

(1997) 09 KAR CK 0072

In the Karnataka High Court

Case No : Writ Appeal No's. 2097 to 2099, 2107, 2194 and 2220 of 1994

Workmen, Bangalore Water Supply and Sewerage Board

APPELLANT

Vs

Bangalore Water Supply and Sewerage Board and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 20, 21, 22

Payment of Bonus Act, 1965 — Section 24, 24 A, 32 (iv), 32 (v) (c)

Citation : (1999) 4 KarLJ 574

Hon'ble Judges : R.P Sethi, C.J.;S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri M.C. Narasimhan, Sri K. Ramadasan and Sri H. Neelakanta Rao, for the Appellant; Sri B.C. Prabhakar, Sri J.N. Rajanna Setty, Central Government Standing Counsel and Sri A.V. Srinivasa Reddy, A.G.A., for the Respondent

Judgement

R.P. Sethi, C.J.—Under the industrial jurisprudence, bonus connotes claim of the workmen due to them beyond strict wages. Any extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due to the recipient is a bonus. It is also termed as wage incentives given to the labourer by the establishment for achieving higher productivity. The object of grant of bonus on the one hand is to increase earnings of the workers and on the other to improve the efficiency in the output in an industrial establishment. The Payment of Bonus Act (hereinafter called the "Act") was enacted to provide for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. In the statement of objects and reasons to Act No. 21 of 1965, it was stated:

"A Tripartite Commission was set up by the Government of India by their Resolution No. WB-20(9) of 1961, dated 6th December, 1961, to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's Report containing their recommendations was

received by the Government on 24th January, 1964. In their Resolution No. WB-20(3) of 1964, dated the 2nd September, 1964, the Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein. With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May, 1965. The object of the Bill is to replace the said Ordinance".

2. Before the enactment of the Act the Supreme Court in *M/s. Titaghur Paper Mills Company Limited v Their Workmen* case recognised the payment of production bonus holding it to be dependant upon production in addition to wages. It held:

"The extra payment depends not on extra profits but on extra production. The extra payment calculated on the basis of extra production is in a case like the present where the payment is made after the annual production is known, in the nature of emoluments paid at the end of the year. Therefore, generally speaking, payment of production bonus is nothing more nor less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance".

3. In *Mumbai Kamgar Sabha, Bombay v M/s. Abdulbhai Faizullabhai and Others*, the Apex Court held that the Act was enacted on the subject of the profit based bonus. Statutory bonus was termed as profit bonus. Dealing with the concept of bonus and its development under the Industrial Law, the Court held:

"Bonus has varying conceptual contents in different branches of law and life. We are here concerned with its range of meanings in Industrial Law but, as expatiated earlier, there is enough legal room for plural patterns of bonus, going by lexicographic or judicial learning. It implies no disrespect to legal dictionaries if we say that precedents notwithstanding, the critical word "bonus" is so multiform that the judges have further to refine it and contextually define it. Humpty Dumpty's famous words in *Through the Looking Glass* "When I use a word.....it means just what I choose it to mean.....neither more nor less" is an exaggerated cynicism. We have to bring in some legal philosophy into this linguistic problem as it incidentally involves doctrinal issues where the Constitution is not altogether non-aligned. Statutory interpretation, in the creative Indian context, may look for light to the lodestar of Part IV of the Constitution e.g., Article 39(a) and (c) and Article 43. Where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference".

"In *M/s. Jalan Trading Company Private Limited v Mill Mazdoor Sabha*, Shah, J. (as he then was) gave a synopsis of the development of the branch of Industrial Law relating to bonus from the days of the First World War to the Report of the Bonus Commission culminating in the Bonus Act, 1965. The story of "war bonus", the Full Bench formula and this Court's view that "bonus is not a

gratuitous payment made by the employer to his workmen, nor a deferred wage, and that where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus may be legitimately made by the workmen" are set out in the decision. The Full Bench formula was based on profits and the terms of reference to the Commission put profit in the forefront as the foundation of the scheme -- "to define the concept of bonus, to consider in relation to industrial employments the question of payment of bonus based on profits and to recommend principles for computation of such bonus and methods of payment...." A glance at the various chapters of the Report brings home the point that bonus based on profits in its central theme. The conclusions and recommendations revolve round the concept of profit bonus. Little argument is needed to hold that the bonus formula suggested by the Commission was profit-oriented. Indeed, that was its only concern. The Act, substantially modelled on these proposals, has adopted a blue print essentially worked out on profit. The presiding idea being a simplified version of bonus linked to profits over a period, shedding the complex calculations in the Full Bench Formula, the statute did not cover other independent species like customary or contractual bonus which had become an economic reality and received judicial recognition. There were marginal references to and accommodation of other brands of bonus but they were for better effectuating the spirit and substance of profit-based bonus".

4. The concept of the bonus, the object sought to be achieved by its grant and the circumstances warranting the enactment of the Act clearly and unambiguously show that it is a welfare legislation. The payment of bonus cannot be equated with the grant of bounty or a charity. Such a right is proved have been acquired by the industrial workers after a prolonged struggle and legal battles. The Act is intended to achieve the socialistic goal as enshrined in the preamble of the Constitution. Such welfare measures incorporated under the Act cannot be permitted to be frustrated by adopting a hypertechnical approach. Liberal construction and interpretation beneficial to the workmen for whose benefit the Act has been legislated are required to be kept in mind. The Supreme Court in *Hindustan Steel Works Construction Limited v State of Kerala and Others*, held that, Welfare Acts which are enacted to protect the interests of the workers should not be allowed to be frustrated by putting interpretations which may result in frustration of the object sought to be achieved by the Act.

