

FACTORIES (AMENDMENT) BILL*

(AMENDMENT OF SECTIONS 51, 54 and 59)

Shri T. B. Vittal Rao (Khammam): I beg to move for leave to introduce a Bill further to amend the Factories Act, 1948.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Factories Act, 1948."

The motion was adopted.

Shri T. B. Vittal Rao: I introduce the Bill.

ELECTRICITY (SUPPLY) AMENDMENT BILL

(AMENDMENT OF SECTION 77 ETC.)

Mr. Speaker: The House will now resume further discussion of the motion moved by Shri Sadhan Gupta on the 20th April, 1956 that the Bill further to amend the Electricity (Supply) Act, 1948, be taken into consideration.

Out of 2½ hours allotted for discussion of the Bill, one hour and six minutes were taken up already and the balance is one hour and 24 minutes. Shri Hathi may continue his speech.

The Deputy Minister of Irrigation and Power (Shri Hathi): Mr. Speaker, on the last occasion, on 20th April 1956, while replying to the motion, I was referring to the judgment delivered by the Labour Appellate Tribunal and was explaining how, in view of the latest judgment, this Bill is not at all necessary. I will not recapitulate all the facts which I stated then. It is stated in the Statement of Objects and Reasons of this Bill that bonus was considered to be an item not admissible under the various items mentioned in the Sixth Schedule and therefore the workers in the electricity supply industry have been deprived of the right to get the bonus. After the particular judgment which is referred to in the Statement of Objects and Reasons another judgment was delivered by the Full Bench wherein they have reversed the earlier judgment. But before that, as soon as it was brought to the notice of Government that the Appellate Tribunal had held that the

payment of bonus was not an item of expenditure admissible, we took up the matter with the Ministry of Labour and the Ministry of Law. The Irrigation and Power Ministry also thought that the employees working in the electricity supply industry should be entitled to bonus as other employees in other industries are. Ultimately we were advised by the Law Ministry that the item of payment of bonus is an admissible item of expenditure. This, therefore, sets the whole question at rest.

The intention of the Mover of this Bill is to set right a lacuna which he thought was existing in the Act, but according to the later judgment, and Government also, bonus is an item admissible. Subsequently we have also introduced a Bill, the Electricity (Supply) Amendment Bill, 1955 where in order to make the position clear we have mentioned that this item will be an admissible item. Therefore, there is really no necessity for such an amendment.

The second amendment which the hon. Mover wants is to the effect that no bonus should be paid to any employee drawing more than Rs. 1,000 per month. The arguments advanced by him were that in a particular company, i.e., the Calcutta Electric Supply Corporation, there are many foreigners drawing more than Rs. 1,000 and bonus is being paid to them, or it may be paid to them. I would like this House to consider whether we should draw a distinction between an employee drawing Rs. 1,000 in the electricity supply industry and an employee working in some other industries and drawing more than Rs. 1,000. If people working in other industries and drawing more than Rs. 1,000 are entitled to bonus, would it be fair to deny such bonus to the people working in the electricity supply industry who are drawing more than Rs. 1,000? Or, do we want to minimise the importance of our people electricians? There might be many who might be drawing more than Rs. 1,000, and simply because a few foreigners would be getting the benefit of this bonus, should we deprive our own people who are entitled to draw the bonus? How many such foreigners would there be in the country in the electricity supply industry? And do we want to say that if others are being paid more, our people should not be paid more, that they should not draw more than Rs. 1,000? If people in other industries are entitled

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The whole object of this Bill is mainly people working in the electricity supply industry of the right of getting bonus? This sort of discrimination would not at all be desirable.

The third amendment which the Mover of this Bill wants is to add one more clause in section 77 of the Act :

"or by the President or Secretary of a registered Trade Union of the employees of the licensee or other persons against whom the complaint is made".

The whole object of this Bill is mainly one, and that is that the workers in the electricity supply industry should be entitled to bonus. That is the whole object of this Bill as is mentioned in the Statement of Objects and Reasons. It is also with a view to remove a lacuna, as has been stated. Legally, there is no lacuna. The law is clear. It has been declared by the Labour Appellate Tribunal that this is an item admissible, and there is no question of its non-admissibility. He thought that if this was not admissible, it should be made admissible, and having made it admissible he put in another clause: "all expenditure incurred on account of payment of bonus to employees earning less than one thousand rupees a month exclusive of such bonus". This entry he wanted to add, but indirectly he also wanted to add that bonus should not be paid to persons drawing more than Rs. 1,000.

