[Shri Bhupesh Gupta]

civilisation all that is new and all that is creative We should like to see this through this University which we believe certainly to be the symbol of Indian Muslim fraternity and brotherhood Through that institution we should like to project a part of our culture into other cultures, draw from them and build up and enrich the heritage of the great Indian culture

With these words, Madam Deputy Chairman, I wish well of the Aligarh University and I hope it will be a success, it will overcome its difficulties despite the communal elements on the one hand and the unnecessary interference or attempted interference on the other hand by the Government

SHRI A K SEN Nothing has been said which evokes a reply, Madam

THE DEPUTY CHAIRMAN The question is

'That the Bill be passed"

The motion was adopted.

THE PAYMENT OF BONUS BILL, 1965

THE MINISTER OF LABOUR AND EMPLOYMENT (SHRI D SANJIVAYA) Madam, I beg to move

"That the Bill to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith, as passed by the Lok Sabha be taken into consideration"

This question relating to bonus has been a very troublesome and difficult question for the last so many years Therefore, when the Second Five Year Plan was drawn up, it was suggested that a careful study of this question should be undertaken Meanwhile, disputes relating to bonus were settled either by mutual negotiation or by referring those disputes to Tribunals Various Tribunals have gone into these disputes and have given decisions but ultimately in one case the Labour Appellate Tribunal formulated certain principles according to which disputes relating to the payment of bonus should be decided in general This formula or principle which was evolved by the Labour Appellate Tribunal is popularly known as the L A T formula, that is, the Labour Appellate Tribunal formula This formula went before the Supreme Court also and was upheld generally The Supreme Court, while delivering judgment in the A C C case stated that if the legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis it can step in and legislate in that behalf It may also be possible to have the question comprehensively considered by a high-powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and all bodies of workmen Therefore Government considered this matter, namely, the question of setting up a high-powered commission to examine the bonus question In fact, in the Standing Labour Committee March-April, 1960, it was discussed and a decision was taken that Government should set up a Bonus Commission Even the terms of reference were discussed in a smaller tripartite committee and they were finalised So, ultimately, on the 6th December 1961, the Bonus Commission was set up and an eminent judge was appointed as Chairman of the Commission Two representatives of the workers and two representatives of the employees were nominated in addition to the nomination of one Member of Parliament and that hon Member is sitting to my left, Mr M Govinda Reddy He has done very wonderful work in the Commission After two years of their deliberation the Bonus Commission submitted their report to the

Government on the 24th January, 1964. We all anticipated and expected that the recommendations of the Bonus Commission would be unanimous but unfortunately there was a minute of dissent appended by a Member of the Commission who represented the employers in the private sector. The main points on which the minute of dissent was appended relate to the disallowance of super profits tax and rehabilitation allowance as prior charges and also with regard to the rate of interest allowed on equity capital and reserves. The Government after careful consideration took a decision on the recommendations of the Bonus Commission and the decisions were announced on the 2nd September 1964. Only a few modifications have been made. So far as the unanimous recommendations are concerned almost all of them have been accepted by Government. Wherever there was a difference of opinion the Government have modified the recommendations to a certain extent.

I would like to state on this occasion as to why the Government had to modify the recommendations In fact one of the criticisms made against the Government is that the Government have unnecessarily interfered with the recommendations of a tripartitite body and that would be a bad precedent. When the Bonus Commission was appointed, my illustrious predecessor, Shri Gulzarilal Nanda, announced that if the recommendations of the Bonus Commission were unanimous Government would accept them. If there were to be no unanimity, Government will consider the situation. Therefore the Government modified some recommendations as they felt it was necessary.

In fact the rate of interest which was recommended was 7 per cent on equity and 4 per cent on reserves. The Government modified it and made it 8·5 per cent. on equity and 6 per cent on reserves. This we have done on account of two reasons. The first reason why we have modified is that the present rate of interest is very high and secondly the rate of interest that is allowed today is taxable while the rate that was allowed previously under the L.A.T. formula was not taxable. It was nearly 6 per cent. and 4 per cent. and if this were made taxable it would have been 8·5 and 6. That is why this change has been made.

Then, the Bonus Commission said that all the recommendations of the Bonus Commission should be given retrospective effect, with effect from the accounting year ending on any day in the year 1962; that means all bonus matters relating to 1961-62 and thereafter should be covered by the formula suggested by the Bonus Commission, but the Government felt that it will not be desirable to reopen matters in respect of which decisions had been given. If they were to be reopened the industrial peace will be upset and there will be so much of agitation. Therefore, what we said was that all those pending disputes relating to the accounting year ending on any day in 1962 and thereafter should be covered by the formula suggested by the Bonus Commission.