5. Keeping in view what has been stated hereinabove the legality or otherwise of the judgment of the learned Single Judge impugned is required to be determined. While disposing of the petitions filed both by the Management and the Workmen, the learned Single Judge set aside the award of the Industrial Tribunal dated 27-12-1983 holding that employees of the Bangalore Water Supply Sewerage Board (hereinafter referred to as the "Board") excepting those engaged at its 4 pumping stations and two treatment plants, were not justified in demanding the bonus. The Tribunal had held that as the pumping stations and treatment plants had been registered under the Factories Act, the employees

working at the said Stations and Plants were entitled to bonus under the Act, but as the remaining employees of the Board were employed in non-profit making organisation they were not entitled to the grant of bonus under the Act. While setting-aside the award of the Labour Court, the learned Single Judge held that the employees of the Board were not entitled to the grant of bonus in view of the provisions of Section 32(iv) of the Act which excluded the employees employed by the establishment running an industry owned by a Local Authority. On appreciation of the facts and various provisions of law, the learned Judge concluded that the Board was an establishment run by a local authority.

6. The admitted facts are that upon a joint request made by the Board and its workmen, the State Government vide its reference No. SWL 579 LLD 70, dated 16th August, 1979, referred the following points of disputes to the Tribunal:

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

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

The Tribunal recorded the evidence led by both the parties and passed its award on 27-12-1983 as noted hereinabove. Against the award, Board filed Writ Petition No. 19528 of 1984 and the employees filed Writ Petition No. 4550 of 1984 and W.P. No. 16210 of 1984. The Board contended that the award was not sustainable in view of the provisions of Section 32(iv) and (v)(c) of the Act. The employees challenged that part of the award which deprived the section of the workmen from the grant of bonus as noted earlier. By means of an application moved by the employees in W.P. No. 4550 of 1985 some additional grounds were alleged challenging the constitutional validity of Section 32(iv) of the Act. On the basis of the arguments addressed before him, the learned Single Judge formulated the following questions of law requiring his determination:

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

(2) Whether the Board aforesaid is an institution established not for purposes of profit within the meaning of Section 32(v)(c) of the Bonus Act and is therefore not liable to pay Bonus to its employees? and

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

7. While deciding Question No. 1 it was held that the Board was a local authority within the meaning of Article 32(iv). In view of this finding the learned Judge did not consider it necessary to go into the merits of the rival submissions of the parties with respect to the applicability of the provisions of Section 32(v)(c) of the Act. He dealt with the constitutional validity of Section 32(iv) of the Act and upon analysis of various pronouncements held that the said provision was not

discriminatory and violative of the fundamental rights suffering from the vice of unconstitutionally.

8. The learned Counsel for the appellants has not challenged the constitutional validity of Section 32(iv) of the Act before us. He has restricted his arguments regarding the applicability or otherwise of the provisions of Section 32(iv) or (v) (c) of the Act.

9. The provisions of the Act are not applicable to the 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. Section 32 of the Act is not applicable to the employees employed by institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purposes of profit (Section 32(v)). It is conceded before us that the Board is not a department of the Central Government or of the State Government. The rival contentions are with respect to the Board being an establishment under a local authority or otherwise for the purposes of Section 32(iv). It has also to be ascertained as to whether the employees of the Board are the employees of an institution referred to in clause (v)(c) of Section 32 or local authority or not.

10. Local Authority has not been defined under the Act. u/s 3(31) of the General Clauses Act, it has been defined to mean:

"Local authority" shall mean a municipal committee, District Board, Body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund".

"Local fund" is not defined under any statute. The ordinary meaning of the word "fund" may mean actual cash resources of a particular kind. It connotes actual payment, by taking money out of the drawer or drawing a cheque on the bank. A sum of money on which some enterprise is founded or expense supported, a supply or source of money, a store laid-up, money available to an organisation for a project etc. "Local" means pertaining to position in space or belonging to a place, confined to a place. "Local fund" would therefore mean the actual cash resources or the payments by way of taking the money out of the drawer pertaining to a specified position or belonging to a place which is inhabited by public and localised to the area. Tax has been interpreted to mean compulsory acquisition of property by the State for the purposes of providing protection, security and other amenities for the vital interests of the Society. "Local fund" as referred to in Section 3(31) of the General Clauses Act would amount to a tax, fee and cess but would not cover the charges paid for the service rendered.

