

designated professors in colleges, but their salaries are those of the lecturers. The Delhi University has laid down that nobody can be called a professor or a lecturer or a reader unless approved by the University, so that this anomaly does not arise as far as the Delhi University is concerned. This particular question, of course, I have not raised with the Governor because this did not fall within the purview of the UGC's recommendations. But I do not know how the question will be resolved. This will have to be considered by the UGC. And there are many difficulties in this which I am prepared to explain to Shri Rajnarain at some leisure whenever he gives me an opportunity to do so because the affiliated colleges do not perform exactly the same functions as the university departments. It is a very long story. I do not want to take the time of the House by giving a lecture on university education and grades of pay and so on. All that I would like to tell Shri Rajnarain is that I have not raised this question with the Governor because this is not part of the University Grant Commission's recommendations.

I. STATUTORY RESOLUTION SEEKING
DISAPPROVAL OF THE PAYMENT
OF BONUS (AMENDMENT) ORDINANCE, 1969—*contd.*

II. THE PAYMENT OF BONUS
(AMENDMENT) BILL, 1969—*contd.*

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : Let us go back to the Resolution about the Payment of Bonus (Amendment) Ordinance and the Payment of Bonus (Amendment) Bill. Mr Babubhai Chinai.

SHRI BABUBHAI M. CHINAI (Maharashtra) : Sir, the Payment of Bonus (Amendment) Bill which is before us now is yet another confused chapter in the long and bewildering bonus story in our country. Before I go on to deal with the amendment and show how wrong it is, I would like to briefly refer to the history of bonus legislation, what kind of patch work it is and how inequitable it is to industry and therefore to the working class as well.

To start with, I would like to place on record my dissatisfaction with the way in which Government have sought to amend the Bonus Act through an Ordinance. It

was on the 10th of January this year that an Ordinance was issued to combat what the Supreme Court held on the 26th of August that the amount of tax deductible under clause (c) of section 6 is the tax calculated on a notional basis and not the actual tax payable by the employer. Indeed, according to my understanding, the Supreme Court only upheld what the Bonus Commission recommended and what was the intention of the Payment of Bonus Act of 1965. My point is : Should an Ordinance be issued at all ? A democratic Government like ours should not resort to the ordinance-making powers for the purpose of legislating in spheres essentially of a routine and day-to-day character. Our Government, I expect, will abide by the principle that the powers of legislation by Ordinance should be invoked only for purposes of meeting circumstances connected with an emergency. Ordinance-making powers have been vested on Government by the Constitution-makers to meet emergency situations. This is an important matter and I appeal to our Prime Minister to declare in unequivocal terms that the salutary principle behind Ordinance-making powers will be respected in letter and also in spirit.

I for one will not be convinced by the argument that there is automatic statutory limitation on the duration of an ordinance, as on reassembly, Parliament will immediately have an opportunity of reviewing the legislation covered by the Ordinance, in this particular case the Ordinance amending the Payment of Bonus Act. Surely, there have been no emergency conditions. Moreover,

3 P.M.

Parliament was scheduled to meet not in the very distant future. I submit that considerations neither of circumstances nor of need, necessity and justification, served either to provide urgency or impart merit to the step taken in issuing the Ordinance. It is for this reason that I am appealing to the Prime Minister to issue a statement of the kind that I have just now indicated.

Coming to the story of bonus, I said it was a long and bewildering one. Historically, the practice of paying bonus as an *ex-gratia* payment—I repeat the words, *ex-gratia* payment—had its early roots in the textile industry in Bombay and Ahmedabad . . .

SHRI M. V. BHADRAM : That was during the British period.

SHRI BABUBHAI M. CHINAI : Yes, it continued when we got independence also.

As an industrial dispute, it arose in the Bombay cotton textile industry, i.e., payment of bonus for the years 1948 and 1949. This dispute was referred to the Industrial Court and the Court expressed the view that since both labour and capital contributed to the profits of industry, both were entitled to a legitimate return out of the profits, and evolved a formula for charging prior liabilities on the gross profits of the accounting year and awarded a percentage of the balance as bonus.

SHRI S. R. VASAVADA : Do you still call it *ex-gratia* payment ?

SHRI BABUBHAI M. CHINAI : No. Then, we have the famous L.A.T. formula of 1950. But this formula had its own defects and it did not please either the industry or the workers. In 1959, in the A.C.C. case, the Supreme Court observed that the whole question of bonus payment might well be comprehensively considered by a high-powered commission.

In December 1961, the Government of India appointed a tripartite Bonus Commission and the Commission took more than two years to submit its Report and the Report was not unanimous. On September 2, 1964, the Government of India adopted a Resolution accepting the majority recommendations of the Bonus Commission with certain modifications. On May 29, 1965, the Government of India promulgated the Payment of Bonus Ordinance, 1965, as Parliament was not in session. In a way, therefore, it was an Ordinance that gave birth to this piece of legislation.

What is extraordinary is that although the Bonus Commission under its terms of reference was called upon to define the term "Bonus", the Commission did not do so. Neither has the Act defined it. Consequently, bonus is now payable even if an industrial unit suffers a loss during the financial year. In short, the minimum bonus is no more than an increase in wages. There is no profit-sharing concept at all. I should mention here that provision for compulsory minimum bonus has adversely affected a number of marginal units in various industries.

[THE DEPUTY CHAIRMAN in the Chair.]

Since the Payment of Bonus Act was passed, the Supreme Court has given two important judgments. It struck down section 34(2) which sought to give an almost impossible gift, namely, that in the case of an establishment if the quantum of total bonus paid or payable to the employees in the base year was more than the bonus payable under the provisions of the Act in the accounting year, the employees would be entitled to payment of bonus based on a formula prescribed in that section and the ratio which is also prescribed in the formula becomes frozen in respect of such establishments.

This Supreme Court judgment did not hurt the workers' interests. It only showed that workers' interests cannot be safeguarded anyhow and somehow.

Now we come to the second judgment of the Supreme Court which has called for the Ordinance. Even the Statement of Objects and Reasons appended to the Bill does not say as to why the amendment is being brought except to point out that the Supreme Court has held that the tax relief on bonus will go entirely to the employers and not to the employees. But this is precisely what the Bonus Commission wanted to be done. Let me quote from the Report of the Bonus Commission.

"The fixing of a certain proportion of the available surplus (after meeting the prior charges recommended by us) to be distributed as bonus, subject to a minimum and maximum (coupled with an arrangement for set-off and set-on) in the formula which we recommend would lead to an equitable result; we recommend that this proportion should be 60%. The balance left with the concern would be 40%; and this would be increased by the saving in tax on bonus payable. The aggregate balance thus left with the industry is intended to provide for gratuity and other necessary reserves, the requirements of rehabilitation in addition to the provision made by way of depreciation in the prior charges, the annual provision required, if any, for redemption of debentures and return of borrowings, payment of super profits tax, if any, and additional return on capital."

It is worthwhile to quote from the Supreme Court judgment of the 20th August, 1968, in the matter of Metal Box Co. of India Ltd., and its workmen and *vice versa*. While discussing the tax liability, the Supreme Court stated that Parliament

"did away with rehabilitation as a prior charge partly because there were complaints that it was being ill-used, but partly also because it knew that the rebate in the Income-tax Act on the bonus paid would go to the employer with which he could recoup the depreciation which would be larger than the one allowed under section 32 of the Income-tax Act." The Supreme Court went on to observe—

"In our view, it was for that reason that Parliament did not lay down that bonus is to be deducted before computing the amount on which direct taxes are to be calculated under section 6(c). If Parliament intended to make a departure from the rule laid down by courts and tribunals that the bonus amount should be calculated after provision for tax was made and not before, we would have expected an express provision to that effect either in the Act or in the Schedules."

Let me briefly refer, Madam, to the effect of the Ordinance on companies making inadequate profits. In any case, the company has to pay 4 per cent of the wage bill as minimum bonus. And this company might well pay the entire profit by way of bonus and thereafter be in the red. According to the Bill, the company which has saved tax on the bonus paid will have to add next year the so-called saving to the available surplus. This is an injustice. Therefore, I suggest that the Bill at least be amended to provide that in a year in which the allocable surplus is not enough to pay more than the minimum bonus, the provision of carrying forward the tax saving to the next year's available surplus should not be applied.

