

12.14½ hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

SEVENTIETH REPORT

Shri S. V. Krishnamoorthy Rao (Shimoga): Sir, I beg to present the Seventieth Report of the Committee on Private Members' Bills and Resolutions.

12.14½ hrs.

PAYMENT OF BONUS BILL—contd.  
Clause 20 —contd.

Mr. Speaker: The House will now take up further clause-by-clause

consideration of the Payment of Bonus Bill. There is an amendment moved by Shri Indrajit Gupta to clause 20 which I am now putting to the vote of the House. The question is:

Page 12,—

for clause 20, substitute—

"20. The provisions of this Act shall be applicable to all establishments and factories in public sector and all employees of the public sector shall be entitled to bonus under the provisions of this Act." (24).

The Lok Sabha divided:

[Division No. 20

AYES

12.23 hrs]

Alvarez, Shri  
Aney, Dr. M.S.  
Bade, Shri  
Banerjee, Shri S.M.  
Barua, Shri Hem  
Bheel, Shri P.H.  
Buta Singh, Shri  
Dandekar, Shri N.  
Deo, Shri P.K.  
Dwivedy, Shri Surendranath  
Gulshan, Shri  
Gupta, Shri Indrajit  
Gupta, Shri Kaashi Ram  
Joshi, Shrimati Subhadra

Kachhavaiya, Shri Hukam Chand  
Kamath, Shri Hari Vishnu  
Kandappan, Shri S.  
Kapoor Singh, Shri  
Krishnapal Singh, Shri  
Lahri Singh, Shri  
Lakhan Das, Shri  
Mahananda, Shri  
Masani, Shri M.R.  
Mukerjee, Shri H.N.  
Murmu, Shri Sarkar  
Nath Pal, Shri  
Nesamony, Shri  
Pandey, Shri Sarjoo

Ranga, Shri  
Sen, Dr. Ranen  
Seshiyam, Shri  
Shastry, Shri Prakash Vir  
Siddhanti, Shri Jagdev Singh  
Sinha, Shri J.B.  
Srinani, Shri  
Tan Singh, Shri  
Verma, Shri S.L.  
Vimala Devi, Shrimati  
Vishram Prasad, Shri  
Warior, Shri  
Yadav, Shri Ram Sewak  
Yalnik, Shri

NOES

Abdul Rashid, Bakshi  
Abdul Wahid, Shri T.  
Achal Singh, Shri  
Alagesan, Shri  
Alva, Shri A.S.  
Alva, Shri Joachim  
Azad, Shri Bhagwat Jha  
Babunath Singh, Shri  
Bai Krishna Singh, Shri  
Berman, Shri P.C.  
Berupal, Shri P.L.  
Bessa, Shri  
Bhagat, Shri B.R.  
Bhagwati Shri  
Bhatkar, Shri  
Bisat, Shri J.B.S.  
Boroah, Shri P.C.  
Braham Prakash, Shri  
Brajeshwar Prasad, Shri  
Brij Basi Lal, Shri  
Chakraverty, Shri P.R.  
Chandak, Shri

Chandrabhan Singh, Shri  
Chandraekhar, Shrimati  
Chaturvedi, Shri S.N.  
Chaudhury, Shri Chandramani Lal  
Chaudhuri, Shrimati Kamala  
Chavda, Shrimati Joraben  
Chuni Lal, Shri  
Dafle, Shri  
Daljit Singh, Shri  
Das, Dr. M.M.  
Das, Shri B.K.  
Das, Shri N.T.  
Das, Shri Sudhanow  
Dessai, Shri Morarji  
Deshmukh, Shri B.D.  
Deshmukh, Shri Shivaji Rao S.  
Dey, Shri S.K.  
Dhuleshwar Meena, Shri  
Dighe, Shri  
Dinesh Singh, Shri  
Dixit, Shri G.N.  
Doria, Shri Kasinatha

Dubey, Shri R.G.  
Dwivedi, Shri M.L.  
Ering, Shri D. f  
Gajraj Singh Rao, Shri  
Ganapati Ram, Shri  
Gandhi, Shri V.B.  
Ganga Devi, Shrimati  
Goni, Shri Abdul Ghani  
Gowdh, Shri Veeranna  
Gupta, Shri Shiv Charan  
Hajarnavis, Shri  
Harraol, Shri Ansoor  
Heda, Shri  
Jagjivan Ram, Shri  
Jasir, Shri S.G.  
Jamsunadevi, Shrimati  
Jena, Shri  
Jha, Shri Yogendra  
Joshi, Shri A.C.  
Jyotishi, Shri J.P.  
Kajrohar, Shri  
Kannanwar, Shrimati Tei

## NOES—contd.

|                             |                               |                             |
|-----------------------------|-------------------------------|-----------------------------|
| Kayal, Shri P.N.            | Nayar, Dr. Sushila            | Setyabhama Devi, Shrimati   |
| Kaderia, Shri C.M.          | Niranjan Lal, Shri            | Sen, Shri A.K.              |
| Keishing, Shri Riabang      | Oza, Shri                     | Seth, Shri Bishanchander    |
| Khan, Dr. P.N.              | Paliwal, Shri                 | Shah, Shri Manabendra       |
| Khan, Shri Osman Ali        | Pandey, Shri R.S.             | Sham Nath, Shri             |
| Khanna, Shri Mehr Chand     | Pandey, Shri Vishwa Nath      | Sherma, Shri A.P.           |
| Khanna, Shri P.K.           | Panna Lal, Shri               | Sharma, Shri D.C.           |
| Kindar Lal, Shri            | Pant, Shri K.C.               | Sheo Narain, Shri           |
| Kotoki, Shri Liladhar       | Parashar, Shri                | Shinde, Shri                |
| Koujalel, Shri H.V.         | Patel, Shri N.N.              | Shree Narayan Das, Shri     |
| Kripa Shankar, Shri         | Patel, Shri Rajeshwar         | Shukla, Shri Vidya Charan   |
| Krishna, Shri M.R.          | Patil, Shri D.S.              | Siddananjappa, Shri         |
| Krishnamachari, Shri T.T.   | Pattabhi Raman, Shri C.R.     | Sidbeshwar Prasad, Shri     |
| Kureel, Shri B.N.           | Prabhakar, Shri Naval         | Singh, Shri D.N.            |
| LakshmiKanthamma, Shrimati  | Raghunath Singh, Shri         | Singha, Shri G.K.           |
| Lalit Sen, Shri             | Raghuramsaiah, Shri           | Sinha, Shrimati Ramdulari   |
| Laskar, Shri N.R.           | Rai, Shrimati Sabodra Bai     | Sinha, Shri Satya Narayan   |
| Malaichami, Shri            | Raj Bahadur, Shri             | Sinha, Shrimati Tarkeshwari |
| Mulaviya, Shri K.D.         | Rajdeo Singh, Shri            | Snatak, Shri Nardeo         |
| Mallick, Shri Rama Chandra  | Raju, Dr. D.S.                | Srinivasan, Dr. P.          |
| Manaan, Shri                | Ram Sewak, Shri               | Subbaraman, Shri            |
| Mandal, Dr. P.              | Ram Subhag Singh, Dr.         | Sumat Prasad, Shri          |
| Maniyangadan, Shri          | Ram Swarup, Shri              | Surendra Pal Singh, Shri    |
| Marandi, Shri               | Ramaswamy, Shri S.V.          | Swaran Singh, Shri          |
| Methur, Shri Shiv Charan    | Ramdhani Das, Shri            | Thengondar, Shri            |
| Mehrotra, Shri Braj Biharli | Ramshekhar Prasad Singh, Shri | Thevar, Shri V.V.           |
| Mengi, Shri Gopal Datt      | Ranc, Shri                    | Thomas, Shri A.M.           |
| Minimata, Shrimati          | Rao, Shri Jaganatha           | Tiwary, Shri D.N.           |
| Mirza, Shri Bakar Ali       | Rao, Dr. K.L.                 | Tiwary, Shri K.N.           |
| Mishra, Shri Bibhuti        | Rao, Shri Krishnamoorthy      | Tiwary, Shri R.S.           |
| Misra, Shri Bibudhendra     | Rattan Lal, Shri              | Tripathi, Shri Krishna Deo  |
| Misra, Shri Shyam Dhar      | Rau, Shri Ithola              | Tula Ram, Shri              |
| Mohanty, Shri Gokulanan da  | Reddi, Dr. B. Gopala          | Tyagi, Shri                 |
| Mohiuddin, Shri             | Reddiar, Shri                 | Ukey, Shri                  |
| More, Shri K.L.             | Redoy, Shri Linga             | Upadhyaya, Shri Shiva Dutt  |
| Mukerjee, Shrimati Sharda   | Reddy, Shrimati Yasboda       | Valvi, Shri                 |
| Musafir, Shri G.S.          | Sadhu Ram, Shri               | Veerabasappa, Shri          |
| Muthiah, Shri               | Saha, Dr. S.K.                | Vidyalankar, Shri A.N.      |
| Naik, Shri D.J.             | Sahu, Shri Rameshwar          | Virbhadra Singh, Shri       |
| Nanda, Shri                 | Sani Rupji, Shri              | Yadav, Shri Ram Harkh       |
| Naikar, Shri P.S.           | Saraf, Shri Sham Lal          | Yadava, Shri B.P.           |

**Mr. Speaker:** The result of the division, as recorded by the machine, is: Ayes 42, Noes 189.

**Shri Birendra Bahadur Singh (Rajnandgaon):** My vote, which is for Noes, has not been recorded.

**The Deputy Minister in the Ministry of Education (Shrimati Soundaram Ramachandran):** My vote for Noes has not been recorded.

**डा० राम बरोदर लोहिया (कर्छाबाद):** प्रप्यक्ष महोदय, मशीन ने काम नहीं किया है। मेरा बोट "हां" के लिए है।

**श्री प्रिय गुप्त (कटिहार):** मेरा बोट "हां" के लिए है। मशीन ने रिकार्ड नहीं किया है।

**श्री बागड़ी (हिसार):** मेरा बोट भी "हां" के लिए है। मशीन ने काम नहीं किया है।

**Mr. Speaker:** So, 3 will have to be added to Ayes and 2 to Noes.

*The motion was negatived.*

**Mr. Speaker:** The question is:

"That clause 20 stand part of the Bill."

*The Lok Sabha divided:*

## [Division No. 21

## AYES

12. 25 hrs]

|                                 |                            |                                |
|---------------------------------|----------------------------|--------------------------------|
| Abdul Wahid, Shri T.            | Kayal, Shri P.N.           | Raju, Dr. D.S.                 |
| Achal Singh, Shri               | Kedaria, Shri C.M.         | Ram Sewak, Shri                |
| Alagesan, Shri                  | Keishing, Shri Rishang     | Ram Subhag Singh, Dr.          |
| Alva, Shri A.S.                 | Khan, Dr. P.N.             | Ram Swarup, Shri               |
| Alva, Shri Joachtm              | Khan, Shri Osman Ali       | Ramaswamy, Shri S.V.           |
| Aney, Dr. M.S.                  | Khanna, Shri Mehr Chand    | Ramdhani Das, Shri             |
| Azad, Shri Phagwat Jha          | Khanna, Shri P.K.          | Ramshekhhar Prasad Singh, Shri |
| Babunath Singh, Shri            | Kindar Lal, Shri           | Rane, Shri                     |
| Bal Krishna Singh, Shri         | Kotoki, Shri Liladhar      | Rao, Shri Jaganatha            |
| Barman, Shri P.C.               | Koujalai, Shri H.V.        | Rao, Dr. L.K.                  |
| Barupul, Shri P.L.              | Krishna, Shri M.R.         | Rao, Shri Krishnamoorthy       |
| Berna, Shri                     | Krishnamachari, Shri T.T.  | Rattan Lal, Shri               |
| Bhagat, Shri B.R.               | Kureel, Shri B.N.          | Raut, Shri Bhola               |
| Bhagavati, Shri                 | Lakhan Das, Shri           | Reddi, Dr. B. Gopala           |
| Bhatkar, Shri                   | Lakshmikanthamma, Shrimati | Reddier, Shri                  |
| Bist, Shri J.B.S.               | Lalit Sen, Shri            | Reddy, Shri Linga              |
| Borooh, Shri P.C.               | Laskar, Shri N.R.          | Reddy, Shrimati Yashoda        |
| Brahm Prakash, Shri             | Mahtab, Shri               | Sadhu Ram, Shri                |
| Brajeshwar Prasad, Shri         | Malnichami, Shri           | Saha, Dr. S.K.                 |
| Brii Basi Lal, Shri             | Malaviya, Shri K.D         | Sahu, Shri Kameshwar           |
| Chakraverti, Shri P.R.          | Mallick, Shri Rama Chandre | Sanji, Rupji, Shri             |
| Chandak, Shri                   | Manaen, Shri               | Saraf, Shri Sham Lal           |
| Chandrabhan Singh, Shri         | Mandal, Dr. P.             | Satyabhama Devi, Shrimati      |
| Chandrasekhar, Shrimati         | Maniyangadan, Shri         | Sen, Shri A.K.                 |
| Chaturvedi, Shri S.N.           | Marandi, Shri              | Shah, Shri Manabendra          |
| Chaudhury, Shri Chandramani Lal | Mathur, Shri Shiv Charan   | Sham Nath, Shri                |
| Chaudhuri, Shrimati Kamala      | Mehrotra, Shri Braj Bihari | Sharma, Shri A.P.              |
| Chuni Lal, Shri                 | Melkote, Dr.               | Sharma, Shri D.C.              |
| Daffe, Shri                     | Mengi, Shri Gopal Datt     | Sheo Narain, Shri              |
| Dalit Singh, Shri               | Minimata, Shrimati         | Shinde, Shri                   |
| Das, Dr. M.M.                   | Mirza, Shri Bakar, Ali     | Shree Narayan Das, Shri        |
| Das, Shri B.K.                  | Mishra, Shri Bibhuti       | Shukla, Shri Vidya Charan      |
| Das, Shri N.T.                  | Misra, Shri Bibudhendra    | Siddanajappa, Shri             |
| Das, Shri Sudhansu              | Misra, Shri Shyam Dhar     | Siddheshwar Prasad, Shri       |
| Dasai, Shri Morarji             | Mohanry, Shri Gokulanand   | Singh, Shri D.N.               |
| Deshmukh, Shri B.D.             | Mohiuddin, Shri            | Singha, Shri G.K.              |
| Deshmukh, Shri Shivaaji Rao S.  | More, Shri K.L.            | Sinha, Shrimati Ramdulari      |
| Dey, Shri S.K.                  | Mukerjee, Shrimati Sharda  | Sinha, Shri Satya Narayan      |
| Dhuleshwar Meena, Shri          | Musafir, Shri G.S.         | Sinha, Shrimati Tarkeshwari    |
| Dighe, Shri                     | Muthiah, Shri              | Snatak, Shri Nardeo            |
| Dinesh Singh, Shri              | Naik, Shri D.J.            | Srinivasan, Dr. P.             |
| Dixit, Shri G.N.                | Nanda, Shri                | Subbaraoan, Shri               |
| Dorari, Shri Kasinatha          | Naskar, Shri P.S.          | Sumat Prasad, Shri             |
| Dwivedi, Shri M.L.              | Nayar, Dr. Sushila         | Surendra Pal Singh, Shri       |
| Ering, Shri D.                  | Niranjan Lal, Shri         | Swaran Singh, Shri             |
| Gajraj Singh Rao, Shri          | Oza, Shri                  | Tengondar Shri                 |
| Ganapati Ram, Shri              | Paliwal Shri               | Thevar, Shri V.V.              |
| Gandhi, Shri V.B.               | Pandey, Shri R.S.          | Thomas, Shri A.M.              |
| Ganga Devi, Shrimati            | Pandey, Shri Vibhwa Nath   | Tiwary, Shri D.N.              |
| Goni, Shri Abdul Ghani          | Panna Lal, Shri            | Tiwary, Shri K.N.              |
| Gupta, Shri Shiv Charan         | Pant, Shri K.C.            | Tiwary, Shri R.S.              |
| Hajarnavis, Shri                | Parashar, Shri             | Tripathi, Shri Krishna Deo     |
| Harvani, Shri Anaar             | Patel, Shri Chhotubhai     | Tula Ram, Shri                 |
| Heda, Shri                      | Patel, Shri N.N.           | Tyagi, Shri                    |
| Jagjivan Ram, Shri              | Patel, Shri Rajeshwar      | Uikey, Shri                    |
| Jamir, Shri S.G.                | Patel, Shri D.S.           | Upadhyaya, Shri Shiva Dutt     |
| Jamun-devi, Shrimati            | Pattabhi Raman, Shri C.R.  | Valvi, Shri                    |
| Jena, Shri                      | Prabhakar, Shri Naval      | Veerasasappa, Shri             |
| Jha, Shri Yoendra               | Raghunath Singh, Shri      | Vidyalankar, Shri A.N.         |
| Joshi, Shri A.C.                | Raghuramaiah, Shri         | Virbhadra Singh, Shri          |
| Jyotishi, Shri J.P.             | Rai, Shrimati Sahodra Bai  | Vyas, Shri Radhelal            |
| Kajrolkar, Shri                 | Raj P. adur, Shri          | Yadav, Shri Ram Harsh          |
|                                 | Rajdeo Singh, Shri         | Yadava, Shri B. P.             |

## NOES

Alvares, Shri  
Bade, Shri  
Bagri, Shri  
Banerjee, Shri S.M.  
Barua, Shri Hem  
Bhecl, Shri P.H.  
Buta Singh, Shri  
Dandekar, Shri N.  
Deo, Shri P.K.  
Dwivedy, Shri Surendranath  
Gowdh, Shri Veeranna  
Gulshan, Shri  
Gupta, Shri Indrajit  
Gupta, Shri Kashi Ram

Gupta, Shri Priya  
Kachhavaia, Shri Hukam Chand  
Kamath, Shri Hari Vishnu  
Kandappa, Shri S.  
Kapur Singh, Shri  
Kriahnapal Singh, Shri  
Lahri Singh, Shri  
Lohia, Dr. Ram Manohar  
Mahananda, Shri  
Masani, Shri M.R.  
Mukerjee, Shri H.N.  
Murmu, Shri Sarkar  
Nath Pal, Shri  
Pandey, Shri Sarjoo

Ranga, Shri  
Sen, Dr. Ranen  
Seth, Shri Bishanchander  
Senhayan, Shri  
Shastri, Shri Prakash Vir  
Siddhanti, Shri Jagdev Singh  
Singh, Shri J.B.  
Solanki, Shri  
Tan Singh, Shri  
Verma, Shri S.L.  
Vimala Devi, Shrimati  
Vishram Prasad, Shri  
Wajlor, Shri  
Yadav, Shri Ram Sewak  
Yajnik, Shri

**Shrimati Soundaram Ramachandran:**  
My vote has not been recorded. I am for "Ayes".

**Shri Birendra Bahadur Singh:** I am also for "Ayes".

**Mr. Speaker:** These two would also be noted down. The result of the division is: Ayes—188; Noes—43.

*The motion was adopted.*

*Clause 20 was added to the Bill.*

**Clause 21—** (Recovery of bonus due from an employer).

**Shri Indrajit Gupta** (Calcutta South West): Sir, I beg to move:  
Page 12, line 30,—

after "employer" insert—

"under the provisions of this Act or". (26)

Clause 21 relates to the recovery of bonus which is due from an employer and the relevant part which I wish to amend reads as follows in the Bill:—

"Where any money is due to an employee by way of bonus from his employer under a settlement or an agreement or award"

and then the procedure is laid down as to what the employee will have to do. Stangely enough—I am not able to follow—why this clause excludes any

reference to bonus due under this Act itself. All that is laid down here is that bonus which is due under settlements or agreements or awards can be recovered according to this procedure, but if bonus is due to an employee under this Act and a particular recalcitrant employer refuses to pay that, there is no provision in this Bill to say how that bonus will be recovered from him. This is a point which I raised earlier during the general discussion. There is a provision for penalty of course in a different place but there is no provision made for the recovery of the moneys which are due by way of bonus under this Act itself. I do not think this needs a long explanation. I would like to know from the hon. Minister actually whether this omission was due to inadvertence or something else. If my amendment is accepted, it will read:—

"under the provisions of this Act or a settlement or an agreement or award".

**Dr. Ranen Sen** (Calcutta East): I want to speak on another point. On page 13 in the same clause there is a provision which says that every such application shall be made within one year from the date on which the money became due to the employee. My submission is that the Minister should think over it again and make it "two years" instead of "one year," because what happens after the date

on which the money becomes due is that there will be long negotiations with the employer and there will hardly be any time left for the individual worker if he is not a member of the trade union; or, if he dies; his successors or inheritors will hardly get any time to apply within that period. Of course, there is another provision saying that the appropriate Government will think over if any such application comes later. So, I say, instead of one year, it may be made two years. It is a small amendment. This may be accepted by the Minister.

**The Minister of Labour and Employment (Shri D. Sanjivayya):** So far as the first point is concerned, it is not as though we have omitted this inadvertently. It was considered very carefully and we have come to the conclusion that we do not come across any case of any payment by the employer to the employee straightway under this Act. Everything will have to be settled either by a settlement or an agreement or an award. Even if it is the question of calculation of minimum, there may be a dispute and it has to be settled. Therefore, we thought that it should be better like this instead of mentioning "money due under the Act". If the hon. Member is prepared to quote any instance which goes to show that payment will be due right under the Act without any settlement or an award, I am prepared to reconsider it.

**Shri Indrajit Gupta:** How can I quote an example when the Act has not been enacted yet? This is for the first time in this country. Once it becomes an Act on the statute book, there will be automatically a guarantee to the employees that in any event they will get the minimum irrespective of the profit or loss of the company.

**Mr. Speaker:** No. The Minister says that either it would be through an agreement or a settlement or an award. Directly, there is no provision...

**Shri Indrajit Gupta:** That means the Minister is visualising this....

**Mr. Speaker:** He says, he is prepared to reconsider it if the hon. Member can point out any case.

**Shri Indrajit Gupta:** Is he visualising that in every case there will have to be a dispute?

**Shri D. Sanjivayya:** Let me explain it. Even about this 4 per cent of the annual earnings, the annual earnings are dependent on the number of days worked. Some days may be covered by leave; some days may be covered by a sort of employment injury; some days may be covered by some other things. All these complications are there. It is not as though it is a simple formula suggested under any clause of this Bill according to which straightway some money is due. If that is so, I am prepared to concede. That was considered very carefully.

