

SHRI BHUPESH GUPTA : Shrimati Yashoda Reddy defected from this seat to another seat, she went over there.

श्री सुन्दर सिंह भण्डारी (राजस्थान) : मेरा आपसे निवेदन है कि जिस बात को आपने श्री राजनारायण द्वारा उठाये जाने की अनुमति दी, उसके सिलसिले में यह आवश्यक है कि नत्काल इस मामले में हस्तक्षेप किया जाय । अगर आपने इस सवाल को उठाने की इजाजत दी और उस पर कोई निर्णय नहीं दिया तो जिस परपज से उन्होंने उसको उठाया है उसका कोई परिणाम नहीं निकलेगा ।

MR. CHAIRMAN : Hereafter I shall not give permission. That is all. The general principle is this. What is not on the agenda shall not be discussed. But only on account of special circumstances I am giving permission. Hereafter I shall not allow anybody to discuss any matter which is not on the agenda of the House.

श्री राजनारायण : यह ऐसा नहीं कह रहे हैं, इनका इतना ही कहना है

MR. CHAIRMAN : I do not allow.

[THE DEPUTY CHAIRMAN in the Chair]

SHRI BHUPESH GUPTA : Now that you are in the Chair, will you like to hear Shrimati Yashoda Reddy ?

श्री राजनारायण : माननीया, इसमें आप कुछ थोड़ा सा विचार करें । देखिये, यह बड़ा महत्वपूर्ण सवाल है

उपसभापति : आप तो कह चुके जो कहना है ।

श्री राजनारायण : श्री भंडारी ने कहा अगर इसमें तत्काल बहस नहीं होगी तो मामला वहीं का वहीं खत्म हो जायेगा । वह तो एक निकम्मे और भ्रष्टाचारी को मुख्य मंत्री बना देगे ।

THE DEPUTY CHAIRMAN : He has passed on to the next item.

SHRI SUNDAR SINGH BHANDARI : The Chairman did not give any ruling, but he has not passed on to the next item.

SHRI BHUPESH GUPTA : What about my submission ?

THE DEPUTY CHAIRMAN : I cannot give a ruling.

SHRI BHUPESH GUPTA : This is entirely in your power. Mr. Chavan has asked us to discuss this. But now he is going in contravention of that Committee's recommendation.

THE DEPUTY CHAIRMAN : No more, please.

SHRI BHUPESH GUPTA : Let him withdraw the notice....

(Interruptions)

THE DEPUTY CHAIRMAN : No more.

SHRI AKBAR ALI KHAN (Andhra Pradesh) : The Chairman has passed on to the other item.

THE DEPUTY CHAIRMAN : I will pass on to the next item. Mr. Mohta. (Interruptions) No more on that subject. Please. I have called Mr. Mohta.

Mr. Mohta, please begin.

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

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

SHRI M. K. MOHTA (Rajasthan) : Madam, I move :

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

The first submission that I have to make is that the way in which the Ordinance has been promulgated is not in the best interests of parliamentary democracy prevailing in the country. Issuing an Ordinance on very flimsy pretexts brings the law into contempt. It was not long ago that the Parliament was sitting; as a matter of fact, it adjourned only on the 28th December last year. And within a very short period, namely, on the 10th January, an Ordinance

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 was promulgated. The Government has not succeeded in naming any special circumstances that might have justified the promulgation of an Ordinance. Madam, in this connection, I beg to submit that article 123 of the Constitution was explained to the Constituent Assembly by Dr. Ambedkar as one intended to deal with a situation which may suddenly and immediately arise. This cannot be said to be the case in this particular instance. Madam, by issuing an Ordinance on so vital a matter when the Parliament had very recently adjourned and it was going to be reconvened in a very short period of time, they have set a very bad precedent not only for Parliament but also for the State Assemblies. We have the instance of West Bengal in 1967 when Mr. Jyoti Basu, having failed to produce a Finance Bill for eight months, put that through by an Ordinance when the legislature was in recess. In this connection, I would like to submit that in such a vital matter the parties connected with the matter, namely, the employers and the employees, were not given any opportunity of discussing the matter and thrashing it out with the Government, and the matter was put through by an Ordinance in undue haste.

