

[Pandit Thakur Das Bhargava]

but right that the burden must be on the prosecution. It is the prosecution that has to prove, and the prosecution must prove that the act was done. If the act is done, then only the question of presumption arises. As I have submitted already, my hon. friends have not considered this question from this standpoint.

There are two intentions here. One is the intention to kill, which must be proved by the prosecution; and the other is the collateral intention; it is imposed by law in regard to other things, but it has been wrongly put here in regard to animate objects when the question of mischief arises, it can arise in two ways, it can be mischief to animate objects, or it can be mischief to inanimate objects. So far as inanimate objects are concerned, I have not raised any presumption at all. I have raised the presumption only in regard to animate objects, really sentient beings. I have raised it only in regard to animal life.

I may submit that about one-third or perhaps more of the national income of this country is contributed by the cattle wealth of this country. All our Five Year Plans will not be able to do any benefit to this country, unless and until they pay more attention to the cattle wealth of this country. The Minister himself was pleased to say that he is alive to this fact. I would only say that a crore of persons could be employed on this job, of cattle welfare and at least Rs. 500 crores more of income will come to the Union; if only we care for our cattle wealth in the proper manner, and if only we give them food etc., we shall be able to raise our income to a great extent. This only says that a person should be more circumspect and should not lightly kill, that a person should not lightly behave, he should behave in a manner which has been enjoined on him by the injunctions of religion, Hindu, Muslim and every other religion. My humble submission is that this is a simple Bill. It was designed in order to promote the cattle wealth, and the welfare of the country. I wanted that our conduct in this matter should be according to our ancient culture, as understood by us, according to which no life should be wantonly destroyed or destroyed in the manner in which it is destroyed today.

My friends want me to produce evidence here of how the cattle are treated, how cattle are poisoned, how cattle

are maimed. I will refer them to the slaughter houses of Bombay, Madras and Calcutta. Let them see how cattle are maimed, how cattle are poisoned; let them see how designedly these and all sort of crimes are done. But I am not putting my case on the question that this is a very great social evil. I am putting it on this simple question, that according to the principles of the Indian Evidence Act a man is presumed to know the natural consequences of his act. According to these principles, my submission is that the framers of the Indian Penal Code make a mistake, in that they did not differentiate between animate and inanimate objects; in section 429, we would be well advised to put this presumption.

I am thankful to you, Sir for being pleased to give me the full time I wanted, and in view of the advice given by the hon. Minister, I do not see my way to insist upon the full pound of flesh (*Interruptions*).

**Shri Kamath** (Hoshangabad): Not even an ounce of flesh.

**Pandit Thakur Das Bhargava**: If the House agrees, I will just take the advice of the hon. Minister and those hon. Members who have opposed me and request you to kindly allow me to withdraw the Bill.

**Mr. Deputy-Speaker**: Has the hon. Member the leave of the House to withdraw the Bill?

**Several Hon. Members**: Yes.

The Bill was, by leave, withdrawn.

## ELECTRICITY (SUPPLY) AMENDMENT BILL

(AMENDMENT OF SECTION 77 ETC.)

**Shri Sadhan Gupta** (Calcutta South-East): I beg to move:

"That the Bill further to amend the Electricity (Supply) Act, 1948 be taken into consideration".

This Bill has been necessitated by a very unfortunate decision of the Labour Appellate Tribunal in which it held that bonus to electricity workers was not an item of expenditure allowed under the Electricity (Supply) Act, 1948.

**Shri Nambiar** (Mayuram): On a point of order. None representing the Ministry of Labour is here. In essence, this is a matter concerning labour and grant of bonus. It is not exactly relating to electricity supply only. Therefore, it is necessary to have the Minister of Labour or his deputy here.

**Mr. Deputy-Speaker:** So far as I know, it has been entrusted to the Minister for Irrigation and Power. Let us proceed now and if we find that there is something, we will advise the other Ministers to be here.

**The Deputy Minister of Irrigation and Power (Shri Hathi):** It is not necessary for the Minister of Labour to be here in connection with this.

**Mr. Deputy-Speaker:** We need not discuss it at this moment. Let us proceed.

**The Deputy Minister of Defence (Sardar Majithia):** It is joint responsibility. He is equally responsible.

**Shri Sadhan Gupta:** As I was saying, the Appellate Tribunal had decided that bonus to electricity workers was not an item of expenditure allowed under the Electricity (Supply) Act, 1948. The result of that has been that claims to bonus which by all canons of justice may be regarded as legitimate have been overruled by the Appellate Tribunal only on the ground that the bonus is not permissible as an item of expenditure and that it cannot be claimed out of the profits.