**Dr. Ranen Sen:** I made a suggestion that instead of one year, it may be made two years.

**Shri D. Sanjivayya:** In other Acts also, similar provision exists that in case the appropriate Government or any authority under them are satisfied that more time should be given, that is given. That is there.

**Mr. Speaker:** I shall now put Amendment No. 26 to the vote of the House.

*Amendment No. 26 was put and negatived*

**Mr. Speaker:** The question is:

"That clause 21 stand part of the Bill".

*The motion was adopted.*

*Clause 21 was added to the Bill.*

*Clause 22—(Reference of disputes under the Act)*

**Shri N. Dandekar (Gonda):** I move:

(i) Page 13, line 12,—

for "or" substitute "including".

[Shri N. Dandekar.]

(ii) Page 13,—

after line 19, insert—

“(2) Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or at different places, any such dispute as is referred to in sub-section (1) of this section arising at any such department, undertaking or branch shall be deemed to arise at the place where the head office or the principal place or business of the establishment is situated.” (218).

Sir, my first Amendment to clause 22 namely, Amendment No. 176, will, I am sure, be acceptable to the Government. The clause, as it reads, would permit the reference to adjudication of the two types of disputes arising under this Act between an employer and his employees namely, in respect of the bonus payable under this Act or with respect to the applicability of this Act to an establishment in public sector. As it reads, it would seem that the only question in relation to public sector enterprise that may be referred to settlement under the Industrial Disputes Act is with respect to the application of this Act and nothing else. My amendment is to clarify that, by substituting for the word “or” the word “including”. And, therefore, as so amended it would read:

“...with respect to the bonus payable under this Act including with respect to the application of this Act to an establishment in public sector..”

I hope that will be accepted because surely the employees in relation to an establishment in the public sector ought to have the right to go up for adjudication on two matters, firstly, as to whether the Act is applicable and, if applicable, then also as regards the amount of bonus payable.

The second amendment that I have got to clause 22 is in two parts. I am

not pressing the first part because, on further consideration, I find that it may lead to greater confusion. The second part of it, namely, “no cognisance shall be taken of any such dispute as aforesaid to which a trade union is not a party”, is important. I do suggest that it is very necessary if we are not to have state of utter confusion in regard to disputes, whether under this Act or any other Act,—though I am, of course, concerned only with this Act;—disputes to be referred, that is to say, to be taken cognisance of by the appropriate government, and going on from there to conciliation and, if necessary, for adjudication. If disputes under this complicated legislation could be undertaken and initiated by every single individual employee in a factory or establishment to which this Act applies, I think the whole thing will end in utter confusion. My suggestion in the second part of Amendment No. 218, which is the only part I am pressing now, is that no cognisance shall be taken of any such dispute as aforesaid to which a trade union is not a party.

**Shri D. Sanjivayya:** The clause reads like this:

“Where any dispute arises between an employer and his employees with respect to the bonus payable....”

This is generally applicable to all employees to which this Act applies, namely, those who are in the public sector as well as those in the private sector. We also go a step further and say that, if there is a dispute with regard to the fact whether to a particular public sector undertaking this Act applies or not. We have specified the categories—it should not be a departmental concern and if it is not, it must compete with 20 per cent of its production in the private sector, etc., etc. Therefore, we thought that the other thing should also be there.

**Shri N. Dandekar:** The word “or” is not to be read in a conjunctive way.

**Shri D. Sanjivayya:** Whatever the intention is, the first portion should apply to all the employers and employees, both in the public sector and in the private sector, who are covered by this Act. That is, with regard to the payment of bonus. The second point is that, whenever there is a dispute as to whether a public sector is covered by this Act or not, that should also go to a Tribunal under the Industrial Disputes Act. I got the advice of the Legal Department and our legal pandits say that the intention is very clear.

With regard to the other point that has been raised by Mr. Dandekar, I would request the hon. Member to look into clause 23(2), which says: "When an application is made to the said authority by any trade union being a party to the dispute or where there is no trade union, by the employees being a party to the dispute . . .". The intention of the Government is that it will not be by a trade union, but the dispute can be raised by workers who are affected by that. They should not be denied this opportunity. I am not prepared to accept this amendment.

**Mr. Speaker:** I now put amendments Nos. 176 and 218 to the vote of the House.

*Amendments Nos. 176 and 218 were put and negatived.*

**Mr. Speaker:** The question is:

"That clause 22 stand part of the Bill."

*The motion was adopted.*

*Clause 22 was added to the Bill.*

**Clause 23—***(Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies).*

**Shri N. Dandekar:** I beg to move:

(1) Page 13, line 31,—

for "may", substitute "shall". (177)

(2) Page 13, line 36,—

after "satisfied", insert—

"on adequate evidence adduced before it". (178)

(3) Page 13, line 38,—

for "are not accurate", substitute—

"are inaccurate in material particulars". (179)

(4) Page 14,—

after line 10, insert—

"Provided that nothing contained in this sub-section shall be deemed to empower the said authority to make any investigation regarding matters such as—

- (i) valuation of stocks;
- (ii) classification of any expenditure as revenue expenditure or capital expenditure;
- (iii) adequacy or otherwise of remuneration paid to directors and managing agents;
- (iv) expenditure on travelling allowance; and
- (v) propriety or otherwise of any expenditure relating to a previous accounting year incurred by the employer towards increase in salary or wage effected by an award.

shown in the balance-sheet or the profit and loss account of the company." (180)

Sir, as regards my first amendment to clause 23, I may begin by saying generally that sub-clause (1) in the first place, with the circumstances in which the balance-sheet and the profit and loss account of the employer may or may not be accepted. And sub-clause (2) is then concerned with in-

[Shri N. Dandekar]

dicating what information can be called for in the accepted cases.

My amendment No. 177 seeks to substitute the word 'shall' for the word 'may' in sub-clause (1) in line 31 at page 13. The effect would be this. Where the balance-sheet and the profit and loss account of an employer, being a corporation or a company, duly audited either by the Comptroller and Auditor-General or in the case of ordinary companies, by the statutory auditors who are duly qualified to act as auditors are produced, then I suggest the said authority, "shall" presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate. I do not think that that proposition should need much argument. The obligations of the Comptroller and Auditor-General in respect of public sector enterprises and the obligations of the auditors in respect of private sector companies are respectively laid down by statutes of various kinds. The Auditor-General's responsibilities are laid down under the Constitution and various orders and so forth issued under it. And so far as the auditors of private sector companies are concerned, they are exhaustively laid down in the Companies Act, and they are in fact being extensively extended by the Companies (Amendment) Bill that was passed recently by this House. I suggest, subject to the portion of sub-clause (1) that is coming in later, namely the circumstances provided in the "proviso" where even these may be challenged, that in all other cases, that is to say, where the proviso does not apply adjudicators must really be put in a position where they 'shall' presume the statements and particulars contained in such balance-sheets, whether after the Comptroller and Auditor-General's audit or after the ordinary company law audit, to be accurate, whereupon it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by filing affidavits or by any other mode.

Amendment No. 178 is in relation to the proviso to sub-clause (1). The proviso says quite rightly, that where the said authority is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary. I am suggesting the insertion of the words 'on adequate evidence adduced before it'. Judicial authorities must act in a judicial way. It would therefore be desirable to put down here, as has always been the case, in terms of various decisions of the Supreme Court, that where on adequate evidence adjudicators or tribunals find that balance-sheets and things like that are inaccurate, then, of course, they need not accept them as correct. So, while accepting the principle of this sub-clause, and in particular, the proviso thereto, I am merely clarifying and saying that the proviso should read thus:

"Provided that where the said authority is satisfied on adequate evidence adduced before it that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars."

that is to say in such case, it can go ahead to make investigations and so on.

Sub-clause (2) is concerned with the consequential position where accounts and so forth are accepted and where, in the course of a dispute, some further information etc. is desired. The sub-clause says that the tribunal or whatever is the adjudicating authority may after satisfying itself that such clarification is necessary by order direct the corporation which is in the public sector, or as the case may be, the company, in the private sector, to furnish to the trade union or the em-



employees such clarification within such time-limit as may be specified. I am suggesting two amendments to this. Amendment No. 179 is concerned with preventing a mere roving inquiry. And in Amendment No. 180, I suggest, in order to prevent a roving inquiry, that the following proviso ought to be inserted, namely:

"Provided that nothing contained in this sub-section shall be deemed to empower the said authority, to make any investigation regarding matters such as (i) valuation of stocks, (ii) classification of any expenditure as revenue expenditure or capital expenditure, (iii) adequacy or otherwise of remuneration paid to directors and managing agents, (iv) expenditure on travelling allowance, and (v) propriety or otherwise of any expenditure relating to a previous accounting year incurred by the employer towards increase in salary or wage effected by an award, shown in the balance sheet or the profit and loss account of the Company".

Perhaps I ought to explain why I am excluding these. The first two, valuation of stocks and classification of any expenditure as capital expenditure are matters covered in specific terms by the responsibility of auditor, irrespective of whether he happens to be the Comptroller and Auditor General or the statutory auditor under the Companies Act. If these are not excluded from this kind of inquiry, it is quite possible by the backdoor to throw out the balance sheet and the profit and loss account which under sub-section (1) may not be thrown out.

As regards items (iii) and (iv), item (iii) is a matter for determination and constant review by the company law administration, whose previous sanction is necessary in the matter of fixing or charging remuneration to be paid to directors and to managing agents. I suggest that if the matter has once for all been dealt with by Government itself in terms of the provisions of the Companies Act, the same matter should not be open

for agitation before a tribunal or any other adjudicating authority.

Apropos items (iv) and (v), travelling allowance and so forth are subject to considerable scrutiny not merely by the auditors but also by the income tax authorities. And the other matter about previous years' wages etc. is merely a consequence of awards that may have been passed relating to earlier accounting years under which the company is bound to pay. I suggest therefore that these items may not be called in question at all under the provisions of sub-section (2).

I may add that the Bonus Commission was unanimous about this. The Government have accepted all the unanimous recommendations subject only to one or two modifications. This recommendation is contained on p. 91 which I will take the liberty to read:

"But we consider that tribunals and arbitrators should not embark upon investigations into questions such as whether stocks have been properly valued, whether a portion of revenue expenditure which has been passed by the auditors as revenue expenditure should be considered as capital expenditure the adequacy of remuneration to directors and managing agents of companies, whether the expenditure on travelling allowance is excessive etc. The Companies and other Acts provide ample safeguards against malpractices. There are also provisions under the Companies Act for directing investigations into the affairs of companies in certain circumstances".

Finally, I would like to say that in the last draft of this Bill that was circulated, there was in fact a provision of the kind I have now suggested.

Shri D. Sanjivayya: Amendments Nos. 177, 178, 179 relate to sub-clause (1) of clause 23. If we change 'may' into 'shall' and also insert 'on adequate evidence adduced before it' and substitute 'are not accurate' by 'are inaccurate in material particulars', this will be fettering the authority of the tribunal which would be a judicial body.

[Shri D. Sanjivayya]

No doubt, this particular recommendation of the Bonus Commission, which the hon. Member quoted, we had put in the draft Bill in the initial stages for discussion before the tripartite conference, but later on, after the discussion in the tripartite conference, we felt that it would be advisable to delete these categories to which the hon. Member made a reference and to which the Bonus Commission also made a reference. We felt, as I said earlier, that we should give unfettered power to the judicial body, so that the entire thing would be gone into and the true facts arrived at.

**Shri Bade (Khargone):** Does the hon. Minister mean to say that "may" means "shall" and "shall" means "may", as Pandit Jawaharlal Nehru said once?

**Shri D. Sanjivayya:** I did not refer to "may" alone. This will have the cumulative effect of fettering the authority of the judicial body.

**Mr. Speaker:** I now put amendments Nos. 177 to 180 to the House.

*Amendments Nos. 177 to 180 were put and negatived.*

**Mr. Speaker:** The question is:

"That Clause 23 stand part of the Bill."

*The motion was adopted.*

*Clause 23 was added to the Bill.*

**Mr. Speaker:** The question is:

"That Clauses 24 to 26 stand part of the Bill."

*The motion was adopted.*

*Clauses 24 to 26 were added to the Bill.*

*Clause 27— (Inspectors)*

**Shri Kashi Ram Gupta (Alwar):** I beg to move:

for clause 27, substitute—

"27. Such registers, records and other documents connected therewith, as prescribed under clause 26, shall be liable for inspection by,—

- (a) in case of factories, by Inspector of Factories;
- (b) in case of mines, by Inspector of Mines; and
- (c) in case of other establishments by Labour Inspectors." (70)

**Shri Bade:** I beg to move:

Page 16,—

for lines 6 to 11 substitute—

"(5) Nothing contained in section 34(a) of the Banking Companies Act, 1949 shall prevent an Inspector from requiring a banking company to furnish or disclose any statement or information or to produce or give inspection of any of its books of account or other documents." (277).

**Shri N. Dandekar:** I beg to move:

(i) 15, line 18,—

for "the limits", substitute—

"the territorial limits". (181).

(ii) Page 15,—

Omit line 40 (182).

(iii) Page 15,—

after line 40, insert—

"Provided that nothing in this sub-section shall be deemed to empower the Inspector to require the employer to furnish any such balance-sheet and profit and loss account, whether audited or not, or any such particulars, information, statements or clarification in relation thereto as is referred to in sections 23, 24 and 25." (183).

**Shri Bade:** Clause 27(5) reads:

"Nothing contained in this section shall enable an Inspector to

require a banking company to furnish or disclose any statement or information or to produce, or give inspection of, any of its books of accounts or other documents..."

My amendments want this to be substituted by the following words:

"Nothing contained in section 34(a) of the Banking Companies Act, 1949 shall prevent an Inspector from requiring a banking company to furnish or disclose any statement or information or to produce or give inspection of any of its books of account or other documents."

Why are banking companies favoured by the Clause like this? All the other companies and industries will be inspected by the inspector, while the banking company is exempted. My contention is that all the banking companies, whether big or small, should be allowed to be inspected by the Inspector. Hence my amendment.

**Shri Kashi Ram Gupta:** In Clause 26 Government has mentioned certain registers to be maintained. In Clause 27 lays down the powers of inspectors. Actually speaking, bonus relates to a very simple accounting system. There will be set on and set off, nothing else. Therefore, I have suggested that instead of having separate inspectors, the factory inspectors, labour inspectors and mines inspectors can be authorised to see these registers. Going away to other accounts is not a very good thing in this respect. After all, there will be audited accounts. Then, there are income-tax rules, and all these things are there, and on the basis of the profit and loss account we have to find out the surplus for bonus.

Therefore, apart from whatever is mentioned in clause 26, if there is anything remaining behind that can also be inserted in that. The inspector, whether he is the mining inspector or the labour inspector or any other inspector, must be entitled to see what is mentioned in clause 26. Then there

is a contradiction between clauses 26 and 27. You put something in clause 27 and you authorise him to do something which is not mentioned in clause 26. Seeing all these, it will be very proper if the House accepted this amendment so that whatever is mentioned in clause 26 shall have to be inspected by the inspectors concerned.

**Shri N. Dandekar:** Sir, in regard to clause 27, the first amendment which I have is No. 181 which is merely to clarify what is there in clause 27(1) which reads:

"The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction."

It may mean that they can be empowered to do practically everything, even that which no other authority can do under this Act. On a reading of sub-clause (2), however the meaning appears to be merely to define the territorial limits of jurisdiction. That is a normal feature in any Act which appoints authorities, among other things what has to be defined is the territorial jurisdiction of those authorities. Therefore, I suggest this amendment in sub-section (1) of clause 27 is necessary. We should say "the territorial limits within which they shall exercise jurisdiction", so that these inspectors may not run amok all over the State or run amok as regards all other things under the Act.

Next, I take great exception to para (e) of sub-clause (2) because it is extra-ordinary. Sub-clause (2) is concerned with indicating what the Inspectors appointed under section 27(1) may for the purpose of the Act, do. It says that an inspector appointed under section sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with, require an employer to furnish such information as he may consider necessary; second-

[Shri N. Dandekar]

ly he may at any reasonable time enter premises and make inspections, thirdly, he may examine the employer, etc.; and fourthly, he may make copies or take extracts from any book, register or other document. These are perfectly reasonable powers, subject to the proviso which I have suggested in my amendment No. 183. But para (2) of this sub-clause says: "such other powers as may be prescribed." What in heaven's name is contemplated under (e)? Can he be authorised to dismiss anybody or appoint anybody or do anything at all that he may be authorised to do? This seems to me to be going much too far. I do not mind in what detail and in what extensiveness the Inspector's powers are specified; but they must be specified. I submit that this is one of those omnibus autocratic provisions that are beginning to appear in legislations in our country; after providing for a whole lot of specific powers, they go on to add in case they have forgotten something "such other power" as may be prescribed. The House would recall that in connection with the Companies Amendment Bill, I had objected to a similar phraseology in relation to the duties of auditors, namely "such other duties" as the company law administration may think fit to add, apart from a whole lot of powers specified. This amounts to legislation by executive departments, of a kind that must be objected to.

Finally, Sir, I come to my amendment No. 183 to sub-clause (2), which is very important:—

"Provided that nothing in this sub-section shall be deemed to empower the Inspector to require the employer to furnish any such balance-sheet and profit and loss account, whether audited or not, or any such particulars, information, statements or clarification in relation thereto as is referred to in sections, 23, 24 and 25."

Now, clause 23 is concerned with limiting the powers even of a tribunal

or any other adjudicating body as to the circumstances in which it may accept or reject the balance-sheet and profit and loss account, and the circumstances in which the adjudicating body may call for certain further information. I suggest that these powers under clause 23, which the Minister just now explained, as giving adequate and extensive discretion to judicial authorities ought not to be capable of being conferred upon non-judicial executive authorities like inspectors, and should be specifically excluded.

Similarly, clause 24 refers to certain things which even adjudicating bodies may not question or call for, namely, certain information in relation to banks or the accuracy of the accounts of banking companies. This is a very important provision, which says:

"the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act."

Sub-clause (2) is even more important; it says:

"Nothing contained in sub-section (1) shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Companies Act, 1949".

These are very necessary provisions. Banks are credit institutions and anything that might tend to question or injure their credit or reduce their creditworthiness would be dangerous. That is why even the powers of a judicial authority, when concerned with disputes under the Act relating

to banking companies, are so carefully limited. It is only because of that, that very limited discretion has been given. Therefore, the proviso that I am suggesting in relation to the powers of Inspectors is necessary, and I shall read it again:

"Provided that nothing in this sub-section shall be deemed to empower the Inspector to require the employer to furnish any such balance-sheet and profit and loss account, whether audited or not, or any such particulars, information, statement or clarification in relation thereto as is referred to in sections 23, 24 and 25."

**Shri Bade:** I want to know whether Shri Dandekar wants to black out everything from the inspectors, that no information should be given?

**Shri N. Dandekar:** I am blacking out—if that is the right word—these particular powers from the inspector. I am not prepared to give these powers to the inspector.

**Mr. Speaker:** Today, that is the right course!

**Shri N. Dandekar:** The inspector should not have the power which only a judicial authority has been expressly conferred upon in a limited way. The other powers, yes.

**Shri D. Sanjivayya:** Amendment No. 70 contemplates to give or to notify Inspectors of Factories and Inspectors of Mines and Labour Inspectors as inspectors under this Act; their duties are different; probably they will have to perform different duties in respect of the enactments which they have to enforce and the Government will have to notify under this Act certain officers to be inspectors. Probably, Government may have to appoint special staff for any other duties. They will have only the duties that they perform as inspectors. Therefore, I am not prepared to accept amendment No. 70.

**Shri Kashi Ram Gupta:** My point was that the registers of the establishments which were mentioned in clause 26 should be entrusted to them. Otherwise, it would be contradictory to clause 22.

**Shri D. Sanjivayya:** Factory Inspectors and Mines Inspectors have certain statutory functions to perform under those statutes. Therefore, if we ask them to do this work also, it will be too much for them. So, I am suggesting that Government should appoint special staff, or wherever they find that certain other officers who are doing some other duties could find some time, they may also do it.

**Shri Kashi Ram Gupta:** I have no objection to the appointment of inspectors. But my point is that those authorities should be entrusted with this duty as mentioned in clause 26. Otherwise, this clause will be contradictory to clause 26.

**Shri D. Sanjivayya:** I have not been able to follow it.

**Shri Kashi Ram Gupta:** Special powers have been mentioned in clause 27.

**Shri D. Sanjivayya:** About amendment No. 181, it is stated that instead of "limit", it should be territorial limit. By limit and jurisdiction we define the limits within which they shall exercise jurisdiction. It is so obvious; when we say "limits" it means the limits within which one has to exercise one's jurisdiction. It means territorial jurisdiction.

**Shri N. Dandekar:** It is not so obvious. A first-class magis rate's limits of jurisdiction are not merely territorial limits also, higher limits of punishments that he may impose; similarly sessions judges have certain territorial limits also, higher limits of punishment such as death penalties and so on. High Courts have still higher powers. "Limits of jurisdiction" covers a very wide field. It is not

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merely a question of territorial jurisdiction. If you merely talk of 'limit a jurisdiction', it implies both territorial and substantive jurisdiction. I suggest that if the Minister agrees with me that what is so obvious to him is not quite so obvious to me, if it is merely territorial jurisdiction, that he has in mind, it would be better say so expressly in clause 27(1).

**Shri D. Sanjivayya:** Anyway, I am satisfied that this means that, and probably by notification also, when appointing inspectors, we will say that an inspector will be in charge of such and such districts and so on. That will be done in the rules, so that the ambiguity will not be there.

By his amendment No. 182, he wants line 40, i.e. sub-clause (e) to be deleted. It says "exercise such other powers as may be prescribed". Clause 38 gives powers to the government to make rules. It is not as though government are free to make any rule they like. All the rules made have to be placed before the parliament and approved. So, I am not prepared to delete that clause.

13 hrs.

Coming to amendment No. 277, it is really very astonishing that an enlightened member like Mr. Dandekar . . . .

**Shri N. Dandekar:** Amendment 277 is not mine.

**Shri Bade:** It is mine. Let him deal with my amendments also.

**Shri D. Sanjivayya:** I am coming to that. The last amendment of Shri Dandekar says, "Provided that nothing in this sub-section . . ." etc. I would draw his attention to sub-clause (2). It says:

"An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with . . . ."

