

(1991) 04 MAD CK 0049

In the Madras High Court

Case No : W.A. No's. 1205 to 1210 of 1984 and 250 of 1985

Tamil Nadu Water Supply and Drainage Board Engineers
Association etc.

APPELLANT

Vs

State Government of T.N. and others

RESPONDENT

Date of Decision : 30-04-1991

Acts Referred:

Payment of Bonus Act, 1965 — Section 10, 11, 15, 2(13), 2(14)

Citation : (1991) 2 LLJ 394 : (1993) 2 MLJ 540

Hon'ble Judges : S.T. Ramalingam, J;Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—The question herein is whether the Tamil Nadu Water Supply and Drainage Board is an institution established not for purpose of profit and thus excluded from the purview of Section 32(v)(c) of the Payment of Bonus Act, 1965.

2. The appellants herein in their respective petitions under Art. 226 of the Constitution claimed that the Act would apply to their cases. The respondents maintained that it would not apply.

Learned Single Judge has held :

"The Board is an institution established not for purpose of profit within the meaning of Section 32(v)(c) of the Bonus Act. The dominant purpose of its getting established is not profit earning. It got constituted to execute schemes for providing protected water supply and adequate drainage facilities to urban and rural areas in the State of Tamil Nadu. It is service and social welfare oriented with no dominant purposes of earning profit. In this view it can claim the exemption u/s 32(v)(c) of the Bonus Act".

3. The appellants herein are Associations of different services of the Board. They have stated that the Board is a statutory body which came into existence u/s 3 of the Tamil Nadu Water Supply and Drainage Board Act, 1970 with effect from April

14, 1971. Prior to its creation, all functions assigned to it were performed by the Public Health Engineering and Municipal Works Department of the State Government. All the assets and liabilities of the Public Health Engineering and Municipal Works Department except the assets and liabilities which the Government undertook by general or special order, vested in the Board and as one of the consequences, every person who immediately before the notified date was serving in connection with the affairs of the Department of Public Health Engineering and Municipal Works including the office of the Chief Engineer (Public Health Engineering and Municipal Works) under the Government, was as from that date deemed to have been allotted to serve in connection with the affairs of the Board and ceased to be an employee of the Government. Section 30 of the Act which contemplated such transfer however also provided as under;

"Provided that the conditions of service applicable immediately before the notified date to any person shall not be varied by the Board to his disadvantage except with the previous approval of the Government.

Provided further that nothing contained in this section shall apply to any officer or other employee who has, by notice in writing, given to the Board within sixty days next following the notified date intimated his intention of not becoming an officer or other employee of the Board".

Besides those who were serving in connection with the affairs of the Department of Public Health Engineering and Municipal Works, several other categories of the State Government employees were transferred to the Board, but in their case Section 31 of the Act would apply which contemplated,

"As soon as may be after the notified date, the Government may after consulting the Board direct by general or special order that such of the employees other than those employees referred to in Section 30 serving, immediately before the said date in connection with the affairs of the State as are specified in such order shall stand allotted to serve in connection with the affairs of the Board with effect on and from such date as may be specified in such order.

Provided that no such direction shall be issued in respect of such person without his consent for such allotment.

Provided further that the conditions of service applicable immediately before the notified date to any such person shall not be varied to his disadvantage except with the previous approval of the Government.

(b) With effect on and from the date specified in the order under clause (a) the persons specified in such order shall become employees of the Board and shall cease to be employees of the Government."

Besides the transfer of assets and liabilities, the money standing to the credit under the Provident Fund Account of any officer or servant transferred from the service of the Government to the Board's service stood transferred to and vested in the Board with effect on and from the notified date. The leave salary and

pensionary contributions in respect of the officers and servants transferred to the service of the Board in proportion to the leave at the credit of such officers and servant or in proportion to the length of their service under the Government, according to the terms and conditions as were applicable to them under the Government were also credited to the Board. Section 34 in Chapter VIII of the Act said :

"Board"s Funds :- (1) The Board shall have its own fund.

(2) The Board may accept loans, grants, sub-ventions, donations and gifts from the Central or State Government or a local authority or any individual or body or organisation whether incorporated or not for all or any of the purposes of this Act.

(3) All moneys received by or on behalf of the Board by virtue of this Act, all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other moneys accruing to the Board shall constitute the fund of the Board.