With regard to prospective effect it has been decided according to the recommendation of the Bonus Commission that this formula should come into force in respect of the accounting year commencing on any day in 1964; that means bonus matters relating to 1964-65 and thereafter will be covered by the recommendations of the Bonus Commission.

After we announced our decisions several representations were made by workers' organisations to the Government complaining that in certain cases workers will get less quantum of bonus under the present formula than they used to get under the L.A.T. formula or the Full Bench formula. Therefore the Government came forward with an assurance to

[Shri D. Sanjivayya.]

the workers that workers will be potected to a certain extent. In fact on the 18th September, 1964 I made a statement in Parliament both in Lok Sabha and in Rajya Sabha and it reads as follows:—

> "In the legislation to be promulgated to give effect to the recommendations of the Bonus Commission as accepted by Government suitable provisions would be included so as to safeguard that labour would get in respect of bonus benefits on the existing basis or on the basis of the new formula whichever be higher."

In fact clause 34 of the Bill gives effect to this assurance given by the Government.

Thereafter we wanted to draft a Bill and a tentative Bill was prepared and placed before the Standing Labour Committee on the 9th and 10th December, 1964. There we could not arrive at an agreed solution. Divergent views were expressed by the representatives of workers and employers. Ultimately a Sub-Committee was appointed and even at that level we could not arrive at an agreed solution. So ultimately on the 27th March, 1965 the Standing Labour Committee which met again resolved that Government might go ahead with the Bill keeping in view the opinions expressed by the workers organisations and the employers organisations. So we tried our best to finalise the Bill and introduce it in Lok Sabha during the Budget session but in spite of the best efforts on our part we could not do so. Meanwhile many disputes arose and there was a great danger of the industrial peace being disturbed. Therefore, ultimately the Government took a decision that it would be desirable to have an ordinance promulgated. So on the 19th May, 1965 an ordinance was promulgated and this Bill is to replace that ordinance.

While moving the Bill in the Lok Sabha I moved certain amendments which were accepted by that House. Most of them relate to drafting changes or were of a clarificatory nature but two or three of them are really important. One relates to the amendment which I proposed to clause 33. Clause 33 is intended to give retrospective effect to the recommendations of the Bonus Commission. We said in the original clause that any dispute pending on 2nd September 1964 would have retrospective effect but later on we thought that it would be better to change that date to 29th May 1965 because that was the date on which the ordinance was promulgated.

The other amendment relates to clause 34. Clause 34, as I said, Madam Deputy Chairman, gives effect to the assurance given by the Government, namely that the past benefit will be protected to the extent possible. Clause 34(3) contemplates voluntary agreements between workers representatives and employers representatives to settle bonus issues according to a formula which is different from the one which is contemplated under this Bill but we wanted to protect the workers in order that they may not be deprived of the minimum bonus that is recommended here, the minimum bonus being 4 per cent of the annual wages or Rs. 40 whichever is higher. This is not a new phenomenon because such provision exists in various other enactments like the Minimum Wages Act, the Payment of Wages Act, the Workmen's Compensation Act, etc. Whenever a worker is entitled to a minimum benefit, nothing should be done to take away that minimum benefit. Therefore, that amendment was moved by me and it was accepted by the House there. Excepting these, no other major changes were made and the Bill was passed by the Lok Sabha. Now, having said this, I once again request the House to

consider the motion which I have moved

The question was proposed

SHRI D L SEN GUPTA (West Bengal) Madam Deputy Chairman, I would have been most glad if I could congratulate the hon Minister on bringing forward a Bill on bonus which would really go towards avoiding litigation, disputes and troubles over the same year after year That was the original conception when the Bonus Commission was appointed, but I should tell you and the House that the Bill instead of reducing the number of litigations, will multiply it That is the consensus of opinion of both the employers and labourers and hence it is an utter failure

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

So far as helping the labour is concerned, I am constrained to observe that it is absolutely false and a myth So far as the Bill is concerned, apparently it promises that 45 lakhs of people, who did not get bonus before, would get the minimum bonus but what about the others? So far as the big employers are concerned—I may be excused for mentioning it, for making a pungent comment—it is a collusive deal between the Government and the big employers