Unless the documents are supplied, how can the inspector find out whether the provisions of this Act have been complied with?

**Shri N. Dandekar:** But he should not ask for disclosure of secrets by way of returns from banks which even the Reserve Bank will not disclose to anybody.

**Shri D. Sanjivayya:** When there is any enactment under which an employer is not obliged to disclose something, he cannot ask for it. For instance, under section 34A of the Banking Companies Act, banking companies are not expected to disclose certain secret information.

**Shri Indrajit Gupta:** They are well protected.

**Shri N. Dandekar:** Please don't mislead the House. Under clause 24(2), only what is mentioned in sub-clause (1) of clause 24 is protected; nothing else.

**Shri D. Sanjivayya:** Sub-clause 24(2) says:

"Nothing contained in sub-section (2) shall enable . . ." etc.

Here clause 27(5) says:

"Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Companies Act, 1949."

So, section 34A of that Act protects the banking companies. Mr. Bade wants that this embargo should not be there.

For these reasons, I am not in a position to accept any of the amendments to this clause.

**Mr. Speaker:** I shall put all the amendments to the House.

**Amendments Nos. 70, 181 to 188 and 277 were put and negatived.**

**Mr. Speaker:** The question is:

"That clause 27 stand part of the Bill."

*The motion was adopted.*

*Clause 27 was added to the Bill.*

**Clause 28— (Penalty)**

**Shri Kashi Ram Gupta:** I beg to move:

Page 16,—

for lines 18 to 20, substitute—

"he shall be punishable with fine, which may extend to rupees one thousand." (71)

**Shri Indrajit Gupta:** I beg to move:

Page 16,—

(i) line 19,—

for "or" substitute "and"; and

(ii) line 20,—

omit "or with both". (29).

**Dr. Ranen Sen:** I beg to move:

Page 16, line 19,—

for "one" substitute "three" (72).

**Shri Bade:** I beg to move:

(i) Page 16, line 19,—

for "or" substitute "and" (278).

(ii) Page 16, line 20,—

omit "or with both". (279).

**Shri N. Dandekar:** I beg to move:

Page 16,

after line 20, insert—

"Provided that failure to comply with any direction given or requisition made by an Inspector under sub-section (2) of section 27 shall be punishable with a fine only." (184).

**Dr. Ranen Sen:** My amendment and Mr. Indrajit Gupta's amendment have the object of making the punishment deterrent. We seek to substitute 'and' instead of 'or' in line 19. As I said, the main object is to have a deterrent punishment. We know—that must be the experience of the minister also—that the employers, powerful as they are, try to find out loopholes and soft corners in the laws and get away with this small punishment of fine. We want to provide not only for fine, but for imprisonment also. We want to put a little fear in the hearts of employers, so that they may not contravene these provisions of the law. It will have a little deterrent effect on the employers. They will save lakhs of rupees as part of bonus of which they will deprive the workers and so easily they will pay Rs. 3000 fine and get away with it. So, if they are to undergo imprisonment, that will have a deterrent effect.

**Shri Bade:** My amendment is also just like Dr. Ranen Sen's. Instead of six months' imprisonment or fine, it should be both fine and imprisonment for six months. I know there was a case of a person who beat another person with a shoe. He was fined Rs. 25. He told the magistrate,

"मंत्रिस्ट्रेट साहब, मैं पच्चीस रुपये और देवल पर रखा हूँ. मुझे एक जूता और मारने की इजाजत दीजिए।"

**Mr. Speaker:** Were you the lawyer defending him? That might have been your advice.

**Shri Bade:** He said, I have paid Rs. 25; because he abused me, bringing in the names of my forefathers, I will give him one more beating with the shoe, for which I am paying Rs. 25 more. So, here also, the employers who make lakhs of rupees will easily pay the fine of Rs. 1,000 and get away with it. So, if you want to penalise anybody, it must be deterrent punishment. Otherwise, it will defeat the very provision of the law. Therefore, I request the hon. minister to accept my amendment.

**Shri Kashi Ram Gupta:** My amendment is quite opposed to that of Mr. Inderjit Gupta, Dr. Sen and Mr. Badd. I tried to find out from Dr. Sen's speech whether there could be any justification for combining both imprisonment and fine, but I found none. We have to see the effect of this and how it will function. If there is a default, it can be dealt with under the Companies Act or the Income-tax Act or the Minimum Wages Act and so on. But this is about bonus. They have to have audited accounts. When gross profit is to be calculated on a certain basis and there is to be set off and set on, what is there which would make a man commit a big crime and undergo a punishment like this? After all, they are big industrialists who are responsible persons. When a punishment is provided, a large number of people are expected to evade this law. If a large number of people are expected to evade this law, there is no use of having this law. So, when a large number is not expected to evade the law, there is no justification for combining both fine and imprisonment. After all, we live in this country as free citizens and we must see to our prestige. Those days are gone when the people used to do all these things in a big way. There are so many Acts which provide for exemplary punishment for other malpractices. So far as bonus is concerned, their chances to do mischief are limited. Therefore, the punishment also should be limited. Therefore, I suggest that it will not be good to provide both imprisonment and fine. I suggest that it will be quite enough if the punishment is limited to fine only.

**Shri Solanki (Kaira):** Sir, there is no quorum in the House.

**Mr. Speaker:** The Bell may be rung.

**Shri N. Dandekar:** They will only come to vote; they do not even listen to what it is all about.

**Mr. Speaker:** They may be reading the latest bulletin. The latest bulletin has been put up just now on the notice board. 20 copies have been supplied to the Notice Office, and those hon. Members who want a copy can have it from there. Others may read from the copy that has been put up. As I have already announced, the Defence Minister will be making a statement at 4.00.

**Shri Badd:** Let the bulletin be read here, Sir.

**Mr. Speaker:** I can give him a copy.

**Dr. M. S. Aney (Nagpur):** Will you allow him to circulate it?

**Mr. Speaker:** He might read it and then pass it on.

**Shri Hari Vishnu Kamath (Hoshangabad):** Sir, yesterday it was agreed that some Minister, not necessarily the Defence Minister, would come and make a statement here on the war situation.

**Mr. Speaker:** Earlier we had agreed—Shri Kamath had not known it and probably the Deputy-Speaker also had not known it—that such bulletins would be placed in the Notice Office so that hon. Members can get them and whenever it was necessary the Defence Minister would be making a statement, but not on other occasions.

**Shri S. M. Banerjee (Kanpur):** How many times will this bulletin be issued, Sir?

**Mr. Speaker:** I have not specified the number of times.

**Shri S. M. Banerjee:** We are already getting the spot news. If there is something that is not there, then it is a different matter.

**Mr. Speaker:** If hon. Members are satisfied with the spot news, that is a different matter. I should rather think that there should be as many



copies as there are Members inside the House and they should be distributed here. Those who are outside the House can get it from the Notice Office. Now there is quorum—Shri Dandekar.

**Shri N. Dandekar:** Sir, I would begin by saying that I am sorry my hon. friend disturbed some of my hon. friends from their afternoon siesta. I do not think they are particularly concerned with what is happening with this Bill.

Sir, a clause such as clause 28 is obviously necessary.

**Mr. Speaker:** My apprehensions are that tomorrow at 10.00 there may not be quorum in the beginning. We have put down 10.00 A.M.

**Shri Hari Vishnu Kamath:** Let us give it a trial.

**Shri N. Dandekar:** Sir, the amendment that I am proposing to clause 28 is not really concerned with the substance of whether or not contraventions of the provisions of the Act or directions given or requisitions made under the Act should or should not be visited with a penalty of six months imprisonment, nine months imprisonment, or imprisonment for a year, or a fine or both. Obviously, there has to be punishment of an adequate kind and the clause provides for it. But I am concerned with that part of this clause which says that if any person to whom a direction was given or a requisition was made under this Act fails to comply with the direction given or requisition made he may be punishable with imprisonment. I feel concerned with that because I find that the Inspector to be appointed under clause 27 has also certain powers of the kind that might be perhaps regarded as coming within the ambit of clause 28. My suggestion therefore, is that the following be added:

“Provided that failure to comply with any direction given or re-

quisition made by an Inspector under sub-section (2) of section 27 shall be punishable with a fine only.”

My reason is that an executive authority is not a judicial authority. I can quite understand and accept that directions given by a judicial authority have to be treated seriously or rather, that they cannot be allowed to be treated lightly and they must be backed by sanctions and penalties of a serious nature. But please see the level of the executive authority that is contemplated here. If we were somebody higher up, if it had been said that he might issue requisitions or directions, with the prior consent, sanction or approval of the appropriate government that would perhaps be acceptable. But here a fairly low echelon officer has been provided. An inspector can run wild and issue any directions or make any requisitions. He may not deliberately do it. But he may not be able to grasp the complexity of this whole bonus scheme. After all, he cannot be as knowledgeable about all this as would be, say, the Commissioner of Labour or some other authority of that kind. Therefore, my suggestion is that, if at all this clause is attracted by failure to comply with requisitions made or directions given by an inspector under clause 27, then, only a fine may be imposed and not imprisonment.

**Shri Bade:** Sir, I support Shri Dandekar. I forgot to give an amendment to this. Here it is said: “directions given or requisitions made”. These are very loose words. I have seen that these two words used in many enactments are considered to be capable of covering a very vast ground. Supposing an inspector asks a manager or a head of a particular industrial undertaking that he should do something and that direction is not obeyed, do you mean to say that the proprietor is punishable for that? Then I fail to understand the difference between the words “directions” and “requisitions”. This clause is, there-

[Shri Bade]

fore, very loosely worded. I do not know whether the hon. Minister has consulted the law experts. These two words can include so many things. Therefore, to punish the proprietor for the fault of the head of the department is a wrong thing to do. This clause, I suggest, may either be deleted or some amendment, as suggested by my hon. friend, Shri Dandeker, may be accepted.

**Shri D. Sanjivayya:** Sir, both Dr. Ranen Sen and Shri Bade in their amendments want that the punishment should be both imprisonment and fine, whereas in the clause it is said:

"imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Therefore, we have made provision for both to be levied. I do not think they should be so harsh on the employers who might commit certain offences under the Act.

Coming to the amendment moved by my hon. friend, Shri Kash Ram Gupta, which is quite a different one and which seeks to do quite the opposite thing, he wants completely to delete the provision relating to imprisonment and he says that it should be only fine. In most of our enactments both these things exist and, therefore, it should continue as it is.

Coming to the amendment moved by Shri Dandeker, I would like to say that it is not acceptable to me for this reason. The clause reads like this:

"If any person—

(a) contravenes any of the provisions of this Act or any rule made thereunder; or

(b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,

he shall be punishable...."

Now, the punishing authority will certainly take into consideration the nature of the offence, whether it is merely non-submission or non-production of documents or something serious. So, taking into consideration the nature of the offence, the judicial authority, the first class magistrate or city magistrate as the case may be, will certainly impose such punishment as is justifiable. Therefore, we did not make a separate provision for non-compliance. That is not necessary. After all, these cases are not filed just by an inspector. I would like to draw the attention of hon. Members to clause 30 which says:

"No court shall take cognizance of any offence punishable under this Act save on complaint made by or under the authority of the appropriate Government."

Similar provisions exist in the Motor Transport workers Act also. So, I do not accept any of the amendments.

**Mr. Speaker:** Shall I put all the amendments together?

**Shri N. Dandeker:** As my amendment is contradictory to the other amendments, it may be put separately.

**Mr. Speaker:** All right. I will now put amendment No. 71, moved by Shri Kashi Ram Gupta, to the vote of the House.

*Amendment No. 71 was put and negatived.*

**Mr. Speaker:** I will now put amendment No. 29 by Shri Indrajit Gupta, 72 by Dr. Ranen Sen, and 278 and 279 by Shri Bade to the vote of the House.

*Amendments Nos. 29, 72, 278 and 279 were put and negatived.*

**Mr. Speaker:** I will now put amendment No. 184 moved by Shri Dandekar to the vote of the House.

*Amendment No. 184 was put and negatived.*

**Mr. Speaker:** The question is:

"That clause 28 stand part of the Bill."

*The motion was adopted.*

*Clause 28 was added to the Bill.*

**Shri S. M. Banerjee:** I think the Minister should bring in some amendment so that Members could also be paid bonus for their attendance. Now there is no quorum in the House.

**Mr. Speaker:** The bell is being rung..... Now there is quorum. I am very sorry that I have to put hon. Members who were in the Central Hall to this inconvenience and discomfort.

**Clause 29—(Offences by companies)**

**Shri N. Dandekar:** I beg to move:

Page 17, line 2,—

after "includes", insert—

"an establishment in the public sector" (185)

Sir, this clause 29 is very necessary clause which defines or indicates who are the persons to be regarded as having committed offences when the offending employer is a company. I am suggesting that in order to make it clear that officers of public sector companies are not exempted from the scope of this clause, my amendment may be accepted. If my amendment is accepted, it will read: "company" means any body corporate and includes an establishment in the public sector, a firm or other association of individuals. I presume it is the intention that any one of the officers

in the public sector companies who commits an offence, of the kind for which officers in the ordinary companies can get pushed around, should also get pushed around. I hope the minister will agree that the recalcitrant people in the public sector enterprises should get the same punishment which officers in the private companies can get for similar offences.

**Mr. Speaker:** Will not "body corporate" include public sector companies?

**Shri N. Dandekar:** If they had simply said "body corporate" it would have been a different matter. But in clause 2(16) the Bill contains a very specific definition of establishments in the public sector. Consequently, it will not apply to public sector companies unless you include the words "establishments in the public sector"

**Shri D. Sanjivayya:** I would invite the attention of the hon. Member to clause 2(9) which reads:

"'company' means any company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act;"

Our legal advice is that public sector is also covered.

**Shri N. Dandekar:** Then, why is "establishments in the public sector" separately defined? I find that an "establishment in the private sector" has been defined as that which is not the public sector. Consequently, I am unable to accept that some other definition for some other purpose necessarily includes this particular thing for a particular purpose. I am concerned with this particular purpose; that is that the establishments in the public sector covered by the Bill should be covered by this particular clause also.

**Shri D. Sanjivayya:** I have nothing more to add.

**Mr. Speaker:** I will now put amendment No. 185 to the vote of the House.

*Amendment No. 185 was put and negatived.*

**Mr. Speaker:** The question is:

"That clause 29 stand part of the Bill".

*The motion was adopted.*

*Clause 29 was added to the Bill.*

*Clauses 30 and 31 were added to the Bill.*

**Clause 32—**(Act not to apply to certain classes of employees)

**Shri D. Sanjivayya:** I beg to move:

(i) Page 18, line 20,—

omit "and" (82).

(ii) Page 18,—

after line 21, insert—

"(g) any other financial institution (other than a banking company), being an establishment in public sector which the Central Government may, by notification in the Official Gazette, specify having regard to—

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;" (83)

(iii) Page 18, line 23,—

for "in". substitute "under". (84)

(iv) Page 18,—

after line 23 insert—

"(xi) employees employed by inland water transport establishments operating on routes passing through any other country". (85)

**Shri N. Dandekar:** I beg to move:

(i) Page 17,—

after line 35, insert—

"(d) an association or institution having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, industrial and business management, engineering or architecture, or such other profession as the Central Government may specify in this behalf from time to time, by notification in the Official Gazette:

Provided that the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established;" (186).

(ii) Page 17, lines 36 and 37,—

for "building operations", substitute—

"building, construction, loading and unloading or other operations". (187)

(iii) Page 18,—

omit lines 14 to 17. (188)

(iv) Page 18,—

omit line 20. (189)

(v) Page 17,—

after line 37, insert—

"(via) employees employed by an employer (other than a company) whose capital invested in the establishment as evidenced from his books of accounts does not exceed one lakh rupees at the commencement of the accounting year;" (219).

**Shri D. S. Patil (Yeotmal):** Sir, I beg to move:

Page 17,—

omit lines 22 to 24. (271)

अध्यक्ष महोदय, खंड 32 में लिखा है कि यह ऐक्ट गोदी कर्मचारियों को लागू नहीं होगा। मेरा सुझाव है कि बोनस का कानून उनको भी लागू किया जाए।

13.31 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

उपाध्यक्ष महोदय : बोनस कमीशन ने अपनी रिपोर्ट में इन के बारे में सिफारिश की है कि इन कर्मचारियों को बोनस स्कीम लागू की जाए। बम्बई में यह स्कीम लागू है, लेकिन कलकत्ता में कोई स्कीम लागू नहीं है। बम्बई में जो स्कीम लागू है उसमें भी कई दोष हैं। तो मेरे कहने का मतलब यह है कि मिनिमम और मै.स.म बोनस देने के जो इसमें प्रावोजन्स हैं उनको कम या ज्यादा करते हुए यह कानून उनको भी लागू किया जाए।

बम्बई में जो इनकम होती है उससे कहीं ज्यादा इनकम कलकत्ता में होती है। इतना होते हुए भी कोई भी बोनस की स्कीम वहां लागू नहीं है। इसलिए मैं ने यह छोटा सा प्रमोडमेंट दिया है। प्रमोडमेंट छोटा है लेकिन उसका महत्व बहुत है और मैं चाहता हूँ कि मंत्री महोदय इस संशोधन पर गौर करें और इसको मान्य करें।

**Shri N. Dandekar:** Sir, first of all, I will take my amendment No. 188 to clause 32, whereby I am endeavouring to put in after line 35 at page 17 the following. I better begin by referring to what is already excluded under sub-clause (v), namely, 'the Indian Red Cross Society or any other institution of a like nature; universities and other educational institutions; and institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit. I am now suggesting that we should add to that list one more category, namely,—

"an association or institution having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, industrial and business management, engineering or architecture or such other profession as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette:

Provided that the association or institution applies its income or accumulates it for application solely to the objects for which it is established;"

I have taken the wording almost entirely from the recent Finance (No. 2) Bill where associations of this kind have been exempted from tax subject to the condition that they accumulate their incomes for applications only to objectives for which they are intended. I hope, the hon. Minister will agree that these associations of professional bodies which regulate and present the profession of accountancy, such as cost accountancy and general accountancy, engineering, architecture and so forth, ought not to be within the ambit of this Act in the same way as universities and other educational institutions.

Then, Sir, amendment No. 187 is concerned with extending the scope of sub-clause (vi)—employees employed through contractors on building operations. Exactly the same considerations which apply to the problem of bringing in employees employed through contractors, the Bonus Commission found, really extended also to the whole field of contract workers. The proper thing here should be that the clause should be extended to cover employees employed through contractors not merely on buildings but also on construction, loading and unloading or other operations; in other words, contract labour as a whole ought to be excluded because it just is impracticable really to apply these sorts of laws to them.

[Shri N. Dandekar]

Then, I come to my amendment No. 219 because logically that comes next. At page 17, I suggest the insertion of one more category for exclusion. This is in line with the intention of exempting the smaller establishments. The way by which the Bill goes to exempt small establishments is that it will apply to a factory, meaning an establishment of ten or more workers using power; it will also apply to other establishments, that is, any other establishment, not a factory, employing 20 or more workers. That is one way of limiting the scope. I suggest another way—a necessary way,—which certainly in the Bonus Commission we did not think of. This is just one of those many matters which comes to one's mind when one goes into it more and more. I suggest the insertion of only this category, namely,—

“employees employed by an employer (other than a company) whose capital invested in the establishment as evidenced from his books of accounts does not exceed one lakh rupees at the commencement of the accounting year”.

This will exclude a whole lot of small, little people who in many ways constitute an important element in our industrial development today,—particularly in places in and around the cities of Punjab, in and around some of the cities of Maharashtra and Gujarat, and in many of the cities in Madras and UP—very small men, small industrialists, and entrepreneurs, little firms and small families, who are embarking upon ancillary industries of all kinds, taking a good deal of risk but making a fairly good job of it on the whole. I suggest that this is also a necessary way of excluding that kind of small-scale industries, other than those that operate as companies. And I, therefore, press this amendment for consideration by the Minister.

Then, I will go back to the other amendments concerning which I have

not spoken of yet, namely, Nos. 188 and 189. These are concerned with eliminating from the exemption list certain public sector enterprises, in respect of which I see no reason whatever for their exclusion. The general line and, indeed, the terms of reference, if I may say so, which limited the Bonus Commission in respect of public sector enterprises is interesting reading and I will take the liberty to read it out. The first term of reference was:—

“To define the concept of bonus and to consider in relation to industrial employments, the question of payment of bonus based on profits” etc.

The courts have held that “industrial employment” includes also employment in banking and financial institutions etc. But in so far as the public sector is concerned the Bonus Commission was hamstrung by this limiting “note”, namely,—

“The term, ‘industrial employments’ will include employment in the private sector and in establishments in the public sector not departmentally run and which compete with establishments in the private sector.”

Even accepting those limitations, I see no reason why the Industrial Finance Corporation of India, which is sub-item (a) under sub-clause (ix), or any State Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951, should be excluded. They are not departmentally run concerns; they are also concerns which in fact, compete with the banking industry, moneylending industry, financiers etc. I personally am quite clear that neither the Industrial Finance Corporation nor any State Financial Corporation ought to be honestly excluded from the application of this Act.

The same applies in regard to my Amendment No. 189 which is concerned with similarly suggesting that the Unit Trust of India should not be entitled to any exemption. The Unit Trust of India operates like any other investment house. There are any number of investment houses, investment corporations and concerns. This is one such and it offers a certain kind of investment while others offer other types of investment. They are all competitive enterprises. Indeed, today, the Unit Trust of India is the most powerful competitive enterprise in this field. It is one which is taking timid people's money for investment in industrial enterprises and it is operating as a channel through which such investments can take place. I am not saying it has no place in the economic structure. But what I do suggest is that it is a competitive enterprise like others; that it is not departmentally run; and that, therefore, there is no case for its exclusion.

Now, I turn to the Minister's own amendments, particularly Amendments No. 82 and 83. He has not taken any pains to explain them. But I would venture to make a few observations on them. Amendment 82 is merely a formal one. Amendment 83 is intended to insert yet another category of financial institutions to be exempted, namely,

"any other financial institution (other than a banking company), being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify 'v-ing regard to—

- (i) its capital structure;
- (ii) its objectives and the nature of its activities;
- (iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;"

The moment I read this, the State Trading Corporation came to my mind, the Mining Corporation and others, which are now mushrooming both at the Centre and at the State levels. These are competitive enterprises. They are not departmentally run bodies. Consequently I see no justification whatever for the Minister's additional items for exemption from the public sector enterprises that might otherwise be subject to this Act.