(4) All moneys and receipts specified in the "foregoing provisions and forming part of the fund of the Board shall be deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed" or in -

(a) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (Central Act II of 1934), or

(b) the State Bank of India constituted under the State Bank of India, 1955 (Central Act 23 of 1955), or

(c) any corresponding new Bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, (Central Act 5 of 1970), and the said account shall be operated upon by such officers of the Board as may be authorised by the Board and in such manner as may be prescribed.

Provided that the Board may invest any sums not required for immediate use in such securities or debentures as may be approved by the Government."

Besides what is said in Section 34, Section 35 provided for sanction of loans and grants to the Board by the State Government for the purposes of the Act and Section 36 gave power to the Board to borrow and lend subject to the provisions of the Act and the rules made thereunder and subject to such conditions as specified by the Government by a general or a special order. Under this, the Board could/can raise loans from any bank or other financing institutions or the Life Insurance Corporation or any Corporation owned or controlled by the Central or/the State Governments as well as from the public by issue of bonds, or debentures or stocks or otherwise in the form and manner approved by the Government and,

"Subject to the provisions of this Act and to such conditions and limitations as may be prescribed, the Board may out of its funds grant loans an advances on such terms and conditions as it may determine, to any local authority for the

provision, regulation or development of any scheme relating to the water supply and drainage."

The Act also contained provisions for establishment and maintenance of sinking and other funds, accounts and audit etc., as a result of the creation of the Board thus a section of the Government servants were transferred to the Board and subjected to the conditions of service of a Board established by the Act. They however found that like other establishments and corporations, who paid to their respective employees a minimum bonus each year the respondent would pay bonus to them, but they were not paid any such bonus by their employer/Board. Therefore they made representations. They have said in the affidavit :

"Right from the year 1975-76, the petitioner Association has been making representation to the 2nd Respondent demanding payment of minimum bonus to all the employees. From the year 1979, the 2nd respondent has been convening bi-monthly meetings with the representatives of the recognised unions for discussing about their demands and grievances. At all such meetings, the demand for payment of minimum bonus was discussed. The second respondent has been taking the stand it was a policy matter to be decided by the 1st respondent viz. the Government. The Petitioner Association has also sent representations to the respondents in this regard. Till date the first respondent has not replied the representations made by the Petitioner's Association."

4. The above facts are not disputed. What the respondents object is confined to the claim of the appellants that the Board is not entitled to the statutory exemption u/s 32(v)(c) of the Payment of Bonus Act. The Payment of Bonus Act has recognised that (1) every factory and (2) every other establishment in which 20 or more persons are employed on any day during an accounting year, would/ will pay bonus to persons employed therein on the basis of profits or on the basis of production or productivity. It has however a provisions in Section 32 which states -

"The Act not to apply to certain classes of employees :- Nothing in this Act shall apply to -

- (i) employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958 (44 of 1958) ;
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulations of Employment) Act, 1948 (9 of 1948) and employed by registered or listed employers;
- (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;
- (v) employees employed by -

- (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
- (b) universities and other educational institution,
- (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;
- (vi) employees employed through contractors on building operations;
- (vii) * * * *
- (viii) employees employed by the Reserve Bank of India;
- (ix) employees employed by -
 - (a) the Industrial Finance Corporation of India;
 - (b) any Financial Corporation established u/s 3, or any joint Financial Corporation established u/s 3 of the State Financial Corporations Act, 1951 (63 of 1951).
 - (c) the Deposit Insurance Corporation;
 - (d) the Agricultural Refinance Corporation;
 - (e) the Unit Trust of India;
 - (f) the Industrial Development Bank of India;"

In Section 36 the appropriate Government has been given the power to exempt any establishment or class of establishments in public interest having regard to the financial position and other relevant circumstances for a period of time and subject to such conditions as it may think fit to impose.

5. A Constitution Bench of the Supreme Court in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, considered the constitutional vires of the various provisions of the Payment of Bonus Act including Section 32 and stated the law in these words : (pp 556-558)

"It may be broadly stated that bonus, which was originally a voluntary payment, out of profits made, to workmen to keep them contented, acquired the character, under the bonus formula, of a right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act

"Available surplus" is defined in S. 2(6) as meaning the available surplus computed under S. 5. "Employee" is defined in S. 2(13) as meaning any person (other than an apprentice) employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