May I also submit that now that the Payment of Bonus Act is being amended, why not do away with the minimum bonus? Also why not a genuine effort be made to define "Bonus"?

If at times I have expressed myself forcefully, it is because I am fully convinced that it is the Government of the

day alone which can uphold democratic principles and extend social justice. I am also convinced that there is unfortunate pressure being placed on the Government to do things in haste. Nevertheless, I hope that with this present amendment of the Bonus Act, the various questions relating to bonus will be deemed to have been settled by all concerned. Thank you.

SHRI D. THENGARI (Uttar Pradesh): Madam, the Statement of Objects and Reasons of the Bill states very clearly that the Bill has been brought with a very limited purpose, the intention of the Government being that the available surplus under section 5 should be so computed that the amount of tax rebate accruing to the employers on account of bonus paid or payable under the Act, becomes a part of the available surplus of the succeeding year instead of the same going entirely to the employers. A very limited purpose has been set forth and, therefore, extraneous considerations need not have been brought in.

So far as the object of the Bill is concerned, I wholeheartedly support it. Regarding the other points referred to by our friend, Mr. Chinai, I want to state that he is not correct in saying that bonus is an *ex-gratia* payment. No. Bonus assumes two characters. So long as there is a gap between the living wage and the actual wage, bonus has the character of deferred or supplementary wage. But once the actual wage attains the level of living wage, then only bonus has the character of profit-sharing. Therefore, as wage, deferred or supplementary, bonus must be given its priority or precedence over all other allocations. Therefore, now that he has referred to other points I want to say that instead of bringing in this piecemeal amending legislation, we should have welcomed the Government to come forward with a comprehensive amending Bill in which this definition of bonus ought to have been incorporated as deferred or supplementary wage so long as there is a gap between the living wage and the actual wage, secondly doing away with the tampering with the number of workers employed for purposes of the application of the Act as well as doing away with the ceiling of percentage of available surplus

[Shri D. Thengari]

for purposes of distribution of bonus and in the same way granting to the workers the right to go behind the balance-sheets of their respective concerns and scrutinise the profit and loss accounts and also the propriety or impropriety of the various expenditures incurred. In this fashion if a comprehensive Bill had been brought we would have further welcome it. I would request the Government to bring forward such a comprehensive Bill.

श्री रेवती कान्त सिंह (बिहार) : माननीया, यह जो अमेरिंग बिल आया है मैं इस बिल की तारीफ करता हूँ, लेकिन साथ ही साथ मैं इस बिल के बारे में यह कहना चाहता हूँ कि सरकार ने बहुत देर के बाद इस तरह का बिल पेश किया। सरकार को कुछ और पहले इस बिल को पेश करना चाहिये था। जो ओरिजिनल बोनस ऐक्ट है, उसमें इस बात का प्राविजन था कि अवैलेबिल सरप्लस को कलकुलेट करने के लिये ग्रास प्रॉफिट सर्टेन चार्जेज को डिडक्ट कर के जो बचेगा, उसको अवैलेबिल सरप्लस समझा जायेगा। उसी में साथ-साथ यह था कि जो डाइरेक्ट टैक्सेज पेएबिल या पेड होंगे, उनको भी डिडक्ट करने के बाद जो एमाउन्ट बचेगा वह अवैलेबिल सरप्लस समझा जायेगा और उसका 60 पर सेंट अवैलेबिल सरप्लस होगा बोनस के मामले में। लेकिन देश के मजदूरों की यह खास मांग थी और सही मांग थी कि जो डाइरेक्ट टैक्सेज पेड या पेएबिल हैं, जो उसमें से डिडक्ट किये जाते हैं, उनका कैलकुलेशन इस ढंग से किया जाता है कि उन पर जो रिबेट मिलता है, वह सारे का सारा रिबेट भी एम्प्लायर अपने पास रख लेते हैं और उसमें मजदूरों को हिस्सा नहीं मिलता है। इस सवाल को लेकर मैटल बाक्स कम्पनी वाला मुकदमा सुप्रीम कोर्ट तक गया और मुझे खुशी है कि उस मुकदमे में हिन्दुस्तान के मजदूरों की जीत हुई है। सुप्रीम कोर्ट के फैसले के बाद इस सरकार की नींद टूटी और उसने यह अमेरिंग बिल पेश किया है। अब इस अमेरिंग

बिल में सरकार ने यह प्राविजन किया है—अगर यह बिल पास हो जाता है जो कि पास होना चाहिये—कि रिबेट की राशि में से भी 60 प्रतिशत बोनस के रूप में मजदूरों के हिस्से में जायेगा। मैं कहना चाहता हूँ कि यह 60 प्रतिशत का प्राविजन बहुत ही कम है। इस प्राविजन को अभी कुछ और बढ़ाना चाहिये; क्योंकि बोनस जो दिया जाता है, मैं माननीय वावुभाई चिनाई की तरह यह नहीं मानता कि यह एक्स ग्रेशिया ग्रांट दिया जाता है, मजदूरों के ऊपर दया कर के दिया जाता है, यह मजदूरों का अधिकार है। जो दौलत पैदा होती है उस दौलत को पैदा करने में अकेले पूँजी और जमीन का ही हाथ नहीं होता है। अगर मानव श्रम न हो, मजदूरों का हाथ न हो तो पूँजी दौलत के रूप में नहीं बदल सकती है। इसलिये दौलत को पैदा करने में मजदूर की जो श्रम वाली पूँजी लगती है उस श्रम का यह वाजिब हिस्सा है जो उसको बोनस के रूप में दिया जाता है, यह एक्स ग्रेशिया ग्रांट नहीं है या दया का दान नहीं है। इस लिये मैं मंत्री जी से यह निवेदन करूँगा कि इस 60 प्रतिशत को बढ़ा कर के . . .

एक माननीय सदस्य : 100 पर सेंट करना चाहिये।

श्री रेवती कान्त सिंह : 100 प्रतिशत अभी सम्भव नहीं होगा, लेकिन 80 प्रतिशत तक वह किया जा सकता है।

इसके अलावा मैं एक दो सुझाव और देना चाहता हूँ। एक तो यह कि बोनस ऐक्ट में जो मिनिमम 4 पर सेंट आफ द वेजेज देने का प्राविजन है, उसके सम्बन्ध में 1965 से आज तक यह ऐक्ट बनने के बाद, स्वयं मंत्री जी को यह अनुभव हुआ होगा और वे स्वयं इस बात को महसूस करते होंगे कि इस 4 पर सेंट की राशि को और ज्यादा बढ़ा कर के कम से कम 10 पर सेंट पर ले जाना चाहिये।

दूसरी बात मैं यह कहना चाहता हूँ और जो बहुत ही महत्वपूर्ण है, वह यह है कि जो बैलेंस शीट तैयार होते हैं कम्पनीज के, उद्योगों के, वह बैलेंस शीट तैयार होने के समय ही कुछ इस तरह के गड़बड़ घुटाले उनमें किये जाते हैं, जिससे एक ओर तो सरकार का टैक्स बचायें और दूसरी ओर मजदूरों को बोनस नहीं देना पड़े। इन दो बातों को दृष्टि में रख कर के कम्पनीज के बैलेंस शीट तैयार होते हैं। मेरा यह सुझाव होगा कि कोई ऐसा प्राविजन बनना चाहिये, श्रम मंत्रालय की ओर से कोई ऐसा कदम उठाया जाना चाहिये, जिससे कम्पनियों का ट्रायल बैलेंस और बैलेंस शीट तैयार करने के समय उसमें मजदूरों के भी हिस्सेदार हों, मजदूरों के भी नुमाइन्दे उसकी तैयारी के समय में और उसके बाद उसकी जांच में रहें। ऐसा करने से वैसा ट्रायल बैलेंस तैयार नहीं होगा जैसा कि आम तौर पर तैयार होता है और जिसका उद्देश्य यह होता है कि सरकार का टैक्स बचाया जाये और मजदूरों को बोनस न दिया जाये। तो इस मामले में भी श्रम मंत्रालय को कोई कदम उठाना चाहिये।