11. In *Union of India and Others v R.C. Jain and Others*, it was held that an authority, in order to be a "local authority", must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port

Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. It should have separate legal existence as a corporate body which should not be a merely Government agency but must be legally independent entity. It must function in a defined area and be elected by the inhabitants of the area wholly or partly, either directly or indirectly. It must enjoy some degree of autonomy with freedom to decide the questions of policy effecting the area administered by it. It must be entrusted by the statute with such Governmental functions and duties as are usually entrusted to municipal bodies. It may be entrusted with the performance of civic duties and functions which would otherwise be Government duties and functions and it should have power to raise funds for the furtherance of its activities and the fulfilment of the projects by levying taxes, rates, charges or fees, which may be in addition to moneys provided by Government or obtained by borrowing or otherwise. The control and the management of the fund must vest in the authority itself. Under the peculiar facts of the case the Delhi Development Authority as constituted under Delhi Development Act was held to be local authority. To come to the conclusion that the said authority was local authority the Court found:

"We see that the Delhi Development Authority is constituted for the specific purpose of "the development of Delhi according to plan". Planned development of towns is a governmental function which is traditionally entrusted by the various Municipal Acts in different States to municipal bodies. With growing specialisation, along with the growth of titanic metropolitan complexes, legislatures have felt the need for the creation of separate town planning or development authorities for individual cities. The Delhi Development Authority is one such. It is thus an authority to which is entrusted by statute a Governmental function ordinarily entrusted to municipal bodies. An important feature of the entrustment of Governmental function is the power given to the authority to make regulations (which are required to be laid before Parliament). The power to make regulation is analogous to the power usually given to municipalities to frame bye-laws.

The activities of the authority are limited to the local area of the Union Territory of Delhi. The High Court appears to have assumed that the Delhi Development Authority has extra-territorial powers extending to peripheral areas in the adjoining States. There is no basis in the statute for the assumption made by the High Court.

There is then an element of popular representation in the constitution of the authority, Representatives of the inhabitants of the locality, three elected from among the members of the Delhi Municipal Corporation and two elected from among the members of the Delhi Metropolitan Council, figure among its members".

It may be noticed that in the present case there is no provision of popular representation in the constitution of the Board. The lack of representation of the

inhabitants takes away the characteristic of the Board of being a democratic institution. In *Municipal Corporation of Delhi v Birla Cotton Spinning and Weaving Mills, Delhi and Another*, local bodies were held to be subordinate branches of Government activity which functioned for public purposes and take away a part of the Government affairs in local areas. They were termed to be political subdivisions and agencies which exercise a part of State functions. Power of taxation was considered a necessary adjunct to their other powers.

12. In *Municipal Corporation, Jabalpur v Krishi Upaj Mandi Samiti and Another*, the Apex Court referred to Section 2(20) of the Madhya Pradesh General Clauses Act and held, "Local Authority" to mean a Municipal Corporation, Municipality, Local Board, Janapad Sabha, Village Panchayat or other authority legally entitled to, or entrusted by the Government with the control of management of a municipal or local fund". In *Surya Kant Roy v Imamul Hak Khan*, the Apex Court dealt with the Bihar and Orissa Mining Settlement Act, 1920, and on finding that the Board called the Mines Board of Health had constituted and on being satisfied that the Board was a Body Corporate having perpetual succession and common seal, consisting of not less than seven and not more than eleven members of whom not less than two and not more than four were elected by owners of mines, three non-officials selected by the State Government and two or more members but not exceeding four nominated by the State Government was a local authority" because it operated the local funds which consisted of sum chargeable by the Board under the Act from land owners besides the sums allotted to Board by State Revenue, sums borrowed by the Board under the Local Authorities Loans Act, and grants received from local authorities, associations and private persons, etc. The Board had powers of appointing Health Officers as well as Sanitary Inspectors. It had the power to impose taxes like latrine tax and also make yearly assessment:--

It held, The above provisions are enough to establish that the Board is a "local authority" within the meaning of that expression as defined in clause (31) of Section 3 of the General Clauses Act".

13. A Constitutional Bench of the Supreme Court in *Valjibhai Muljibhai Soneji and Another v State of Bombay and Others*, had held:

"The expression "Local Authority" is not defined in the Land Acquisition Act but is defined in Section 3(31) of General Clauses Act, 1897, as follows:

"local authority" shall mean a municipal committee, district board, Body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:"

The definition given in the General Clauses Act, 1897, govern all Central Acts and Regulations made after the commencement of the Act. No doubt, this Act was enacted later in point of time than the Land Acquisition Act; but this Act was a consolidating and amending Act and a definition given therein of the expression "local authority" is the same as that contained in the earlier Acts of 1868 and

1887. The definition given in Section 3(31) will therefore, hold good for construing the expression "Local Authority" occurring in the Land Acquisition Act. We have already quoted the definition".

14. On the basis of various judgments of the Apex Court referred to hereinabove it can be said that following are some of the attributes of the "Local Authority":

- (i) The authority must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners possessing distinctive attributes and characteristics of such committee, Board or Body of Port Commissioner;
- (ii) Such authority be legally entitled to or entrusted with the control and management of a municipal or local fund and the control and management of fund must vest in it;
- (iii) It must have separate legal existence as a body corporate;
- (iv) It must not be a mere governmental agency but must be legally independent entity;
- (v) It must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area;
- (vi) It must enjoy a certain degree of autonomy with freedom to decide for themselves question of policy effecting the area administered by it;
- (vii) It must be entrusted by the statute with such governmental functions and duties as are usually entrusted to municipal bodies;
- (viii) It must have power to raise funds for furtherance of its activities and fulfilment of the projects by levying taxes, rates, charges or fees.

The existence of many and not any of the above distinctive attributes would be necessary before declaring an authority to be a local authority.

15. Let us now examine as to whether the respondent-Board possesses any, few or many attributes, noted hereinabove, to qualify being called as "local authority".