By S. 2(21) "salary or wage" is defined as meaning all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes 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), but does not include certain specified allowances, commission, value of amenities, etc. Section 4 provides for computation of gross profits in the manner provided by Sch. I in the case of banking company and in other cases in the manner provided by Sch. II Section 10 to 15 deal with payment of minimum and maximum bonus and the scheme for "set-on" and "set-off." Every employer is by S. 10 bound to pay to every employee in an accounting year minimum bonus which shall be 4 per cent if the salary or wage earned by the employee during the accounting year or Rs. 40/- whichever is higher, whether there are profits in the accounting year or not. In the case of employees below the age of 15, the minimum is Rs. 25. By S. 11 where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable, the employer shall be bound to pay to every employee in the accounting year bonus which shall be an amount proportionate to the salary or wage earned by the employee during the accounting year, subject to a maximum of twenty per cent of such salary or wage. Section 15 provides that if for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under S. 11, then, the excess shall, subject to a limit of 20 per cent of the total salary or wages of the employees employed in the establishment in that accounting year, be carried forward for being "set-on" in the succeeding accounting year, and so on up to and inclusive of the fourth accounting year and be utilised for the purpose of payment of bonus. By sub-sec. (2) it is provided that where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under S. 10 and there is no amount or sufficient amount carried forward and "set-on" under sub-sec. (1) capable of being utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, shall be carried forward for being "set-off" in the succeeding accounting year upto and inclusive of the fourth accounting year. By sub-sec (3) it is provided that the principle of "set-on" and "set-off" as illustrated in Sch. IV shall apply to all other cases not covered by sub-sec (1) or (2) for the purpose of Payment of Bonus Act."

After stating the Payment of Bonus Act contemplated payment of minimum bonus of 4% of the salary or wage earned by the employee during the accounting year or Rs. 40/- whichever is higher and other aspects of the law in this regard and saying that by Section 20 establishments in the public sector are in certain eventualities also made subject to the provisions of the Act, the Supreme Court took notice of Section 32 to say,

"Section 32 excludes from the operation of the Act employees of certain classes and certain industries specified therein"

Dealing with the argument that Section 10, which provides for payment of minimum bonus, Section 22 which seeks to exclude certain classes of employees from the operation of the Act, Section 33, which seeks to apply the Act to certain pending disputes regarding payment of bonus and Sub-section (2) of Section 34, which freezes the ratio at which the available surplus in any accounting year has (subject to Section 11) to be distributed if in the base year bonus has paid, are ultra vires, because they infringe Arts. 14, 19 and 31 of the Constitution and that conferment of power of exemption u/s 36 is ultra vires the Parliament in that it invests the appropriate Government with authority to exclude from the application of the Act, establishments or a class of establishments, if the Government are of the opinion having regard to the financial position and other relevant circumstances that it would not be in the public interest to apply all or any of the provisions of the Act, the Supreme Court said (pp. 559-560) :

"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 establishments or classes of establishments were similarly situate and that discrimination was practised 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 question 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 proving unconstitutionality of the statute lies upon the person 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.

By S. 36 the appropriate Government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Condition for exercise of the power is that the Government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances.

Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of S. 36. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional legislation, and is not void. Whether in a given case power has been properly exercised by the appropriate Government would have to be considered when that occasion arises.

But Section 37 which authorizes the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act, in our judgment, delegates legislative power which is not permissible. Condition of the applicability of S. 37 is the arising of the doubt or difficulty in giving effect to the provisions of the Act. By providing that the order made must not be inconsistent with the purposes of the Act, S. 37 is not saved from the vice of delegation of legislative authority. The section authorizes the Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties. If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority. Sub-section (2) of S. 37 which purports to make the order of the Central Government in such cases final accentuates the vice in sub-sec. (1), since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient of to remove the doubt or difficulty, and whether the provision enacted is not inconsistent with the purposes of the Act."

The Supreme Court determined by a majority that Section 34(2) was invalid on the ground that it infringed Art. 14 of the Constitution as well as Section 33 which infringed along with Section 34(2) Arts 19(1)(2) and 31(1) of the Constitution.