In order to understand the injustice involved in this interpretation of the law and the consequent necessity to amend the law, as I have suggested, I shall give a short background of the Electricity (Supply) Act, 1948. Before this Act was passed electric supply companies could make as much profit as they chose. Now, one of the main objects of the Act was to regulate the quantum of profits which an electric supply concern should be permitted to make. With that end in view, this Act sought to control profits by enacting the Sixth Schedule. This schedule contains a definition of 'clear profits' and it is defined by paragraph XVII (2) of the schedule. It is defined as follows:

"'clear profit' means—the difference between the amount of income and the sum of expenditure plus special appropriations, made up in each case as follows:—"

Then, there are three other clauses (a), (b) and (c); (a) enumerates income; (b) gives the items of expenditure and (c) enumerates the special appropriations. So 'clear profit' is income minus the sum of expenditure and special appropriations.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

The injunction in the very first paragraph of the Sixth Schedule is that the licensee shall so adjust his rates for the sale of electricity by periodical revision so that this 'clear profit' in any year, shall not as far as possible, exceed the amount of reasonable return, provided that the licensee shall not be considered to have failed so to adjust his rates if the 'clear profit' in any year of account, has not exceeded the amount of reasonable return by more than 30 per cent. of the amount of reasonable return.

Then, paragraph II is important.

"II (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return, one one-third of such excess, not exceeding 7½ per cent. of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State Government may direct."

Then, there is the provision as to how the Tariffs and Dividends Control Reserve has to be utilised and so forth. Therefore, the net result of the Sixth Schedule is this; that 'clear profit' should not exceed the reasonable return and if there is an excess, only 7½ per cent. of the excess will be at the disposal of the undertaking. Out of the rest of the excess, one-half shall be transferred to a Tariffs and Dividends Control Reserve, which is to be utilised for obviating any losses that have been suffered in the past and the other half is to be transferred or to be distributed to the consumers or to be used for granting rebates for the sale of electricity. That is the scheme of the Act. Therefore, a clear profit is

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not to exceed the reasonable return. What is the reasonable return? A reasonable return is defined in paragraph XVII of the Sixth Schedule as the return that will be found by applying the standard rate to the capital base. It is in sub-paragraph 9. A reasonable return means in respect of any year of account the sum of following: the amount found by applying the standard rate to the capital base at the end of that year, the income derived by investments other than that made under paragraph 4 of this Schedule, an amount equal to one half of one per cent. of any loan advanced by the Board—sub-paragraph (2) of paragraph 1 of the First Schedule. We need only be concerned with clause (a) a sub-paragraph (9) because the others are not important in the case of most electricity supply concerns. Sub-paragraph 9 (a) says "the amount found by applying the standard rate to the capital base at the end of that year". The standard rate is defined in paragraph 10 as 5 per cent. that is to say the reasonable return is 5 per cent. of the capital base. The capital base itself is defined in paragraph XVII(1) and is a sum of many capital assets, such as the original cost of fixed assets, the cost of intangible assets, the original cost of works in progress, the amount of investments compulsorily made under paragraph 4, amount on account of working capital equal to the sum, etc., etc. and there are many items. Therefore, the scheme we have is that the reasonable return is 5 per cent. of the capital base, which consists of all kinds of capital assets, movable and immovable, in the possession of the concern. Therefore, the reasonable return, you will find, is calculated on an entirely different basis. It is calculated not as it is usually done in the case of other concerns on the paid-up capital; it is calculated in this case on the capital base of the company itself. Through this mode of calculation the companies, which have enjoyed a good business for a long time, which are old established companies, get an advantage over the relatively newer companies, because through their profits the capital base keeps on expanding and so their profits expand much more in relation to the paid-up capital than in the case of other companies. This is a very important thing to remember, because electricity supply concerns often enjoy monopoly, and some of the concerns have been established in big cities for a long time con-

trolled by foreigners and they are in the best position to earn a huge dividend.