**Dr. Ranen Sen:** Sir, under the provision of this clause, the Government seeks to exclude not only a large number of workers but also various categories of people employed in different spheres of activity.

The first exclusion is the employees employed in insurance business, including the L.I.C. employees. I fail to understand why the employees of the L.I.C. have been excluded. If we consider it from the point of view of the public sector, even then the L.I.C. is not a monopoly concern in that respect. In the field of general and life insurance, the L.I.C. has got a place for itself. Therefore, this is also an industry, an establishment.

**Shri Alvares (Panjim):** At least the general insurance scheme.

**Dr. Ranen Sen:** It is a competitive body. Therefore, to debar thousands and thousands of L.I.C. employees under the provision of this clause is totally unjust. So, from any point of view, this should not be brought in by the Government.

Secondly, they have tried to debar the dock workers from this. One can understand about seamen because there is an explanation given in the Bonus Commission's Report which purports to say that seamen are mostly going outside and all that. But

[Dr. Ranen Sen]

As regards the dock workers, they have got the Dock Labour Board. They should not be excluded. Lakhs and lakhs of people are employed in our docks and the number is increasing every year. So, the Government is doing injustice to this category of workers who have no means to get bonus.

Then, I come to the category of employees of the Universities and educational institutions. Merely saying that these institutions are not profit-making bodies would not do justice. Firstly, the people employed in the Universities and educational institutions are very low-paid employees. They do not enjoy any of the facilities or privileges that are enjoyed by other workers in other industries or institutions. They are not covered by any labour law. We are not linking up this bonus issue simply on the question of profit. If an establishment incurs some loss, then also the employees get some benefit, some bonus. Therefore, it will be wrong to exclude this category of employees who are working in the Universities and educational institutions. They should at least get the minimum.

Then, again, in the category of institutions established not for purpose of profit, the chambers of commerce are mentioned. I must say this is a wonderful thing. The chambers of commerce are the central organisations of all profit-making institutions, organisations, industries, and so on.

**Shri D. Sanjivayya:** But the chamber itself does not make profit.

**Dr. Ranen Sen:** But they derive the benefit from those profit-making organisations and they employ thousands of people. Take, for example, the Bengal Chamber of Commerce, the F.I.C.C.I., the Associated Chambers of Commerce, etc. etc. All these are the organisations of

big businesses. You are not only debarring thousands of workers who are working in the chambers of commerce but you are also showing a little soft corner for the big business people who represent these chambers of commerce.

With regard to the contract labour also, there are large bodies of engineers and contractors who are engaged in the construction work. They are really like private organisations who employ many workers for building purposes. There are big organisations of the contractors who are engaged in building operations. I have myself seen it in Varanasi where big Government buildings are being constructed through those contractors and they are employing thousands of people. Those workers are also being excluded.

Various categories of workers have been excluded from the purview of this Act. The hon. Minister has said that some 45 lakhs of people will be getting the benefit. But when several lakhs of people are being debarrred from the benefit of this Act, only a few lakhs of people will be getting the benefit. Therefore, I submit that at least these categories of workers should not be excluded from the purview of this Act.

**Shri Bade:** Sir, I want to move my Amendment Nos. 281, 282 and 283.

**Mr. Deputy-Speaker:** Not now.

**Shri Bade:** I want to move them now with your permission, Sir. I had gone out for just two minutes and I could not move them at that stage. The Speaker has allowed it many times. It is only a technical thing. I may be allowed to move them.

**Mr. Deputy-Speaker:** You can speak on this clause. But I cannot allow you to move them now.



**Shri Bade:** I know there is no use of moving them because they will not be accepted.

**Mr. Deputy-Speaker:** You can have your say but I will not allow you to move them now.

**Shri Bade:** Sir, I support the amendments of Dr. Ranen Sen and Shri Patil. The Government have excluded the workers employed in the insurance business. At the same time, they have excluded the building contractors. As the hon. Minister knows, the Bharat Sewak Samaj takes the contracts of building constructions. What is the specific reason for excluding the building contractors from the purview of this Act? So many building contractors have got permanent employees with them, say, for example, the carpenters and other labourers also. They move from one place to another. They take contracts of huge buildings and construct them. There is one more thing. I agree with Mr. Dandekar regarding the employees of the Industrial Finance Corporation of India, Deposit Insurance Corporation, Unit Trust of India, and Industrial Development Bank of India. Why should these employees be deprived of the bonus? Because they are in competition with other lending companies, other companies which do banking business, they should not be exempted.

**Mr. Deputy-Speaker:** All these have been explained by the previous speaker. There should not be repetition.

**Shri Bade:** Repetition is not an offence.

I want to bring one more point before this House. The amendment moved by the Government is this:

"any other financial institution (other than a banking company), being an establishment in public sector, which the Central Government may, by notification

in the Official Gazette, specify, having regard to—

- (i) its capital structure;
- (ii) its objectives and the nature of its activities;
- (iii) the nature and extent of financial assistance or any concession given to it by the Government; and
- (iv) any other relevant factor".

They want to exempt these companies. That is, they want to grab more powers in their hands. It is like a dictator. Whatever the dictator wants to do, one line is passed and he is given the power to dictate. Here also the Government wants to grab more powers in this way. At the same time they are blind to the fact that this provision is overlapping another provision in the same Act, i.e., the provision under Section 36.

"If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class or establishments from all or any of the provisions of this Act".

That is, the Government has got power under Section 36 to exempt any establishment from the provisions of the Bonus Act. Why then a special provision is made now? These two provisions overlap each other. When it goes to the Court, the judges will laugh in their sleeves. They will say: "This is what Parliament has done; one section overlaps

[Shri Bade]

another section; the same provision is made without looking to the general provision that already appears in Section 36". I would, therefore, request the hon. Minister to think over the matter again and not press this amendment.

**Shri Alvares:** I oppose this entire clause and in particular support the amendment moved by Shri Patil. This clause seeks to define the categories of employees that will not be covered by this Bonus Act. Let me take exception to my friend Dr. Ranen Sen's justifying the exclusion of seamen. I do not see any reason why seamen who are employed in a profit-making industry should be excluded from the provisions of this Bonus Act. It is immaterial whether they work in the air or sea or land. The seamen also perform an economic function of normal type as others do of earning money, earning foreign exchange. Why should this category of employees be exempted from the provisions of this Act? In regard to stevedore labour, there is a specific recommendation in the Bonus Act. These people are not employed in the public or semi-public sectors. Even, for that matter, they perform all manual labour which the other people were performing hitherto. They belong to the private sector. If, at the slightest suspicion, they perform some sort of a very public duty which is akin to that in the public sector undertakings in this country, it should not be taken as a public sector duty. Therefore, I recommend that stevedore labour also should qualify for bonus.

Now, in regard to employees employed through contractors on building operations, I do not know why they have been excluded. It is not as if the Government wants to keep down the cost of construction. The cost of construction is soaring up. Some of the biggest corporations or companies or institutions that have sprung up of late are those of contractors who undertake construction

work of big type. If anybody examines the structure of employment in these corporations or institutions or organisations, one will come across the fact that there are thousands of labour who are perennially employed on many projects, and the employment has been continuous for many years. Take, for instance, the Bharat Sevak Samaj. It is undertaking construction of buildings in this country. They get a more favourable rate and the employment is continuous. Why should these employees, whether they are in private organisation or Bharat Sevak Samaj, be denied any participation in the profits of their companies, which is really of a very high order. Therefore, I say that it is a bad labour practice for the labour Ministry to keep on discriminating and adding to the number of people who will not be entitled to the provisions of this Bonus Act. Therefore, not only seamen, but also stevedore labour, contract labour, the employees of insurance companies, etc. should qualify for bonus.

**Dr. M. S. Aney:** I join my hon. Friend in demanding that the exemptions made under Section 32 should be removed and they should also be brought within the purview of the provisions of the Bonus Act. I particularly draw attention to sub-clause (iii) of Section 32 which excludes the operation of this Act to employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers. This, in my opinion, is in utter disregard of the recommendation of the Bonus Commission. Under 'Stevedore Labour', the Bonus Commission has made the following observations:—

"There are about 18 stevedoring firms in Bombay and about 34 in Calcutta. The figures for other ports are not readily available. In Bombay, stevedore labour has been paid profit bonus

at a uniform rate, but stevedore labour in other ports is not paid any profit bonus....".

Then the historical circumstances are given, which I do not want to read here.

"We are of the opinion that stevedore labour should not, per se, be ineligible for bonus. It has not been suggested that stevedoring is less profitable in Calcutta than in Bombay. The circumstance that employment is from a pool, in rotation and intermittent, is not a good argument against giving bonus and there should be no practical difficulties since a record is regularly maintained of the persons who have been employed under each stevedore".

My point is that the benefits of the provisions of the Bonus Act should be extended to these persons also. Therefore, the clause which makes a distinction by excluding certain employees from the purview of the Bonus Act should be removed, more particularly that part which goes against the recommendation of the Bonus Commission.

**Shri S. M. Banerjee:** I oppose the whole clause, especially with regard to the employees employed by any insurance carrying on general insurance business and employees employed by the Life Insurance Corporation of India. My point is this. After a heroic struggle, the employees of the L.I.C. entered into an agreement with the L.I.C. and got bonus. Previously it was told to them that the employees of the public sector projects should not get any bonus because those were not profit-making concerns. The insurance employees were told by their corporation that the future negotiations would depend on the recommendations of the Bonus Commission and on the legislation that was likely to be brought forward in this House. Now, a situa-

tion has arisen where this Bill is not going to be applicable to the general insurance employees, the life insurance employees, the dock workers, the Indian Red Cross Society, and universities and other educational institutions, and institutions including hospitals, Chambers of Commerce and social welfare institutions. Persons who are responsible for social welfare activities in this country will not have any social security or anything else; they will be deprived of even bonus. I do not know whether these omissions are with a view to minimising or making the total number of employees entitled to bonus the minimum possible in the country.

14 hrs.

The hon. Minister has said that about 35 to 45 lakhs of organised labour will be able to get bonus. I say that the organised labour in this country is more than a crore; I do not say that it runs to crores, but it is one crore and some lakhs. If more than 60 per cent of them are not going to be entitled to bonus, then I would like to ask what we are aiming at.

The result of this Bill will be that even those concerns which were paying bonus up to this time would stop paying it. For instance, the Chamber of Commerce people in Calcutta were paying bonus to their employees, known as the Puja bonus. As you know, in Calcutta and other places in West Bengal, bonus is paid only once a year, and that is during the Puja holidays. And that is known as the Puja bonus. After this Bill is passed, those Chamber of Commerce people who are paying bonus now to their employees will no more pay it, and they would take shelter under this clause. I am sure the hon. Minister may refer us to clause 34 in this connection. I shall come to that a little later.

[Shri S. M. Bannerjee]

So far as the LIC is concerned, that is owned by Government. But what about the general insurance employees? We had asked for nationalisation of general insurance but that had not been agreed to because of certain big business interests. The general insurance companies are now paying bonus in some cases, while some are not paying at all. During the recent negotiations, which the general insurance employees had with the general insurance companies, the latter told them that they should wait for the bonus Bill. Now, the bonus Bill is before 30 or 40 of us who are sitting at the moment in this House, and we are going to pass it also.

Then, I come to the case of the employees employed by contractors for building operations. In this country we are expanding and we are constructing many new buildings, in Delhi, Calcutta and other big places. Even the rural development schemes are now before us, and in all these, we shall be employing a lot of contract labour. These contractors have minted fabulous sums of money out of the sweated labour of the working people but they would not pay a single pie to the workers. I may remind the House that they are neither paying the minimum wage according to the Minimum Wages Act, nor any dearness allowance or city compensatory allowance or overtime. Actually, the condition of the contract labour today is very pitiable. I want to know whether the exclusion of contract labour is due to the fact that the beloved organisation of the ruling party, namely the Bharat Sewak Samaj has got to undertake or has undertaken contract work in Delhi and other places and they will also be obliged to pay bonus if this Bill were to be made applicable to contract labour engaged in building operations. I am sure that that is one of the principal reasons why contract labour has been excluded from the purview of this Bill. Let it be made clear,

if that is the only reason, that the bosses of the ruling party who are ruling this country will take care of the Bharat Sewak Samaj. If Shri Nanda is no longer associated with it, another Nanda will come who will take care of the interests of the Bharat Sewak Samaj. The mere fact that Bharat Sewak Samaj will be obliged to pay some amount out of its abundance to contract labour should not be a ground for excluding contract labour.

I would submit that the Labour Minister must react like a Minister in charge of labour. Otherwise, his name will go down in history as one of the champions of the interests not only of the big business bosses but even of the petty contractors who want to please the ruling party by giving them Rs. 500 or Rs. 1,000 by way of donation.

Shri A. P. Sharma (Buxar): Why is my hon. friend bringing in donations here?

Shri S. M. Banerjee: My hon. friend Shri A. P. Sharma represents the railway workers, and so far as the Railway Board is concerned, that is not going to pay any donation to him, but I am talking of the contractors and others who really thrive under this.

Shri Alvares: There are contractors in the railways also.

Shri S. M. Banerjee: So, I oppose the entire clause. I hope the hon. Minister will safeguard the interests of these working people who are actually engaged in expanding our country.

Shri N. Dandekar: May I be permitted to move my amendment No. 190? In the confusion, that has been left out.

Mr. Deputy-Speaker: I had already disallowed Shri Bade's amendment.

Shri N. Dandekar: He was not present then. But I was present and

I thought that that would make some difference.

**Shri Indrajit Gupta:** I would like to know whether the hon. Minister is going to make any submissions in support of his amendments, because I would like to oppose his amendments.

**Mr. Deputy-Speaker:** He will say what he wants in his reply.

**Shri Indrajit Gupta:** Is he not going to explain his amendments before we say whether we support them or oppose them? If he is going to explain his amendments, then I shall withhold what I have to say in opposition until after I have heard him.

**Mr. Deputy-Speaker:** The hon. Member wants to oppose those amendments?

**Shri D. Sanjivayya:** Does he mean that I shall first have to speak and explain my amendments, and then a second time by way of reply? If he wants me to explain my amendments and speak now, I am prepared to do so.

**Shri Indrajit Gupta:** If he is not going to speak now, then I shall start opposing just now.

**Mr. Deputy-Speaker:** Let the hon. Member oppose it now.

**Shri Indrajit Gupta:** But the hon. Minister has not explained why he has brought forward his amendments.

**Mr. Deputy-Speaker:** He will say that in his reply.

**Shri Bade:** On a point of order. The practice in this House for the last three or four years has been that whenever an amendment is moved, the Mover moves it and then we criticise it. Otherwise, we shall have no opportunity to reply to what he says.

**Mr. Deputy-Speaker:** Dr. Ranen Sen has opposed those amendments already. If the hon. Member wants to oppose them he may also do so.

**Shri Indrajit Gupta:** The procedure is that when anybody moves an amendment he first explains it while moving it and then we speak on it.

**Mr. Deputy-Speaker:** I cannot allow him to make two speeches.

**Shri Indrajit Gupta:** I would beg of you to consider whether double standards should be applied here. When we move amendments, we have to make our submissions first, and then the hon. Minister will reply to them, but when the Minister brings forward amendments, he would simply move the amendments, and we would not know why he has brought forward those amendments, but we would have to express our opinions on them all the same....

**Shri D. Sanjivayya:** I am prepared to speak. Perhaps if I speak now, the hon. Member may give up his idea of opposing the amendments. It is with that intention that I am prepared to speak now.

**Shri Indrajit Gupta:** But before that, I would just like to say one word about clause 32....

**Mr. Deputy-Speaker:** The hon. Member can say what he wants to say once and for all. I cannot allow two speeches for the same hon. Member.

**Shri D. Sanjivayya:** Amendment No. 82 is only consequential to my amendment No. 83. As far as amendment No. 83 is concerned, I would like to say that clause 32 contemplates the exclusion of certain classes of employees from the purview of this enactment. We as a Government feel that one more category should be added through amendment No. 83. In sub-clause (ix) of clause 32 we have enumerated quite a number of institutions like the Deposit Insu-

[Shri D. Sanjivayya]

rance Corporation, the Agricultural Refinance Corporation and so on. We want that the employees in all these financial institutions should be excluded from the purview of this Bill. In a similar way, if on any future date, Government decide to establish similar financial institutions, the employees thereof should similarly be excluded. The apprehension in the minds of hon. Members, particularly of Shri N. Dandekar, seem to be that institutions like the STC and MMTC and mining corporations etc. would come under this category. I would like to say categorically that they are not financial institutions and they will not come under this. Moreover precaution has been taken to see that all financial institutions are not excluded by notification by Government. That is why we say, 'having regard to its capital structure, its objectives and the nature of its activities, the nature and extent of financial assistance or any concession given to it by the Government, and any other relevant factor'. Unless all these are looked into, we are not going to just exempt any particular institution or the employees thereof from the operation of the Act.

**Shri Alvares:** It means that if any institution is helped by Government, that is a liability and its employees will not get bonus.

**Shri D. Sanjivayya:** No, what Government are thinking of is institutions which are in the interest of the general public. There is in the country a housing scarcity. Suppose Government starts a corporation to advance loans to help lower middle income groups or other lower income groups to build their own houses. The corporation might be excluded. Similarly other corporations which are intended for the general benefit of the public.

**Shri Priya Gupta:** But they will function in competition with private contractors.

**Shri D. Sanjivayya:** Amendment No. 84 is merely a drafting change. Amendment No. 85 specifies another category we are adding. Here we have in our mind the route from Calcutta to Assam. There are various difficulties. Therefore, we thought it would be in the public interest to exclude this category.

**Shri Priya Gupta:** A canal is being constructed to connect the Brahmaputra with the Ganges circumventing Pakistan territory. So why this permanent exclusion of inland water transport workers now?

**Shri Indrajit Gupta:** When we were having the general discussion, I had occasion to remark that the number of exemptions which the Minister was seeking to bring into this Bill would eventually result in a state of affairs whereby this Bill would have to be called not the Payment of Bonus Bill but the Non-payment of Bonus Bill. I had in mind the whole of cl. 32 which, if passed, will amount in fact to a greater number of employees being deprived of bonus than those who are brought under the scheme.

**Shri S. M. Banerjee:** That is their socialism.

**Shri Indrajit Gupta:** The Minister always tells us that 40 or 45 lakh workers would come under the scheme.

**Shri D. Sanjivayya:** Yes.

**Shri Indrajit Gupta:** Has the Ministry worked out.....

**Shri D. Sanjivayya:** Definitely.

**Shri Indrajit Gupta:** ...how many lakhs are covered by all these exemptions?

**Shri D. Sanjivayya:** Yes.

**Shri Indrajit Gupta:** Will he tell us the figures? He says he has worked

— out the figures very definitely. But he has omitted to tell us how many lakhs are excluded by means of these exemptions and exclusions.

**Shri D. Sanjivayya:** I have not worked out the exclusions. Those who are covered, are about 45 lakhs workers—those figures I have got.

**Shri Indrajit Gupta:** You will find that many more are being excluded under the clause.

**Shri D. Sanjivayya:** I am not sure.

**Shri Indrajit Gupta:** You may not be sure,—you should make sure, but we are sure.

Does the Minister know that the Bombay Dock Labour Board has provided for payment of bonus for the dockers in Bombay? What will happen to that when this is passed? The Calcutta Dock Labour Board and the Madras Dock Labour Board have for sometime now been considering adoption of the Bombay scheme for their dockers. But suddenly you bring forward a Bill which has a provision to exclude this category of workers. So, I do not follow what is the purpose of this. The dock workers who are working at our docks and harbours are, I think, doing a very important strategic job, handling foodgrains and other things. But they are sought to be denied bonus. Similarly the case of seamen, and so many other people. I am therefore totally opposed to this clause 32.

As regards his own amendments, the expression 'any other financial institution' sought to be introduced in sub-cl. (g)—a new sub-clause—he said just now that in future we might set up some institution to give loans for housing or something like that. I say when such an institution is set up in future, we can deal with it then. He can always come forward with an amending Bill and extend the Act to cover it. But he is seeking to provide for some speculative future. We

do not know whether such an institution will be set up.

**Shri D. Sanjivayya:** It is going to be the immediate future.

**Shri Indrajit Gupta:** When it comes, the Act can be extended, if necessary, if the House permits. Why should there be this blanket provision covering all financial institutions? I do not follow why the employees should suffer because of that.

A word about the exclusion of inland water transport workers. I could not follow his argument, though I was waiting to be convinced.

**Shri D. Sanjivayya:** I am not in a position to disclose some of the arguments in the interest of the security of the country.

**Shri Indrajit Gupta:** Security of the country. I know this clause relates to only one company in the country, there is no other company coming under the definition of inland water transport operating on routes passing through any other country. He knows it as well as I do. There is only one company and that is the River Steam Navigation Company which operates a river route between Bengal and Assam, part of which passes through Pakistan waterways. They are employing some Pakistanis also today, although it is the declared objective of that company to Indianise as soon as possible—I think they ought to do it; there is no doubt about it—the staff. But the point is, why are these people being excluded? We could not follow.

There is a copy of a notice with me which the management in Calcutta has put up at their dockyard and their office on 31st August. In this the management has clearly stated to the employees that they have applied to Government for exemption under section 36 of the Payment of Bonus Ordinance, and it is receiving the attention of the Central Government. Why has the management applied?

[Shri Indrajit Gupta.]

They have stated the reasons. There are no secret reasons to be hidden, as he says. The reasons are stated in the notice of the company itself. I have no time to read the whole thing out. But I summarise them by saying that they are pleading that they have been suffering losses, the financial condition of the company is not at all sound, it has been undergoing losses for the last three years, figures are given and so on. That is the reason put forward by them.

The management and control of this company has recently been taken over by Government. The capital invested by the Inchcape family in England remains intact. The House has sanctioned it. Questions have repeatedly been asked by me and other members during the last three years about the huge loans which have been sanctioned by this Government to this company. Rs. 2½ crores were given as loans which they have not yet repaid. Those loans were given on the understanding that they would rehabilitate their old vessels and reorganise the company and improve the operation in this waterway linking two of our states. But nothing was done. Finally, Government came forward because the private investors in order to protect their capital approached Government 'You please take over the management; we cannot manage it any more'. But their capital is kept intact. Now the company is pleading that it made losses for the last three years.