6. The interpretation by the Supreme Court of the various provisions of the Payment of Bonus Act thus had left no manner of doubt that the bonus formula is arrived at to share the surplus profit and enforceable thorough the machinery of the Industrial Disputes Act and that the Payment of Bonus Act has imposed a statutory obligation upon the employer to pay bonus to his employees. It must uniformly apply to employees other than an apprentice, employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative. Technical or clerical work for hire or reward, whether the terms of employment be express or implied. The expression "salary or wage" has been defined to mean all remuneration (other than remuneration in respect of over time work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment

including dearness allowance. Such classes of employees who are exempted, have to be identified only u/s 32 of the Act. Employees employed by the Life Insurance Corporation of India, seamen, employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, 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, employees employed by the Indian Red Cross Society, Universities and other educational institutions, employees employed by the Reserve Bank of India, employees employed by the Industrial Finance Corporation of India or any Financial Corporation established u/s 3 or any joint Financial Corporation established u/s 3A of the State Financial Corporation Act, the Deposit Insurance Corporation, the Agricultural Refinance Corporation, the Unit Trust of India, the Industrial Development Bank of India and any other financial institution other than a Banking Company being established in public sector duly notified in this behalf by the Central Government and employees employed by Inland Water Transport establishments operating on routes passing through any other country, can easily be identified and they may not be found to be eligible for any bonus under the Act. It is in respect of institutions established not for purposes of profit, however, that problems arise. The employer alone would possess evidence to show that the institution concerned had/has not been established for purposes of profit.

7. In *Workmen, T. T. Devasthanams v. Management* : (1980)ILLJ211SC , the Supreme Court has indicated how to construe Section 32(v)(c) of the Act. The Tirumala Tirupathi Devasthanam, which has very wide circle of devotees who come from all over the country, claimed that it catered to their needs and provided the amenities, one of those facilities being transport services for pilgrims to come to Tirupathi from distant places. Devasthanam employed a larger number of transport workers, who raised an industrial dispute making demand of bonus. On a reference, the Industrial Tribunal, however found that the reference was invalid. The Supreme Court said (pp. 212-213) :

"The Tirumala Tirupathi Devasthanam, a vast and unique religious organisation in the country, is certainly not founded for making profit, and attracts people who want to offer worship to Shri Venkateshwara, but then the specific question with which we are concerned is, whether the transport operation by the administration falls within the category of institution within the meaning of S. 32(5)(c). Is the Transport Department so merged in and integrated with the Devasthanam as to be incapable of independent identity ? Is the Transport Industry run by the Devasthanam sufficiently spread as to be treated as an institution in itself ? There is no doubt, as the Tribunal has rightly held, that it is an industry, but the further question arises whether it is an institution in the context and within the text of the Payment of Bonus Act. This question has not been properly appreciated by the Tribunal. Secondly, assuming that it is an institution, it does not necessarily follow that S. 32 is excluded. On the other hand, there must be proof that the Transport Department (a) is an institution : and (b) is established

not for the purpose of profit. The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made in some years are ploughed back, whatever that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not clinch the issue whether the institution has been established not for purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as a remunerative enterprise, that is decisive of the issue.

The Tribunal has to decide whether the Transport Department having regard to the features of its administration, the sources of its finance, the balance sheet that is drawn up and the disposal of the profits, can be considered to be an institution in itself, whether it has nexus with the Devasthanam, or not. The fact that it is run by the Devasthanam, does not keep it out of its being an institution. This aspect has not been considered and must be decided de novo.

Likewise, merely because it is an institution, the Transport Department does not cease to be one established "not for purposes of profit", that has got to be made out on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profits or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution. Was the institution "not one for purposes of profit", motives apart ? if it was one, definitely not for earning profit, but merely as an ancillary facility for pilgrims to reach and to return, S. 32(5) will exclude the institution. If we may tersely put it, the dominant purpose of the Transport Department will be the decisive factor."

8. In the instant case, we do not have to find out whether the Board is an institution in itself as there has been no such controversy at any time and there is no controversy before us. Learned Single Judge has held and we say so with respect rightly that it is an institution as any establishment, organisation or association instituted for the promotion of objects especially of public or general utility, religious, charitable, educational, etc. would be an institution (see K. V. Krishna Rao v. Sub Collector Ongole - 1969 I MJB 83. It is only on the second limb, whether it is an institution established not for purposes of profit, that the Learned Single Judge has held that the institution qualifies for exemption and decided against the petitioner/appellants.

