either the Central Government or any of its departments. In para. 11 of the award, the Industrial Tribunal

has rightly held that :

The constitution, powers and functions of the Board are provided in its memorandum of association and rules and regulations. The Board, as

discussed earlier, has a separate existence and it is juristic person which can sue and be sued. The Board cannot be considered as an agent or

servant of the Central Government. Further, the Board has been registered under the Bombay Public Trusts Act, 1950.

We are also in entire agreement with the reasoning of the learned Member of the Tribunal, following the ratio of the decision of Kerala High Court

in the case of the Indian Naval Canteen Board v. Industrial Tribunal, Ernakulam and another [1965 II L.L.J. 366], holding that a trust functions on

its own. It is a legal entity and there would be no direct nexus between the activity carried on by such trust and the Central Government. Such a

nexus would obviously not exist when the trust is registered as a separate entity

and the trustees have legal title to the trust properties.

10. Reliance placed by Mr. Patel, the learned counsel for the petitioner, on the ratio of the decision of the Bombay High Court in the case of

Shamsudeen Abdul Rahim and another Vs. National Dairy Development Board, Anand and others, , also is of no assistance to him. The said

decision was rendered entirely in a different context. The question before the Bombay High Court was whether the petitioner Board was an

instrumentality of "the State" within the meaning of Art. 12 of the Constitution of India. It is now well settled that for deciding whether an institution

is a limb of the State or is "other authority" governed by the provisions of Art. 12 of the Constitution of India, it is to be shown that the authority

concerned discharges functions which the State could have discharged and could include not only regal functions but even commercial functions.

The said test would naturally not apply for deciding the question as per the special language of S. 32(iv) of the Payment of Bonus Act, 1965, as to

whether the petitioner Board is carrying on an industry as an agent of the Central Government or any of its department. For deciding that question,

the ratio of the decision of the Supreme Court in Heavy Engineering Mazdoor Union's case (supra) would squarely apply, as seen above. Mr.

Patel's submission that the Board is an alter ego of the Central Government is also of no assistance as the observations made in the case of

Mellenger and another v. New Brunswick Development Corporation, reported in (1971) 2 All E.R. 593 cannot be pressed in service to buttress

the present contention on behalf of the petitioner as it stands squarely answered against the petitioner by the decision of the Supreme Court in the

case of Heavy Engineering Mazdoor Union (supra) which has interpreted an identical provision like S. 32(iv) of the Payment of Bonus Act, 1965,

as found in S. 2(a) of the Industrial Disputes Act, 1947.

11. We may also refer to the latest decision of the Supreme Court in the case of Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur

and Another, . D. A. Desai, J., speaking for the Supreme Court had an occasion to consider the scope and ambit of S. 32(iv) of the Payment of

Bonus Act, 1965. The said question arose in the context of the appointment of an authorized controller under S. 18A of the Industries

(Development and Regulation) Act, 1951, for Model Mills, Nagpur. The

management of the said Mill tried to repel the claim of the workers for bonus by placing reliance on S. 32(iv) of the Payment of Bonus Act. It was submitted that because of the appointment of authorized controller for the Mills, the establishment became one engaged in an industry carried on by or under the authority of the Department of the Central Government.

In the first instance, the High Court of Bombay accepted the contention of the management and repelled the claim of the workmen for bonus. The Supreme Court in the aforesaid case reversed the Bombay High Court decision and held that S. 32(iv) did not apply and the employees of the Mills were not excluded from the operation of the Payment of Bonus Act as the Mills company cannot be said to be an industry which is carried on by or under the authority of the Central Government. Considering the wordings of the clause ""industry carried on by or under the authority of any department of the Central Government"" as found in S. 32(iv), the following pertinent observations were made by D. A. Desai, J. speaking for the Supreme Court : (para 10 at page 512, 513)

Can it then be said that on the issue of a notified order appointed an authorized controller, the industrial undertaking is engaged in the industry carried on under the authority of the department of the Central Government. The expression "under the authority of any department of the Central Government" would in ordinary parlance mean that the department is directly responsible for the management of the industrial undertaking. This responsibility may cover, amongst others, financial responsibility as well. Power to regulate management or control the management is entirely distinguished 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. In fact, as the authorised controller enjoys all the powers of directors conferred by the relevant provisions of the Companies Act, he can exercise that power subject of course to any restriction or limitation on his power specified in the notified order or under the general supervision of the Central Government. But this power is subject to the in-built limitation that it can be exercised for regulating the

management of the industrial undertaking. Neither its identity nor its ownership is affected in any manner. This change in personnel of management of the industrial undertaking for a specified period can never make the industrial undertaking one engaged in an industry carried on under the authority of the Central Government. On a pure grammatical construction, the expression "establishment engaged in an industry carried on under the authority of the department of the Central Government" cannot take in one in respect of which the Central Government in exercise of the power conferred by IDR Act directed a change of management. In the aforesaid decision, the earlier Supreme Court judgment in the case of Heavy Engineering Mazdoor Union (supra) was also cited with approval and was followed. The aforesaid latest decision of the Supreme Court, therefore, takes a view on the interpretation of S. 32(iv) which squarely answers the first contention of Mr. Patel against the petitioner. The first contention, therefore, stands rejected.