"if any licensee or other person pays any bonus except as permitted by sub-clause (xiii) of clause (b) of sub-paragraph (2) of paragraph XVII of the Sixth Schedule, he shall be punishable with imprisonment which may extend to three years or with fine which may extend to fifty thousand rupees or with both."

So, that is the penalty for not following or complying with the provision. That is, if anybody pays a bonus to a person drawing more than Rs. 1,000 it is an offence punishable. And he wants that the prosecution of this offence should be launched by the President or Secretary of a registered trade union. Section 77 makes various provisions under which the prosecutions could be launched, but they are for certain reasons, for not complying with the directions of the Board or failing to keep the accounts in a particular way etc. These are some of the reasons

for which prosecution has been provided. But prosecution only for this purpose, that is for the purpose of prosecuting an employer who pays bonus to employees drawing more than Rs. 1,000, and that too empowering certain Presidents or Secretaries of certain unions, would be interfering with the normal administration of the electricity supply industry. This is generally the function of the State Electricity Boards, or, where the Board does not exist, of the State Governments. This is not such an offence that anybody could launch a prosecution. There are other ways open for proceeding against the person who fails to comply with the particular provision. But in view of the latest decision, in view of the Government's view that bonus is admissible and in view of the fact that we have already introduced a Bill where this item has been made admissible, there does not exist any reason for the main amendment, and therefore, all the subsequent minor amendments which generally flow from the main amendment are also not necessary.

The question, therefore, is very clear. I do not think I should repeat at length the other points which I had mentioned earlier. The whole thing centres round only one thing, namely whether this bonus is an admissible item of expenditure or not. Now, it has been held to be an admissible item. Therefore, there is no question whether they should be paid bonus or they should not be paid bonus. They have to be paid bonus, and it would be treated as an expenditure.

The whole question arose because under this Act, 'clear profit' had been defined to be the difference between income and certain expenditure only; and various items of expenditure had been mentioned which alone could be taken as real expenditure. So, this item was not considered to be an expenditure. But since it has now been held to be an item of expenditure, there does not remain any doubt whatsoever.

So, it is not necessary for me now to reply to the other points which my hon. friend has made, namely that a particular company is making so much of profit and yet it does not give any bonus or anything of that sort and so on. That is not a point which I need go into now. That would have been a very relevant point if it were a question to be decided whether bonus was an admissible item

of expenditure or not, or whether they should or should not pay. But now that point is clear.

I do not want to take any further time of the House. I would say in conclusion that this Bill is not necessary in view of the circumstances which I have mentioned.

Shri Sadhan Gupta (Calcutta—South-East): That the object of this Bill is an unassailable. One would be clear from the fact that no one has really spoken against the Bill, and the only speaker Shri Tek Chand, who spoke against the Bill, attacked it in its most inessential part. He opposed the Bill outright, but did not attack the essence of the Bill, namely the clause which authorised expenditure on account of the payment of bonus to workers.

Shri Tek Chand waxed very eloquent and with great emphasis opposed the Bill, because, according to him, there were some absurdities in the amendment to section 77(1), which, as the Minister has pointed out, is merely an ancillary amendment or a kind of consequential amendment to the amendment which I have proposed in the Sixth Schedule, which is a substantial amendment to the Act for the purpose of enabling bonus to be paid to workers.

Shri Tek Chand's reasonings were very surprising to me. It is very surprising that an eminent parliamentarian and a lawyer of his stature should argue that it was something absurd that I was seeking to penalise kindness, that I was seeking to impose such a heavy fine for paying one's own money to one's own employees. He also made an argument, which, if I may say so, was really a demagogic argument, that if bonus was paid to a person earning up to Rs. 1,000, nothing happened, but if it was paid to a person earning Rs. 1001, then the penalty came in.

I shall try to answer this point in short. The reason for which I sought to impose a penalty on payment of high bonus was that firstly it was unjust that when workers earning small incomes did not get any bonus, people who were already highly paid should run away with a big sum of money, and secondly—that was more important—that people earning more than Rs. 1,000, who were mostly foreigners, and who were engaged in foreign companies, should be allowed to drain our financial resources

in this manner. When these considerations are involved, I emphatically maintain that no question of kindness arises. You cannot be kind-with money which you get from the consumer by charging them for the electricity which you have a monopoly of supplying, and then be kind to people who do not deserve it. That is not the socialistic pattern. That is not good for society. Therefore, I make no apology for seeking to penalise payment of bonus to high-salaried people, particularly when they are foreigners.