Take the case of the Calcutta Electric Supply Corporation, for instance. This company has the monopoly of the electricity supply in Calcutta. In 1950, its capital composition was—in round figures—about eighteen million pounds. The paid up capital of the corporation was only six million and odd pounds. So, the capital base was about three times the paid up capital. In terms of our currency, the capital base would be about Rs. 24 crores while the paid up capital would be about Rs. 8 crores. On that basis, applying the standard rate of five per cent, the company would be able to make a clear profit of about Rs. 1,20,00,000. That would be the reasonable return. That would be about fifteen per cent. of the paid up capital. That is supposed to be the controlled profit of a concern.

It is being accepted that six per cent. is quite sufficient by way of return on paid up capital. Here it is about fifteen per cent, recognised statutorily. Therefore, although it seems that the profit is controlled, the allowance is quite liberal at all events in the case of these companies. Even this allowance is not sufficient for companies which have been established for long. For example, in the case of the Calcutta Electricity Supply Corporation, even in spite of regulations, they were compelled, if I may say so, to make an excess profit of £961,113—that is to say, about Rs. 1,28,00,000 over that profit. That is to say, they were compelled to double their clear profits through the sale of the electricity which took place.

Now, they employ five thousand workers. In terms of the number of workers employed, the profit comes to about £ 225 per worker, which means about Rs. 3,000 per worker. That is the position of the company.

But when the workers wanted a bonus of only three months pay they resisted it. Why should the workers be given the bonus? What is the legitimacy of their claim for bonus? To all these, I will come later. Apart from all questions of legitimacy, whenever huge profits are made, the workers' claim to bonus is recognised. It is not rare in concerns which make huge profits for workers to get three months or four months or even six months' remuneration by way of bonus. That is a common phenomenon. The workers in the petroleum industry have been given

four or five or five and a half month's remuneration as bonus by the labour appellate tribunal itself. The Labour Appellate Tribunal considered it just to give it. The Tatas give, I think, about 3 or 4 months' pay. Similarly there are any number of well established companies, who have made huge profits and who give 3 months', 4 months', 5 months' and even 6 months' bonus. But when the claim comes against an electricity supply concern the argument is that bonus cannot be given because it is not mentioned in one of the items of expenditure which occurs under paragraph 17(2)(b) of the Sixth Schedule. This argument came to be upheld by the Labour Appellate Tribunal in the Bombay Suburban Electricity Supply Company's case. Then the workers turned round and said: "Very well. If it is not an item of expenditure, let us have it out of profits. You are making huge profits. Please give us this bonus out of profits". There the Appellate Tribunal in the same case said that they cannot claim it out of profits also. Why? Because the profits have been so regulated by statute that they are making only a reasonable profit. They said: "What the statute calls a 'reasonable return' is in fact reasonable and, therefore, you cannot claim bonus either out of expenditure or out of profits."

Now, you know, Sir, the Calcutta Electricity Supply Corporation, about which I have been mentioning, made a profit. They made not only a profit amounting to the reasonable return of about Rs. 1,20,00,000, but they made an excess profit of Rs. 1,28,00,000. That excess profit, Sir, was ordinarily to have been allocated mostly to the consumers, because after allocating 7½ per cent. of the reasonable return, which I think would amount to Rs. 29 lakhs, the rest would have to be transferred for the benefit of the consumers. In the case of the Calcutta Electricity Supply Corporation there is no question of a tariff and dividend control reserve fund because it has never suffered a loss. Therefore, it cannot be allowed under the law to transfer the amount to the tariff and dividend control reserve. Even this consumers' money was allowed to be appropriated by the West Bengal Government by way of special appropriation for the expansion of its undertakings. The result was that the consumers did not get it, the workers did not get it and the company was allowed to expand its undertakings by taking the consumer's share of the money.

By way of expansion it would be enabled to earn greater profits, because by way of expansion the capital base of the company would be expanded by about Rs. 1,28,00,000. Therefore, the clear profit to that extent would increase.

In spite of all this, in spite of making huge profits, in spite of having the use of the money which belonged to the consumers and thereby being able to earn greater profits, when the demand for bonus comes, they award only one month first and then, on an arbitrary basis I would say, in view of the Appellate Tribunal's interpretation the lower Tribunal enhanced it to two months. I do not know what has happened to the appeal against it, but was only two months.