12. So far as the next contention of Mr. Patel was concerned, his objection was that, in any case, the petitioner Board can be said to be an institution established for carrying on activities on "no profit, no loss" basis and, therefore, it would earn the exemption under S. 32(v)(c) of the Payment of Bonus Act. Even this contention cannot be sustained in view of voluminous evidence brought on the record of the case and discussed in detail by the learned Member of the Tribunal. The Tribunal has considered this contention in para 16 of the judgment. We entirely concur with the finding recorded by the Tribunal on this aspect therein. It is true that in the memorandum of association of the petitioner Board, amongst the various objects of the Board enumerated in Clause 3, thereof, at item (p), it has been provided that the Board is "to sponsor, promote, manage, set up, acquire, construct or instal any plant or works which directly or indirectly promote or advance projects of general public utility (not involving any activity for profit), relating to dairying, animal husbandry, food and agriculture, fisheries and cold storage and to make, recommend, submit and draw plans, schemes and reports, for such projects and to provide or detailed implementation and execution of such projects including dealing with surplus, if any accidentally arising from such activities...". And so far as the activities covered by this sub-clause is concerned, the Board is enjoined

to carry on these activities which should not permit any profit generating activity. However, there are various other clauses in the object Clause 3

ranging from (a) to (o) and (q) and (r) which entitle the Board to carry on various commercial activities which would naturally earn profit for the

Board. We may mention at this stage that one of these objects enumerated in Clause 3(b) permits the Board to provide for consultancy service to

any dairy. As per Clause 13 of the Memorandum of Association, the Executive Committee, amongst others, is directed to discharge various

functions mentioned in Sub-Cls. (a) to (g) of Clause 13. At Clause 13(c) found direction to the Executive Committee to charge fees for services

rendered. That would obviously include the various services which the Board is expected to render to various dairies and allied industries as

enjoined by diverse clauses from (a) to (o) and (q) and (r) mentioned in Clause 3 of the Memorandum of Association. Such activities carried on

for commercial purposes would bring profits to the Board. We may also mention Clause 28, of the Memorandum of Association which provided

that ""If on the dissolution of the Board there shall remain after the satisfaction of its debts and liabilities and property the same shall not be paid to

and distributed among the members of the Board or any of them but shall be transferred to the Government of India to be utilised by it in such

manner as it thinks fit."" Thus the Memorandum of Association itself contemplates that there is possibility of large assets emerging during the

functioning of the Board and which are contemplated to be dealt with in the eventuality of the dissolution of the Board in the manner as provided in

Clause 28 of the Memorandum of Association. Clause 5 of the Memorandum also becomes relevant for the present purpose. It reads as under :-

The income and property of the Board, howsoever derived, shall be applied towards the promotion of the objects set forth in the Memorandum

of Association, subject nevertheless in respect of the expenditure of grants made by the Government of India may lay down from time to time. No

portion of income and the property of the Board shall be paid or transferred directly or indirectly by way of dividends, bonus or otherwise,

howsoever, by way of profit or to any of them, or to any person claiming through them or any of them, provided that nothing herein contained shall

prevent the payment in good faith of remuneration to any members thereof other persons in return for any service rendered to the Board or for

travelling allowance, halting allowance and other similar charges.

Even this clause contemplates the possibility of profit called surplus emerging as a result of diverse activities of the Board. It is true that these profits

are not to be distributed amongst the members; but that injunction only would deal with the mode of distribution of profits and their utilization. That

will have nothing to do with the moot question with which we are concerned as to whether the Memorandum and Articles of Association of the

Board indicated that the Board is an institution which is established not for the purpose of profit as required by S. 32(v)(c) of the payment of

Bonus Act. On the facts of this case, it has to be held that the petitioner Board is not an institution established not for the purpose of profits. The

Tribunal has noted that the annual report of the Board produced on the record show that the excess of income over expenditure was 11,82,480/-

in 1977-78 including Rs. 1 lac transferred to general reserve; Rs. 1,81,826 in 1978-79; Rs. 8,58,357/- in 1979-80 and Rs. 16,08,530/- in 1981-

82. The general reserves as on 31st March, 1982, are Rs. 53 lacs. Even in the final award passed by the Tribunal, overruling the preliminary

objections, it has been found that sufficient profit has emerged out of the working of the Board over years. The Tribunal has also noted that the

Board is of course established for the benefit of the community at large, but its activities set out in the judgment are such that it cannot be said that

they are run not on commercial basis. Apart from grants, the Board receives income by way of technical service fees, for feasibility studies, training

fees and also royalty. The rules enable it to make investments. Under these circumstances, it must be held that there is overwhelming evidence on

record of this case to show that the petitioner Board is not one of the institutions which is established as contemplated by S. 32(v)(c) of the

Payment of Bonus Act, meaning thereby that it is not an institution established not for the purpose of profit. We entirely concur with the finding

reached by the Tribunal on this aspect. Consequently, the second contention canvassed by Mr. Patel, therefore, is rejected.

13. These were the only contentions raised by Mr. Patel and as they fail, the petition fails and is summarily rejected.

14. (Rest of the judgment is not material for the reports).