The second point he urged was why should there be no penalty for payment of bonus to people earning Rs. 1,000 but a drastic penalty for payment of bonus to people earning Rs. 1,001. As a lawyer, I would refer him to various provisions of the Indian Penal Code. For example, if an animal is valued at Rs. 49-15-9, and you kill it, you come only within the law of mischief, and so, you have a very small punishment. But as soon as it is valued at Rs. 50, you come under section 429 of the Indian Penal Code, and you are subject to a penalty of five years. What is the rationale behind it?

Similarly, under section 436 of the Indian Penal Code, a distinction is made between property valued at Rs. 100 and above, and a property valued below that. What is the rationale behind that? You must fix some limit by law, and if that limit is exceeded, then another provision of law, a more drastic one at that comes into being. When you legislate, you cannot provide for marginal cases. Marginal cases will be provided for by the conscience of the judge, who will pronounce judgments. The judge will not pronounce a sentence of five years for a man who had killed an animal which is valued just at Rs. 50, and he would perhaps pronounce a judgment of five years, if the value of the animal or the utility of the animal killed was great. This disposes of Shri Tek Chand's argument.

Of course, I am persuaded by certain arguments of the Minister. Regarding section 77, my idea in bringing forward an amendment seeking to penalise high bonuses was that foreigners might get away with a huge amount of funds from our country by way of bonuses. In the Industrial Policy Statement, I find that generation of electricity is to be a national undertaking. I hope that in this way, the

existing undertakings of foreigners will be gradually taken over, and then this kind of provision will not be necessary. So, I am prepared to dispense with that provision also.

4 P.M.

Regarding the essential point, namely the amendment to the Sixth Schedule which I have introduced for the purpose of paying bonus, I would seek only one clarification from the Minister. If that clarification is satisfactory, I am prepared to withdraw this Bill. The clarification that I seek is this. At present, I find that it has been decided that the expenditure on account of payment of bonus is an allowable item of expenditure because it is admissible for the purposes of income-tax relief. But what troubles me is this. There are disputes pending for a long time. Usually in bonus disputes, the claim for bonus hangs on and the claim is awarded by a tribunal and the bonus disbursed for the year in respect of which it is due in subsequent years, sometimes two or three years later. I want to know from the Deputy Minister whether bonus in respect of past years will be covered by the income-tax law, whether such bonus will be admissible for income-tax relief if it is not admissible it will not be an item of expenditure which will be admissible under the Electricity (Supply) Act. I know of many cases in which the question of bonus from 1952 onwards is pending. Will disbursement of money in 1956 on account of bonus payable in 1952 in respect of the year 1952 be admitted as an item of expenditure? To guard against any contingency in this respect, I propose to make my amendment to the Sixth Schedule retrospective from the beginning of this Act. The result would be that all employers who had many disbursements or who will hereafter make any disbursements on account of bonus will be able to justify their disbursements under the amendment I propose. If it is not covered by the income-tax laws, may I have this assurance from the Deputy Minister that at the time the Government bring forward their amending Bill, this provision will be made retrospective in order to remove the obstacle? That is to say, if the Government find that disbursements in respect of past years' bonuses are not admissible under the income-tax law, are the Government prepared to permit such disbursements in respect of past

years' bonuses by a retrospective amendment?

I would ask the Minister to consider this. There is no danger in it. It is not against the employers. It is in favour of the employers who want to give bonus to their employees in respect of past years. If I have this assurance, I shall be prepared to withdraw not only my amendment regarding section 77 but also the whole Bill because then it will no longer be necessary. So I would request the Deputy Minister to give his opinion on this point.

Shri Hathi : The last point raised by him is rather a new point. In the provision in the Bill which he moved for consideration, there was no question of giving retrospective effect.

Shri Sadhan Gupta : Oh, yes—'shall be deemed'.

Shri Hathi : But then, naturally all the pending cases will be governed by the latest judgment delivered by the Appellate Tribunal. You know the position if employees go to a court of law and then do not pursue the matter further, to the higher court. The position of law as existing and as declared by the particular competent court will remain unless it is set aside or reversed in appeal. That is the legal position. At present, the position is that the Appellate Tribunal has reversed the previous judgment and, therefore, all the future cases will be governed by this judgment. So far as the pending cases are concerned, whatever legal remedies are available to the employees will naturally be open to them.