तीसरी बात मैं यह कहना चाहता हूँ कि बोनस ऐक्ट में यह प्राविजन है कि अकाउंटिंग ईयर के समाप्त होने के आठ महीने के बाद तक वे बोनस का पेमेंट कर सकते हैं। 8 महीने का जो यह समय मिलता है यह एम्प्लायर के हक में जाता है। यूँ आम तौर से कोई भी एम्प्लायर बोनस देने के लिये राजी नहीं होता है। पहले तो वह यह कहता है कि यह हमारा डिस्क्रिशन है कि हम 8 महीने के पहले देंगे या 8 महीना बीतने के बाद देंगे। इसलिये मैं यह निवेदन करना चाहता हूँ कि श्रम मंत्री जी इस बात को ध्यान में रखें और इस 8 महीने की अवधि को घटा कर के तीन महीने पर लाया जाय।

इसके साथ ही साथ मैं यह कहना चाहता हूँ कि मजदूरों के सम्बन्ध में भिन्न-भिन्न

कानून बनते हैं और उनमें पीसमील अमेंडमेंट्स होते हैं। उसी तरह में बोनस ऐक्ट में एक छोटा सा अमेंडमेंट अभी आया है और मैं यह समझता हूँ कि अगर सुप्रीम कोर्ट का फैसला न होता तो शायद यह अमेंडमेंट भी सरकार की ओर से नहीं आता और यह आर्डिनंस भी सरकार की ओर से नहीं लागू किया जाता। इससे सरकार की नियत पर मुझे कुछ सन्देह होता है। मैं कहना चाहता हूँ कि सरकार एक मर्तवा अच्छी तरह से सोच कर मजदूरों के सम्बन्ध में भारे बिलों के बारे में, इंडस्ट्रियल रिलेशंस के बारे में एक कांफ्रि-हेंसिव बिल लाये जिसमें मजदूरों का सेफ-गार्ड एम देश में हो सके।

इन शब्दों के साथ मैं एम बिल की टाईड करना हूँ और माननीय मोहता ने जो प्रस्ताव रखा है, उसका विरोध करना हूँ।

SHRI BANKA BEHARY DAS (Orissa): Madam Deputy Chairman, though I am not satisfied completely with the amending Bill that has been introduced here, under the present circumstances I support this measure and oppose the Resolution that my friend from this side has moved. Madam, there is a misconception still prevailing in this country, particularly among certain sections of businessmen that bonus payment is something like an *ex-gratia* payment. I would have been very happy if by now, the industrialists of this country would have reconciled to the position that bonus is, so to say, a deferred payment to the workers or at least that the workers have a right to bonus because of the contribution that they make to the cause of production in this country. As long as this psychology among the industrialists does not develop in this country, I am afraid this psychology will create conditions of labour unrest in this country. After so many years when everybody has accepted the idea of bonus, it is very unfair on the part of employers to go on talking to us that it is an *ex-gratia* payment as if they are doing something out of mercy to the workers. In this connection I will only remind—because it is so much rudimentary that I ought not to have to refer to that but in

[Shri Banka Behary Das.]

view of certain ideas that have been aired here I want to refer in this connection—about the Bonus Commission report in which it was mentioned “In the dispute between the General Motors (India) and the workmen adjudicated under the Defence of India Rules, Mr. Justice Chagla, who is a Member of this House stated :

‘It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in a particular industry and I think it is also conceded that labour has a right to share in the increased profits that are made in any particular period.’”

There was no necessity for quoting this but I wanted only to inform friends on the other side who still believe in the old idea that bonus is something which they pay out of mercy which the workers in this country do not earn. In this connection I am again constrained to state that in spite of the fact that the Bonus Commission said about the calculation of the available surplus, that 7 per cent. return is enough, the Government succumbed to the pressure of the industrialists of this country and accepted that which only one person in the Bonus Commission recommended. In this connection I want to give some statistics because some friends here always tell us that after the recession the profits in the industries have gone down to such an extent that they needed all sorts of help for themselves. I agree that when there was recession they needed some help. But a recent survey, by not any progressive political party, made about 101 corporate giants in the private sector in this country shows interesting results. The capital of each of those corporate giants was more than Rs. 10 crores. It has been found that for the accounting period of one year ending 1967-68, the profit after the tax was Rs. 102.78 crores out of which the distributed profit was Rs. 62.46 crores. The gross profit as percentage of the total capital employed was 9.7 per cent. in 1967-68 as against 10.8 per cent. in the preceding year. So in spite of even recession the gross profit of all these big giants—these 101—came down from 10.8 per cent. to 9.7 per cent. A different picture is not emerging as far

as net return is concerned because we are concerned with the net return as regards the calculation of bonus. Then I would give this figure for the benefit of those Members that the net return after tax on shareholders' money in the business stood at 9.9 per cent. in 1967-68 as against 11.4 per cent. in the previous year. So in spite of two years of recession the gross profits or net return came down by a little more than 1 per cent only. So all the e talks by the industrialists that they have suffered a lot by recession or that they have not enough profits to give to the working class or that they cannot pay bonus are all nonsense. I want to impress on you that in spite of recession in this country all these 101 giants, having an asset of more than Rs. 10 crores each, earned a profit which was much more than the return that the Bonus Commission even in their own report contemplated, namely 7 per cent.

In this connection I want also to refer to the conditions of the banks and the insurance companies because the Bonus Commission also went into the question of banks and the insurance companies. You will be astonished to note from the latest report that all those insurance companies in the private sector who had a paid-up capital investment of only Rs. 11.65 crores earned Rs. 9.24 crores which comes to more than 80 per cent. All the insurance companies earned a profit of more than 80 per cent. in 1966 when recession was stalking this land and if you take the banks the big 37 Scheduled commercial banks earned a profit and though their profits in 1965 and 1966 were the same, that is, Rs. 15 crores, it increased to Rs. 16 crores in 1967. If you take the case of the banks or insurance companies or those of the great companies in this country, all of them, in spite of recession in this country for the last 2 years, earned a profit which was more than even the return that the Bonus Commission contemplated. In view of those facts there is absolutely no case for those persons to come and tell us that they have not enough money, that they require more capital to be ploughed back, etc. All this is nonsense. It has no relevance to statistics and the documents produced in this country. I will only plead with the Minister that he should again reconsider the position and

try to implement the Bonus Commission report and not accept the Minute of Dissent of one man who represented the business class of this country and succumb to their pressure and have the Bonus Act amended accordingly. In view of all these I oppose the Resolution and with one or two reservations I commend the Bill with one amendment to which I wish to draw the attention of the Minister. I want to give retrospective effect because that was the purpose of this Bill. Because of the Supreme Court interpretation we had to reconsider all those things but when that was the intention of the Bill, I would rather like that this should have effect from 1966 instead of from 1968.

SHRI CHITTA BASU : I rise to support the Bill and oppose the Resolution moved by Shri Mohita. This House had had the benefit of hearing the points of view of the employers of this country in regard to the payment of bonus through Mr. Mohita and Mr. Chinai. We are astonished to see that even to-day there is a section of employers who refuse to accept the established position regarding bonus that bonus is a right earned by the workers after strenuous struggle for years together and they still want to make us believe that bonus payment is nothing but a generous charity on the part of the employers themselves. But if we analyse the history of the movement carried on for bonus and the Bonus Act itself, we would agree that a long time ago even the Supreme Court, by accepting the application of the L.A.T. Formula in a modified form, has established this very single fact that the workers have a right to the bonus. Now the question arises as to how that particular right of the workers to the bonus can be implemented. Madam, although there is the Bonus Act today, I am constrained to remark that the material conditions have not changed to any very large extent with regard to the payment of bonus even after the enactment of such a law. This I say because there are lacunae in the Bonus Act itself, as being enforced today. These lacunae have found a place in the Bonus Act because of the fact—as has been pointed out by many—that the Government did not act on the recommendations even of the Bonus Commission in their entirety. And the Government unilaterally