**Shri D. Sanjivayya:** I am told there are some other companies also.

**Shri Indrajit Gupta:** Where?

**Shri D. Sanjivayya:** Operating on that route.

**Shri Indrajit Gupta:** Give me two names—I would like to know.

This company is seeking exemption on the ground of losses suffered over the last three years. I say those

losses, if they were real losses, are entirely due to the mismanagement made by the British-owned company. It has been taking huge loans from Government and doing nothing. It is disorganising the whole work on that water route. Now Government has taken over the management and control. In fact, we would like Government to nationalise it completely.

But what is the excuse for coming forward with a provision to deprive the employees of the bonus? I can tell the Minister from my own personal experience that there is going to be grave unrest and a lot of trouble over this. People may have the impression that this relates only to ships plying on this route. Not at all. They have a ship-building and ship-repairing works employing 2,000 people. Are these people to be excluded under cl. 32. Are ship-building and ship-repairing workers to be excluded from bonus? There is the Rajabagan works employing 2,000 people. They have a dockyard in the eastern coast doing ship-repairing and ship-building. They have got their installations all along the river Hooghly, what are called ghats, where loading and unloading is done. All these people are excluded. It is not only the crew of the boats which pass through the Pakistani waters. This is a very serious state of affairs. I oppose this totally. I am not at all satisfied by the argument which he takes shelter under, saying that there is something which he cannot disclose. This is not an argument. The argument is contained here in the General Manager's notice that because of losses they will not pay. I say that that is no argument. Even if they make losses, they should pay the minimum bonus, and they should not be excluded.

**Shri D. Sanjivayya:** First I would like to deal with the question of dock workers since it was referred to by quite a large number of Members. Dr. Aney referred to the recommendation



of the Bonus Commission. I have also gone through it. It only says that a system of bonus is available to the dock workers of Bombay, and similar systems should be tried in other ports for dock workers, and that if an agreed solution is not found to this problem, i.e., if the bonus issue is not settled amicably between the dock workers and the employers there, other methods should be explored by referring the dispute to arbitration or adjudication for the purpose. Therefore, we have already addressed all the Chairmen of various dock labour boards to examine this question and to help in finding a solution for it. In fact, I have reports with me that almost all the Chairmen of the various dock labour boards apart from Bombay have taken up this question in right earnest and consultations and negotiations are going on between dock workers and the employers there. I hope and trust this will be settled amicably, falling which the recommendation of the Bonus Commission, namely that the issues should be settled through arbitration or adjudication, would be considered.

Secondly, I go to the next item, namely the one relating to seamen because that also was referred to by quite a large number of Members.

**Shri Bade:** Only say you do not accept the amendments.

**Shri D. Sanjivayya:** The Commission themselves have pointed out—Dr. Ranen sen pointed out the specific recommendation made by the Bonus Commission—that it would create difficulties if recommendations were made applicable to seamen and therefore they have said that they should be excluded. In a similar way, various other categories, insurance etc., are all excluded in the light of the recommendations made by the Bonus Commission.

Thirdly, I come to the workers employed through contractors or in building operations. Here again, the Bonus

Commission said that it was very difficult. They said:

“We think that the problem relating to workers on building construction engaged through contractors is one of evolving and enforcing a proper wage structure. It is not feasible to apply the bonus formula to such workers engaged through contractors.”

I know that there are quite a large number of workers engaged in this industry. We had a conference, a tripartite meeting, and we have taken a decision to have special legislation so far as the construction workers are concerned. So, firstly we have to think of their wages and allowances and welfare facilities to be provided for them. Thereafter, probably we may think of other facilities for this category of workers.

There are various amendments proposed by hon. Members, some to delete certain categories, some to delete the whole clause. I am not willing to accept any one of them.

Coming to Amendment No. 186 moved by Shri Dandekar, I think this is covered by clause (c), which reads:

“institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;”

I think the institutions mentioned by Shri Dandekar are those which are not for profit, in which case they will all be exempted.

In the end, I would like to say that I am not willing to accept any of the amendments proposed by the hon. Members, and I press my amendments.

With regard to construction workers, of course, this does not practically re-

[Shri D. Sanjivayya]

late to any issue here but they made it a sort of political issue. They say that probably the Government has exempted, or they do not want that the benefits of the law should flow to construction workers, because there is the Bharat Sevak Samaj which is engaging itself in construction etc., that probably the ruling party wants bonus from the capitalists etc. This is a unanimous recommendation of the Bonus Commission, and unfortunately their own representative, Shri Dange, was a member of this Commission and he also agreed to this. Am I to presume that the Communist Party headed by Shri Dange also wanted a bonus from the capitalists?

**Dr. Ranen Sen:** It was a package deal, that is why Shri Dange agreed to many things, because majority opinion was to be arrived at.

**Shri D. S. Patil:** Is it not a fact that the Bonus Commission has said that they are of opinion that stevedore labour should not be ineligible for bonus?

**Mr. Deputy-Speaker:** The question is:

(1) Page 18, line 20.—  
omit "and" (82)

(2) Page 18,—  
after line 21, insert—

"(g) any other financial institution (other than a banking company), being an establishment in public sector, which the Central Government may, by notification in

the Official Gazette, specify, having regard to—

- (i) its capital structure;
- (ii) its objectives and the nature of its activities;
- (iii) the nature and extent of financial assistance or any concession given to it by the Government; and
- (iv) any other relevant factor."

(3) Page 18, line 23,—

for "in", substitute "under". (84)

(4) Page 18,—

after line 23, insert—

"(xi) employees employed by inland water transport establishments operating on routes passing through any other country". (85)

*The motion was adopted.*

**Mr. Deputy-Speaker:** I shall now put amendment Nos. 186, 187, 188 189 and 209 to the House.

*Amendments Nos. 186 to 189 and 219 were put and negatived.*

**Mr. Deputy-Speaker:** I now put amendment No. 271 to the House.

*Amendment No. 271 was put and negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 32, as amended, stand part of the Bill."

*The Lok Sabha divided:*

### Division No. 22]

### AYES

[14.37 hrs.]

Bal Krishna Singh, Shri  
Barman, Shri P.C.  
Barupal, Shri P.L.  
Basappa, Shri  
Bears, Shri  
Bhatkar, Shri  
Bisat, Shri J.B.S.  
Braleshwar Prasad, Shri  
Chakraverti, Shri P.R.  
Chandrabhan Singh, Shri  
Chaturvedi, Shri S.N.  
Chaudhury, Shri Chandramani Lal

Chaudhuri, Shrimati Kamala  
Daffe, Shri  
Das, Shri Sudhansu  
Deshmukh, Shri B.D.  
Dhuleshwar Meena, Shri  
Harvani, Shri Anwar  
Jha, Shri Yogendra  
Kedaria, Shri C.M.  
Keishing, Shri Rishang  
Kinder Lal, Shri  
Kotaki, Shri Liladhar  
Krishna, Shri M.R.

Lalit Sen, Shri  
Malhotra, Shri Inder J.  
Maniyangadan, Shri  
Masuriya Din, Shri  
Mathur, Shri Shiv Charan  
Mehrotra, Shri Braj Bihari  
Mehta, Shri J.R.  
Melkote, Dr.  
Mengi, Shri Gopal Datt  
Mishra, Shri Bibbuti  
Mohammed Yusuf, Shri  
More, Shri K.L.  
Munzini, Shri David

Muthiah, Shri  
Patil, Shri D. S.  
Raghunath Singh, Shri  
Rai, Shrimati Sabodra Bai  
Rane, Shri  
Rattan Lal, Shri  
Reddy, Shri Linga  
Reddy, Shri R. S.  
Sadhu Ram, Shri

Saha, Dr. S. K.  
Sahu, Shri Rameshwar  
Sharma, Shri A. P.  
Sharma, Shri D. C.  
Sheo Narain, Shri  
Shree Naryan Das, Shri  
Shukla, Shri Vidya Charan  
Singha, Shri G. K.  
Snatak, Shri Naradeo

Subbaraman, Shri  
Sumat Prasad, Shri  
Tiwary, Shri D. N.  
Tiwary, Shri K. N.  
Tiwary, Shri R. S.  
Tula Ram, Shri  
Upadhyaya, Shri Shiva Dutt  
Wanik, Shri Balkrishna  
Yadava, Shri B. P.

### NOES

Alvares, Shri  
Aney, Dr. M. S.  
Bade, Shri  
Banerjee, Shri S. M.  
Bheel, Shri P. H.  
Dandekar, Shri N.  
Gupta, Shri Indrajit

Gupta, Shri Kashi Ram  
Gupta, Shri Priya  
Krishnapal Singh, Shri  
Mitra, Dr. U.  
Mukerjee, Shri H. N.  
Pandey, Shri Sarjoo  
Sen, Dr. Ranen

Sezhiyan, Shri  
Solanki, Shri  
Trivedi, Shri U. M.  
Warior, Shri  
Yadav, Shri Ram Sewak  
Yojnik, Shri

**Mr. Deputy-Speaker:** The result of the division is: **Ayes 64; Noes 20.**

*The motion was adopted.*

*Clause 32 as amended, was added to the Bill.*

**Clause 33.—***(Act to apply to certain pending disputes regarding payment of bonus)*

**Shri D. Sanjivayya:** I beg to move:

Page 18, line 24,—

for "2nd September, 1964" substitute—

"29th May, 1965" (2)

**Shri Indrajit Gupta:** I beg to move:

Pages 18 and 19,—

for clause 33, substitute—

"33. (1) Minimum bonus under section 10 of this Act shall be paid in all cases relating to any accounting year ending on any day in the calendar year 1962 where claims have been dismissed because no surplus was available according to the formula of the Labour Appellate Tribunal.

(2) This Act shall apply to all bonus matters relating to accounting year ending on any day in calendar year 1962 other than those cases in which settlements have

been reached or decisions have been given except as provided in sub-section (1)." (31)

**Shri Alvares:** I beg to move:

Pages 18 and 19,—

for clause 33, substitute—

"33. The Act shall have retrospective effect from the accounting year ending on any day in the year 1962". (272).

**Shri Bade:** I beg to move:

Page 19,—

after line 2, insert—

"Explanation II—A dispute shall also be deemed to be pending if the payment of bonus was not made due to the non-availability of surplus." (286).

**Shri N. Dandekar:** Sir, I am not moving No. 191, but I am moving my amendments Nos. 192, 220, 221, 222 and 223.

I beg to move:

(i) Page 18, line 36,—

omit "and any subsequent accounting year." (192).

(ii) Page 18, lines 28 and 29,—

for "the appropriate Government or before any tribunal or other authority",

[Shri N. Dandeker.]

substitute—"and tribunal or other adjudicating authority" (220).

(iii) Page 18,—

omit lines 34 and 35. (221).

(iv) Page 18,—

omit lines 36 to 41. (222).

(v) Page 19,—

omit lines 1 and 2. (223).

**Shri D. Sanjivayya:** Sir, my amendment No. 2 is a simple one. Firstly we said, 2nd September, 1964, because on that day the Government resolution was issued on the Bonus Commission's recommendations. But we thought that 29th May, 1965 would be a better date, because it was on that day that the Ordinance was promulgated.

**Shri N. Dandeker:** Sir, my amendments Nos. 192 and 221 to clause 33 go together. They are for deleting certain words in line 33 and the entire lines 34 and 35. The point of it is quite simple. It is perfectly understandable that where a dispute arise, it should be settled in accordance with the provisions of this Act. But it seems to me really odd that subsequent years, even if they have been settled, should be unsettled; but that is the effect of these particular provisions that I am suggesting the deletion of. (*Interruptions*).

Sir, would you kindly ask them to discuss the war in the Coffee House?

**Mr. Deputy-Speaker:** Order, order.

**Shri Raghunath Singh** (Varnasi): He is practising for the war!

**Shri N. Dandeker:** Sir, clause 33 says that bonus in respect of certain disputed years shall be payable in accordance with the provisions of this Act. This is alright in relation to the accounting year to which the dispute relates. But the clause goes on to add, "and any subsequent accounting year, notwithstanding that in respect of that

subsequent accounting year no such dispute was pending". That, it appears to me, Sir, is an odd provision. Where a thing has been settled, no law subsequently passed ought to unsettle settled matters; and frankly I am unable to appreciate the reason why this has been put in where no dispute is pending. Where a dispute is pending, it is perfectly correct that it should be settled in accordance with the provisions of this Act.

Then, Sir, as regards my amendments Nos. 220, 222 and 223, they are concerned with the Explanation. And the Explanation reads this way:

"A dispute shall be deemed to be pending before the appropriate Government where no decision of that Government on any application made to it under the said Act"

—that is, where the Government have gone to sleep—

"or such corresponding law for reference of that dispute to adjudication has been made or where having received the report of the Conciliation Officer under the said Act or law, the appropriate Government has not passed any order refusing to make such reference."

This, really, is incredible, that a dispute is supposed to be pending because the Government have gone to sleep. I am suggesting that if this "Explanation" is to have any meaningful meaning, the wording ought to be changed. I suggest that the word "the appropriate Government or before any tribunal" ought to be deleted and ought to be substituted by the words "any tribunal or other adjudicating authority" and that the rest of the stuff ought really to go; so that a dispute shall be deemed to be pending only if it was pending before any tribunal or other adjudicating authority. That is all. In other words, a dispute is pending only when the

dispute is pending, and not when somebody has gone to sleep and has not done anything about it. So that if a dispute was pending before any tribunal or adjudicating authority it should be regarded as a pending dispute; if it was not so, it should not be regarded as a pending dispute. Otherwise, it will open up any number of cases on which all kinds of letters may have been written, but no action had been taken by the Government; all kinds of things the Conciliation Officers might have recommended, but no action might have been taken. Uncertainty of that kind as to what is a pending dispute ought not to exist. A dispute ought to be said to be pending when it was in fact pending before an adjudicating authority.

That is all that I have to say.

**Shri Indrajit Gupta:** Sir, the whole of clause 63 is extremely cumbersome. As has been found in the course of the discussion, it is difficult for any one to understand what it is. And it may lead to a lot of differing interpretations, and consequently to a lot of disputes and litigation. We want to avoid that. So I wish to substitute that by what I consider to be a much simpler clause, or rather two sub-clauses.

The first one is this. In the existing Bill there is no explanation or there is no provision made for those bonus disputes which were settled or which were dismissed, let us say, prior to this Ordinance coming into force, and relating to any accounting year ending on any day in the calendar year 1962—but dismissed on the sole ground that there was no available surplus in terms of the yardstick then available, that is to say the LAT formula. That yardstick no longer holds good. Once the Act is enacted there is no question of there being any criterion for minimum bonus irrespective of profit and loss.

Therefore, the provision I wish to make is that in all those cases relating to any accounting year ending on any

day in the calendar year 1962 where the workers' claims have already been dismissed only on this particular ground that no surplus was available according to the formula of the Labour Appellate Tribunal, in all such cases the minimum bonus under section 10 of the Act should be paid.

**Dr. M. S. Aney:** Even when the cases are pending?

**Shri Indrajit Gupta:** The case is not pending; cases were pending but they were dismissed on the ground that no surplus was available under the LAT formula. Since this Bill seeks to put in retrospective consideration for such disputes which related to accounting year ending on any day in the year 1962, on that same basis those cases which have already been dismissed because of non-availability of surplus under the LAT formula should be considered afresh. The minimum bonus available under section 10 of the Act which we are going to legislate should be made available and it should be paid in all such cases.

Secondly, I want to introduce an amendment to sub-clause (2) which would read as follows:

"This Act shall apply to all bonus matters relating to accounting year ending on any day in calendar year 1962 other than those cases in which settlements have been reached or decisions have been given except as provided in sub-section (1)."

I think this makes it much more straightforward and clear. There is much less scope for misinterpretation. Cases where decisions had been given by a Tribunal or any such statutory body or where agreements had been reached, could not be reopened but in all the other cases which relate to accounting year ending 1962, this Act should apply and that should be the straightforward interpretation given to it.

**Shri Alvares:** My amendment seeks to substitute this clause by a very simple proposition. My first object is to avoid all the complications and the various ways through which this clause seeks to deny bonus from those who seek it with retrospective effect from 1962. The second point is to re-establish a healthy practice that the Government had adopted hitherto of giving bonus from the time it had been referred to a tribunal. I could recount any number of instances where it had been implemented with retrospective effect. The Bonus Commission was set up in 1961 and the award came much later. Now, all tribunals and commissions, because of the special circumstances in which they function, because of the delays to which they are subject, have agreed to make it a practice of making their awards retrospective from certain prior date so that there should not elapse a long measure of time from the time the issue was first referred till the time the issue was finally settled. We have the instance of the Railways where a tribunal was set up under Justice Saran in 1955 or 1956 and the award came in 1962. An unconscionable delay resulted and the railwaymen were deprived of not merely promotion but also the benefit of the award for six years and also its cumulative effect. The same principle must be applied here as the Government applies to other awards, that the Acts or benefits must be deemed to have come into effect from the accounting year 1962.

**Shri D. Sanjivayya:** Two points were raised by Mr. Dandekar one that the phraseology 'subsequent years' must be deleted. If the bonus formula is made applicable to a bonus dispute relating to any accounting year ending on any day in 1962 and if that does not apply to subsequent years, clause 15 of this Bill will not work out because according to clause 15 we have to evolve a formula called set off and set on; that should go on continuously for four years. Therefore, we have added the words 'subsequent years' so that if once the

bonus formula is made applicable it should continue for subsequent years also.

Secondly, with regard to the word 'pending', pending before whom is the question. He feels that it should be pending before a tribunal alone. The Government feels that if it is pending before the Government or a tribunal or a labour court or any authority contemplated under the Industrial Disputes Act, it should apply. That is how we have been thinking about it.

The apprehensions of Shri Indrajit Gupta and Peter Alvares are correct. In fact what they want to be covered will not be covered by this clause. The intention according to the Bonus Commission recommendation was that the recommendations should have retrospective effect from the accounting year ending on any day in 1962. But as the House is aware, this particular recommendation was modified by a decision of the Government that it will be applicable only to pending cases.

**Dr. Ranen Sen:** Why modify this recommendation?

**Shri D. Sanjivayya:** Because if we say generally in a bold way that all the disputes will be covered, then disputes relating to bonus which relate to the accounting year 1961-62, 62-63 and 1963-64 even if they were settled earlier than 29th of May will all be reopened. By this time their accounts would have been closed and profits would have been distributed and it may be difficult even for the employers to find out the money. The other point is that if old disputes which had been settled are reopened, probably there will be industrial unrest.

**Shri Priya Gupta:** It could be paid from future surpluses, set off and set on.

**Mr. Deputy-Speaker:** I shall put Government amendment No. 2 to the

vote of the House. The question is:  
Page 18, line 24,—

for "2nd September, 1964" substitute—

"29th May, 1965" (2).

The motion was adopted.

**Mr. Deputy-Speaker:** I shall now put amendment No. 31 to the vote of the House.

Amendment No. 31 was put and negatived.

**Mr. Deputy-Speaker:** I shall put amendments Nos. 192, 220, 221, 222 and 223 to the vote of the House.

Amendments Nos. 192 and 220 to 223 were put and negatived.

**Mr. Deputy-Speaker:** I shall put amendment No. 272 to the vote of the House.

Amendment No. 272 was put and negatived.

**Mr. Deputy-Speaker:** I shall put No. 286 to the vote of the House.

Amendment No. 286 was put and negatived.

**Mr. Deputy-Speaker:** The question is:

"That clause 32, as amended, stand part of the Bill."

The motion was adopted.

Clause 33, as amended, was added to the Bill.

**Mr. Deputy-Speaker:** We shall now take up clause 34. There are some amendments.

Clause 34.—(Effect of laws and agreements inconsistent with).

**Shri D. Sanjivayya:** I beg to move that:—

(i) Page 19, lines 34 and 35,—

for "2nd September, 1964" substitute—

"29th May, 1965". (3).

(ii) Page 20, line 2,—

for "in which" substitute—

"in respect of which" (4).

(iii) Page 20,—

after line 12, insert—

"Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right." (5).

(iv) Page 19, lines 19 and 20,—

for "of his salary or wage for the accounting year", substitute—

"of the salary or wage earned by him during the accounting year". (211).

**Shri Alvares:** I beg to move:

Page 19,—

omit lines 18 to 20. (273).

**Shri Solanki:** I beg to move:

(i) Page 19, line 12,—

after "contract of service", insert—  
"referred to in sub-section (1)".  
(194).

(ii) Page 19, line 19,—

for "twenty per cent.", substitute—

"eight and one-third per cent."  
(195).

(iii) Page 19,—

omit lines 21 to 25 (196).

(iv) Page 19, line 35,—

for "any dispute of the nature specified", substitute—

"any such dispute as is specified". (197).

(v) Page 20, lines 5 to 7,—

for "gross profits as reduced by the direct taxes payable by

[Shri Solanki]

the employer in respect of that year",

substitute—

"the gross profits calculated under section 4 and as reduced by the sums specified in clauses (a) and (c) of section 6". (199).

(vi) Page 19, line 15,—

for "the same ratio to the gross profits",

substitute—

"the same proportion to the net profits". (225).

(vii) Page 19, line 17,—

for "gross profits", substitute—  
"net profits". (226).

(viii) Page 19,—

omit lines 26 to 31. (227).

(ix) Page 20,—

for lines 4 to 7, substitute—

'(b) "net profits" in relation to the base year or, as the case may be to the accounting year, means the gross profits of that year as reduced by the following sums, namely:—

(i) depreciation in respect of that year, computed in accordance with the provisions of clause (a) of section 6; and

(ii) any direct tax payable by the employer, computed in accordance with the provisions of clause (c) of section 6 but without making any deduction for any amount in accordance with clause (b) of that section.' (228).

Shri N. Dandekar: I beg to move:

Page 20, line 11,—

for "formula", substitute—

"scheme". (229).

Dr. Ranen Sen: I beg to move:

Page 19 and 20,—

for clause 34, substitute—

"34. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of this Act;

Provided that where under any such award, agreement or contract of service, employees employed in an establishment are entitled to bonus under a formula which is more favourable than that under this Act, then, the employees shall continue to be entitled to the bonus under that formula.

(2) Nothing contained in this Act shall be construed to preclude employees employed in any class of establishments from entering into an agreement with their employer for granting them an amount of bonus under a formula which is more favourable than under this Act". (32).