Reg. Condition (i).--The authority must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners possessing distinctive attributes and characteristics of such committee, Board or Body of Port Commissioner:

In order to attract the applicability of condition (i), the Municipal Committees, Board or Body of Port Commissioners should be such as are constituted under the specified Acts for the purpose of managing the affairs of such Municipality, District Board or the Port. The conferment of the powers on the Municipal Committee, District Board or Body of Port Commissioners, is the attribute of democratic process of local administration or local government. Such Committees, Boards or authorities are conferred with various powers for achieving the objectives set forth in the Acts under which such Committees or

Boards are constituted. They have the authority to possess the property and raise the funds by imposing taxes, rates, fines, fees, penalties, etc. They have independent powers of exercise of the discretion with respect to the affairs of the Municipality or the Corporation. They are conferred with the power to effect recovery of their claims. Powers for maintenance of streets, regulating the buildings, prescribing control over drainage, water works etc., for prevention of nuisance, for promotion of public health, safety and convenience, taking safeguards to prevent dangerous possession and similar powers are conferred upon such Municipalities and Corporations. No citizen or inhabitant of the area has any option in the matter of the obligations and duties conferred under the Acts by which such Committees, Corporations and Boards are constituted. The affairs of the Municipalities and Corporations are generally managed by the representatives of the area elected in the manner prescribed under the Act. Regulation of water supply and sewerage is itself under the control and powers of Municipality or the Corporation. The respondent-Board which is constituted under the Bangalore Water Supply and Sewerage Act, 1964 (hereinafter referred to as "State Act") is not of the nature and character as a Municipal Committee, District Board or Body of Port Commissioners possessing the requisite distinctive characteristics. The State Act has been enacted to make provision for water supply, sewerage and sewage disposal in Bangalore Metropolitan Area and for matters connected therewith. Such a Board is constituted by the State Government u/s 3 of the Act and is required to consist of not less than three and not more than seven persons appointed by the State Government. Of such seven members: (1) one shall be a person who has experience of, and has shown capacity in commercial matters and administration; (2) one shall be a person with wide experience of civil engineering works preferably in the field of public health engineering with reference to water supply, sewerage and sewage disposal and industrial wastes, and (3) one shall be a person who has experience of accounting and financial matters in a public utility undertaking. One of the members possessing any of the qualifications as noted hereinabove is to be appointed as Chairman of the Board. The Chairman and the other members of the Board are to hold the office for such period as may be prescribed by the rules made by the Government under the Act. On and from the date of coming into force of the provisions of Chapter IV of the Act, all public reservoirs, tanks, cisterns, fountains, wells, pumps, pipes, taps, conduits and other works connected with the supply of water to the Bangalore Metropolitan Area have vested in the Board and are subject to its control. Members of the Board can be removed by the State Government under the circumstances specified u/s 6 of the Act. The State Government has the power to declare void any transactions in the manner as prescribed u/s 7. The Board is charged with the general duty of providing supply of water and improving the existing supply of water in the Bangalore Metropolitan Area and to make adequate provisions for the sewerage and disposal of sewage in the Bangalore Metropolitan Area. It is the duty of the Board to take steps from time to time for:

- (a) ascertaining the sufficiency and wholesomeness of water supplies within the Bangalore Metropolitan Area;
- (b) preparing and carrying out schemes for the supply of wholesome water for domestic purposes within the Bangalore Metropolitan Area;
- (c) preparing and carrying out schemes for the proper sewerage of, and the disposal of the sewage of, the Bangalore Metropolitan Area.

The Board is required to submit to the State Government annual financial statement which is required to be laid on the table of both the houses of State Legislature. Restrictions on unbudgeted expenditure have been imposed on the Board. The State Government has the power to make subventions to the Board for the purposes of the Act on such terms and conditions as the State Government may determine. It has the power to advance loans to the Board. The Board has the power to borrow any sum required for the purposes of the Act, and the State Government has the discretion to guarantee the loans of the Board. The Board is vested with the power of maintaining and dealing with the sewers and sewage disposal and is required to be guided by the State Government in the discharge of its functions. On an analysis of the provisions of the State Act in comparison with the powers and functions of the Municipal Committee, Boards, Municipal Corporations or authorities of the Port Commissioners, it can be said that the Board is of not that nature and character as envisaged under condition (i) above.

16. Re. Condition (ii).--Such authority be legally entitled to or entrusted with the control and management of a municipal or local fund and the control and management of fund must vest in it.

In the preceding paras of this judgment, it has been noticed that local fund" is not defined in any statute. It would, under the circumstances, amount to a tax, fee and cess but would not comprise of the charges paid for the services rendered by the authority. The rates, fees, rentals and other charges received by the Board to cover operating expenses, taxes and interests, to meet repayment of loans and other borrowings or to provide for other purposes beneficial to the promotion of water supply and disposal of sewage in the Corporation cannot be equated with the levy of tax. Though there is no generic difference between a tax and a fee, yet it has to be kept in mind that whereas the tax is imposed for public purposes, the fee levied essentially for the services rendered. The Supreme Court in *Hingir-Rampur Coal Company Limited and Others v State of Orissa and Others*, dealt with the distinction between the cess levied for specified services and tax recovered by the public authority and held:

"The first question which falls for consideration is whether the levy imposed by the impugned Act amounts to a fee relatable to Entry 23 read with Entry 66 in List II. Before we deal with this question it is necessary to consider the difference between the concept of tax and that of a fee. The neat and terse definition of tax which has been given by Latham, C.J., in *Mathews v Chicory Marketing Board* 60

CLR 263 , is often cited as a classic on this subject. "A tax", said Latham, C.J. is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered".