modified the recommendations of the Bonus Commission patently and obviously to subserve the interests represented by Mr. Mohita and Mr. Babubhai Chinai. So this unilateral modification of the recommendations of the Bonus Commission, and the legislation—the Bonus Act—naturally placed the working class in a position of disadvantage, and that disadvantage, I am constrained to remark, has not materially improved the position of the working class of the country in the matter of the quantum of bonus paid to them. This is because, Madam, even under the existing Act, the prior charges are computed in such a manner that they swallow up most of the profits, and out of the huge profits only a fraction is left as available surplus to be distributed as bonus to the workers. Again, as has also been referred to by many friends here, the employers, who by this time have become sensitive to the payment of bonus, manipulate their accounts in such a way, calculate the basis in such a way to find out the available surplus, that the available surplus sometimes gets evaporated, and if it has not altogether evaporated, it is so meagre that it is nothing but virtual denial of the right of the workers to bonus. Even today the Bonus Act does not ensure the minimum bonus to all the working classes; there is still discrimination practised, and as you know, Madam, there is the discrimination made between departmental workers and non-departmental workers. And various sections of the workers employed in the public sector undertakings do not enjoy the right to bonus even today. As far as the quantum of bonus is concerned, where the minimum bonus is paid, it is not commensurate with the rise in prices, the prices prevailing today. Precisely because of all these things during all these years, the representatives of the workers in the bipartite committees or tripartite committees or any other committees, and in the Indian Labour Conference have been persistently demanding a revision of the formula for the calculation of the quantum of bonus. Therefore, Madam, the question is whether the Government have made up their mind in relation to the fundamental question of having a new formula in the matter of the quantum of bonus to be paid to the working classes in the country. But I want to know specifically from the hon. Labour

[Shri Chitta Basu.]

Minister whether the Government have by now come to any conclusion with regard to the persistent demand of the working classes in the country today for a revision of the bonus formula itself because, in the changed circumstances, the formula, as incorporated even in the Bonus Act, does not meet the demand of the workers. I want to know very specifically and categorically from the hon. Labour Minister what is in the contemplation of Government with regard to that fundamental and persistent demand of the working class in the country for a revision of the existing bonus formula, for evolving a new formula for calculation of the quantum of bonus. I say this because you should also bear in mind that a revision of the existing bonus formula is necessitated because there is a constant widening of the gap between a living wage, and the actual wage today, and there cannot be any argument as to why the Government should not find out a device or mechanism to partially arrest the constant erosion in the purchasing capacity of the working population in this country. Having regard to this fact I hold the considered opinion that only in a comprehensive legislation in the matter of bonus, based primarily on the recommendations of the Bonus Commission, and also the suggestions made by the representatives of the Central trade union organisations, this question can be effectively answered. As a matter of fact, Madam, I myself introduced a Bill about two years ago for amending the Bonus Act, and the introduction of that Bill for amending the Bonus Act by a private Member should itself have, by this time, awakened the Government of India to come out with such a comprehensive Bill, so that the question raised by us not only on the floor of the House but in several bipartite and tripartite committees could have been considered too.

I would in conclusion fervently appeal to the hon. Labour Minister to give proper thought to this question raised by us and come up with a comprehensive legislation incorporating the suggestions made by us also on the floor of this House.

THE DEPUTY CHAIRMAN : Mr. Mani. Please be very brief. You were not here when I had called your name earlier.

SHRI A. D. MANI : Yes, I shall be very brief but I had left the House with the permission of the Chair.

Madam Deputy Chairman, I am sorry I am not able to congratulate the Minister for Labour and Employment for bringing forward this Ordinance before the House in the form of a Bill because, in my view, this Bill is a negation of a decision taken by Parliament when the Payment of Bonus Act was considered in great detail. At that time the Payment of Bonus Act was based on the recommendations of the Bonus Commission. And it was the recommendation of the Bonus Commission that the rebate that an employer gets in respect of taxes should be available to him. I can quote relevant paragraphs from the report of the Commission but my time is short. It was on that basis that Parliament gave its assent to the Payment of Bonus Act. Now, Madam, a decision which negates an earlier decision by Parliament should not have been taken by Government in the form of an Ordinance. It should have been the subject of a full-dress discussion in both the Houses of Parliament. Madam, I have got a bunch of clippings of the discussion that took place on the Payment of Bonus Bill at that time, and there is not one suggestion made by any workers' representative that the tax rebate that one used to get under the Act should be taken away—I have tried in vain to find out even one single instance of such a claim being made. In any case the tax benefit that an employer gets is used by him very often in spite of the examples quoted by some of our Members here of the bonus shares issued is used by him generally for the rehabilitation of machinery. It is well known to the House that the amounts given for depreciation, for rehabilitation of machinery, under the Income-tax Act are not adequate, because machinery prices are going up every day, and it has been the only little concession that an employer was getting. Now I would like the hon. Minister of Labour to lay on the Table a report on the working of the Payment of Bonus Act. There has been considerable litigation even in regard to payment of bonus and in regard to payment of minimum bonus which is more or less unheard of in any other part of the world. I have been trying to ask friends from other countries whether they are under law compelled ...

SHRI S. R. VASAVADA : In East European countries.

SHRI A. D. MANI : They may give it in Eastern Europe but not in Western Europe.

What is the idea of bonus? It has never been defined anywhere. Madam, I feel...

SHRI ARJUN ARORA (Uttar Pradesh) : It has been defined by the LAT as early as 1950.

SHRI A. D. MANI : The LAT formula was a much better formula from the point of view of the workers.

SHRI ARJUN ARORA : No, no. A definition of bonus was given by the Labour Appellate Tribunal bonus was defined as an effort to fill the gap between the existing level of wages and the living wage. He said that bonus has not been defined. So I am telling him that it was defined in 1950 and nobody has challenged it.

SHRI A. D. MANI : Madam, it was an *obiter dictum* of the Labour Appellate Tribunal.

SHRI ARJUN ARORA : Madam, it is not an *obiter dictum*. He is trying to mislead the House.

THE DEPUTY CHAIRMAN : I will give you a chance. Let him continue.

SHRI A. D. MANI : Madam, the main point is this. If a minimum bonus is to be paid by concerns which are in the red constantly how are those concerns going to find the money to pay? This minimum bonus has borne very harshly on these medium and small scale units. Of course I am not one of those who says that no bonus should be paid to the workers but when a far-reaching decision of this sort...

SHRI JAISUKHLAL HATHI : Even Babubhai does not say so.

SHRI A. D. MANI : ... is taken by which the tax benefits given to the employers by Parliament is taken away, it is time that there should be rethinking about the principles on which the Bonus Act has been passed by Parliament.

L9RS/69—7

Madam, I would like to make one more suggestion only because I said I would not take more time, and that is this. The Payment of Bonus Act was passed four years ago if I am not mistaken. It was challenged in the Supreme Court and the Supreme Court held that the payment of minimum bonus was legal by a majority judgment but I feel that since...

SHRI S. R. VASAVADA : Not majority; unanimous.

SHRI A. D. MANI : About other sections, section 33 and 34 there was difference of opinion.

In view of the fact that the Payment of Bonus Act has been in operation for the past three or four years the time has come for the Government to have tripartite discussions again on the question of the bonus formula. Of course it will take some time. The Bonus Commission took four years to finalise its recommendations and it may take two or three years for this matter to be considered again but I would have liked a wholesale reconsideration of the matter rather than a piece-meal legislation in the form of an ordinance which, as I said, goes contrary to the decision taken by Parliament.

SHRI SHEEL BHADRA YAJEE (Bihar) : Certainly not.

SHRI JAISUKHLAL HATHI : No, no.

SHRI A. D. MANI : I will read out from the Report of the Bonus Commission. This is para 12.1.

SHRI JAISUKHLAL HATHI : I know that.

SHRI A. D. MANI : This is what it says :

"The fixing of a certain proportion of the available surplus (after meeting the prior charges recommended by us) to be distributed as bonus, subject to a minimum and maximum (coupled with an arrangement for set-off and set-on) in the formula which we recommend, would lead to an equitable result and we recommend that this proportion should be 60 per cent. The balance left with the concern would be 40 per cent; and this would be increased ...