9. In Maharashtra State Electricity Board Vs. M.C. Chitale and others, , a Division Bench of the Bombay High Court considered whether the Maharashtra State Electricity Board was an institution exempted u/s 32(v)(c) of the Act or not and held against the Electricity Board. The Bombay High Court said (pp. 468-469) :

"It is true that the "institution" is a word of very wide import and can include within its sweep even the Government and many statutory corporations which are in terms referred to in the exemption clause. But, in our judgment, the term

is not used in the general and wide sense. Now, it may be noted that the definition of the word "employer" under S. 2(14) who is statutorily liable to pay the bonus conceives of his being an employer of an "establishment" which carried with it a sense of being commercial undertaking. By the time the Bonus Act enacted in the 1965 enlarged concept of "industry" covered even non-commercial institutions such as hospitals, clubs and charitable institutions. The word "institution" has thus become synonymous with "establishment" and the Act uses both the words without indicating any distinction in their imports. One more factor provides the clue. Under different clauses of S. 32 Government as well as many statutory corporations of public utility, such as Life Insurance Corporation, India Red Cross Society, Universities and other Educational Institutions, Reserve Bank of India, Industrial Finance Corporation, Deposit Insurance Corporation, Agricultural Refinance Corporation, the Unit Trust of India, the Industrial Development Bank of India, etc. are exempt. They all are institutions by the same standard and measure as the petitioner is. Thus these clauses deal with different species of the genus "institution" and it is necessary to ascertain which particular category or species is intended to be brought under this particular clause. Now the word "institution" has been used not merely in isolation and immediately thereafter there is a bracketed portion giving the inclusive list such as hospitals, chambers of commerce and social welfare institutions. In the absence of any definition of the said word, the context and the collocation of the words can be the best guide to indicate its true import. *State of Assam Vs. Ranga Mahammad and Others*, . It is well-known method of interpreting a statute that when there is doubt about the meaning of a particular word, it has to be understood in the sense in which it best harmonizes with its subject-matter. If the word is not precise but is general, it has to be restricted to the fitness of the matter. In other words, to construe as particular if the intention be particular. Maxwell on the Interpretation of Statutes, (12th Edition) page 76, observed as under :

"The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonize with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject, or in the occasion on which they are used, and the object to be attained. Grammatically, words may cover a case; but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied. Keeping these canons of interpretations as well as the rule of *eiusdem generis* in view, it seems to us that particular types of institutions such as hospitals, social welfare institutions, the chambers of commerce alone are intended to be covered under this clause, and not every type of institution including the Statutory Corporation like the Board

carrying on semi-commercial activities."

The Bombay Court dealt with the second limb whether the Board was established not for the purposes of profit by looking into the scheme of the Act under which the Electricity Board was constituted and concluded that the primary and dominant purpose of providing for the constitution of such Board was obviously to serve the public interest by ensuring better amenities of life and raising the standards of life of the community as a whole and added (p. 469) -

"For this purpose under different enactments different Corporations are created having their independent identities. They are controlled and financed by the State, interest and stake being different from Corporation to Corporation. Harnessing the gifts of the nature with the aid of the machines and generate electricity on large scale, co-ordinating of different such generating units, for ensuring the supply thereof to the maximum number of people for various purposes, is all directed at implementing this dominant purpose, which by itself cannot contain any grain of profit motive. However, all such activities, even when undertaken by the State or its creatures like the autonomous Boards are required to be run on commercial basis to prevent strain on the meagre revenue and resources of the State and profit making is contemplated."

The Court thus came to the conclusion (pp. 469-470) :

"Before the constitution of the Board, such projects were worked out and operated in private sectors on commercial basis predominantly with profit motive by the licensees. The Board is constituted to do the same work to improve the quality of service at cheaper rates without any profit motive as in the case of private licensees. Working out such projects on commercial basis is however indispensable as it is necessary to provide for the required current or capital expenses and ensure the stability and the continuity of the project. This cannot be achieved without ensuring the surplus of the income over the expenses. Whatever the object, such surplus does amount to profit. The element of such profit, to a certain extent is inevitably implicit in any commercial and trading undertaking. That the scale of profit is limited to the purpose is only to work out the scheme effectively does not alter the nature of such surplus or profit. The legislative mandate of S. 59 to ensure prevention of losses, and in the different clauses of the Sixth and Seventh Schedules are consistent only with its commercial complexion and consequently to the profit motive, though on the limited scale."