In bringing out the essential features of a tax this definition also assists in distinguishing a tax from a fee. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power Courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case. The distinction between a tax and a fee is, however, important, and it is recognised by the Constitution. Several entries in the three lists empower the appropriate legislatures to levy taxes but apart from the power to levy taxes thus conferred each list specifically refers to the power to levy fees in respect of any of the matters covered in the said list excluding of course the fees taken in any Court.

The question about the distinction between a tax and a fee has been considered by this Court in three decisions in 1954. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, ,

the vires of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951), came to be examined. Amongst the sections challenged was Section 76(1). Under this section every religious institution had to pay to the Government annual contribution not exceeding 5 per cent of its income for the services rendered to it by the said Government; and the argument was that the contribution thus exacted was not a fee but a tax and as such outside the competence of the State Legislature. In dealing with this argument Mukherjee, J., as he then was, cited the definition of tax given by Latham, C.J., in the case of Matthews 60 CLR 263 and has elaborately considered the distinction between a tax and a fee. The learned judge examined the scheme of the Act and observed that "the material fact which negatives the theory of fees in the present case is that the money raised by the levy of the contribution is not earmarked or specified for defraying the expense that the Government has to incur in performing the services. All the collections go to the consolidated fund of the State and all the expenses have to be met not out of those collections but out of the general revenue by a proper method of appropriation as is done in the case of other Government expenses". The learned judge no doubt added that the said circumstance was not conclusive and pointed out that in fact there was a total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution. That is why Section 76(1) was struck down as ultra vires.

".....It is true that when the legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy".

In that case the validity of the Orissa Mining Areas Development Fund Act was challenged on the ground that the cess levied under the Act was not a fee but in reality and in substance a levy in the nature of a duty of excise on the coal produced by the petitioner which was stated to be beyond the legislative competence of the State Legislature. Alternatively, it was submitted that even if the levy imposed by the impugned Act was fee relatable to Entry Nos. 23 and 66 in List II of the Seventh Schedule, the same was ultra vires in view of Entry No. 54 in List I read with Central Act LIII of 1948. The said levy was challenged on the ground of being violative of Entry 62 in List I read with Central Act LXV of 1951. The prayer was made for issuance of directions to the respondents

prohibiting them from enforcing any of the provisions of the impugned Act against the petitioner. The plea of the company was resisted on the ground that the levy imposed by the Act was a fee relatable to Entries 23 and 66 in List II and its validity is not affected either by Entry 54 read with Act LIII of 1948 or by Entry 52 read with Act LXV of 1951. In the alternative it was contended that if the said levy was held to be a tax and not a fee it would be a tax relatable to Entry 50 in List II for which the State Legislature had the competence. In that context the Court held that there was an element of quid pro quo in the Scheme, the cess collected was constituted into a specific fund and it was not allowed to become a part of the consolidated fund and its application was regulated by the statute for specified purposes. There was no definite co-relation between the impost and the purposes of the Act which was to render service to the notified area. Those features of the Act impressed upon the levy the character of a fee as distinct from a tax. The writ petition of the company was ultimately dismissed.

17. In the present case also the rates, fees, rentals and other charges recovered by the Board under Chapter III of the Act cannot be equated with the collection of taxes and be termed as a "local fund". The amounts referred to in Section 16 of the Act are recoverable only in lieu of the services rendered and an inhabitant who is not desirous of receiving any service under the Act is not obliged to pay the rates, fees and rentals to the Board. No such option is available in the matter of tax or cess. The main attribute entrusted with the control and management of the municipal or local fund is non-existent in the present case. Relying upon the observations of the Supreme Court in R.C. Jain's case, *supra*, the learned Single Judge interpreted Section 16 of the Act to hold that the power vested in the Board was essentially a power to levy tax. He held:

".....The very fact therefore that the Board does not enjoy the power to levy a tax in the strict sense of the term; does not make any material difference, for a power to levy fees, charges, rates and rentals, has been considered to be sufficient to satisfy the attribute of the local authority being able to raise a fund..".

We do not agree with such findings arrived at by the learned Single Judge in view of the settled position of law regarding the distinction between the levy of tax and the rates, fees and rentals recovered for the services rendered. In case of tax or cess recoverable from the inhabitants of the area for the services rendered in general, no inhabitant has any option but is obliged to pay for such public services rendered which is not the case regarding the collection of rates, fees, rentals and other charges by the Board u/s 16 of the Act. Without providing the services, the Board has no authority to levy any tax and the citizen has an option either to accept the services or to decline it. The essential attribute of the authority to collect and control the municipal or local fund is lacking in the case of the Board which renders it to be not a local authority. The whole of the judgment of the learned Single Judge which is based upon the assumption of the Board being a local authority on the ground of having been entrusted with the

control and management of the local fund cannot, therefore, be sustained.