Shri N. Dandekar: I beg to move:

Page 19, line 11,—

after "base year", insert—

"in accordance with a formula". (224).

Mr. Deputy-Speaker: Clause 34, together with all these amendments, are before the House. Has the Minister got anything to say on his amendments?

Shri D. Sanjivayya: With regard to amendment No. 3, I would like to say that it is only a consequential amendment made to clause 33, where we have substituted 29th May, 1965 for 2nd September, 1964. So, to be in conformity, in this clause also I propose, that 2nd September, 1964 may be substituted by 29th May, 1965.



About amendment No. 4, it is only a sort of drafting change; we say "in respect of which" for the words "in which".

About amendment No. 5, I would like to say that it is really a substantive amendment in the sense that it gives protection to the workers. According to clause 34(3), the employers and employees are free to enter into an agreement with regard to bonus according to a formula different from the formula contemplated by this Bill. But we do not want that the workers should forego their minimum bonus. A similar provision exists in various enactments like the Minimum Wages Act, Payment of Wages Act and the Workmen's Compensation Act, etc. Therefore, I propose that the following proviso may be inserted:

"Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right."

Then, about amendment No. 211, this is also a sort of drafting change. Instead of the words "of his salary or wage for the accounting year" it should be "of the salary or wage earned by him during the accounting year."

**Shri N. Dandekar:** I will speak on all our amendments to clause 34.

**Mr. Deputy-Speaker:** Is he speaking on the amendments of Shri Solanki also?

**Shri N. Dandekar:** Yes, Sir. I shall first take amendment Nos. 224 and 194 together; their purport is to overcome the objection which I had raised in my speech on the motion for consideration of the Bill. This is the clause where one does not really know what particular awards or arrangements or this or that and the other that one is talking about in sub-clause

(2). My amendment No. 224 is to insert the words "in accordance with a formula" after the words "base year", so that it will read "in respect of the base year in accordance with a formula under any award". This is to make clear that what is involved here is a comparison of a formula and not ad hoc settlements arrived at, at a time when there was no Act governing the payment of bonus, at a time when things were governed by custom, or usage, or industry-wide agreements, or Supreme Court decisions, as modified by agreements or by practice, and sometimes under considerable pressure from labour interests and so on. What I am trying to suggest is that all vague things of that kind ought really to go out, and what we ought to be concerned with, even if we wished to resurrect these old awards, agreements, settlements and contracts, etc., is that we should say in a specific way, that grants should be paid to the employees in the old way if, in that establishment, in respect of the base year it was paid in accordance with a formula under an award, etc.

My next amendment is amendment No. 1194. It is to point a finger at the kind of awards, settlements, etc., that we are concerned with. Let me read sub-clause (1) of clause 34 which says:

"Save as otherwise provided in this section, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award agreement settlement or contract of service...." etc.

My amendment gets over the other difficulty I had over sub-clause (2) as it now stands namely that what we were presumably trying to resurrect in respect of the base year, were such an award agreement etc., as is referred to in sub-clause (1). What I am

[Shri N. Dandeker]

trying to do is just to say all this in one sentence, if the total bonus payable in any year is less than double the total bonus paid to the employees in any establishment in respect of the base year in accordance with the formula under any old award agreement etc., then, the relief provided in rest of the clause will follow.

Then Sir, I will go to the substantive amendments—Nos. 225 and 226. The operative wording in sub-clause (2) is rather an odd one. If the amount payable under this Act is less than the amount paid under the earlier awards, then, the employees in the establishments shall be paid bonus in respect of the accounting year as if the allocable surplus for that accounting year were an amount which bears the same ratio to the profits as in the base year, and so on. I suggest that it should read: "the same proportion to the net profits". Instead of the word: "gross profits", it should be "the same proportion to the net profits". That is another point I would like the hon. Minister's attention to be drawn to. You cannot begin an act by defining gross profits and then start using the same words for net profits, and then again use the words "gross profits", all of which causes utter confusion. I, therefore, suggest that the words should be "net profits": and so, when for the words "gross profit.", The words "net profits", are substituted, then, you will get the sensible proposition "the same proportion to the net profits" instead of the "same ratio". To summarise, it is an amount "which bears the same proportion to the net profits of the said accounting year as the total bonus paid or payable in respect of the base year bears to the net profits of the base year." Thus you get some sensible proposition instead of a complex mixture. "One does not speak of a ratio"; one ought to speak of a proportion.

Then I turn to amendment Nos. 196 and 197. As it stands, it is a confused set of provisos. The first proviso reads thus:

"Provided that nothing contained in this sub-section shall entitle any employee to be paid bonus exceeding twenty per cent. of his salary or wage for the accounting year."

If the amount payable under this Act happens to be less than under a formula applied to the base year, I agree we have to do something about it. But I suggest that we should not jump to the other extreme so as to provide for something that can only come under the normal scheme. Therefore, after a great deal of thought, I have put 8 1/3 per cent, as the upper limit, remembering that, unlike in the base year, this is a limit not merely of wages, but it is eight and one-third of wages or salary as defined, which includes dearness allowance. If you introduce this kind of substituted arrangement, it should be limited to the amount of one month's wage and dearness allowance taken together. The second proviso is the most remarkable one, and I am suggesting its deletion by my amendment No. 196—omit lines 21 to 25.

Sir, as for "Explanation I" to clause 34(2). The sub-clause begins by saying that if the total bonus payable in the accounting year is less than the total bonus payable in the base year, etc. certainly we can understand this proposition. The total bonus payable in the accounting year is known; and it is easy to ascertain whether it is less than the total bonus payable in the base year, which is also known. In other words, if x which is payable in the bonus year, is less than y which is the bonus payable in the base year, then such and such thing follows. But, Sir, we then have in "Explanation" here which throws simple arithmetic out of the window. It says that this amount 're' shall be deemed

to be less than the amount 'y' if a certain ratio in that year is less than a certain ratio in the other year. I do not know how far "Explanations" of this kind that "2 plus 2 shall make 5", or that "3 shall be deemed to be less than 2, because  $1/3$  is less than  $2/5$ " even though solemnly enacted by this elected parliament, can be a valid piece of legislation.

15 hrs.

To give an example, suppose the bonus payable in the bonus year is Rs. 3 lakhs and the bonus payable in the base year is Rs. 2 lakhs, so that plainly Rs. 3 lakhs is really more than Rs. 2 lakhs. Nevertheless, Rs. 3 lakhs must be deemed to be less than Rs. 2 lakhs, if Rs. 3 lakhs is a proportion of Rs. 9 lakhs, namely one-third, whereas Rs. 2 lakhs is a proportion of Rs. 4 lakhs, namely half. I do not think provisions of this kind that the relative values of numbers and the validity of arithmetic are to be thrown out of gear merely because some ratios do not tally would be sustainable in law. I suggest this ought really to be deleted, because it makes non-sense of the whole thing, for it says that 3 shall be regarded as less than 2 if 3 bears a certain ratio to some other figure, which ratio is less than the ratio which 2 bears to some other figure. I do not think I need say more about this. I hope, Sir, the minister has not misunderstood all this argument about ratios which applies to "Explanation I" and not to the second proviso. My amendment to the second proviso is a different one, which is to omit lines 21 to 25, because otherwise you have carry forwards and so on in relation to a completely fictitious situation, really rendering the thing even more fictitious than it already is. All my argument about ratios is relative to my amendment No. 227, which seeks to delete "Explanation I", i.e. lines 26 to 31.

Turning to page 20 of the Bill, I have moved amendment No. 228 to

what appears as para (b) under "Explanation II." I suggest that we should substitute for that para something that makes some sensible reading, namely,

"net profits" in relation to the base year or, as the case may be, to the accounting year, means the gross profits of that year as reduced by the following sums, namely,

- (i) depreciation in respect of that year, computed in accordance with the provisions of clause (a) of section 6 and
- (ii) any direct tax payable by the employer, computed in accordance with the provisions of clause (c) of section 6, but without making any deduction for any amount in accordance with clause (b) of that section."

Sir, what is sought to be protected is clear enough, despite all the verbosity, or clause 34(2). If the amount payable in the bonus year, if I may so call it, is less than the amount payable in the base year, protection is necessary. I accept it, cutting out all the rest of it. Secondly, if protection is necessary, what is to be the mechanism of this protection? Here again, what is suggested in sub-clause (2) is correct in principle that you compare the ratio of this to that if the amount is less but not otherwise. You cannot fictitiously say that the amount is less, when it is not. But granting that the amount is less, it is right that you have to have a base for deciding what is to be done. The base I suggest is that you compare the bonus to net-profit proportion of the base year with the bonus to net-profit proportion of the bonus year; and if by adopting the base year proportion or bonus to net-profit you get a better result, that ought to be the proportion to be applied to the

[Shri N. Dandekar]

bonus year. And of course, net profit should be defined in some sensible fashion. What I suggest is, it should be defined in relation to the base year or, as the case may be, to the accounting year, in the words I have just read out. Firstly, gross profit is already defined in the Act. So, gross profits less depreciation admissible for that year again already defined under section 6(a) and less the direct tax, but without any development rebate, development allowance on anything of that kind, gives us the net profit.

Lastly, Sir, I have a suggestion about sub-clause (3). That is a very important sub-clause, which has really nothing to do with what is contained in sub-clauses (1) and (2). Really it should be an entirely independent clause. I would like the House to regard it as an independent clause. It says:

"Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act."

The intention is clear. It is a proposition on its own, which one could readily support, except for the use of the word 'formula'. I cannot find any formula in this Bill. I can find a scheme. So we should really substitute the word 'formula' by the word 'scheme'. There is a scheme in this Act and clearly anyone else working out a different scheme—the workers and employers together—ought to be free and entitled to do that.

In that connection, however I must strongly oppose the amendment no. 5 to clause 34 (3) moved by the Minister. He is seeking completely to defeat this sub-clause by his

amendment. If he really intends that employers and employees should get together and say, "This scheme under this Act is too cumbersome; let us get down like sensible people and work out an alternative scheme", he is defeating that purpose entirely by his amendment no. 5 which says:

"provided that any such agreement whereby the employees relinquish their right to receive minimum bonus under section 10 shall be null and void".

But why? should not the employees and employers get together and say, "we want to take a larger view of the situation as a whole; we are going to take a larger view over the years as a whole instead of just this year or that?"

It may well be that the employers and employees sitting together can work out a better scheme, if not fettered in this way, which the workers might well be willingly agreeable to accept. I suggest with the utmost seriousness that the whole purpose of this admirable provision, which ought to be a separate section, which is in accordance with the recommendations of the bonus commission, namely, that the parties should be entirely free to work out a completely different scheme satisfactory to both of them will be totally defeated by the minister's amendment. Every endeavour to achieve workable alternatives will be completely defeated if this kind of a proviso is put round the neck of both the parties which says:

"Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right."

I, therefore, oppose it.

**Shri Indrajit Gupta:** Sir, it has become clear for some time that this clause is a sort of the core of this Bill, in the sense that all the assurances which were given to us for the last year or two by the hon. Minister as to the right of the worker to maintain his existing rights and privileges, the assurance that he would be given protection, are sought to be embodied in this clause. It has also become clear that whether it be the workers or employers including even the State Governments, they are all, I can say, most apprehensive about the consequences which are likely to follow from this section because it is, as Shri Dandekar said, so confused and so difficult to interpret. I know in my State the Labour Commissioner himself said that if interpretations of this clause arising out of bonus disputes become a common feature in the future and they have to be dealt with by his office he will just have to close the doors of his office because he does not know how to deal with them. The employers are also saying that they are unable to make head and tail of it. The workers are apprehensive that the Bill will somehow or other work to their disadvantage. Therefore, this amendment which has been suggested by my hon. friend, amendment No. 32 . . .

**Shri D. Sanjivayya:** Are employers agreeable to your formula?

**Shri Indrajit Gupta:** I am not interested whether they are agreeable or not. If they are agreeable there is no need of any legislation. But the point is, clarification and simplification are required. Otherwise, this section will become the death-knell of this whole Act. I am sure the Minister does not want that there should be endless litigation and disputes. We should attempt to simplify and clarify it as far as possible. With that object in view Sir, his amendment has been moved.

My amendment seeks substitution of the whole clause. As far as the

first part of my amendment is concerned, the only change suggested here is—I am not pressing this particular one very much—that in the last sentence of the clause where it says: “. . . of any award agreement, settlement or contract of service made before the 29th May, 1965.” instead of “29th May, 1965” it may read “before or after the commencement of the Act.” I think once this becomes a statute, then with relation to this particular clause the date 29th May has no particular validity. Once this Act comes into force, in this particular context it is better to say: “made before or after the commencement of this Act”.

Then, this so-called protection clause, which the Minister took great pains to explain, though I have not understood anything of it nor was Shri Dandekar, as far as I could make out, able to understand . . .

**Shri N. Dandekar:** Sir, the Minister asked whether I would be agreeable to this amended version of the entire clause 34. I would like to say at once that Mr. Indrajit Gupta's amendment No. 32 is far more acceptable than the present clause.

**Shri Indrajit Gupta:** So you are getting agreement from the two main parties to the dispute.

**Shri A. P. Sharma:** Such agreement will be there sometimes.

**Shri Indrajit Gupta:** You make some unions in the private sector too; then you will know (*Interruptions*).

Sir, the Minister had explained yesterday that the protection which is sought to be given here is not protection of any quantum of bonus but protection of the ratio. He said it is not possible to protect the quantum. He wants to protect the basis or the ratio. I also want to protect the basis—can it a formula or call it a

[Shri Indrajit Gupta]  
scheme. The proviso that we have put in our amendment is:

"Provided that where under any such award, agreement or contract of service, employees employed in an establishment are entitled to bonus under a formula which is more favourable than that under this Act, then, the employees shall continue to be entitled to the bonus under that formula."

You may call it 'scheme' or 'formula', I do not mind. I am also asking for protection of the basis, the scheme or the formula. I am not asking for the protection of any particular quantum. My contention is that wherever there is an existing formula or a scheme arrived at generally by agreement with the employers—they agreed to it because they felt that they had the capacity to pay according to that formula or scheme, it is not something imposed or thrust on them, it was an agreement entered into voluntarily by them—and where such a formula or scheme is more favourable to the workers than the formula provided for in this Bill that previous formula should continue. Why should not that previous formula continue to hold good in such cases. I would like to know? This is not asking for protection of any quantum. Why should you put it in this cumbersome, complicated way?

**Shri D. Sanjivayya:** What about the maximum 20 per cent, the "set off" "set on".

**Shri Indrajit Gupta:** You want to make it as complicated as possible. If the quantum is less, then the ratio has to be worked out and the ratio has to be maintained. Why do you want to go about it in this round-about way. All employees and workers are having apprehensions about disputes arising because they are afraid that where they have been getting

bonus under some other existing formula or agreement that basis will be removed. I am only seeking, by my amendment, to protect that basis. The quantum may, according to the formula, work out to be more in some years and less in some other years because it all depends upon the working of that establishment from year to year.

Thirdly, with regard to sub-clause (3), there also in the last line, I have said: "Nothing contained in this Act shall be construed to preclude employees employed in any class of establishments from entering into an agreement with their employer for granting them an amount of bonus under a formula which is more favourable than under this Act." In the existing clause it is said: . . . "which is different from that under this Act". The question is, what are you excluding. Already the Minister has brought forward an amendment which means that they cannot enter into an agreement which is unfavourable to the workers. It has to be in relation to the minimum bonus. It cannot be less than the minimum bonus. That means, this facility or opportunity that you are giving to employees and employers to enter into an agreement different from that under this Act means that they can enter into a more favourable agreement and not a less favourable agreement. Then why not put it in a straightforward way, instead of saying 'different from that under this Act.' I only want that these words be changed into: "granting them an amount of bonus under a formula which is more favourable than under this Act". That is the real issue. That is the provision you want to make. If they can enter into a mutual agreement and arrive at a formula which is more favourable than that under this Act they can do so.

**Shri D. Sanjivayya:** It may be less, but not less than the minimum.

**Shri N. Dandekar:** Sir, may I speak in support of this amendment?

**Mr. Deputy-Speaker:** The amendment was before the House when he spoke. He has already spoken on the amendments.

**Shri Alvares:** My amendment does not go into such details because I do not entertain any hopes, as Shri Indrajit Gupta does, about the fate of those amendments. Before I speak on this amendment I would like to say that this Labour Minister will have the invidious distinction of going down in the history of labour legislation as one who has taken away the maximum benefit from labour which they were enjoying.

While giving statistics in his speech he said that 45 lakhs workers will come under the provisions of minimum bonus getting Rs. 18 crores. But he has kept silent on this issue as to how many will be deprived by removing certain employers from the liability to pay and how many more will be deprived by excluding certain categories from qualifying under the Bonus Act. What is the total quantum of bonus reduced by increasing the tax on dividend from 7 to 8.5 per cent and on reserves from 4 to 6 per cent and other measures? What is the number of seasonal workers and others who have been deprived of this bonus under this Act? Finally, what is the number of people who were getting bonus under existing agreements prior to this Bill and which agreements will no longer have currency, and what is the quantum of bonus involved there? If an assessment is made of all this, one will find that this Labour Minister's Government has given to industries crores of rupees worth of concession simply by denying labour, which were entitled hitherto to the benefit of this bonus agreement and bonus practice by introducing certain disqualifying provisions in this Bill.

Shri Kashi Nath Pande referred to the agreements entered into by the employees of the sugar mills with the

management under which they were getting a larger quantum of bonus. Now their bonus will be reduced because of the limitation placed by this Bill. Similarly, in the Bombay textile industry there were agreements of far-reaching consequence which, I am sure, had set the model in the matter of participation by workers in the profits of a particular industry. Now, I do not understand why there should be this set on and set off. If the Bonus Bill had accepted the liability to pay the minimum bonus of 4 per cent and maximum of 20 per cent, its obvious implication is that the Bonus Bill does concede the principle of deferred wage. Now, instead of participation being free and unhindered, why should there be a limitation? If we examine the provisions we will find that in spite of all these things, in every conceivable manner the Government has put restrictions upon the quantum of bonus. Under clause 34(1) all progressive agreements in the field of happy industrial relationship between labour and employers have been thrown to the wolves as of no consequence; all India agreements which should have been encouraged and which are more progressive now come under the guillotine of this Act.

In section 34(2) there is a suggestion about ratio. Now, what is the meaning of this ratio? Why should you say that in the accounting year the ratio of bonus to the profits should be the same as in the base year when you have the overall guillotine of 20 per cent and nothing more can be paid? Suppose in the base year the ratio is more than in the accounting year, will they say that the ratio should be maintained even if the quantum of bonus is more than 20 per cent of the wages paid? No, they would not. So, this provision has no meaning, no relevance because you are ultimately applying the guillotine that whatever ratio applies, favourable or unfavourable, nobody can get more than 20 per cent of the wage.

[Shri Alvares]

Then there is a pious hope. I do not know why Shri Indrajit Gupta, in spite of his experience of trade unionism, now holds out the possibility of any employer giving the workers a better formula or more money than the Act specifies. Which employer will do it?

**Shri Indrajit Gupta:** I can quote many instances.

**Shri Alvares:** I am referring to the future, after the Act comes into force. Even though the Labour Minister cynically hopes, which employer would now offer a new formula which is better than the Act, after the Minister has given an absolute protection to the employers that in no case it will be more than 20 per cent of the total wages? I would like to dream of the day when any employer would be so silly as to forget his own interest, which the Government have safeguarded, and offer bonus which is greater than 20 per cent of the total wages. Therefore, I recommend my amendment to the House, which suggests that the limit of 20 per cent should be removed and all existing agreements should have currency.

**Shri Bade:** I want to support the amendment moved by Shri Indrajit Gupta. Sub-clause (3) says:

"Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act."

It is a pious wish or hope that the employers will, after the Act comes into force, enter into an agreement which has a formula different and more favourable than the existing one or what the Act provides. A criticism was made by the employees that this Bonus Bill is really a Bogus Bill and I was rather surprised to hear that criticism. But after reading sub-

clause (3) it appears that our Labour Minister is labouring for and is making all efforts to protect the employers and not the employees. The employers have been given the exemption of six years, exemption of super profits tax, development rebate and all sorts of other exemptions. So, if the hon. Labour Minister wants that there should be no labour disputes in future and the labour disputes which are already settled should not be re-opened, I think he should think over the matter afresh. In the end at least the Labour Minister should sing some song which is in favour of the employees.

**Shri S. M. Banerjee:** I want to support the amendment moved by Shri Indrajit Gupta. If this amendment is not accepted, what will happen is that no employer will enter into any agreement and give more than what is provided in the Bill. The minimum will be 4 per cent and the maximum 20 per cent. I will give you some illustration. Concerns like Cooper Allen and JK Rayon used to pay their workers 4½ per cent or more according to the agreements that they have arrived at with their employers. Now, when this Bill becomes an Act they will pay only 4 per cent. Even though this Bill has not become an Act, under the Ordinance, under the Bonus Commission Report and the various statements issued by the hon. Minister, the employees have taken shelter and they are prepared to pay only 4 per cent, even though they used to pay 6, 8 or even 10 per cent in the past. The proviso to this amendment reads:

"Provided that where under any such award, agreement or contract of service, employees employed in an establishment are entitled to bonus under a formula which is more favourable than that under this Act, then, the employees shall continue to be entitled to the bonus under that formula."

Nothing is going to be lost by accepting this amendment. After all, Shri



Dandeker, who is representing the employer . . . .

**Shri N. Dandeker:** I am not.

**Shri Hari Vishnu Kamath:** The people of Gonda.

**Shri S. M. Banerjee:** He is representing them.

**Shri N. Dandeker:** I ought to know better whom I represent.

**Shri S. M. Banerjee:** Shri Dandeker says that the amendment of Shri Indrajit Gupta is much better, much more favourable . . . .

**Shri N. Dandeker:** I said much better; not more favourable.

**Shri S. M. Banerjee:** I was referring to it comparatively. So, in this particular case, if the amendment is acceptable to Shri Dandeker, I do not know what the hon. Minister will lose if it is accepted. After all, he has taken all the trouble just to please the employers. So, I think, if a Member who was also a member of the Bonus Commission agrees, let him accept that.