Now, I would ask you to consider whether, when a profit of Rs. 2,48,00,000 that is to say, about Rs. 2½ crores has been made by employing a mere 5,000 workers, it is just that the share of the workers should be only two months' basic wages. What is bonus? There was a contention for a long time that bonus is a payment which the employer makes out of his generosity. But in every country industrial courts have decidedly rejected this theory. In our country, all the courts, from the lowest to the highest, from the small tribunals to the Supreme Court, have decided that bonus partakes of a double character. Bonus is firstly a bridge between the wages in so far as they fall short of the living wages and the living wage itself. Principles have been laid down to say that that shortfall cannot be bridged at once and that all kinds of repercussions have to be taken notice of. But there is no doubt that whether it is the industrial tribunal, whether it is the Planning Commission or whether it is any other authority dealing with labour, they have all admitted and accepted that the claim of labour to bonus is just.

**Mr. Chairman:** The hon. Member's time is up.

**Shri Sadhan Gupta:** I think there is enough time. I do not think many hon. Members are going to speak on this.

**Mr. Chairman:** Four minutes more. The hon. Member has taken 26 minutes already.

**Shri Nambiar:** Many hon. Members are not going to speak on this Bill.

**Mr. Chairman:** I cannot say that.

**Shri Sadhan Gupta:** The Bill has been given 2½ hours.

**Mr. Chairman:** Half an hour is usually allowed for the mover of the Bill. If there is no other Member to speak, I will certainly allow the hon. Member more time.

**Shri Sadhan Gupta:** Thank you, Sir. I was saying that our industrial courts have accepted that bonus is necessary to bridge the gap between our wages and the living wages, which should be the wages of every worker in justice and fairness. Also, bonus represents the worker's right to share in the profits. There is no doubt that in a concern where huge profits are made, for example in a concern like the Calcutta concern where the company earns a profit of Rs. 5,000 per each worker, the workers are entitled to a substantial share and that amount should certainly be for more than two months. If the workers are deprived of it, not because the company is unable to pay, not because the profits are insufficient, not because the workers do not deserve to get the amount out of the profits, but because there is a technical difficulty and that the expenditure cannot be met under clause (b) of sub-paragraph (2) of paragraph XVII, it is a very unfortunate state of affairs. Justice is there; the legitimate claim is there; the profits are there. Yet, you do not allow the disbursements of the profits to the workers who have contributed to the profits of the company, merely because of the omission of a provision. I have, therefore, sought to supply the omission by my amendment to sub-paragraph (2) of paragraph XVII. Clause 3 of the Bill contains my main amendment, and the others are consequential. I shall read my amendment :

"In paragraph XVII of the Sixth Schedule to the principal Act, after sub-clause (xii) of clause (b) of sub-paragraph (2) the following new sub-clause shall be inserted, and shall be deemed always to have been so inserted, namely:—

"(xiii) All expenditure incurred on account of payment of bonus to employees earning less than one thousand rupees a month exclusive of such bonus."

It may seem a drastic thing to make in retrospective. I have made it retrospective in the interests of both the workers and the concerns themselves. Some concerns may have paid more bonus. They would find the difficulty of being hauled up because of recurring

of an item of expenditure not permitted. Some workers may have had claims and many workers have claims against their companies for greater bonus and these claims are continuing for a long time. For their interests, this provision should be made retrospective. Therefore, I have made it retrospective.

There is, however, one danger in providing an item of bonus in expenditure. The danger is that big officials, most of whom would be foreigners, would take away very huge sums from our country by way of bonus. Therefore, I have suggested an amendment of section 77 of the Act which is the section penalising infractions of the Act. If bonus is paid to any person earning Rs. 1,000 or more, that payment of bonus should be penalised. I have hit upon this limit to Rs. 1,000 because most of the people earning over Rs. 1,000 are likely to be foreigners and are likely to deprive our country of huge resources.

There is another consequential amendment—I should not say it is consequential, it is also substantial—to sub-section (3) of section 77. Sub-section (3) bars cognisance by a court of law in respect of an offence committed under the Act unless the complaint is preferred by the State Government. This provision is fraught with great danger. As far as the interests of the workers are concerned, I have seen cases in my own part of the country where the State Government has readily given employers the authority to prosecute cases against their employees. In the case of the Llyods Bank, the European authority of the Bank was allowed to prosecute the employees for resorting to an illegal strike, which was otherwise justified. It was only technically an illegal strike. On the other hand, the employers have violated the Industrial Disputes Act deliberately and yet the employees find it very difficult to get sanction for the prosecution of the employers. I have sought to add by way of an amendment to sub-section (3) that not only the Government, but also the President or Secretary of a registered trade union of the employees of the licensee or other persons against whom a complaint is made, should be allowed to prefer the complaint and the court should take cognisance of the offence on their complaint. I think this is a very reasonable amendment and the House will have no difficulty in accepting the amendment.