18. Re. Condition (iii).--It must have separate legal existence as a body Corporate.

It is true that the Board is a body corporate having a perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and can sue and be sued in the said name (Section 9). It has been termed to be a local authority for the limited purpose of the Land Acquisition Act, 1894. The very fact that the Board is a body corporate having perpetual succession would not, however, make it a local authority unless some other attribute is also found to be in existence.

19. Re. Condition (iv).--It must not be a mere governmental agency but must be legally independent entity;

A perusal of various provisions of the Act clearly and unambiguously show that the Board is a mere Governmental Agency and not an independent legal entity. The members of the Board and its Chairman is appointed by the State Government u/s 3 of the Act. The term of office and other conditions are regulated by the rules framed by the Government. A member of the Board can hold a share or interest in any firm or company provided if the Board enters into, or is about to enter into any contract or agreement with any such firm or company in which a member holds any share or interest, he shall be obliged to disclose the fact of such disclosure is required to be recorded in the minutes of the Board and communicated to the State Government and the State Government may thereupon give such direction as it may deem proper. u/s 6 of the Act, the State Government has power to suspend from the office for such period as it thinks fit or remove from office any member of the Board who is found to be incurring a disqualification as specified in the said Section. The State Government has the power to suspend any member pending an inquiry against him. If the Board fails to carry-out its functions, or refuses or fails to follow the directions issued by the State Government u/s 89, the State Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places. u/s 7 of the Act, the State Government has the power to declare void any transaction in connection with which a member is removed under clause (e) of subsection (1) of Section 6 of the Act. In case of temporary absence of the Chairman or the members, the State Government has the right to appoint another person to officiate for him and carry-out his functions under the Act or the Rules and Regulations made thereunder (Section 8). The Secretary, the Chief Engineer, the Sanitary Engineer, Water Supply Engineer, and other officers can be appointed by the Board only after consultation with the State Government. u/s 14 of the Act the State Government is authorised to constitute a Consultative Committee consisting of members of the Board and such persons as the State Government may appoint after consultation with the representatives or bodies, representatives of the Municipal Corporation of the City of Bangalore, the Bangalore City Improvement Trust

Board and consumers of water. The Board is obliged to place before the Consultation Committee the annual financial statement before submitting such statement to the State Government. The financial statement is required to be submitted to the State Government in the prescribed form as is amended by Section 17. The State Government with the approval of the State Legislature has the authority to make subventions to the Board for the purposes of the Act on such terms and conditions as the State Government may determine. u/s 20, the State Government can advance loans to the Board on such terms and conditions, as the State Government may determine. u/s 21 the Board can borrow any sum required for the purposes of the Act only with the previous sanction of the State Government. u/s 22, the State Government has the discretion to guarantee in such manner as it thinks fit the payment of the principal and interest of any loan proposed to be raised by the Board or of either the principal or the interest. u/s 24-B the Board is obliged to pay interest in respect of assets of the Government which vest in it. The accounts of the Board which require to be audited by such Auditors as may be appointed by the Government. The Board has the authority to make regulations regarding water supply but only with the previous approval of the State Government (Section 61). The Board can make regulations regarding sewerage with the previous approval of the State Government. The Board is under an obligation to submit to the State Government an annual report on such matters as may be prescribed by rules and such report is required to be published in the Official Gazette. The Board is further obliged to submit its reports to Government regarding its activities during the financial year. The State Government has the power to frame rules for the purposes of giving effect to the provisions of the Act as provided u/s 87 of the Act. Regulations u/s 88 can be made by the Board only with the previous approval of the State Government. u/s 89, the Board is under an obligation to discharge its functions as per directions of the State Government issued on question of the policies. In view of the circumscribed powers of the Board it cannot be said that it is an independent entity. All actions of the Board are eclipsed by governmental supervision and control making it only a governmental agency. On this test also, the Board cannot be termed to be local authority:

20. Re. Condition (v).--It must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area:

It is true that the Board functions in the defined Bangalore Metropolitan Area but it is not true it is wholly or partly, directly or indirectly elected by the inhabitants of the area. In *Municipal Corporation of Delhi's*, case, *supra*, it was held:

"Local bodies are subordinate branches of Government activity. They are democratic institutions managed by the representatives of the people- They function for public purposes and take away a part of the Government affairs in local areas. They are political sub-divisions and agencies which exercise a part of State functions. As they are intended to carry on local self-government the power of taxation is a necessary adjunct to their other powers".

Similarly, in R.C. Jain's case, *supra*, the Delhi Development Authority was held to be a local authority as the Court amongst other things found that:

"There is then an element of popular representation in the constitution of the Authority. Representatives of the inhabitants of the locality, three elected from among the members of the Delhi Municipal Corporation and two elected from among the members of the Delhi Metropolitan Council, figure among its members".

No such element of popular representation is provided for the Board under the Act. All the members of the Board are the nominated members of the Government and are not elected wholly or partly, directly or indirectly. The learned Counsel appearing for the Board has, however, submitted that as u/s 14 a representation to the Municipal Corporation and Bangalore City Improvement Trust Board is given in the Consultative Committee, the Board shall be deemed to be representative of the local area. The argument has no substance inasmuch as, firstly because the Board and the Consultative Committee have distinct functions to perform and the Consultative Committee is not the substitute of the Board and secondly, even in the Consultative Committee the representation is not given by election of the representatives directly or indirectly. The Government after consultation with the representative bodies has the power to appoint 3 members who are not required to be necessarily members of the Corporation or the Board. Appointment of members after consultation with the representatives or bodies representative cannot be termed to be appointed by election. On the touchstone of the various judgments of the Apex Court was noted hereinabove it is evident that no member of the Board is appointed by election or represents the interests of the inhabitants of the area.