SHRI ARJUN ARORA (Uttar Pradesh): It is not pungent It is abusive

SHRI D L SEN GUPTA So far as this abusive word is concerned, it is also permissible, if it is true So far as this Government is concerned, what are they doing? Those who do not make profits or who do not make sufficient profits, for those employers you are providing a minimum bonus For the big capitalists, who can pay any amount of bonus, you are making two ceilings One is 6⅔ per cent of the allocable surplus Not satisfied with that, again, you say not exceeding 20 per cent of the annual income To whose benefit? Is it to the benefit of labour? Is it to the benefit of the working class? No, never Who will think that Birlas will go down in profit tomorrow or Tatas will go down in profit tomorrow, and as such a safeguard is necessary for them? I think after four years the 'set on' money beyond 20 per cent of the gross earning will vanish No one can keep this 'set on' money for 'set off' beyond four years as provided in this Bill After four years this money will be wiped out So, he does not get it now and he does not get the benefit of it even in future So, by this procedure you are showing to the country Look by this Bill we are paying 45 lakhs of people this minimum bonus By that coverage you are hiding the fact that you are preventing the employers of big concerns from paying proper bonus You are serving their interests through this Bill. That is one aspect of the case

So far as the litigation part is concerned, there the gross profit has got to be found out Who will find it out? You say that the balance-sheet is sacrosanct No Tribunal in the past has said that The Supreme Court has not said that in the past. You for the first time, by bringing forward this Bill, are saying that the balance-sheets are sacrosanct Yesterday you passed the Companies (Amendment) Bill Day in and day out you are observing that the companies are manipulating accounts The balance-sheets are being manipulated You appointed a Commission to go into the affairs of Dalmia-Jain You also admit, if not openly at least privately that the employers manipulate accounts in most of the cases, but in the Bill you are making the balance-sheet sacrosanct Unless the Judge is satisfied with the inaccuracy of the account, it will not be open to question How will the Judge decide it? How can the Judge be satisfied, unless *prima facie* you give him an opportunity to look into it, to question it You say it is sacrosanct And then you say, if the Judge is satisfied etc The Judge can never be satisfied You being satis-

[Shri D L Sen Gupta]

fied with the inaccuracy are closing the door for the Judge of the balance-sheet

Now, coming to another question This is a Bill, which you say, on which the Bonus Commission members were not unanimous So, you have defied the majority decision Is there any parallel to such a conduct on the part of any Government? In a Commission of seven, you had two representatives of employers, two of Government, two of labourers and one independent, that is the Judge Mr Meher was the Chairman There was only one dissenting note and that was from the employers' representative Six will be overlooked and one, minority, opinion will prevail Only one opinion, not only the minority opinion, will prevail is the position taken by the Government That now holds the field That now guides your conscience, that now regulates your conscience

I have been associated with this subject since the inception of the industrial adjudication in 1947 The hon Deputy Minister is a good friend of mine and he will not question my knowledge of the subject Since 1947 all the Judges have followed a certain pattern And what was the pattern? The pattern was that the reserve was entitled to a return of 2 per cent or 4 per cent If the reserve was employed 'as working capital' Then only the employer will be entitled to a certain dividend or certain return But what are you going to do this time? You are going to provide for a return on the reserve if it is shown in the balance-sheet Whether it is employed for earning profit or not, is immaterial You are only saying 'reserve' just 'reserve' There is no question of its utilisation There are many big firms who have got idle money in their reserve funds only because they cannot send it to England or other countries abroad Because of our foreign exchange restrictions, they cannot send the money to England or abroad What do you do in respect of the money that stands in the reserve fund? You allow them not only 2 per cent but according to the new formula you have allowed them 6 per cent, which was suggested in the minority amendment or minority dissenting note The majority was for 4 per cent You increased it to 6 per cent You do not insist on the utilisation of the reserve fund as working capital You are just satisfied and you consider that the employers can claim 6 per cent, even if it is shown in the balance-sheet, whether it is employed as working capital or not This is something fantastic It has no legal basis I get this bonus because of the profit and it should be a charge on that profit, provided the reserve fund was utilised Now, though there may not be any contribution of this reserve fund in earning profit still I have to pay a return by way of 6 per cent deductions And thus the allocable surplus will dwindle When it dwindles, then my share of the 60 per cent of the allocable profit again dwindles When it dwindles, my share of profit bonus also dwindles Now this is the position The question is again why you make this 60 per cent? I can tell you the position as it stood before this law The Supreme Court had given the stamp of recognition on this question of the distribution of the allocable surplus in the Rajendra Mills case The question arose as to what portion of the allocable surplus or the available surplus should be distributed as bonus to the workmen On the question they said that it should be of such a percentage that taking into consideration the amount refunded by way of income-tax refund for the bonus paid it will mean 50 50 This shows that if 67 per cent of the allocable surplus were given to the workers, then out of Rs 100/-the worker would have got Rs 67 as bonus So far as the management is concerned they would have got Rs 33 or Rs 34 as an income-tax refund out of the Rs 67 The income-tax refund of Rs 34 taking into consideration the