[Shri A. D. Mani]

I want Mr. Yajee to note this.

"... by the saving in tax on bonus payable. The aggregate balance thus left with the industry is intended to provide for gratuity and other necessary reserves, the requirements of rehabilitation in addition to the provision made by way of depreciation in the prior charges, the annual provision required, if any, for redemption of debentures and return of borrowings..."

It was on the basis of this recommendation unanimously made by the Bonus Commission...

SHRI BANKA BEHARY DAS : But why do you forget about 7 per cent? One part you want to criticise while the other part you want to accept.

SHRI A. D. MANI : I have understood your point. I say this question of 6 per cent on working capital requires to be reconsidered. But let us reconsider the whole thing and not make a piecemeal legislation in the form of an ordinance. If we want to do it let us do it. It may be six per cent return on working capital is high.

SHRI BANKA BEHARY DAS : When you accept one thing, you must accept all the others also which you are not doing.

SHRI A. D. MANI : I am prepared to reduce it to 4 per cent. As recommended by the LAT you reduce the interest on the working capital. I am prepared for that. But what I say is, don't take away the surplus given to the employers by the Bonus Commission itself and which has been approved by Parliament. It was on that basis that we accepted the Payment of Bonus Bill without much controversy.

Madam, these are the suggestions I wanted to make in regard to this Ordinance.

THE DEPUTY CHAIRMAN : Mr. Arjun Arora, very briefly.

SHRI ARJUN ARORA : I will be very brief, Madam. I am provoked to say certain things because of the approach based on ignorance of my hon. friend, Mr. A. D. Mani, who is usually very well informed. In this matter of bonus, being a small employer himself...

(Interruptions).

THE DEPUTY CHAIRMAN : Please, let him continue.

SHRI ARJUN ARORA : Madam, bonus was at one stage, perhaps in the 19th century, considered as an *ex gratia* payment. My friend, Mr. Mani is still living in that period when bonus was considered as an *ex gratia* payment. I may tell him that even before the country won its independence in 1947 the learned judges of the High Court had recognised bonus as a right of the workers. Now if that is a right the question is how that right is to be enforced. Mr. Mani in his ignorant manner argued that bonus has not been defined but he relies upon the LAT formula. The LAT gave its famous LAT formula in its first decision in 1950 wherein the concept of bonus was properly defined by the LAT. They repeated that bonus is a right. Defining bonus they said it is an attempt to fill the gap between the existing level of wages and the living wage and they said that as long as this living wage standard is not achieved the payment of bonus is an obligation. Now even Mr. A. D. Mani, a member of the Liberal Federation once upon a time, will not argue that the living wage standard has been reached by any worker in this country. So according to the LAT decision bonus continues to be paid and an effort continues to be made to fill the gap between the existing level of wages and the living wage standard.

SHRI BANKA BEHARY DAS : Mr. Arora, I am not disturbing you but I just want to point out that according to that decision even if a living wage standard is attained then also the bonus is to be paid.

SHRI ARJUN ARORA : I am coming to that.

SHRI A. D. MANI : He has forgotten that.

SHRI ARJUN ARORA : I have not forgotten that. I want to make my points one by one and not jumble them up like your editorials.

They also said that bonus is the share of the workers for the contribution that they make to the profits of the concern. So as long as the workers continue to make a contribution to the profits of the concern bonus remains a right according to that

famous formula. Mr. Mani and several others of his way of thinking are worried about the minimum four per cent bonus. Now, that minimum four per cent bonus has to be considered in the light of the fact that according to the Payment of Bonus Act itself it has to be set off and set on. In case a concern makes loss and is compelled under the law to make a four per cent payment of bonus and next year or in subsequent years it makes profits, the amount that it disburses in case of loss as bonus has to be deducted. So, four per cent minimum bonus is only an advance instalment of the bonus which will become due one day in terms of the LAT formula.

The LAT formula introduced many novel things. It introduced the concept of rehabilitation, which meant that nobody will properly get his share of profit as bonus. The Bonus Commission and this House, when it passed the Payment of Bonus Act, did not accept the concept of Rehabilitation. Instead, the Commission gives an additional percentage of profit from 6 per cent to 7 per cent on the capital. So, the concept of rehabilitation has gone and that way the LAT formula has been modified. The present Bill has become necessary because of something introduced by that very well known and usually liberal Judge, Mr. Gajendragadkar, in the ACC case. Giving his decision in the ACC case as the Chief Justice of the Supreme Court of India, he introduced the concept of notional taxes. While nobody objects that the taxes actually paid should be deducted from the surplus, available surplus, the Supreme Court, in the ACC case about ten years ago, introduced the concept of notional taxes. Whereas they do not pay taxes, whereas the actual assessment of taxes on a company may be much less, the notional taxes may be high. While the Government in the shape of taxes gets much less, much more is deducted from the money available to be shared by workers because of the concept of notional taxes. That is why this amendment has become necessary. As a matter of fact, when the Payment of Bonus Bill came before this House, the Government and the Parliament did not want the concept of notional taxes to remain. But it appears there was some defect in drafting which has led the Supreme Court to conclude that notional taxes can still be taken into consideration.

I welcome this Bill because it puts an end to the concept of notional taxes. As far as this four per cent minimum bonus is concerned, unfortunately, the minimum has a tendency to become the maximum. Many employers who make a profit, instead of giving a higher bonus, insist on paying four per cent, which is the minimum. The result is that industrial disputes, which the Payment of Bonus Act sought to avoid, continue because of the shortsighted policy of the employers who, in spite of making profits which would justify a higher bonus, insist on paying only four per cent, the legal minimum. The disputes remain and the result is that those disputes are decided in accordance with the LAT formula which the Act embodies. So, this new thing of notional taxes, which was not there in the formula as embodied in the Act but was again introduced by the Supreme Court, must go.

With these words, Madam, I am very brief and I support the Bill.

SHRI G. A. APPAN (Tamil Nadu) : Madam Deputy Chairman, I have only to submit to this House my views on the economic principles and the factors of production to show how far the Bonus Act or the amendment is valid. I come here to support the cause of the consumers. It is really unfortunate that the earlier economists, whoever they may be, failed to take into account the fifth factor of production, namely, the consumers. It is also unfortunate that neither the capitalist employers, nor the employees, nor the Government have taken into consideration the important role that the consumers play. Consumers are the pivotal point of all productivity and national income. Their importance has been miserably misunderstood or ignored to be recognised. Let the capitalist or the employer put in any amount of money. Let the employees contribute much to productivity. Unless the consumers consume the products, or services, how can there be any scope for further development or expansion of capital? It is not possible. So, the deciding factor, the fifth factor of production, is the consumer. The capitalists and the employers want more money. People who finance money want more interest. People who work want more wages. All right. The Government also begins to do

[Shri G. A. Appan.]

meddling and muddling and it acts like a boomerang. We have been seeing that the Government in the past have not been so rational in their labour legislation. It is brought forward under duress, under coercion or it shows escapist tendencies. They have been trying to yield to the pressures either of the capitalist employers or the employees, without caring at all for the main pivot, the consumer. He is to utilise the services or the products accruing therefrom. As such prices have been rising.

SHRI KESAVAN (THAZHAVA) (Kerala) : Is it the view of the DMK?

SHRI G. A. APPAN : I am speaking to the House. I am speaking about the economic view of the nation. I stand here to say that I am a nationalist and my submission to this House is in the larger interests of the nation and not of anybody's cause. I do not think our party also would be anti-national, as most of the fascist, selfish labour leaders would like to be. That is what I say. Let me not go further into the matter. Let me resume my speech. In this connection, unless the interest of the consumer is taken into consideration, consultations are made in future on these economic, industrial and labour policies and sufficient representation is given to the consumers also by starting at every village, at every block, at every taluk, district, State and at the national level, an institution of consumers' panels, you cannot solve the problem. Of course, with the help of the consumer panels and consumer organisations in Delhi, a cosmopolitan city, the women folk have brought to bear a very rational and salutary effect on the economic side and on the merchants, who have been trying to make more profits at the cost of other national interests.