I now come to the subject-matter of the Ordinance. Here I would like to say that the Ordinance disregards the intention of the Parliament, the recommendations of the Bonus Commission and the judgment of the highest court of the land. As regards the recommendation of the Bonus Commission, I would like, with your permission, Madam, to quote from the Report of the Bonus Commission as follows :

"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 per cent. The balance left with the concern would be 40 per cent; 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 require-

ments 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."

On a perusal of this section of the Report of the Bonus Commission, it would be crystal clear that the intention of the Commission was that the savings of the industrial companies should be increased by the saving in income-tax on bonus paid by them. This being the intention of the Bonus Commission, any unilateral decision of the Government in ordering payment of a part of this tax saving to the employees is unjustified. As far as the intention of Parliament is concerned, it was made quite clear, while discussing this matter at the time of passing the original Bill, that Parliament took into consideration the views of the Bonus Commission and adhered to those views. If it intended to do otherwise, it could have made a very clear and specific provision in the original Act by which a part of the tax saving should be made available to the labour.

I would now like to refer to the judgment of the Supreme Court which has laid down in no uncertain terms the interpretation of the court of the Bonus Act. The Supreme Court observed that :

"Parliament did away with rehabilitation as a prior charge because it knew that the rebate in the income-tax 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 highest court of the Land 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. If Parliament intended to make a departure from the rule laid down by courts and tribunals that bonus should be calculated after provision for taxes was made and not before, we would have expected an express provision to that effect either in the Act or in the Schedules."

So, in view of the pronouncement of the Supreme Court about the intention of Parliament, it is really strange that the Government, instead of bringing the matter once again before Parliament, should have gone ahead and promulgated an Ordinance.

I would like to stress the point of rehabilitation once again. It is a known fact that Indian industry, by and large, is in great need of rehabilitation and modernisation. It is well known that the textile industry in particular and other industries also have been becoming sick one by one due to their not having been modernised, and this was the direct result of paucity of finances available with the industry. Before the Bonus Act was passed by Parliament, the labour tribunals used to earmark a certain sum for rehabilitation before arriving at the available surplus and allocating the bonus payable to the workmen. Now the intention of the Bonus Commission as well as of Parliament was that the tax saving on bonus paid should be utilised by the companies for the purpose of rehabilitation. If the Government intends that a higher bonus should be paid to workmen, I for one would not object to it provided the reasonable and fair demand of the industry for a sufficient sum to be earmarked specifically for rehabilitation is first taken care of. If rehabilitation is not taken care of in sufficient measure, it will not be very long before the Indian industry, which is already a very high-cost structure industry, will be ridden with still higher costs, and the ultimate sufferer would be not only the Indian consumers but also the exports of the country. . .

THE DEPUTY CHAIRMAN : You must try to finish soon.

SHRI M. K. MOHTA : I will need 10 minutes more.

THE DEPUTY CHAIRMAN : For both the Bill and the Resolution only two hours have been allotted by the Business Advisory Committee. You have to divide the time between yourself and the other mover. Otherwise, the other Members will not have time.

SHRI M. K. MOHTA : I will hurry up and finish if you will kindly give me another five minutes.

THE DEPUTY CHAIRMAN : All right. You can have five more minutes.

SHRI M. K. MOHTA : Thank you. Since the time at my disposal is very short, I will simply outline the points without elaborating very much.

1 P.M. on them. While laying down the new formula for payment of bonus no care has been taken to link the payment with productivity. Unless productivity increases we cannot do away with the high cost structure prevailing in the Indian industry today. The second point I would like to make is that no attempt has been made to make a part of the bonus payable in kind, for instance, in the shape of national saving certificates rather than in cash. It is all right to pay a minimum amount of, say, 4 per cent in cash, but anything more than that, if paid in cash and if utilised for consumption in consumer articles, will only push up inflationary pressures and would not be in the best interests of the country as a whole.