21. Re. Condition (vi).--It must enjoy a certain degree of autonomy with freedom to decide for themselves question of policy affecting the area administered by it:

A reference to various provisions of the Act as noted hereinabove clearly and unambiguously show that the Board does not enjoy any autonomy or permitted to decide about the questions of policy affecting the area where it operates. In R.C. Jain's case, *supra*, the Apex Court referred to various provisions of the Delhi Development Authority's Act and after noticing that (a) it had the power to acquire, hold and dispose of the land and other property, (b) to carry-out building, engineering, mining and other operations, (c) to execute works in connection with supply of water and electricity, (d) having authority to carry-out civic survey and prepare a master plan to define the various zones to which Delhi may be divided for the purposes of development and indicate the manner in which land in each zone proposed was to be used, (e) take steps for the preparation of zonal development plans by providing what a zonal development may contain and specify, (f) submit all the plans to the Central Government by the authority for approval and to take steps for development of the area prohibiting that without the prior approval or sanction of its authority no changes could be made by the authority to prescribe the procedure for fee required to

accompany applications to obtain permissions and carry-out development plans; and considering all such other similar and additional powers vesting in the authority concluded that the Delhi Development Authority was a local authority within the meaning of Section 31(3) of the General Clauses Act. As noted hereinabove no such power vests in the Board which could be made a basis to attribute it to be a local authority.

22. Re. Condition (vii).--It must be entrusted by the statute with such governmental functions and duties as are usually entrusted to municipal bodies:

As noted herein earlier Board has not been entrusted with any governmental functions and duties which are usually entrusted to the municipal bodies. Various provisions of the Act applicable in the case indicate that it has been entrusted with a specified task of water supply, sewerage and sewage disposal in the Bangalore Metropolitan Area. Even if it is presumed that such a power is the delegation of the governmental functions, it would not be sufficient to hold that the Board was a local authority.

23. Re. Condition (viii).--It must have power to raise funds for furtherance of its activities and fulfilment of the projects by levying taxes, rates, charges, or fees.

While dealing with the attribute (ii) it has been noticed that the Board has no power of levying taxes, rates, charges or fees. It has been authorised only to charge for the services rendered, option being given to the consumer of service.

24. An analysis of various circumstances as noted hereinabove clearly demonstrate that the Board does not possess even few, much less many of the distinct attributes necessary for being declared as local authority. The learned Single Judge was therefore not justified in holding that the Board being local authority was exempt from the Payment of the Bonus Act.

25. To the conclusions arrived at by us we find support from various judgments of the High Courts and the Apex Court. In *Hutti Gold Mines Kamgar Sangh v Government of India and Others*, the Andhra Pradesh High Court dealing with the object of the Act and relying upon the *Associated Cement Companies v Their Workmen* and *M/s. Jalan Trading Company's case*, supra, held that the object of the Act was to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour. In *Hindustan Antibiotics Limited v The Workmen*, it had been held:

"The object of the industrial law is two-fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour. By this process, it is hoped that the standard of life of labour can be progressively raised from the stage of minimum wage, passing through need

found wage, fair wage, to living wage".

26. In *K. Sabanayagam v Secretary to Government of Tamil Nadu, Housing Department and Others*, the Tamil Nadu Housing Board was held liable to pay the bonus to its workmen and not exempted from its liability under the Act.

27. The Gujarat High Court in *National Dairy Development Board v National Dairy Development Board Employees' Union, Ahmedabad* held:

"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 u/s 32(iv) of the Act. This objection has been considered in detail 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":

28. Similarly in *Tamil Nadu Water Supply and Drainage Board Engineers' Association v State Government of Tamil Nadu and Another*, it was held that the Tamil Nadu Water Supply and Drainage Board was established to serve the public interest by ensuring better amenities of life and raising the standard of life of the community as a whole. The functions of the Board and its powers clearly show that it was to provide protected drinking water supply and drainage facilities. The Board was proved to have acquired its own assets and liabilities. It was found to be carrying on commercial activities of a sort, for which it had got a capital structure, profit and liabilities and labour force to care for. The Board was held to be 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. The employees of the Board were held entitled to payment of bonus under the Act. The facts in the present case are identical as were considered by the Madras High Court in the aforesaid case.