4 P.M.

In this connection, Madam, may I submit to the House this thing? I do not agree also with the judgment of the Supreme Court. (Interruption) Yes, I do not agree. I have a right to say that. I shall be able to demonstrate to the whole nation that the pivotal point of all economic productivity and national income throughout the world, not only in our country but throughout the world, is the consumer whose interests have not been taken into consideration all this time by any of the economists or others.

SHRI ARJUN ARORA : Everybody produces including the consumer?

SHRI G. A. APPAN : Simply because the Supreme Court has made an observation that it was considered necessary to amend section 5 of the Payment of Bonus Act, 1965, this amending Act comes in. Anyhow, Madam, what is bonus? For the labour put by the labour there is the wage. For the increased level of expenditure there is the D.A. But the bonus should be an item of additional remuneration. It might be the right of the employees but bonus should be based on some rational principle. It can be only to a limited extent, not 10 per cent or 15 per cent or 20 per cent more than what they are entitled to. The profit also should be shared. The bonus can be a check on the greediness of the employers. They want more profit, and I request all the employers, industrialists and businessmen to arrest the level of price increase, so that the labourers may not clamour for more, so that there might be more of productivity.

SHRI M. K. MOHTA : Madam, the first point that I made in my opening speech was that it was not fair on the part of Government to bring this legislation in the form of an Ordinance. It is a discourtesy to Parliament and I hope that the hon. Minister would assure the House that unless a situation of grave emergency exists no such measures would be brought by promulgating Ordinances.

As to the subject-matter of the Ordinance itself one hon. Member quoted figures of profits and losses of 101 giant concerns. In this connection I would like to submit that it is not only the giant concerns which are concerned in the payment of bonus but hundreds or indeed thousands of small and medium-scale concerns also whose profits and losses seem to have escaped the Member's attention. Then again, if the profits of the concerns, whether they are giant or non-giant, are high, it is perfectly all right, because 60 per cent of the available surplus is going to be distributed to the labour in any case. So whether the insurance companies make high profits or giant concerns make high profits, it should be a matter which should be welcomed rather than commented upon in the fashion that it was.

The real point is not whether high profits are made or not. The real point is whether after paying the bonus and after carrying forward the tax rebate on the bonus for payment in the next year, sufficient resources would be left with the industrial concerns for the purpose of rehabilitation. This point of rehabilitation was specifically mentioned by the Bonus Commission and by the Supreme Court. The return that is allowed on capital and reserves as prior charge, namely $8\frac{1}{2}$ per cent and 6 per cent, is barely sufficient as return on the capital invested. The rate of return is even lower than the rate of interest charged by Government financial institutions on secured loans. If the industrial concerns are left with insufficient resources for rehabilitation, it does not require a very high degree of imagination to visualise what kind of state the Indian industry would be in after a period of time.

Another Member raised the question of continuing litigation in spite of the passing of the original Bonus Act. The litigation is continuing not because of any lapse on the part of the employers but because by and large the workmen, the employees are not satisfied with the amount of bonus calculated as per the provisions of the Act itself. Whenever it suits them, they apply the formula laid down by the Act. Whenever it does not suit them, they simply say that the quantum of bonus is not acceptable to them, and litigation and labour unrest continue.

The two other points that were raised by me earlier were that in cases where bonus is paid to such an extent that it is even more than the total profit made by the company, because 4 per cent minimum has to be paid, in such cases there is no tax liability and the whole notion of tax saving on the quantum of bonus is purely imaginary. In this particular case a great hardship would be caused to industrial employers if the imaginary tax-saving is again carried forward to the next year and 60 per cent of that is sought to be distributed to the workmen. Thank you.

SHRI JAISUKHLAL HATHI : Madam, I am thankful to the hon. Members who have given support to this measure. I am only sorry that Shri Mohta, Shri Babubhai

Chinai and Shri Mani tried to blame the Government for bringing this piece of legislation and also for promulgating an Ordinance. I only hope that after hearing the speeches from different sections of the House they will realise that what the Government has done is the bare minimum, which should have been done, but for which there would have been industrial unrest. It is not the Government alone that was thinking that this kind of unrest was brewing and that it might flare up at any time. Of late the trade unions have renewed their agitation against the Payment of Bonus Act which was enacted only in 1965. Memoranda and resolutions are being submitted to the Government of India demanding that the Act be amended forthwith in the interests of industrial peace. This is a statement which I am reading from a pamphlet which I have just received : "The Bonus Act; an Objective Assessment", written by the Employers Federation of India. I am asking the Employers Federation of India, Mr. Mohta and those who are opposed to this, what did they do to avert this industrial unrest ? Is it only by blaming the Government that the industrial unrest could have been avoided or could it have been avoided by making a gesture whereby you come forward and find out a formula and satisfy the workers ? If that is not done, I am afraid that even those gentlemen, those who are in the House and others also, we will lead them to think that the employers are not willing to pay the fair share of the bonus to which the workers are entitled. That will create a sort of lack of confidence among the workers towards the employers, a fact which I would always like to avoid. I would like that there should be a feeling of confidence, a feeling of mutual trust between the employers and the workers. But if every progressive measure or any measure which aims at giving what is due to the workers is being opposed, I am rather doubtful whether this kind of good industrial relations would exist. I am therefore appealing to Mr. Mohta even at this stage—it would be good gesture—to withdraw this Resolution which he has moved, even if they have not been able to do anything else.

And what is the argument now? The only argument is that Parliament had given this rebate for rehabilitation.

[Shri Jaisukhlal Hathi.]

Parliament has passed this Act, the Government has gone behind this, the Bonus Commission had also given it, the Supreme Court has done it. And why do you do all this? Now, what has the Bonus Commission done and what did Parliament or the Government do? Under the Bonus Commission's recommendations, as has been pointed out by Shri Vasavada, Shri Arora, Shri Banka Behary Das and all those who have spoken, they gave only two taxes for deduction, the Income-tax and the super-tax. The Act went further and made provision to deduct all the taxes, direct taxes, now and in future. The Act of Parliament gave 8½ per cent on equity capital as against 7 per cent recommended by the Bonus Commission. On reserves, whereas the Commission gave 4 per cent, Parliament gave them 6 per cent deduction. The Bonus Commission did not give anything for development rebate; Parliament and the Act did give development rebate. We wanted to develop. The Bonus Commission decided that they were not giving rebate for rehabilitation because they had thought that otherwise sufficient amount would not have been available to them. But put on the one side what the Bonus Commission gave; put on the other side what the Act gave—7 to 8½ per cent; 4 to 6 per cent; development rebate which was not recommended by the Commission and this is nearly 6 per cent—all the taxes. Having regard to them, there was no need for providing for separate rehabilitation. The argument of the Bonus Commission was quoted by Mr. Mani and all others who said that they have specifically said that these tax rebates should go to the employers because that would mean sufficient rehabilitation amount with them. Now, this is what Mr. Mani also said : Parliament having taken a decision, why do you do it? He said, no worker had asked that this sort of rebate should go to the workers. Now, it was not that the workers had to claim because the Act wanted that the tax which the employers actually paid has to be deducted and therefore there was no need for the workers to bring an amendment. But an amendment was brought forward by a Member, Mr. Dandekar. He actually wanted that instead of the word 'is', the words should be 'would be'. I will not trace that part, I will confine myself to the other part

of the amendment. The present clause reads :—

"subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits . . ."

Now, the wording is . . . the employer is liable to pay . . . and he wanted that instead of 'is', it should be 'would be', so that it should be notional and not actual tax. Now, when this amendment was moved, the then Labour Minister, Shri Sanjivaiya, said :

"Regarding the other point about the tax concessions obtained on bonus paid, we have considered that point also. . ."

Concessions which I mentioned earlier, five concessions, which have not been given by the Bonus Commission.

"Having given so much concession for improving the industry, we thought that this may not be allowed for the management. Therefore, I am not in a position to accept this amendment."

Now, the intention of Parliament in rejecting the amendment was very clear that this tax rebate is not to go to the employer. It is very clear. The word is 'is' and that was interpreted by the Supreme Court which said that the past Act was this, and said—

"If Parliament intended to make a departure from the rules laid down by courts and tribunals that the bonus amount should be calculated after the provision for tax was made and not before, we would have expected an express provision to the effect either in the Act or in the Scheduled."