In the penal clause, you can reduce the penalty. I have no objection to it. You can reduce the term of imprisonment; you can reduce the amount of fine. But regarding the principle I think there should be no objection that bonus should be allowed to the workers. Bonus should be given to them and no payment difficulty should be created on their way. If any infringement occurs regarding the payment of bonus, the representative of the workers should be allowed to prosecute the employer.

5 P.M.

**Mr. Chairman:** Motion moved:

"That the Bill further to amend the Electricity (Supply) Act, 1948, be taken into consideration."

Before we proceed further, I have to make an announcement. The House will sit tomorrow till 6-30 P.M. The Finance Bill will be over by 6 P.M. and half an hour will be taken by the Appropriation Bill.

**Shri Tek Chand (Ambala-Simla):** Mr. Chairman, I have had an occasion to go through the amending Bill that is before the House along with the relevant provisions of the Electricity (Supply) Act, 1948, which this Bill seeks to amend. There are certain anomalies, apart from the spirit of the law, that are not easy to comprehend. Let us analyse the suggestions which have been made by the hon. Mover.

Clause 2 intends to bring about a drastic change. Making of the payment of bonus to an employee becomes an offence, according to him, under certain circumstances. I should have thought that if there is money which is not yours and you put it into your pocket or you throw it away or you distribute it among unauthorised persons, it may under certain circumstances be a criminal offence. But what happens here is that an electricity supply undertaking earns a certain profit. A part of that profit it distributes as dividend among its shareholders and a part of that profit it gives as bonus to the employees. The criminal offence, for which a citizen forfeits his liberty, the maximum of which is going to be three years, is that some profit that this company has earned has been distributed as bonus to the employees. The criminality lies not in withholding somebody else's money, but in distributing your own money as bonus. That act becomes a criminal offence when the giver of his

own money to his employees becomes a criminal offender thereby. Let us examine it. What is bonus? Bonus in the accepted sense is distribution by the employer out of his profits certain sums which under law he is not obliged to pay to an employee. For the good work done, for the co-operation, for such contribution as their labours have resulted in increasing the profits of the undertaking, the directors of a concern or the concern itself out of a sense of generosity, out of a sense of justice, out of a sense of fairness, like to share it along with their employees. Some moneys may be there; it may be two months' salary or it may be three months' salary; that fund forms itself into a bonus, and that bonus goes to the employees. That is an act whereby the profit of the undertaking which is exclusively the property of the undertaking or of the shareholders, let us say, is not being retained by the shareholders themselves; but the company gives it away to its employees under a conceivable set of circumstances, as opined by the Mover. That becomes a criminal offence whereby the giver of the largess or the giver of the bonus stands to forfeit his liberty to a period extending up to three years. And not only that, but for giving away money, he runs the risk of being fined to the tune of Rs. 50,000.

**Shri Nambiar:** Such a thing will never happen. Even the other thing is not happening. Even those who are drawing up to Rs. 1,000 are not getting any bonus.

**Shri Tek Chand:** To cap it, for giving that bonus, he runs the risk of forfeiting his liberty, and he is being mulcted in fine, not necessarily in the alternative, but in addition to sentence of imprisonment.

There seems to be a curious state of affairs. You distribute money out of kindness; and the reward you get for that kindness is that you forfeit your liberty for three years, and you stand to lose Rs. 50,000 to boot.

I do not know how it is possible to subscribe to the most novel proposition contained in this Bill. Further, under this Act the right to prosecute is conferred upon the board. The board is the authority for the purpose. The constitution of the board is given in section 5 of the Act. Where there is a board, the board may prosecute,—because

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 they are the responsible people—on grounds provided in the Act itself, in cases where there has been some infraction of law. But where there is no board, that duty is cast upon the State. But now the role of prosecution is being arrogated under this Bill by this worthy gentleman styled as the president of the union or the secretary of the union. He is going to play the role of the complainant. I should have thought that in the case of a crime, the party aggrieved is not an individual, but essentially the party aggrieved is the State. It is the right of the State and the State alone to the exclusion of any other individual, whatever his capacity may be, to assume the role of a prosecutor. This duty is being taken over by the president or the secretary of the registered trade union, that is to say, the role of the prosecutor, the role of the complainant, which essentially does and should vest in the State or some official body like the board.