sum of Rs. 33/- out of Rs. 100/- already in hand, would have meant Rs. 67 this side and Rs. 67 that side. That was the Supreme Court's decision in the Rajendra Mills' case. But you are not providing that. Instead of that 67 per cent, you are saying 60 per cent in the case of big companies. Again, it is a concession to the big capitalists. Those who are not earning any profit, for whom you provide a minimum, that is a class apart. They do not come here into consideration at all. They do not come into the formula aspect of it. So far as the formula application is concerned, I can understand if you make 67 per cent of the allocable surplus subject to a maximum of 20 per cent of the gross earnings of the year and say that any amount in excess of this 20 per cent. will go to the national Government. I can understand it. But you do not make that provision. You say it will remain with the company and it will be forfieted to the company after fear years. What is this four? Any amount in excess of 20 per cent of the earnings will remain with the company and after four years that will lapse and lapse to the company. Why? I only expect in reply from the hon. Minister an explanation to this as to why he says that after four years this money will lapse to the company, which was my money and my share of the allocable surplus. But if it lapses, it lapses to the company. The cat is out of the bag. You are conniving with the big employers. I shall support this Bill if you say that this money will go to the national Government or to any welfare fund as in the case with the coalmine workers' illegal strike wage being deposited in the Coalmine Workers Welfare Fund. I can understand it, but you do not do that. If that is not there, then you are practically depriving the workmen of their due share of bonus only to augment the funds of the company, so that they can forfeit it hereafter, while presently deferred in the name of 'set on' and 'set off.'

So far as this bonus aspect is concerned, it has a long history. The battle of bonus was fought in the tea estates, in the coalmines, factories and offices, and the right to bonus was established after long struggle. A formula was evolved by the full Bench of the L.A.T. which got the sanction of the Supreme Court of India, notably in the case of the Associated Cement Company. In the case of the Associated Cements they have really given what an employer has got to prove to entitle him to certain deductions, what should be the amount to be added for really finding out the gross profit, and all that.

SHRI ARJUN ARORA: Does he realise that that decision of the Supreme Court in the A.C.C. case was so bad that it made it impossible for any workers to get bonus?

SHRI D. L. SEN GUPTA: That made the employers cautious and yet that gave the employees a right to bonus which is now being taken away by this Bill. I know for certain that in spite of the Associated Cements case there were many employers who were being forced to give five or six or seven months pay as bonus. But by this Bill no employer will have to give more than five months' pay as bonus. In spite of the Associated Cements case people were getting seven months' pay as bonus. In spite of that they were getting it. But what about this Bill? It restricts it to 20 per cent. of the gross earnings, and that restriction only goes to 5 months' pay. Twenty per cent. gross earnings means $2\frac{1}{2}$ months' total wage roughly and $2\frac{1}{2}$ months' total wage comes to roughly 5 months' basic pay. Now what is the question? The position therefore is, it is worse still. Why not condemn it? Why not join me in condemning it? If that was bad, this Bill is worse still. It is something arbitrary, something capricious. (*Interruption*) Before this Bill what was there for the workmen to fall back upon? There were two methods. One was the Full Bench formula of the Labour Appellate Tribunal, and there were also settlements and agreements. I know of a

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particular company, Messrs. Shaw Wallace and Company where the workmen were entitled to get this year eight months' pay as bonus under the agreement. They came here and met the hon. Minister and the Deputy Minister. The hon. Minister said that he was helpless. I have never seen any hon. Minister saying that he is helpless Those people saw the hon. Minister, saw me and many Members of Parliament and said that they were entitled to get eight months' pay as bonus by agreement while the same was going to be curtailed by the Bonus Ordinance. The employees made some *ad hoc* arrangement with the employers for eight months' pay as bonus this year. But under the law they will not get that amount in the future.