Shri Sadhan Gupta : But will Government consider this at the time of bringing forward the amending Bill?

Shri Hathi : The judgment is there. Whether the Bill which we have introduced is passed or whether this Bill is passed, the position is already there existing. We need not wait till the Bill is passed.

Shri Sadhan Gupta : In the judgment it is not clear whether in respect of past years, the grant of bonus will be protected. It is quite clear that in respect of bonus for that particular year, the expenditure is protected. But if that expenditure has to be incurred in respect of a past year, the accounts of which are closed, then can it be included in the account of the subsequent

years in respect of which income-tax returns will have to be given? I only want an assurance—I think there should be no difficulty in giving it—that in such a case, if there is any obstacle discovered the Government will in their amending Bill provide for it. If there is no such case, then there is no question of providing for it. I only want an assurance that it will be provided for, if it is discovered.

Mr. Speaker : What is the upshot now? We are going on exchanging views?

Shri Hathi : I have said what I had to say.

Mr. Speaker : Does the hon. Member want to withdraw the Bill in view of the statement of the hon. Deputy Minister?

Shri Sadhan Gupta : Yes.

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

Several Hon. Members : Yes.

The Bill was, by leave, withdrawn

PROCEEDINGS OF LEGISLATURES (PROTECTION OF PUBLICATION) BILL

Mr. Speaker : The House will now proceed with consideration of the Bill to protect the publication of reports of proceedings of Parliament, State Legislatures and their Committees, as reported by the Select Committee.

I want to take the opinion of the House on the allotment of time for this Bill. Originally the time allotted was 4 hours. For reference to the Select Committee, we have taken 3 hours and 53 minutes. Only 7 minutes are left. How long will this whole Bill take?

Shri Feroze Gandhi (Pratapgarh Distt. West cum Rae Bareilly Distt.—East) : I would like that the time allotted for consideration and passing of this Bill be extended by one hour, if the House agrees.

Several Hon. Members : Yes.

Mr. Speaker : Very well, 1 hour and 7 minutes.

Shri Kamath (Hoshangabad) : 1½ hours.

Shri Sadhan Gupta (Calcutta—South-East) : It is an important Bill. Many Members may be willing to speak.

Shri Feroze Gandhi : If more time is wanted, I have no objection.

Pandit C. N. Malviya (Raisen) : We should have 2 hours at least.

Mr. Speaker : We will have 1½ hours.

Shri Feroze Gandhi : I beg to move :

“That the time allotted for the consideration and passing of the Bill be extended by an hour and a half.”

Mr. Speaker : The question is :

“That the time allotted for the consideration and passing of the Bill be extended by an hour and a half.”

The motion was adopted.

Mr. Speaker : This means that we are actually extending it by 1 hour and 23 minutes because 7 minutes are already available. Discussion of this Bill will be concluded at 5-30 p.m. During the other half-hour, other work relating to Private Members' business will be taken up.

Shri Feroze Gandhi : I beg to move :

“That the Bill to protect the publication of reports of proceedings of Parliament, State Legislatures and their Committees, as reported by the Select Committee, be taken into consideration.”

अध्यक्ष महोदय, मुझे हाउस (लोक सभा) का ज्यादा समय नहीं लेना है और बहुत थोड़ी सी ही बातें कहनी हैं। सिलेक्ट (प्रवर समिति) ने जो रिपोर्ट (प्रतिवेदन) इस बिल (विधेयक) पर दी है, उस रिपोर्ट से मैं सहमत हूँ। मेरा खयाल है कि जो रद्दोबदल इस कमेटी ने की है, वह ठीक है। खास चीज जो सिलेक्ट कमेटी ने बदली है वह उस हिस्से पर लागू होती है जो कि स्टेट लेजिस्लेचर्स (राज्य विधान मंडलों) से सम्बन्ध रखता है। इस बारे में सिलेक्ट कमेटी ने काफी गौर किया और भिन्न भिन्न राज्यों ने जो रायें दी उनको देखते हुए यह ठीक ही समझा गया कि फिलहाल इस बिल को इसी हाउस की और राज्य सभा की कारवाइयों को प्रोटेक्ट (संरक्षित) करने के लिये रखा जाये।