Then again, kindly examine the provisions of section 77. Under the penal provisions of section 77 (1), the maximum penalty for the infraction of certain provisions is a fine extending to Rs. 50. But for making payment to the employees, in the same provision the penalty imposed is three years plus Rs. 50,000. I think, in all humility, it is a logic defying statute, the like of which is difficult to locate in our laws. If you pay bonus to an employee whose salary is Rs. 1,000, it is a laudable object. But if you pay bonus to an employee whose salary is Rs. 1,100 or Rs. 1,050 or Rs. 1,001, then you run to risk of losing your liberty and being saddled with a fine. I think one has just to analyse the provisions in order to realise the absurd consequences that they will entail. I oppose the Bill.

**Shri Nambiar:** As I have already stated in my interruption, this is essentially a case which has to be decided by the Labour Ministry. In the Statement of Objects and Reasons, it is clearly stated that the whole question arose out of the decision of a Labour Appellate Tribunal which refused to grant bonus to the employees of a particular electric supply company. The hon. Mover has said:

"Taking advantage of this decision, many electric supply concerns, including the British-owned Calcutta Electric Supply Corporation, which make huge profits of about Rs. 5,000 per worker have refused to pay legitimate bonus to their workers".

That is the subject. Here the question is that in the electric supply corporation, the workers should get bonus. There is a provision under the Act which prevents the workers from getting the bonus if they go to an Appellate Tribunal or a court. It is to do away with this legal lacuna that the hon. Mover has moved this amendment.

**Shri Hathi:** May I just say, to enlighten the House, that that judgment on which this whole Bill is based, has been reversed by the Appellate Tribunal in the latest judgment?

**Shri Nambiar:** If it is so, then this lacuna can be removed by accepting the spirit of the amendment moved by the Mover.

**Mr. Chairman:** There is no lacuna.

**Shri Nambiar:** But this expenditure is not included yet.

**Mr. Chairman:** Suppose the company has a desire to pay bonus. Will it be committing an offence by paying according to the ruling of the Appellate Tribunal? Has the hon. Member seen the ruling of the Appellate Tribunal?

**Shri Nambiar:** No.

The Bombay Court has taken objection under this, that this bonus is not included in the so-called expenditure, as narrated by the schedule. That is the point. Therefore, the hon. Mover wanted to add another sub-clause in that schedule to say that bonus also can be a legal expenditure for this purpose. Here what the hon. Mover wanted was to limit it to the extent of . . . . .

**Mr. Chairman:** Order, order. Let me just ascertain from the Deputy Minister. What is the basis of the reversal of the judgment? Is it on the plea that as a matter of fact, in spite of the fact that these words do not occur there, bonus cannot be paid?

**Shri Hathi:** The interpretation was that bonus is not an item of expenditure admissible. This is the wording:

"Other expenses admissible under the law, for the time being, in force, in the assessment of Indian incometax and arising from and ancillary or incidental to the business of electricity supply."

The first court held that this is not an item admissible, and it is not an item of expenditure incidental to the business of electric supply. Therefore,

this would not be an item of expenditure admissible. Then nobody went to the Supreme Court or higher courts. Subsequently, again some cases came and a Full Bench, that is, the Labour Appellate Tribunal, in appeal No. 242, very recently have held, referring to this very case, that,

"If that right has been given—and it cannot be doubted in view of its affirmation by the Supreme Court—then it follows that any payment for the implementation of that right must be regarded, in any event, as one of the other expenses admissible under the law, for the time being, in force, in the assessment of the income-tax and arising from and ancillary or incidental to the business of electric supply. We, therefore, hold contrary to the view of the Bench that bonus is, in fact, one of the permissible items of expenditure under Schedule Six, falling within item 11....."

to which the hon. Mover has referred.

They have held so and the previous judgment has been reversed and there is no basis for amendment.

**Mr. Chairman:** The judgment proceeds on the basis of another judgment which has been mentioned there—the Supreme Court judgment.

**Shri Hathi:** No, Sir; this is a Full Bench judgment of the Labour Appellate Tribunal.

**Mr. Chairman:** There is a reference to the Supreme Court judgment.

**Shri Hathi:** That was about the right of the workers to bonus. But, this is a judgment of the Full Bench of the Appellate Tribunal and it has held that it is an admissible item, and, therefore, it does not arise, in fact. Government also holds the same view.