The Bombay High Court disagreed with the view expressed by the Allahabad High Court in U.P. Engineer Association v. U. P. State Electricity Board 1973 II LLJ 243 in which the U.P. Electricity Board though satisfied all the Bombay Court noticed, was held by the Allahabad Court, to be an institution established not for the purpose of profit. Projects which were worked out and operated in private sector on commercial basis predominantly with profit motive by the licensees like Electricity Board were taken over by the State with the object of generating

electricity on large scale and supply thereof to the maximum number of people for various purposes without any grain of profit. Yet, since the scale of profit was limited to the purposes it could not alter the nature of such surplus or profit that the Board received in course of its business. The Bombay High Court thus noticed that the Electricity Board could not escape the liability to pay bonus to its employees. Why then projects which the State Government work out and operate as their department when transferred to a statutory establishment/institution, would not convey that they decided to transfer such projects to a statutory corporation/Board for, they did not find the projects profitable and accordingly establish the Board so that they work out such projects on commercial basis and invest such profits to further the objects of the creation of the Board ? By this alone the test indicated by the Bombay Court, would be found to have been satisfied. The Board for this reason alone cannot be said to be an institution established not for the purpose of profit.

10. In the case of Co-op. Banks and Societies Employees" Federation, Maharashtra and others Vs. A.K. Thorat, Member, Industrial Tribunal and another, , the Bombay High Court once again considered various provisions of the payment of Bonus Act including Section 32(v)(c). Speaking on the subject, the Bombay Court said in this case once again, (p. 490) :

"What is relevant is to find out as to whether it is established for profit. However, it cannot be forgotten that whether an Institution is established for profit or not, will have to be decided after taking into consideration its activities, objects as well as business carried on by it. In this context, attention of this Court was drawn to the decision of this Court in Maharashtra State Electricity Board Vs. M.C. Chitale and others, wherein the Division Bench of this Court held that the activities carried on by Maharashtra State Electricity Board, even when undertaken by the State or its creatures like the autonomous Boards are required to be run on commercial basis to prevent strain on the meagre revenue and resources of the State and profit making is contemplated. As already observed by us, if various provisions of the bye-laws of the Respondent-Society are read with Sections 65 and 66 of the Co-operative Societies Act, then profit-making motive is inherent in the very establishment of the Credit Society. This is reflected in the business carried out by it as well as its balance-sheet. In bye-laws a specific provision is made for the payment of bonus under the Payment of Bonus Act."

This Judgment of the Bombay High Court was challenged before the Supreme Court, but in Civil Appeal No. 4042/87 dated March 31, 1989, the Supreme Court dismissed the appeal (see Jackson Co-operative Credit Society Limited Vs. Co-operative Banks and Societies Employees" Federation and Others, .

11. This Court in the case of Tamil Nadu State Housing Board Vs. K. Sabanayagam and Govt. of Tamil Nadu, has held that the Housing Board is not an institution established not for purposes of profit. However, in the case of The Workmen Of Central, etc. (CIPET) v. The Management of (CIPET) (1989 W.L.R.

Vol. VI-266), a Bench of this Court has held on facts that the Housing Board's case (*supra*) was distinguishable on facts and CIPET like TWAD Board was an establishment not for the purposes of profit. For this conclusion, it has made a reference to the impugned judgment in W.P. No. 7406 of 1983.

12. We have no manner of doubt that the respondent Board has been established to serve the public interest by ensuring better amenities of life and raising the standard of life of the community as a whole. Learned single Judge has referred to the functions of the Board and its powers and rightly held that the purpose behind the functions of the Board is to provide protected drinking water supply and drainage facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its own method of recovery of the cost of the schemes, making investment and constituting its funds by "all monies received by and on behalf of the Board ..., all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other money accruing to the Board and all monies and receipts", deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and loss in another year. Thus, in its commercial activities of a sort, it has got a capital structure, profit and liabilities and a labour force to care for. We see reason to hold in accordance with the rule indicated by the Supreme Court in the case of *Workmen T. T. Devasthanams v. Management* that the Board is an institution designed for profit in the limited sense that when the Government's department found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meagre revenue and other resources of the State.

13. Applying the test as above, we have no hesitation in holding that the Learned Single Judge has fallen in error in holding that the respondent/Board is an institution established not for purposes of profit. Employees of the Board qualifying for bonus under the Act, in our opinion, are entitled to minimum amount of bonus and/or such amount computed in accordance with law upon the surplus in the accounting year.

14. In the result, the appeals are allowed. The impugned judgment and order are set aside W.P. Nos. 7405, 7416, 7511, 7575, 7891, 8355 and 9999 of 1983 are allowed. The respondents are directed to pay the employees of the second respondent bonus in accordance with law. No costs.