**Mr. Deputy-Speaker:** The hon. Member's time is up.

**Shri S. M. Banerjee:** Why should you hurry over Bills?

**Mr. Deputy-Speaker:** We have taken three days over this Bill.

**Shri D. Sanjivayya:** We have taken more than 18 hours.

**Shri Hari Vishnu Kamath:** Time can be extended by the House. It is an important Bill.

**Shri S. M. Banerjee:** Generally all our Acts are declared *ultra vires* the next day by the Supreme Court because we do not attach any importance to these. The Minister should also become sensible. What is the use of passing this Bill if it is to be declared *ultra vires* tomorrow? So, we should read every line of it whe-

ther in English or in Hindi. The Congress Members should also read it. I am speaking for their education also.

So, I say that this amendment is a harmless one and this should be accepted. If he does not accept this amendment also, definitely there is nothing left for us but to ask for a division. So, we request that he will consider it and try to give some benefit to the employees.

**Dr. Melkote (Hyderabad):** Mr. Deputy-Speaker, Sir, in clause 34, line 7, there are these words, namely, "in respect of the base year". It is said here:—

"If in respect of any accounting year the total bonus payable to all the employees in any establishment under this Act is less than the total bonus paid or payable to all the employees in that establishment"

It is in respect of payment and not in respect of—

"under any award, agreement, settlement or contract of service".

This may lead to a certain amount of ambiguity and if it goes in a court of law how it will be interpreted in the court cannot be said. I, therefore, plead with the Minister to clarify that the provision is very clear. The words "in respect of the base year" should come after the words "under any award, agreement, settlement or contract of service" and not before. This clarification should come from the Minister so that the intention of the Government may be known to everybody and the law courts may not interpret it as they like.

**Shri A. P. Sharma:** I also wanted to point out the same thing, namely, whether the words "in respect of the base year" apply to bonus payable to all the employees in an establishment or they apply to award etc. We sug-

[Shri A. P. Sharma]

gest that it should apply to awards etc. and not to the payment of bonus. That is what the Labour Minister should take care of.

**Shri D. Sanjivayya:** Sir, this is really a very important clause and that is why several hon. Members have taken a lot of time. Straightaway let me consider the amendment proposed by Shri Indrajit Gupta and supported by other hon. Members. I would also like to say that this substitute clause, if accepted, will upset the whole scheme of the Bill, namely, the set-on and set-off. Unless the set-on and set-off is there, the workers will not get even the minimum bonus. Some of the hon. Members feel that there should be no restriction with regard to the maximum and that sky should be the limit. I would like to ask them then why the minimum should be there and why a minimum of 4 per cent should be paid even when there is a loss.

**Shri Priya Gupta:** Because that is the socialistic theory. The minimum should be pinned down.

**Shri D. Sanjivayya:** That is why we have accepted that we should fix a minimum bonus of 4 per cent or Rs. 40 whichever is higher in spite of the fact that there is a loss. We should also have a maximum. It was recommended by the Bonus Commission and was accepted. Therefore I am not in a position to accept this amendment.

**Shri Indrajit Gupta:** My amendment only says, "by agreement". In a particular case, they might agree. How does it affect your minimum bonus, the general clause?

**Shri D. Sanjivayya:** Suppose, in a particular year their bonus issue is settled in accordance with the provisions of the bonus law and later on, in the second year, they enter into an agreement and decide upon bonus according to a formula which is different from that of this Bill, then the set-on and set-off will be disturbed.

**Shri Indrajit Gupta:** They know that also.

**Shri D. Sanjivayya:** There is also another aspect which I would like to place before the House. If the ratio between the bonus paid and gross profits is less than the ratio between the allocable surplus and gross profits in the accounting year, the basis is protected. I will give an example. Suppose, in the base year the gross profit was Rs. 100 lakhs and the bonus paid was Rs. 20 lakhs, the percentage is 20. Now, if in the accounting year they earn Rs. 100 lakhs, they must pay Rs. 20 lakhs and if they earn Rs. 200 lakhs, they must pay Rs. 40 lakhs; so that the ratio is kept up.

Then with regard to the fact where the quantum was less in the accounting year than in the base year, probably my hon. friend, Shri Dandeker, might have misunderstood Explanation I after the second proviso. Suppose, in the base year the profit was Rs. 6 lakhs and the bonus paid was Rs. 2 lakhs, it is one-third or 33.1/3 per cent. Suppose, in the accounting year the gross profit is Rs. 12 lakhs and the bonus paid is Rs. 3 lakhs, the quantum is higher in the accounting year. In the past year it was Rs. 2 lakhs and in the accounting year it is Rs. 3 lakhs; so, the quantum is higher. Even then, it is considered less because . . . .

**Shri N. Dandeker:** It is simple arithmetic.

**Shri D. Sanjivayya:** Let me complete my sentence. Even before my completing my sentence, if hon. Members were to interrupt me, I will sit down. Let them speak or let me complete my sentence.

Even then, it is considered less because Rs. 2 lakhs is one-third of Rs. 6 lakhs, that is, 33.1/3 per cent and Rs. 3 lakhs is only one-fourth of Rs. 12 lakhs, that is, 25 per cent; so, 25 per cent is less than 33.1/3 per cent though the quantum is certainly

higher. Rs. 3 lakhs is higher than Rs. 2 lakhs. Even then this basis is protected, that is, the ratio is protected and out of Rs. 12 lakhs also they will get one-third or 33.1/3 per cent, that is, Rs. 4 lakhs. That is the meaning of Explanation I to the second proviso.

**Shri Indrajit Gupta:** If it is more than the ratio then the ratio will not be protected.

**Shri D. Sanjivayya:** This is what I feel; hon. Members can have their own interpretation. I am sure, my interpretation is correct and they also feel that it should be correct.

Then the other amendment which Shri Dandeker moved was that it should be . . .

**Shri Indrajit Gupta:** So, you will not accept this amendment?

**Shri D. Sanjivayya:** No, Sir.

The other amendment is that it should be according to a formula. Suppose, there is no formula. The employer comes forward and says, "I give three months' bonus" and it is accepted by the employees without any dispute—there is no dispute—it should be protected. It is a sort of unwritten agreement, an unwritten settlement, I would say. If it has been there, that also should be protected. Therefore I am not accepting that amendment which says that it should be according to a formula.

Next is the criticism of clause 34 (3) by Shri Indrajit Gupta which was ably answered by the hon. Member, Shri Peter Alvares, with whom I agree. No employer would enter into an agreement with the employees to pay higher quantum of bonus. Therefore I am pressing my own amendments and am not accepting any of the other amendments.

**Mr. Deputy-Speaker:** The question is:

(1) Page 19, lines 34 and 35,—  
for "2nd September, 1964"  
substitute—

"29th May, 1965" (3).

(ii) Page 20, line 2,—

for "in which" substitute—

"in respect of which" (4).

(iii) Page 20,—

after line 12, insert—

"Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right". (5).

The motion was adopted.

**Mr. Deputy-Speaker:** I shall now put amendments Nos. 32, 194, 195, 196, 197, 199, 224, 225, 226, 227, 228 and 229 to the vote of the House.

Amendments Nos. 32, 194 to 197, 199 and 224 to 229 were put and negatived.

**Mr. Deputy-Speaker:** The question is:

Page 19, lines 19 and 20,—

for "of his salary or wage for the accounting year",  
substitute—

"of the salary or wage earned by him during he accounting year". (211)

The motion was adopted.

**Mr. Deputy-Speaker:** I shall now put Amendment No. 273 moved by Shri Alvares to the vote of the House.

Amendment No. 273 was put and negatived.

**Mr. Deputy-Speaker:** The question is:

"That clause 34, as amended, stands part of the Bill".

The motion was adopted.

Clause 34, as amended, was added to the Bill.

Clause 35 was added to the Bill.

**Clause 36—(Power of exemption)**

**Mr. Deputy-Speaker:** There are no amendments.

**Dr. Eanan Sen:** I want to speak on this clause.

Sir, this clause gives wide powers to the appropriate Government to exempt certain categories of establishments and factories or even one factory or one establishment. I do not understand why this Government should take this wide power in their own hands or to give this power to the appropriate Government. Our experience in the trade union movement has been that often the Government, either the Central Government or the State Government, take this power to exempt certain categories of factories from the provisions of Factory Act and that results in serious difficulties for the workers. Even if his Bill is passed, there may be occasions—we are very suspicious of the Government's attitude—when the appropriate Government may take powers to exempt certain factories or establishments from the provisions of this Act thereby depriving a large number of workers from the benefit of this Bill. Therefore, I do not find any justification for the appropriate Government to take such wide powers as is provided in clause 36. Will the hon. Minister kindly explain why such wide powers have been given to the appropriate Government?

**Shri D. Sanjivayya:** I think such a provision is really necessary and desirable. In case the Government feels that in the interest of the country or in the interest of the economy of the country or for certain other reasons certain establishments have to be given exemption, it should be done.

**Mr. Deputy-Speaker:** The question is:

"That clause 36 stands part of the Bill".

*The motion was adopted.*

Clause 36 was added to the Bill.

Clauses 37, 38 and 39 were added to the Bill.

**Mr. Deputy-Speaker:** There is Amendment No. 139—New Clause 39A.

This is by Shri Sreekantan Nair—he is not here.

The question is:

"That clause 40 stands part of the Bill".

*The motion was adopted.*

Clause 40 was added to the Bill.

**First Schedule**

**Shri N. Dandekar:** I beg to move:

(i) Page 22, line 14,—

for "Bonus", substitute—  
"Bonus to employees". (230)

(ii) Page 22, line 21,—

after "paid", insert—  
"to employees". (231).

Amendment No. 230 is concerned with making it clear that in the First Schedule, item 2 (a) to be added back in the computation of gross profits is "bonus to employees" and not just "bonus" because there are various types of bonuses, production bonus, bonus to employees not covered by the Act, all kinds of things; and I suggest this may be made clear by saying "Bonus to employees" and not just "bonus".

Similarly, Amendment No. 231 is concerned with adding back bonus paid to employees in respect of previous accounting year. The footnote reads, "If, and to the extent, charged to profit and loss account" and quite rightly this is to be added back. Here, too the bonus in question should be bonus to employees.

**Shri D. Sanjivayya:** I accept both the Amendments.

**Mr. Deputy-Speaker:** I shall now put Amendment Nos. 230 and 231 to the vote of the House.

The question is:

(i) Page 22, line 14,—  
for "Bonus", substitute—  
"Bonus to employees". (230)

(ii) Page 22, line 21,—  
after "paid", insert—  
"to employees". (231)

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

"That First Schedule, as amended, stands part of the Bill."

*The motion was adopted.*

*First Schedule, as amended, was added to the Bill.*

**Second Schedule**

**Shri N. Dandekar:** I beg to move:

(i) Page 27, line 4,—  
after "Capital expenditure", insert—

"that is to say, any expenditure which brings into existence any capital asset in respect of which depreciation is deductible under clause (a) of section 6 of this Act, or for the acquisition of freehold or leasehold land." (200).

(ii) Page 26, line 11,—  
for "Bonus", substitute—  
"Bonus to employees." (232)

(iii) Page 26, line 23,—  
after "paid", insert—  
"to employees". (233)

Sir, I will first deal with my Amendments Nos. 232 and 233. They are precisely to the same effect as the two amendments I moved earlier to the First Schedule.

**Shri D. Sanjivayya:** I accept them.

**Shri N. Dandekar:** Now, I shall deal with my Amendment No. 200.

Again, this concerns the question of computation of gross profit. Quite rightly, in computing the gross profit, one has to add back capital expenditure. However, as I was going through all this, I came to the conclusion that I should suggest some meaning to the expression 'capital expenditure' if we are to avoid unnecessary trouble in relation to the whole problem, particularly in relation to the questions that we dealt with earlier this afternoon, that is, about the acceptability of accounts and so on. I am suggesting that after the words "capital expenditure" should be added these words, namely,

"that is to say, any expenditure which brings into existence any capital asset in respect of which depreciation is deductible under clause (a) of section 6 of this Act, or for the acquisition of freehold or leasehold land."

I submit that would narrow down the possible scope for dispute as to what is capital expenditure. I may remind the Minister that this is concerned with capital expenditure only to the extent that it happens to be charged up in the profit and loss account. I have nothing more to add. This amendment should be easily understandable.

**Shri D. Sanjivayya:** Here, the hon. Member is trying to define "capital expenditure", as to what it means and all that. I have not defined it in the Bill and neither the Bonus Commission has given us any definition. So, I do not think, we should try to define it here. Let us keep the expression "capital expenditure" as such which is very well understood. So, I am not in a position to accept Amendment No. 200. I am accepting Amendment Nos. 232 and 233.

**Mr. Deputy-Speaker:** I shall first put Amendment No. 200 moved by Shri Dandekar to the vote of the House.

*Amendment No. 200 was put and negatived.*

**Mr. Deputy-Speaker:** I shall now put Amendments No. 232 and 233 to the vote.

The question is:

(i) Page 26, line 11,—

for "Bonus", substitute—

"Bonus to employees". (232)

(ii) Page 26, line 23,—

after "paid", insert—

"to employees". (233)

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

"That the Second Schedule, as amended, stand part of the Bill."

*The motion was adopted.*

*The Second Schedule, as amended, was added to the Bill.*

**Mr. Deputy-Speaker:** The Defence Minister will be making a statement at 4-30 P.M. and not at 4-00 P.M.

**Shri Indrajit Gupta:** I beg to move:—

(i) Page 30, line 42,—

for "7.5 per cent." substitute—

"6 per cent". (40)

(ii) Page 31, line 4,—

for "5 per cent." Substitute—

"2 per cent." (41)

(iii) Page 31, line 37,—

for "7.5 per cent." substitute—

"6 per cent." (42)

(iv) Page 31, line 43.—

for "5 per cent." substitute—

"2 per cent." (43)

(v) Page 32, line 13.—

for "8.5" per cent." substitute—

"6 per cent." (44)

(vi) Page 32, line 16.—

for "6 per cent." substitute—

"2 per cent." (45)

(vii) Page 32, line 22.—

for "8.5 per cent." substitute—

"6 per cent." (46)

(viii) Page 32, line 32.—

for "8.5 per cent." substitute—

"6 per cent." (47)

(ix) Page 33,—

after line 46, insert—

"Provided further that the sum so to be deducted shall not in any case exceed 6 per cent. of the capital invested." (50)

**Shri Kashi Ram Gupta:** I beg to move:—

(i) Page 33, line 5,—

after "firm" insert—

"whose capital investment in the establishment exceeds rupees one lakh". (79)

(ii) Page 33,—

after line 32, insert—

"Provided further that where a firm's capital investment in the establishment is rupees one lakh or below, the total remuneration of Partner's in such an establishment shall be forty per cent. of the gross profits". (80)

**Shri N. Dandekar:** I beg to move:—

(i) Page 30,—

for lines 11 to 13, substitute—

"(ii) An amount calculated at

4.5 per cent. above the Reserve Bank of India rate on its average paid-up equity capital plus its share premium account during the accounting year;" (201)

(ii) Page 30, line 14,—

for "8 per cent. of", substitute—

"an amount calculated at 2 per cent. above the Reserve Bank of India rate on". (202)

(iii) Page 30, line 25,—

for "8.5 per cent.", substitute—

"calculated at 4.5 per cent. above the Reserve Bank of India rate". (203)

(iv) Page 30,—

after line 36, insert—

"Provided further that—

(i) where the employer, being a foreign company within the meaning of section 591 of the Companies Act, 1956, prepares no separate balance-sheet in respect of its Indian business, the total amount to be deducted under this item shall be calculated at 4.5 per cent. above the Reserve Bank of India rate on such amount of capital computed in such manner as may be prescribed;

(ii) where under the provisions of section 3 or of sub-section (2) of section 16 of this Act a department, undertaking or branch of an establishment is to be treated as a separate establishment for the purpose of computation of bonus, then the equity share capital, the share premium account and the reserves of the establishment as a whole shall be allocated to such separate establishment in the same proportion as its sales turnover bears to the total turnover of the establishment as a whole." (204)

(v) Page 30,—

for lines 42 to 45, substitute—

"(ii) an amount calculated at 3.5 per cent. above the Reserve Bank of India rate on its average paid-up capital and its average share premium account during the accounting year". (205)

(vi) Page 31, line 4,—

for "5 per cent. of", substitute

"an amount calculated at one per cent. above the Reserve Bank of India rate on". (206)

(vii) Page 31, line 37,—

for "7.5 per cent. of", substitute—

"an amount calculated at 3.5 per cent. above the Reserve Bank of India rate on". (207)

(viii) Page 30,—

(1) after line 19, insert—

"Provided that where the company has a branch, department or undertaking situated outside India, the profits of which are excluded from the gross profits of the company in accordance with Item 6(b) of the Second Schedule, then, the investment made in such department, branch or undertaking (being the total net debit balance in respect thereof appearing in the books of accounts of the company) at the commencement of the accounting year shall be excluded as follows, that is to say:—

the aggregate amount of such investment shall be deducted from the reserves of the company; and the balance, if any, shall be deducted from its paid-up equity capital:"; and

(ii) line 20,—

after "Provided", insert "further". (234)

[Shri N. Dandekar]

(ix) Page 31,—

(i) after line 21, insert—

"Provided that where the banking company has a branch department or undertaking situated outside India, the profits of which are excluded from its gross profits in accordance with Item 6(b) of the First Schedule, then, the investment made in such department, branch or undertaking (being the total net debit balance in respect thereof appearing in the books of accounts of the banking company) at the commencement of the accounting year shall be excluded as follows, that is to say:—

the aggregate amount of such investment shall be deducted from the reserves referred to in para (iii) above; and the balance, if any, shall be deducted from its paid-up equity capital"; and

(ii) line 22,—

after "Provided", insert "further". (235)

(x) Page 32, lines 13 and 14,—

for "8.5 per cent. of its paid up capital as at the commencement of",

substitute—

"an amount calculated at 4.5 per cent. above the Reserve Bank of India Rate on its average paid-up capital during". (236)

(xi) Page 32, line 16,—

for "6 per cent of", substitute—

"an amount calculated at 2 per cent above the Reserve Bank of India Rate on". (237)

(xii) Page 32,—

for lines 22 to 26, substitute—

"4. Co-operative society.—(i) an amount calculated at 4.5 per cent. above the Reserve Bank of India Rate on the average capital invested by such society in its establishment during the accounting year as evidenced from its books of accounts";. (238)

(xiii) Page 32, lines 32 to 36,—

for "8.5 per cent. of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year";.

substitute—

"an amount calculated at 4.5 per cent. above the Reserve Bank of India Rate on the average capital invested by him in his establishment during the accounting year as evidenced from his books of accounts, or a sum of fifteen thousand rupees, whichever is greater". (239)

(xiv) Page 32, line 38,—

for "to whom", substitute—

"or a firm to whom or to the partners of whom". (240)

(xv) Page 32, line 40,—

after "him", insert—

"or by its partners". (241)

(xvi) Page 33, line 5,—

after "a firm", insert—

"other than a firm engaged wholly or mainly in the profession of law, medicine, accountancy, industrial and business management, engineering or architecture or such other profession as the Central Government may notify in this behalf." (242)



(xvii) Page 33,—  
omit lines 9 and 10. (243).

(xviii) Page 33, line 11,—  
omit "clause (a) of section 6".

(xix) Page 33, line 34,—  
after "an individual", insert—

"other than one who is engaged wholly or mainly in the profession of law, medicine, accountancy, industrial and business management, engineering or architecture or such other profession as the Central Government may notify in this behalf." (245)

(xx) Page 33, line 36,—  
after "per cent.", insert—

"or, in the case of a Hindu undivided family, 35 per cent." (246)

(xxi) Page 33,—  
(i) line 40,—

omit "after deducting depreciation";

(ii) omit line 41; and

(iii) line 42,—

omit "of clause (a) of section 6". (247)

(xxii) Page 33, line 43,—  
add at the end—

"or, in the case of a Hindu undivided family, sixty thousand rupees". (248)

(xxiii) Page 33,—  
after line 46, insert—

"Provided further also that where such employer is an individual or a firm, engaged wholly or mainly in the profession of law, medicine, accountancy, industrial and business management, engineering and architecture or such other profession as the Central Government may notify in this behalf, an amount calculated on the following scale by way of remuneration to such employer, that is to say—

for every such individual, or in respect of each partner of every such firm, who has been practising the profession:—

(i) for less than 5 years—  
Rs. 18,000.

(ii) for over 5 years, but less than 15 years—Rs. 36,000.

(iii) for over 15 years, but less than 20 years—Rs. 48,000.

(iv) for over 20 years—Rs. 60,000." (248)

(xxiv) Page 34,—  
after line 9, insert—

"7. All employers.

By way of Rehabilitation Allowance in respect of Plant, Machinery, Equipment and Factory Buildings in respect of which depreciation is allowable in accordance with the provisions of clause (a) of section 6, an amount calculated at 5 per cent. of the original cost of only such of those assets as were acquired, installed, erected or built in any accounting year not earlier than twenty-five years, or later than ten years, preceding the accounting year.

8. All employers engaged in Mining and Quarrying Industries (including Coal and Ore Mining).

By way of Wasting Asset Allowance:—

- (a) at 4 per cent. of the original cost of acquiring the following rights and assets, namely:—

Freehold, leasehold or other forms of mining and quarrying rights, including surface rights connected therewith, regardless of whether the payment therefor are expressed as payments by way of Premium, Salami, Compensation, Goodwill, Ownership Right, Exploitation Right or otherwise, and irrespective of whether payments were made in lump sum or by instalments, and including Capital Expenditure incurred on the development of such rights, to the extent that—

- (i) the same are not admissible as expenditure under the Income-tax Act; and  
(ii) depreciation is not allowable in respect thereof in accordance with the provisions of clause (a) of section 6 of this Act.

- (b) in addition, the whole of the minimum royalty or dead rent paid in respect of mining and quarrying in the accounting year, to the extent such royalty or rent is inadmissible as expenditure under the Income-tax Act.

9. All employers engaged in Tea, Coffee, Rubber and other Plantation industries.

By way of Replantation Allowance, an amount calculated at 4 per cent. of the original cost (excluding the cost of land) of such plantations as were actually under plantation crop during the accounting year." (250)

**Shri Kashi Ram Gupta:** Mr. Deputy-Speaker, Sir, my amendments relate to a basic policy. What I have been experiencing uptill now is that the Government does not make any difference between the big man and the small man. When I see this Schedule,

particularly the list of firms, I find something more astonishing. I find that those people who invest more have to pay the least and the poor people have to pay the most. So far as the registered firms are concerned, I have made calculations and found

that those firms whose capital goes above Rs. 5,00,000 have to pay only the minimum according to this formula and I fail to understand how even the labour leaders could agree to this formula. It shows that they did not care to see the effects of calculations.