**Mr. Chairman:** In view of what has fallen from the lips of the hon. Minister, these two questions still remain. The hon. Mover wants that so far as the employees are concerned, only certain class of employees may be given bonus. At the same time, so far as the main prosecution is concerned, he wants that the prosecution may be entrusted to particular people. These two still remain.

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**Shri Nambiar:** The Bill contains these two aspects. As regards the first one, the hon. Minister has now explained that the workers have got a claim for bonus and that can be allowed and treated as a real item of expenditure under the Act. So, the main job is over.

With regard to the next item, the bonus to be paid to those who get more than Rs. 1,000, I would also request my hon. friend the Mover to delete that portion, but not exactly for the reasons mentioned by my friend Shri Tek Chand. Shri Tek Chand said that it looks ridiculous that an employer should be penalised for paying bonus of his employees. But, it is a fact that in Electrical Corporations and especially in foreign concerns, just as those we have in Calcutta and Bombay, there are a large number of officers who belong to the United Kingdom, who have come here and for several years continued to serve here, who have drawn a lot of money by way of bonus and so many other items. Only the other day, the hon. Finance Minister referred to this in connection with another matter, and said that lakhs of rupees have been taken away in that form. Not only that; it is a matter in which we can save a lot of foreign exchange. The purpose of the hon. Mover is, therefore, to restrict such payments and not in the sense in which Shri Tek Chand tried to present it. Even granting that it would look awkward, I would only request the hon. Mover to delete that item, that is the first part of (1A). If the hon. Minister will agree that it will not stand in the way of employees, getting bonus, then I think, the hon. Mover can be persuaded to decide the issue otherwise.

**Mr. Chairman:** What will be the effect of this ruling?

**Shri Nambiar:** Clause 3 is the main item.

**Mr. Chairman:** So far as this main item is concerned, if, according to the hon. Member who is speaking, bonus could be given to every employee, whether he gets a thousand rupees or more, the question about prosecution does not arise. So, the hon. Member's suggestion should be to ask the hon. Mover, Shri Gupta to take away his Bill.

**Shri Nambiar:** Directly it looks like that, but taking advantage of the present Bill, I would ask for some more clarification from the hon. Minister. Would



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he kindly enlighten us on these terms which we find peculiarly in this Act alone—terms like 'reasonable return', 'clear profit', 'capital base', 'special appropriation', 'dividend equalisation fund' etc? All these terms are included in this Act. In any business concern.....

**Mr. Chairman:** In a Bill of this nature, it is not desirable to ask for clarification for terms which are given in the Act itself. The Act itself speaks of 'clear profit', 'reasonable return' and so on. Even if the hon. Member wants to have the clarification and it is acceptable to the hon. Mover, that will not serve any purpose.

**Shri Nambiar:** Then, it will strengthen my hands to request the hon. Mover to withdraw his Bill. If the hon. Minister is contemplating to move another amendment to the Electricity (Supply) Act, which contains all these peculiar things

**Shri Hathi:** May I say that the amendment to the Electricity (Supply) Amendment Bill, 1955, has already been introduced in this House and that it also deals with the question of bonus? If hon. Members read it, they will be able to know all about it.

**Mr. Chairman:** Has it been introduced in this House?

**Shri Hathi:** Yes. The bonus question is also there in it. The judgment was not there at that time and we rather thought that it was better that it might be clarified. So, it is already there and I think it is not necessary to proceed with the Bill that is now before the House.

**Shri Nambiar:** What is the reference of the ruling?

**Shri Hathi:** I can give the reference of the ruling.

**Shri Nambiar:** After the introduction of the Bill in this House, I think, in 1954, the hon. Minister might have moved another amending Bill to this Act, which is welcome. Whether it is done after this ruling or not is not the question. We welcome the move of the hon. Minister to bring in an amendment to this Act which will give some advantage to the employees, will remove all these peculiar clauses, and give a fair deal. We are thankful to him. Therefore, I would request on this occasion that the hon. Minister may pursue that Bill further and give the promise in practice and let the employees get a bonus. I know that in

the Madras State there are several cases where in the employers behave in the same manner as the Calcutta people did. When they find that there is any chance of evading payment of bonus, they do it, and especially when they find that the law is so convenient to them, they do it.

**Mr. Chairman:** The Bill does not make it obligatory upon every employer to give it. It is only optional.

**Shri Nambiar:** The workers join together and have a bargaining power. If they make their demands, then Government will come to their rescue.