Another anomaly that I find in the Ordinance as well as in the Bill is that even when a minimum payment of 4 per cent is made by the employers, in the absence of any profit the so called tax-saving would have to be carried forward to the following year and 60 per cent of the so-called tax-saving would have to be distributed once again to labour. This I would like to clarify by giving an instance. Supposing the gross profit in a year amounts to 500, the notional tax is taken at 250 and the prior charges are taken at 150, the available surplus would come to Rs. 100 on which the allocable surplus for bonus would come to Rs. 60. Now, supposing the minimum bonus at the rate of 4 per cent as provided in the Act comes to Rs. 600, it means that the bonus amount would be more than the gross profit earned by the company because it is the minimum amount that has to be paid under the law. But the anomaly is that even though the company is paying the entire profit earned by it and something more, in the next year the so-called tax-saving which is purely an imaginary tax-saving would have to be added to the available surplus of the next year and 60 per cent of that would

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again, have to be distributed. This is patently unfair and should receive due consideration of the Government. Another instance of hardship would be when a higher bonus is paid to the workmen in pursuance of a voluntary agreement between the employers and the employees, which is much higher than the amount that might have been arrived at by applying the formula of the Bonus Act. In such a case there is absolutely no need for increasing the next year's bonus amount by adding to it the tax-saving on the previous year's bonus payments because in the previous year itself the bonus amount was much higher than the amount which would have been arrived at by applying the formula. In these two particular cases the application of the provisions of the Ordinance would cause undue hardship to industries. Thank you.

The question was proposed.

THE MINISTER OF LABOUR AND REHABILITATION (SHRI JAISUKHLAL HATHI): Madam, I beg to move :

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

THE DEPUTY CHAIRMAN : You can speak on this Motion later. The House stands adjourned till 2 P.M.

The House then adjourned for lunch at four minutes past one of the clock till two of the clock.

The House reassembled after lunch at two of the clock, THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) in the Chair.

PROCLAMATION ISSUED UNDER ARTICLE 356 OF THE CONSTITUTION IN RELATION TO THE STATE OF BIHAR

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI K. S. RAMASWAMY) : I beg to lay on the Table a copy of the Proclamation issued by the President under article 356 of the Constitution on February 26, 1969 revoking the Proclamation issued by him on 23rd August 1968 under the said article in relation to the State of Bihar. [Placed in Library. See LT-139/69.]

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

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

SHRI JAISUKHLAL HATHI : The reasons why the proposed amendment has become necessary are explained briefly in the Statement of Objects and Reasons appended to the Bill. As the House knows, there was no legislation on the subject of bonus prior to the enactment of the Payment of Bonus Act, 1965. The Act brought into force a statutory formula for payment of bonus to persons employed in certain establishments. I might refer here briefly to the broad scheme of the Act. The available surplus in respect of an accounting year is determined after deducting from the gross profits, certain sums referred to in section 6 of the Act. Sixty per cent. of the available surplus is then allocated for payment of bonus to the employees in accordance with the provisions of the Act. Disputes have arisen in regard to the amount deductible by way of direct taxes under Section 6(c) of the Act. It has been urged on behalf of workers that the words 'is liable to pay' under section 6(c) of the Act connote the tax actually payable by the employer. The employers have, on the other hand, contended that the tax to be deducted under section 6(c) is a notional amount which may be higher than the actual amount payable because, according to them, the calculation should ignore the tax rebate admissible to an employer under the Income-tax Act, on the amount of bonus paid to the employees. The latter view has been upheld by the Supreme Court in a case arising from a dispute between the Metal Box Company and their workmen. The Supreme Court has decided in that case that bonus paid under the Bonus Act is not to be deducted from the gross profits while computing the amount of tax deductible under section 6(c). As a result of this decision, the tax deductible would be a notional amount higher than the actual tax and the tax rebate admissible to the employer under the Income-tax Act on account of the bonus paid, will wholly go to the employer.