29. To the same effect is judgment of the Supreme Court in Hindustan Steel Works Construction Limited's case, *supra*.

30. The learned Counsel appearing for the Board has submitted that even if the Board is held not to be a local authority yet its employees are not entitled to the payment of bonus in view of clause (v) of Section 32 of the Act which provides amongst other things that employees employed by institutions established not for the purpose of profit, would not be entitled to the payment of bonus as the Act has not been applied to them. Sub-clause (v) of Section 32 provides:

"Section 32: Act not to apply to certain classes of employees-

(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 institutions;

(c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;"

The learned Counsel submits that the case of the employees of the Board is covered vide sub-clause (c) of clause (v) of Section 32 of the Act. The argument though attractive on the face of it yet cannot be accepted when analysed critically. The institutions referred to in sub-clause (c) of clause (v) are institutions like hospitals, chambers of commerce and social welfare institutions and the like. To cover case under the aforesaid clause the institutions are required to be of like nature and character as mentioned therein. The words institutions established not for the purposes of profit have to be read *ejusdem generis* to the "institutions including hospitals, chambers of commerce and social welfare institutions". In support of his contention the learned Counsel for the Board relied upon a judgment of the Supreme Court in *Workmen of Tirumala Tirupathi Devasthanams v The Management and Another*. In reply the learned Counsel for the workmen referred to and relied upon the judgments of the High Court of Bombay in *Maharashtra Veej Mandal Kamgar Sangh v Maharashtra State Electricity Board and Others*, and *Tamil Nadu Water Supply and Drainage Board Engineers' Association's case, supra* and *Sabanayagam's case, supra*. The learned Judge, however, did not decide the question of the applicability of the provisions of Section 32(v)(c) of the Act as he held:

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

31. After critically examining the judgments relied upon by the learned Counsel for the parties we find ourselves in agreement with the views expressed by the Bombay High Court in Maharashtra Veej Mandal Kamgar Sangh's case, *supra*, and Madras High Court in cases of Tamil Nadu Water Supply and Drainage Board Engineer's Association, *supra* and K. Sabanayagam, *supra*. In Maharashtra State Electricity Board v M.C. Chitale and Others, the scope of Section 32(v)(c) of the Act was considered and it was held:

"Having given our anxious thought to this question, we are unable to agree with the view taken and we say this with utmost respect. 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" u/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 year 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 Section 32, Government as well as many statutory corporations of public utility, such as Life Insurance Corporation, Indian 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 v Ranga Muhammad*. It is well known method of interpreting a statute that where there is a 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, observes 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 gender 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 interpretation as well as the rule of ejusdem generis in view it seems to us that particular type 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" ".

Relying upon the aforesaid judgment the Madras High Court in K. Sabanayagam's case, supra, held that the Housing Board was not an establishment in public sector u/s 20 of the Payment of Bonus Act and not exempted u/s 32(v)(c) of the Bonus Act.

32. In Tamil Nadu Water Supply and Drainage Board Engineers' Association's case, supra, the Madras High Court considered Tirupathi Tirumala Devasthanams case, supra, Maharashtra Veej Mandal Kamgar Sangh's case, supra and Uttar Pradesh Engineers' Association v Uttar Pradesh State Electricity Board, and concluded.

"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, supra, 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 transform 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".

33. An analysis of the provisions of the State Act would indicate that the Board cannot be termed to be an institution established not for the purposes of profit. The Board, as noted earlier, is carrying on the commercial activities for which it has the power to demand and collect the service charges by way of levy of rates, fees, rentals and other charges. It has funds to its credit which are utilised amongst other things for future adequate maintenance of water supply and sewerage. u/s 24(A) the Board has authority to create a reserve for improvement works and u/s 24 the Board can create a depreciation reserve. Chapter-III of the State Act specifically and clearly deals with the Boards' Finances, Accounts and Audits and shows that it carries on the commercial activity with respect to the work entrusted to it. In this view of the matter the Board cannot be termed to be an institution established not for the purposes of the profit within the meaning of Section 32(v)(c) of the Act.

34. There is, therefore, no substance in the submission of the learned Counsel for the Board, which could be made a basis to deprive the workmen of the Board the benefits of the social welfare legislation in the form of Payment of Bonus under the Act.

35. The Industrial Tribunal, however, made a distinction between the employees of the Board and held that the workmen of the Board employed in 4 pumping stations and 2 treatment plants were only entitled to the payment of bonus. Other employees were deprived of the benefit of the Act. To come to such conclusion the Tribunal referred to Section 1(3) of the Act and found that except the employees of 4 pumping stations and 2 treatment plants, the other employees were not employed in any factory or establishment and thus not entitled to the payment of Bonus under the Central Act. Sub-section (3) of Section 1 of the Act makes it applicable to every factory and however, other establishment in which 20 or more persons are employed on any day during an accounting year. Besides 4 pumping stations and 2 treatment plants which have been declared to be factory under the Factories Act, the other employees of the Board-establishment are admittedly more than 20 to whom the Act has been made applicable. The Board is an employer vis-a-vis its workmen in terms of Section 2(14) of the Act. The Board cannot deny its character of being an establishment within the meaning of Section 1(3)(b) of the Act. The Industrial Tribunal was therefore not justified in holding that the employees of the Board other than employed in the 4 pumping stations and 2 treatment plants were not justified in demanding bonus from the Board. The distinction made by the Board is illusory, imaginary and not warranted under the provisions of the Act. The Act is applicable to both establishments as well as to the factories.

36. Under the circumstances the writ appeals filed by the workmen are allowed and the order of learned Single Judge impugned therein is set aside. The award

of the Industrial Tribunal, Bangalore, to the extent it deprives the workmen of the Board excepting those employed in 4 pumping stations and 2 treatment plants is also set aside. All the workmen employed by the Board are held entitled to claim bonus from the respondent-Board. Rule issued is made absolute. The reference made to the Industrial Tribunal shall be deemed to have been decided in favour of the workmen. The workmen are also entitled to payment of costs assessed at Rs. 5,000/-.