**Mr. Chairman:** The Government themselves have brought in a Bill of this nature. What is the purpose of asking Government to pursue it?

**Shri Nambiar:** They did it after 1954. That is the reason.

**Mr. Chairman:** May I take it that the hon. Mover of the Bill proposes to withdraw it?

**Shri Sadhan Gupta:** I would ask for a few clarifications.

**Mr. Chairman:** The hon. Member may have seen that Bill.

**Shri Sadhan Gupta:** That Bill is a different one, of course. That Bill has nothing to do with the provisions I have touched in my Bill. I would like the hon. Minister to explain the whole position as regards the ruling. First he read out a few passages and I have not yet got the reference with regard to that ruling. Before I can decide upon withdrawing my Bill, I feel I should be perfectly satisfied about the whole position. The new ruling has been sprung upon me as a pleasant surprise, I must admit. So, the Minister may explain the whole thing—the background of the case—and he may refer me to the ruling and I might look it up in the meanwhile.

**Shri Hathi:** If the intention is that the debate should continue, I shall reply at length—if the hon. Member wants. I have just intervened only on certain points of clarification.

**Mr. Chairman:** The point is this. So far as the previous ruling is concerned, it has been reversed. There is a new ruling now. The operative portion of that ruling has been read out. If the hon. Member wants he can go through that ruling and so far as this Bill is concerned, we may adjourn the discussion.

**Shri Nambiar:** If the hon. Member is ready with his reply, he may reply. After that we can consider the question of withdrawal.

**Mr. Chairman:** He will take sometime; he will not finish now.

**Shri Dabhi (Kaira North):** Some other Bill might be taken.

**Mr. Chairman:** The Minister may reply.

**Shri Hathi:** As will be seen from the Statement of Objects and Reasons of this Bill, the Electricity (Supply) Amendment Bill is based on a judgment of the Labour Appellate Tribunal. The Statement, here, reads :

"The Labour Appellate Tribunal in the case of the Bombay Suburban Electricity Supply Ltd. decided that bonus could not be paid to workmen out of the reasonable return nor could it be deducted as an expenditure allowable under paragraph XVII(2)(b) in calculating clear profit. Taking advantage of this decision, many Electricity Supply concerns, including the British owned Calcutta Electric Supply Corporation, which make huge profits of about five thousand rupees per worker have refused to pay legitimate bonus to their workers."

The Mover wants to remedy this difficulty. He wants to add to the list in paragraph XVII of the Sixth Schedule to the Principal Act, an item No. (xiii) which reads:

(xiii) All expenditure incurred on account of payment of bonus to employees earning less than one thousand rupees a month exclusive of such bonus."

In this addition, the Mover wants to add two things at a time. He wants to make the payment of bonus admissible as an item of expenditure. Secondly, bonus should not be paid to people drawing more than a thousand rupees. He wants to achieve both these things by this one addition.

The entry No. 11 in Schedule VI makes this item an item of expenditure. It relates to expenses admissible under the law for the time being, in force in the assessment of Indian income-tax and arising from, ancillary or incidental to, the business of electricity supply.

I shall read the relevant portion from the case which the Mover has referred to in the Statement of Objects and Reasons.

"In the allowable expenditure many items concerning remuneration of and benefits to labour have been included, like contributions to provident fund, staff pension, gratuity and apprentice and other training schemes; but no provision is made for bonus, and try as we may, it is not possible to include bonus under any one of the sixteen items of expenditure which are to be taken into account for the ascertainment of the clear profit."

**Shri Sadhan Gupta:** May I have the reference of the latest ruling?

**Mr. Chairman:** The hon. Member wants the actual reference, the number of the judgment, the date of the judgment, who delivered it etc.

**Shri Hathi:** The one I referred to, which reversed the original decision?

**Mr. Chairman:** Yes.

**Shri Hathi:** It is signed by Shri Jeebhoy, member; Shri Bind Basi, member; Shri Ruben, member; Shri Lalkaka, member and Shri Matin, member. It was a full Bench of these five members.

**Shri Sadhan Gupta:** It is not yet reported, I think.

**Mr. Chairman:** I think the hon. Minister will take some more time for his reply. It is already past 5-30 and so he may continue his speech on the next day.

5-32 P.M.

*The Lok Sabha then adjourned till Half Past Ten of the Clock on Saturday, the 21st April. 1956.*