Mr. Chinai said that the Act or even the Statement of Objects and Reasons of the present Bill nowhere mentioned about this. I am only sorry, he has not fully read it. It says—

"As a result of the decision of the Supreme Court, the tax relief on bonus will go entirely to the employers and not to the employees. It was considered necessary to amend section 5 of the Payment of Bonus Act in order to carry out the intention of the Government that the available surplus under that section should be so computed that the amount

of tax rebate accruing to the employers on account of bonus paid or payable under the Act, becomes a part of the available surplus. . .”

It is mentioned here. Therefore, it is nothing new that we are doing. What the Government is doing today is actually to put an express word, which the Parliament has given a seal to, when this Act was passed. So, to blame the Government and to say that the Government has gone behind the recommendation of the Bonus Commission, behind the Act which was passed by Parliament and that it is trying to change the decision of Parliament by an Ordinance and that it is taking a step, which Mr. Chinai said was undemocratic, is not right. He went even further and said that he wanted the Prime Minister to come here and make a public declaration that this power which vests with the Government of issuing an Ordinance will not be used henceforward, implying thereby that this power has been wrongly used.

SHRI BABUBHAI M. CHINAI : You can use it only in an emergency.

SHRI JAISUKHLAL HATHI : That means, in this case it has not been used. I was rather surprised at this—Mr. Chinai saying this. I can understand Mr. Mohta saying it; it is his duty. And although he may not have any argument, he may have to argue from one side, the other side or any side. But Mr. Chinai also had done it. A person who has been attending the tripartite labour conferences, the committees, the international organisations, does he not know what bonus is or what the concept of bonus is? All my friends on this side, Mr. Vasavada and others, they have explained. I thought he knew it, but perhaps he conveniently forgot it. Anyway, I only hope : even now, at this stage, let there be no opposition, even formal or insincere opposition. But nobody knows that his opposition is insincere. But it will be considered a sincere opposition on the part of the employees.

SHRI CHITTA BASU : Our support is very sincere.

SHRI JAISUKHLAL HATHI : Your support is sincere, and I think you very much for all the speeches, for the sincere support. Even I do not want that insincere opposition; nobody will know whether it is sincere or insincere.

This pamphlet has been published and given to me last night saying that these are the disadvantages. The workers are not very much educated. Their leaders like Shri Vasavada or Shri Banka Behary Das or Shri Chitta Basu might advise the workers that whatever is given, let us take it and let us be content with this. Later on, we shall see. . . (Interruptions) I do not think that you are so sober. I do not expect it. But even then, the workers will feel that the employers are unwilling. And if they want a single pie, they will not get it. Why? What is this consideration? I may give an instance as to what it comes to. Now when you assess, you make this notional income-tax. Supposing a company makes a profit of Rs. 30 lakhs, then the assessment is 50 per cent as income-tax or Rs. 15 lakhs. On that, the allocable surplus is Rs. 9 lakhs. Now when the actual assessment is made, out of the profit of Rs. 30 lakhs, Rs. 9 lakhs is paid as bonus and on the balance of Rs. 21 lakhs, the income-tax is Rs. 10½ lakhs. At first it was calculated as Rs. 15 lakhs. So, Rs. 4½ lakhs is net gain for them.

Then Mr. Mohta raised the point about imaginary tax liability. Now if a company makes loss, then there is no income-tax on loss. Income-tax comes only when the company makes profit. Therefore, there is no question of tax rebate to bonus when a company is making loss. Therefore, there is no imaginary tax rebate. And I do not think he need be afraid of any imagination. There are certain things which come out of imagination.

SHRI CHITTA BASU : What about my point?

SHRI JAISUKHLAL HATHI : So far as you are concerned, you want retrospective effect. Now that question we have considered and in fact, we have given retrospective effect from 1968. We have been discussing this question at the tripartite conference also, and I do not think we can reopen it. Reopening will mean again opening the flood-gate of litigation. I would advise that let us be satisfied with this. Otherwise, reopening of cases will mean litigation which we want to avoid. So I oppose the Resolution of Mr. Mohta.

SHRI M. N. KAUL (Nominated) : One clarification. The hon. Minister's speech has been more intricate than any argument before the Supreme Court. I think if he appears before the Supreme Court he will win all cases. The upshot of all this, so far as I have been able to gather, is that the Supreme Court judgment has been nullified. The hon. Minister has stated what the intention was when the measure was before Parliament. But the Supreme Court says that express words were not used to carry out that intention. The Supreme Court, in fact, interpreted the intention of Parliament contrary to what the Government stated in the House at the time. Now the Government brings forward the plea of honesty, and nullifies the Supreme Court decision, they say they want to stick to their own interpretation, their own statement of policy made in Parliament. I am not attributing any blame; I want to be clear on that. So the moral is, it is bad drafting. This is what constantly gets us into trouble. If the drafting of the legislation were more careful, we would not get into trouble with Parliament or with the Supreme Court.

SHRI JAISUKHLAL HATHI : I do not think it was intricate. My friend has understood what I said. Therefore, there is nothing like intricacy.

THE DEPUTY CHAIRMAN : The question is :

"That this House disapprove the Payment of Bonus (Amendment) Ordinance, 1969 (No. 2 of 1969) promulgated by the President on the 10th January, 1969."

The motion was negatived.

THE DEPUTY CHAIRMAN : The question is :

"That the Bill further to amend the Payment of Bonus Act, 1965, be taken into consideration."

The motion was adopted.

THE DEPUTY CHAIRMAN : Now we shall take up clause by clause consideration of the Bill.

Clause 2—Amendment of section 5

SHRI M. V. BHADRAM : Madam, I move :

2. "That at page 1, line 9, for the figure '1968' the figure '1967' be substituted."

3. "That at page 1, line 13, after the words 'equal to' the words 'one and a half times' be inserted."

4. "That at page 1, line 16, for the words 'the immediately preceding' the word 'that' be substituted."

5. "That at page 2, line 3, the word 'preceding' be deleted."

SHRI M. K. MOHTA : Madam, I move :

6. "That at page 2, after the line 6, the following further proviso be inserted, namely :—

'Provided further that where the employer has paid or is liable to pay a minimum bonus for four per cent due to absence or inadequacy of available surplus in the immediately preceding accounting year, or where the employer has paid or is liable to pay bonus in excess of the amount payable by him according to the provisions of this Act by virtue of any agreement between the employer and his employees, in the immediately preceding accounting year, the available surplus in respect of any accounting year shall be gross profits for that year after deducting therefrom the sums referred to in section 6.'"

The questions were proposed.

SHRI M. V. BHADRAM : Madam, I have four amendments to clause 2. My first amendment is that this should come into force in respect of the accounting year commencing on any day in the year 1967, instead of 1968. All disputes regarding payment to be made for 1968 are still pending; they have not closed. Therefore, I want that the existing cases also should be covered by the amendment. If it is 1968, then it applies to the future only, i.e. payable in 1969 or 1970. So, if you have 1968, the existing cases will not be covered. I, therefore, want that it should be 1967, so that it will cover all the existing cases.

As regards the second amendment, as already stated, the amount should be one and a half times, not 60 per cent; it comes to 120 per cent. So the employers should not be given that 40 per cent. The entire amount should go to workers, because the employers have already got so many concessions.

With regard to my third amendment, probably if the Act is not amended in this way, this might again go to the Supreme Court and again we may have a slap, because the tax rebate that is given in a particular accounting year is to be added to the next accounting year. It means that a worker who is in service that year will not get it, but a worker who is in service in the next year will get it. It is illogical to have that and so it should be ".... for that accounting year" and not "the preceding accounting year."

The last one is the same thing. Therefore, I request the hon. Labour Minister to accept at least two of the amendments.