I would not have minded if this had stopped at that. But the difficulty is that the smaller man has to pay more. Take, for instance, a firm consisting of four technicians; their capital is small but they will have to pay one-third of their income. Suppose they earn Rs. 20,000; out of this, they shall have to pay Rs. 35 as income-tax and they have to part with Rs. 1,500 from their earnings of Rs. 5,000 each for bonus payment. I do not know how such a thing can be said as not amounting to exploitation. It amounts to exploitation on the other side. On one side when we defend those employees whose income goes upto Rs. 1,600 per month, naturally we shall have to see the other side also. My amendment is that those people whose capital investment in the establishment exceeds rupees one lakh should have 25 per cent. and those whose capital investment goes below Rs. one lakh should have 40 per cent. Even then they shall have to pay more than the minimum, say, about 10 or 12 per cent. So the basic thing is that, unless and until Government adopts a policy of protecting the legitimate interests of labour and the investors in the small sector by treating them on quite a different footing, this will adversely affect the growth of thousands of small industries that are springing up in this country. If we do not care to see as to how the labour works in these industries, we shall reach a stage when the small industries will either have to close down or the employers there would adopt malpractices and would not be called employers but as 'dacoits'. It will be very just if the Minister accepts my amendment that those having a capital of rupees one lakh or below, the partners may get more than 25 per cent. On the face

of it, it may seem that labourers will not benefit by this. But it is not so. We have to see the all-round picture of the whole thing and not one side of it. At the end, I may say that labour legislations uptill now have always been looking to the interests of small men. This is the first time that we see that the interest goes against the labour. Because labour is, more or less, mobile, they work at will and go from village to village, the calculations will be a tremendous task. The legitimate interests of all concerned should be protected and if we only say 'let him pay', he will be able to sustain himself? Can we think how a person who earns Rs. 5,000 and is asked suddenly to part with Rs. 1,500, can sustain himself with Rs. 3,500? It is not at all possible. Therefore, if the Labour Minister would take the trouble of calculating all these things, I think he will accept my amendment, which is a legitimate one.

**Shri Indrajit Gupta:** I do not want to say very much on my amendments because this matter has already been dealt with in the general discussion. All these amendments which I suggest relate to one single question, i.e., I wish that in all cases in the Third Schedule the rate of deduction which is being provided for paid-up equity share capital should be reduced to 6 per cent and in all cases the deductible percentage on reserves should be brought to 2 per cent. My contention is that, if we are asked to vote for the Schedule as it stands in the Bill, the Minister is really asking us to vote for the dissenting note of Mr. Dandekar to the Bonus Commission. It was not possible to do that then because we had our representatives on the Bonus Commission and the Government had also sent its representative; all of them got together and the majority of them recommended lower rates than those provided for in the Bill. Only because Mr. Dandekar had a note of dissent, it is incorporated in the Bill and we are asked to vote for it. Actually what

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 the Minister is asking us to do is something which is totally contrary to the democratic principle of majority recommendation. Also I would like to point out that, since on this very vital question, which affects the size of the surplus which would become available for bonus, the Government has arbitrarily and unilaterally modified the majority recommendations of the Bonus Commission, in our amendments we are proposing deduction percentages which are the same as those which were incorporated in the formula previously. Now it is not a question of compromise on anything since the Bonus Commission's majority formula was itself a compromise. Since that was overthrown by the Government and they prefer to accept the recommendation of only the representative of the private employers, as a matter of principle we want to insist through the amendments that only that much deduction should be permitted which the Labour Appellate Tribunal itself had permitted in its previous formula which held good for so many years.

16 hrs.

I would also like to point out that in this Bill the employers are not called upon to give any proof as to whether their reserves are actually being utilised as working capital or not. Appropriation can be made, and deductions can be made, but as to whether those reserves are actually employed as working capital, and if so, for which period, they are not required to furnish any information or proof etc. Therefore, this is a most arbitrary provision, and I oppose it.

It is quite obvious that as a result of the concessions which are sought to be made here in those industries particularly which are capital-intensive industries, the trade unions have got every apprehension that a substantial portion of their surplus will be completely wiped out and as a result of this, there will be nothing left for payment of bonus at all.

Shri N. Dandekar also may again repeat his argument, and I am sure that it will be echoed by the hon. Minister, that unless a satisfactory rate of dividend is assured it is not possible for them to attract capital. That is the old hackneyed argument. But I wish to say that actually this is something out of its context, because what is provided in the Bill has nothing to do in fact with the actual rates of dividends. This is purely a notional thing. The actual rates of dividends are something quite different. What is being put in here is only a notional rate, and the notional rate does not bear any real practical relation to the actual rate of dividend which is being paid. So, this argument does not hold good at all. If the Bonus Commission members could decide, in a majority, on a particular figure or percentage, I do not see why Government should throw it overboard and ask us to accept Shri N. Dandekar's formula. It is quite obvious that this has been done simply under the pressure of big capital, and, therefore, we oppose this totally, and we are pressing for our amendment.

**Shri S. M. Banerjee:** I rise to support the amendment moved by my hon. friend Shri Indrajit Gupta, and in doing so, I wish to point out that the fear in the minds of the working classes in this country that as a result of this Bill they will not be entitled to anything more than 4 per cent has come true. We have said enough already to show how the allocable surplus will dwindle after all these deductions are made. Therefore, my hon. friend has moved an amendment which seeks to substitute '6 per cent' in place of '8.5 per cent' in page 32, line 13, and '2 per cent' in place of '6 per cent' in page 32, line 16. The reason for the suggested amendment is very clear. Unless the allocable surplus is a reasonable amount, no employer will pay more than 4 per cent. We have seen that the employers do not want to pay bonus. I know that there are certain employ-

ers who have not paid bonus since 1961 or 1962. Now, we are in the year 1965. All the big business-houses are just waiting for the passage of this Bill and after that they will declare boldly and firmly with the patronage of Government that they will not pay more than 4 per cent bonus. So, I would request the hon. Minister to kindly throw some light on this matter and tell us whether this aspect has been considered by them and whether the unanimous recommendation of the members of the Bonus Commission representing the working classes was at all considered.

I can understand the viewpoint of Shri N. Dandekar or the viewpoint of the employers. They want to keep reserves for various purposes. But have we ever assessed what fabulous profits they have earned either in the name of the emergency or even without the emergency? Have we assessed what their working capital was before and what it is now? Have we assessed whether they were paying dividends in the past or not and if they were paying to what extent? Since we are having a mixed economy in our country, I want that the employers should also flourish, but should they flourish at the cost of the employees or the workers? That is a matter to be considered. The employers are aiming at this Government with a double-barrelled gun. They want exemption from excise duty and other things and they also want these deductions. They want these for raising their capital or for raising their reserves.

That is why we earnestly appeal to the hon. Minister to consider this most vital problem affecting the workers. This was the only case where modification was made by Government, and which was resented to by all, whether in the INTUC or in the AITUC or in the HMS or in the HMP or the UTC. All of them were unanimous in their opposition. If Government go on tinkering with an award, if they

modify something merely on the basis of a note of dissent submitted by one of the members of the commission, then the award loses its sanctity. I am afraid this Government tinkered with the Pay Commission award. Our late-lamented Prime Minister Shri Jawaharlal Nehru had said that this might not be an award but it was tantamount to an award, and yet Government tinkered with the recommendations; certain favourable recommendations were not accepted by Government. In a similar manner, we find that in the case of the Bonus Commission, the workers' representatives unanimously decided about something, but merely on the basis of a note of dissent, just to please a handful of the big business or the big business-houses, Government have shamelessly modified the report of the Bonus Commission and brought help to the employers. Today when they are talking of socialism or moving towards the socialistic pattern of society, they have to weigh the working people against a handful of employers. After all, the contention and the ideology of the employers is one based on money. Do Government also subscribe to that ideology? If they really subscribe to that ideology, then I say that all the talks of socialism are nothing but a hoax. Therefore, I would make an earnest appeal to the hon. Minister to kindly reconsider this matter. I know he comes from the toiling millions, and his heart bleeds for the common people and for the working classes. If he has been compelled by the employers and by his Cabinet colleagues to do this in order not to displease the employers at this critical hour of national emergency, I would like to know whether Government are really counting on the employers who want this emergency to continue and who actually want that they should earn fabulous profits. In all fairness, I would submit that the hon. Minister should be fair to the working people, who are the backbone of this country. But if Government are going to behave like this and they are going to

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hit them below the belt, I do not know what the fate of this country is going to be and what the fate of democracy is going to be and last but not least what our tall talks of socialism mean.

**Shri N. Dandekar:** Sir, I have a large number of amendments on the Third Schedule in my name. I shall endeavour to be brief, but the problems are so difficult that I hope the House will show some indulgence in view of the difficulties in dealing with this. I would like to group these amendments into various types or categories so that I can take a number of them together.

The first group of amendments that I would like to take up consists of amendments Nos. 234 and 235 which are concerned mainly with certain problems of computation of capital not dealt with in Schedule III concerning which I imagine disputes will arise and concerning which, therefore, I feel that provision ought to be made.

My first amendment is amendment No. 234. This is concerned with an Indian company operating also abroad or having a branch abroad concerned with growth of exports and other means of overseas development. For instance, companies like the Associated Cement Company have factories outside India and a number of other companies having branches outside India. There is no provision in the third schedule, in the case of ordinary companies having branches outside India, as to how the capital engaged abroad is to be computed and so on. My proviso is to this effect—that where the company has a branch, department or undertaking situated outside India, the profits of which are to be excluded from the gross profits in accordance with item 6(b) of the Second Schedule,—the Second Schedule provides for companies having branches outside India,—such profits

are to be excluded. Item 6(b) reads:

“Profits of, and receipts relating to, any business situated outside India”.

They are to be excluded. Quite properly, therefore, from the capital of such concerns ought to be excluded their capital employed abroad. My suggestion is connected with this,—that where such gross profits are to be excluded, then the investment made in such departments, branch or undertaking (being the total net debit balance in respect thereof appearing in the books of accounts of the company) at the commencement of the accounting year shall also be excluded as follows: that is to say, the aggregate amount of such investment shall be deducted from the reserves of the company; and the balance, if any, shall be deducted from its paid up equity capital. Unless this adjustment is made, the company will have its profits diminished but not its capital. I suggest it is necessary in equity to reduce also its capital.

Then amendment No. 204 is concerned with other similar situations. It is in two parts, the first concerns foreign companies operating here having no separate balance sheet. I have found it difficult here to evolve a simple formula. I have merely suggested, in the first part of the suggested proviso, that the capital should be computed in such manner as may be prescribed. I would suggest here, however, that the manner to be prescribed should be that contained in the Schedule to the Companies (Profits) Surtax Act where also similar problems arise and there is a provision in that Act, in Schedule II I think, for the computation of capital in such cases. All that is necessary in adopting those Rules to Schedule Three's requirements and to the requirements of this Act would be to eliminate from the Second Schedule to the Companies (Profits) Surtax Act all references to borrowed moneys and debentures. Subject to this suggestion, I have left it merely in my amendment at merely suggest-

ing 'in such manner as may be prescribed'.

A third type of case is dealt with under amendment No. 204, the second part of it. Again here one has to take cognisance of the fact that under clause 3 of the Bill, in certain circumstances, branches of undertakings and departments of the same establishment situated at various places could be treated as if they were separate establishments in the same way as in certain circumstances, under clause 16, a new undertaking can also be treated as a separate establishment. No provision exists in Schedule Three for the separate computation of capital in such cases and the proviso I have put down, the second part of it, reads thus:

"Where under the provisions of section 3 of sub-section (2) of section 16 of this Act a department, undertaking or branch of an establishment is to be treated as a separate establishment for the purpose of computation of bonus, then the equity share capital, the share premium account and the reserves of the establishment as a whole shall be allocated to such separate establishment in the same proportion as its sales turnover bears to the total turnover of the establishment as a whole".

This is a rough and ready way, but a reasonably equitable way of making the appointment.

The third type in that particular group of amendments is amendment No. 235—concerned with the specific case of Indian banking companies having branches overseas. Again in the case of banking companies, as in that of ordinary companies, the First Schedule provides that the profits in such cases from the branches outside are to be excluded under item 6(b) of the First Schedule, which is practically in the same terms as item 6(b) of the Second Schedule, namely:

"Profits of, and receipts relating to, any business situated outside India".

These are to be excluded. I am suggesting in amendment No. 235 that it is necessary correspondingly to exclude from the bank's capital and reserves its investment in overseas branches. I have formulated a proposal in these terms:

"Where the banking company has a branch, department or undertaking situated outside India, the profits of which are excluded from its gross profits in accordance with item 6(b) of the First Schedule, then, the investments in such department, branch or undertaking (being the total net debit balance in respect thereof appearing in the books of accounts of the banking company) at the commencement of the accounting year shall be excluded as follows, that is to say: the aggregate amount of such investment shall be deducted from the reserves referred to in para (iii) above; and the balance, if any, shall be deducted from its paid up equity capital".

Unless this is done, there would be an anomaly in that the banking company's profits will be reduced but not its capital. I hope the Minister will find it possible to accept these amendments which are necessary and consequential upon the First and Second Schedules respectively and also consequential upon sections 3 and 16(2) of the Bill.

I turn now to another group of my amendments. They are: in respect of banking companies, Nos. 205, 206, 207 and 208; in respect of ordinary companies Nos. 201, 202, 203, 204; in respect of corporations Nos. 236, 237; and in respect of co-operative societies Nos. 238. The burden of all these amendments is the same. I will therefore deal with all of them in just one series of observations without dealing with each of these separately. The

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burden of my amendments is concerned with this vexed question of how much should be allowed by way of return on capital as a prior charge—as also on reserves. There has been a good deal of criticism about this. In particular, the Minister has been assailed for the fact that my minute of dissent was accepted in preference to the majority view which is also there. I hope by this time we,—at any rate those of us who are adults here,—will have accepted the possibility that the majority is not necessarily always right; that the majority can frequently be wrong, and that a reasoned view of a minority of one is often far more accurate than that of the majority. In fact, I believe someone said somewhere,—I do not know who it was that he always believed in the minority of one, which was frequently responsible for better thinking and more progress than was usually a majority, consisting of vast numbers of various kinds of person;—perhaps it was Mahatma Gandhi who said it.

Now, on this question of returns, let us face the facts squarely. There has got to be, if there is to be industrial growth, sustained industrial growth, a fair deal as between all the elements involved in the industrial nexus of the kind that is under consideration, the industrial nexus being the producers, the workers, the consumers, the country as whole and also the Government as interested in how profits are disposed of. In order to maintain the integrity of an enterprise and the growth of industrial activity, one of the essential things,—not the only essential thing, but one of several essential things—is that there should be a steady flow of capital into industrial concerns. For this purpose, it does not matter at all whether an industrial concern is a public sector concern, or a private sector concern or a cooperative society or any other. There has got to be a state of affairs in which a steady flow of capital into industry will take place. And that depends essentially

upon what return one can get on capital invested in these concerns. So much is agreed. The only difference between the majority view and the view I expressed in the Bonus Commission's report was merely this, that at least the old rates of 6 per cent, 4 per cent and so on ought to be modified to correspond to the major modifications in the corporate taxation structure which took place in this country in 1959. Actually there were several other circumstances which would justify an even higher return on capital than that resulting from such modification. Nevertheless, the only change that I suggested was consequential upon the changes in the taxation structure, namely that the 6 per cent should be raised to 8.5 per cent (which was the Taxable equivalent of the earlier 6 per cent tax free) and that the 4 per cent ought to be raised to 6 per cent (which was also the Taxable, equivalent of the earlier 4 per cent tax free). But now, today, I must go further. I submit that since the time this report was submitted and my minute of dissent was written, and since the time when the Government themselves took a decision in September, 1964, upon these questions, the circumstances relating to the structure of interest rates in this country has undergone a radical change. The Bank Rate which was then 4 or  $4\frac{1}{2}$  per cent., now stands at 6 per cent. The borrowing rates have gone up, and the lending rates have also gone up all along the line. Government's own borrowing rates have gone up, and even at these higher rates, Government have encountered considerable difficulty in floating their loans. It is in this present state of the money market and the capital market that I spoke of the need to ensure continuous flow of resources into the industrial sector to assist the developing growth, and also the existing structure, which is so necessary for the good of the country. The interest rate structure has now changed to such an extent that many of those things that I wrote about in the minute of dissent and the reasons why Government themselves



accepted my recommendations, have to be radically changed. On giving thought to this, I wondered whether the answer to this problem lay any longer in fixing yet another rate of return which would again have to be changed according as circumstances change, or in linking the thing to the basic factor in the monetary structure, which was the Reserve Bank rate. I have preferred the latter. Consequently, the amendments that I have moved in relation to the rate of return on capital and reserves are all concerned with a suggestion that the return in the case of concerns other than banking companies ought to be 4.5 per cent over the Bank Rate; so that if the Bank Rate goes down, this rate of return will also automatically go down, and if the Bank Rate goes up, the rate of return will also go up. Similarly, as regards the return on reserves, I have suggested that it ought to be two per cent above the Bank Rate.

Then, as regards banking concerns, corresponding to the recommendations of a lower rate of return in the Bonus Commission's report as well as in my minute of dissent, I have suggested a lower differential at which the return on capital in banking companies and the return on reserves in banking companies ought to be related to the Reserve Bank Rate. I would urge that that is now the only way of fixing these returns in terms of the money market rates. The present position is that one does not know what the Bank Rate is going to be in six months time. I therefore suggest that the return on capital and the return on reserves should be related to the Bank Rate; it would go up if the Bank Rate goes up, and go down if the Bank Rate goes down.

So far, on the subject of return, I have been dealing with what you might call the corporate sector as a whole, that is to say, banking companies, other companies, corporations and co-operative societies. I will now deal

with the question of return on non-corporate sector cases, that is to say cases described in item No. 5 on page 32 of the Bill, namely, "Any other employer not falling under any of the aforesaid categories." Here, there are two questions. In the first place, what should be the rate of return? As to that, I have no other suggestion than the suggestion I have made in the earlier amendment. The other question is in regard to various small concerns. I have suggested there that there should be a minimum return of Rs. 15,000.

16.26 hrs.

[MR. SPEAKER in the Chair]

The specific suggestion I have made in amendment No. 239 is this, that the allowance there by way of return on capital should be either at the rate I have suggested in all cases on the capital employed or a minimum of Rs. 15,000. This minimum of Rs. 15,000 is precisely for the purpose of meeting the kind of cases to which my hon. friend Shri Kashi Ram Gupta referred, that is, the small proprietary concerns. I am suggesting this for two reasons. In the first place, they have not the benefit which companies, have of limited liability. The difference between limited liability in the case of a company and unlimited liability in the case of an individual proprietor or family proprietor or a firm proprietor can often be very, very considerable in terms of its incidence upon the proprietors.

The second reason is that a company is in a position to pay adequate remuneration to its working directors, working shareholders and so on, whereas when you come to non-company cases, it is a matter of difficulty to provide anything that might not, on the one hand, be too much and, on the other, too little. Consequently, the services of the working proprietors are rather more likely to go inadequately rewarded than would be the case in the case of a company. I have, therefore, suggested this particular

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mode of approach to the return on capital.

Now, Sir, I have to go on to some other subject. I think I might stop now. I will continue tomorrow.

16.30 hrs.

#### STATEMENT RE. DEFENCE OPERATIONS

The Minister of Defence (Shri Y. B. Chavan): I would like to keep the hon. Members apprised of the developing situation in our efforts to contain and throw out the Pakistani aggression on our territory, since I made the statement on the floor of the House on 6th September.

2. Our Army which moved across the Punjab border to deal with the Pakistani forces who had invaded Kashmir and which were trying to open another front in the Punjab has gained certain positions which it has held despite vigorous counter attacks from the other side. Our Air Force has been giving very good support to our ground troops. Our air action to hit the bases from which Pakistan has been launching air attacks on our territory has been continuing.

3. In the Chhamb-Jaurian sector our forces have made the enemy retreat and captured substantial number of vehicles besides stores. There are signs of his making a stand again. In other sectors of Jammu and Kashmir our troops have given a very good account of themselves. In the Haji Pir area, our troops have captured another Pakistani post three miles west of the Pass and repulsed a Pakistani counter attack. Proceeding towards the north, from the Poonch side, our troops have, with great gallantry, captured three important hill features in the bulge where not only have they inflicted heavy casualties on the enemy, but they have made a record haul of arms and ammunition and stores. The Pakistanis were well entrenched in these posts and had obviously been using them as bases

for supporting and assisting infiltrations into J. & K. In other areas of J. & K. also our ground forces have been inflicting losses on the enemy.

4. The Indian Air Force has achieved remarkable success, not only in the role of support to our ground troops, but also in strikes at the bases from which Pakistan has been mounting attacks on our territory.

5. Our air strikes in support of the Army were made over the Dera Baba Nanak area. The Air Force also struck at Pakistani ground forces concentrated in Sulemanki Head Works area and poised for an advance into India. The Sargodha and Chaklala air-fields of the Pakistani Air Force have been attacked by our planes as they were being used as bases by the Pakistani Air Force to support the aggression by Pakistani ground troops on our territory. Our Air Force have also intercepted and fought with the Pakistani Air Force in the latter's attempts to bomb air-fields and civilian targets in wide-spread areas, ranging from Jammagar in the west to Kalaikunda near Calcutta in the east. The Pakistanis had earlier bombed the civilian areas of Jaurian and Ranbirsinghpura. They have continued this process of bombing over Amritsar, Ferozepur and other civilian areas. No military target has been damaged in those areas, but there have been sizeable civilian casualties and damage to civilian property. Evidence has been collected to show that Pakistan had made plans to undertake these operations, as early as April.

In the ground fighting, apart from inflicting other losses on the enemy, our troops have destroyed three Pakistani tanks and captured two, complete with their crew. To arrest the advance of our forces, the Pakistanis blew up the Dera Baba Nanak bridge in Pakistan territory. The Air Force has knocked out thirteen other Pakistani tanks. In pursuance of the Army's overall plan to check attacks at the bases from which they are