SHRI M. K. MOHTA : Madam, perhaps I have not been able to make myself very clear when I talked about the imaginary tax liability and the carry-forward to the next year. I would like to make it clear by an example. Supposing the profit of a company is Rs. 1 lakh, the notional tax would be Rs. 50,000. Now, suppose at the rate of 4 per cent, which is the minimum bonus payable, the bonus paid to the employees is Rs. 2 lakhs. Naturally the profit of Rs. 1 lakh is now converted into a loss of Rs. 1 lakh. But according to the provisions of this Bill, the notional tax amount of Rs. 50,000 would be carried forward to the available surplus of next year and 60 per cent of that, viz., Rs. 30,000 will again be distributed to the workers. Now this is patently unjust and unfair.

The other point in my amendment is that supposing the quantum of bonus, by applying the formula of the Bonus Act, comes to 5 per cent of the wages, namely, Rs. 1 lakh and instead of Rs. 1 lakh 10 per cent of the wages, i.e. Rs. 2 lakhs are paid to the workmen by mutual agreement, then according to this, the tax benefit on Rs. 2 lakhs, i.e. Rs. 1 lakh, will be carried forward to the next year and Rs. 60,000

will again be distributed. Now this is an unjust and unfair burden on the employers for their magnanimity, for their over-generousness. This is my submission.

SHRI D. THENGARI : By way of clarification, I want to ask one question. I quite appreciate the point that giving retrospective effect may be opening the Pandora's Box. But the hon. Minister must have consulted the Law Minister on this point as to how to cover the present pending cases. This is the main point.

SHRI JAISUKHLAL HATHI : So far as the first point is concerned, in fact I myself have examined and thought of this, whether we can do it from 1967 onwards, but I understand that it will lead to many complications. Many cases might have been settled or many cases where bonus was given, may not have been pending. Then, all those questions will have to be reopened if we want to be just to all the workers. Those who accepted bonus, did not raise the dispute because they thought, "This is an Act, this is the interpretation". Therefore, that will lead to further complications, otherwise, I myself thought of it. Then about Mr. Bhadram's second amendment, the provision as it is, is just consistent with the scheme; as it is, the allocable surplus is 60 per cent and 40 per cent. They have had it. But now at present we cannot change it. Then, so far as Mr. Thengari's point is concerned, for the accounting year 1968 they will all be covered under this new legislation. . .

SHRI M. V. BHADRAM : No, no.

SHRI CHITTA BASU : The question is about the pending cases of 1967.

SHRI JAISUKHLAL HATHI : If they are for the accounting year 1968, then only they will be covered, not the cases of 1967. (Interruptions) Then, Mr. Mohta had one or two amendments. Mr. Bhadram also said one more thing that for the same year some other workers will have it. That point also we have considered. If we were to do it for the same year, very often it happens that income-tax is not fully assessed in the same year. It may go to the next year also sometimes. Now what is done is that when they prepare their receipts they calculate the notional tax as 15 lakhs out of a gross

[Shri Jaisukhlal Hathi]

profit of 30 lakhs. When they actually make the assessment it will come. Now, at that time it may be that in the same year this assessment may not have been made, and therefore, we do not know what actually this rebate was. So, by and large, in some cases they get this year, some next year and so on. Ultimately it will go on in a cyclic system, first year, second year, third year, like that. In the same year it may not be possible to have the complete picture. That is the whole idea.

Mr. Mohta raised one point. He has two amendments imaginary and the notional tax. Here I said that if there is a loss, only then the 4 per cent has to be paid. If there is a marginal case, that is a thousand or two thousand rupees only, I do not think we can evolve a formula which again will be a sample formula. How will you do it? On what basis? When you say it is marginal, what will be that marginal? That will lead to complications. So far as the agreement and magnanimity, the generosity of the employer which he said, etc. are concerned, when they have entered into an agreement liberally, magnanimously and generously, why should they suffer? This magnanimity and suffering do not go side by side. You have entered into the agreement voluntarily. If there is that voluntary agreement, then this question does not arise.

So, Madam, I would not like to accept these amendments.

THE DEPUTY CHAIRMAN: The question is :

2. "That at page 1, line 9, for the figure '1968' the figure '1966' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

3. "That at page 1, line 13, after the words 'equal to' the words 'one and a half times' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

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5. "That at page 2, line 3, the word 'preceding' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

6. "That at page 2, after line 6, the following further proviso be inserted, namely :—

'Provided further that where the employer has paid or is liable to pay a minimum bonus of four per cent due to absence or inadequacy of available surplus in the immediately preceding accounting year, or where the employer has paid or is liable to pay bonus in excess of the amount payable by him according to the provisions of this Act by virtue of any agreement between the employer and his employees, in the immediately preceding accounting year, the available surplus in respect of any accounting year shall be gross profits for that year after deducting therefrom the sums referred to in section 6.'

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 and 4 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JAISUKHLAL HATHI: Madam, I move :

"That the Bill be passed."

The question was put and the motion was adopted.

[THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.]

THE ARMED FORCES (SPECIAL POWERS) CONTINUANCE BILL, 1969

THE DEPUTY MINISTER IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRI SURENDRA PAL SINGH):
Madam, I beg to move :

"That the Bill to continue the Armed Forces (Special Powers) Regulation, 1958, for a further period be taken into consideration."

The Bill seeks to continue the Armed Forces (Special Powers) Regulation, 1958, in the territory of Nagaland for a further period of three years. The Regulation is only an enabling one and empowers the Governor of Nagaland to declare the whole or any part of Nagaland as a disturbed area if, in his opinion, disturbed or dangerous conditions prevailing in the area necessitate the use of Armed Forces in aid of Civil power. It is only when such a declaration is made by the Governor in the official gazette that the substantive provisions of the Regulation come into force.

The Regulation confers special powers on Commissioned Officers, Warrant Officers and Non-Commissioned Officers not below the rank of Havildar, of the Armed Forces, to enable them to aid effectively the Civil power in the disturbed areas of Nagaland.

The Regulation was initially in force for a period of one year in Kohima and Mokokchung districts of the then Naga Hills-Tuensang Area. It was extended from time to time having regard to the circumstances prevailing in those areas. After the formation of the State of Nagaland on the 1st December, 1963 the Regulation was continued by Parliamentary Legislation. In 1966, while extending the duration of the Regulation for another year, it was made applicable also to Tuensang District of Nagaland, thus covering the entire State. The Regulation will cease to have effect on the 5th April, 1969. The object of the Bill is to continue the Regulation in the entire State of Nagaland for a further period of three years from the 5th April, 1969 to the 4th

April, 1972, as the stage for dispensing with it has not yet been reached.

On this occasion the extension is sought for three years as the unusual situation obtaining in Nagaland specially the collusion of the Underground with China and Pakistan, can bring about circumstances which might require the exercise of the extraordinary powers conferred by the Regulation on the Armed Forces, on a long term basis to deal with the unlawful activities of the Underground.

A heartening feature of the situation in Nagaland has been the overwhelming support won by the ruling Naga Nationalist Organisation at the polls. This party supports the Agreement reached with the Naga leaders in 1960 which brought the State of Nagaland into being and rejects the demands and the methods of the Underground. In giving their votes to this party, the people have rejected the violent creed of the Underground and have reiterated their faith in the lawfully constituted Government of Nagaland. The Government of India will do everything in their power to lend weight to the Government of Nagaland in their effort to restore peaceful conditions in Nagaland. The proposed Bill is a measure in that direction.

Sir, I move that the Bill be taken into consideration.

The question was proposed.

श्री निरंजन वर्मा (मध्य प्रदेश) :
श्रीमान् हमारे मित्र ने इस माधारण से संशोधन के लिये अभी कुछ धाराओं में परिवर्तन का मुझाव रखा है। हमारी समझ में यह बात नहीं आई कि हमारे मित्र जब यह बात कहते हैं कि नागालैण्ड की स्थिति में सुधार होता चला जा रहा है तो यदि उसका सुधार हो रहा है तो एक वर्ष की अपेक्षा तीन वर्ष की अवधि रखने का कोई कारण नहीं है। नागालैण्ड में भारत सरकार की जितनी पालिसी है वह पालिसी प्रारम्भ से ही बिल्कुल गलत तरीके पर चालू की जा रही है और उसका कारण यह है कि 1958 में जब यह कानून बना इस कानून के द्वारा यह सम्भावना व्यक्त की गई थी कि एक वर्ष के भीतर ही हम ऐसे समस्त