There is a provision in clause 34 where an employer and employee can make a fresh agreement. Who is the foolish employer who will give voluntarily more than what you prescribe in law? So you are advising the workers to press the employers for a favourable agreement in excess of 20 per cent; that is to say, either hit the employer on the head or perish. This is no good advice coming from any Government even if it is intended. So far as the Minister is concerned, I pity him. He gave us an assurance in this House on 18th September 1964 in reply to my question and in reply to the question of Mr. Kumaran that the existing better advantages either in the agreement or under the existing law shall remain intact. So he ought to have resigned when he could not keep his promise in the Bill; at least he ought to have refused to pilot this Bill. Instead, you are robbing that existing right under clause 34. You are withdrawing it under clause 34. Is it permissible in any democratic set-up? You gave that solemn assurance to this House, to the whole country, and now you are resiling from it. What is the sanctity attached to the assurance given by any Minister in this House? The two methods hitherto were the Full Bench formula and the agreement. They are now scrapping it just by one stroke of this Bill. They say that they are championing the interests of the workers They are proclaiming to do national good. It is no national good you are doing. You are robbing Peter to pay Paul. What are you doing? You are saddling the poor unorganised employers to pay 4 per cent. or Rs. 40 whichever is the minimum. What will they do? Just for their existence they will raise the price of commodities and the increased cost will be passed on to the consumers. The price line will go higher. So you are robbing the common masses just to pay this Rs. 40 bonus, and you are showing this as the big thing in this Bonus Bill. You say that people who did not get bonus will be getting bonus now. But you are depriving others who used to get more without any contributory benefit being achieved by our Government or the people at large. I would not have grudged if the people at large had been benefited because of their getting a restricted bonus of 20 per cent. o fthe gross earnings. I would not have grudged, but who gains out of it now? No social legislation to the benefit of the common man has ever been restricted by fixation of an upper ceiling. So you should not interfere by legislation like this, which upsets the whole thing. If you restrict it to 20 per cent. of the gross earnings, then you must explain for whom are you restricting it? Restricting it for the benefit of labour? Restricting it for the benefit of the country or restricting it for the benefit of the employers? You can say that you are restricting it so that in a year of adverse trade results the workmen can get the benefit out of it. That might be your logic But where is the chance of big concerns like Tatas and Birlas earning less profit? Therefore, this money should be given to the workers. If after four years the money goes back to the employers, certainly you have no justification for it.

Then regarding the public sector, if the public sector enters into com-

petition with the private sector, then only they are privileged to get this bonus. Those who do not enter into competition are a class apart. Why? Are they not industrial labourers? If they see that one section of their people belonging to the public sector is getting bonus, it will be a very weak consolation for them to be told that they are not getting Bonus as they are not entering into any competition with the private sector. Where there is competition with the private sector, the industrial units are at a disadvantage. Where there is no competition in the public sector, that is a monopoly case, they are doing monopoly business. You must give it to the workmen there as the concerns are placed in a better position there than those who are entering into competition with the private sector. But you are not doing it.

Coming to the question of dividend on paid-up capital what does it come to? There is some increase in bank rates, it is true. But the whole thing is a national formula. I would have been glad if you make a legislation that no employer, no company, can give more than 8 1/3 per cent. dividend. By this bonus law, you are not making that restriction so far as dividends are concerned. It is a notional calculation, it is wholly a notional calculation for the purpose of determination of allocable surplus *vis-a-vis* bonus. In spite of all this, the management will be giving the directors and the shareholders much, and will be declaring 15 per cent. or 20 per cent. dividend. That is the position? It is just a notional calculation. In the matter of notional calculation, what do you do? You take 8 1/3 per cent. which no judicial authority allowed ever before. They also knew that the bank rate was increasing. This was the argument of the employers in the court. But no court heretofore allowed more than 6 per cent. My friend, Shri Arjun Arora, is also a veteran. He was condemning the judgement in the Associated Cement case. What was the provision in that case? It was 6 per cent. In spite of that, you are giving 8 1/3 per cent. now in this Bill. Why do you do that? Is it because it was a minority decision and you feel convinced that all the six members were not sufficiently intelligent to understand what the bank rate was. Only Mr. Dandekar representing the employers was intelligent enough. It is a slur on the reputation and respectability of Mr. Meher, the Government and labour representatives.

SHRI ARJUN ARORA: I am an hon. Member of this House.

SHRI D. L. SEN GUPTA: It is an insult on their intelligence when you said that.

Having taken every fact into consideration, the Commission came to the conclusion that it should be 6 per cent. But you give 8 1/3 per cent. on paid up capital. Do not think that we here do not understand what is passing in your mind. You have to oblige the big capitals, and you have done that.

Coming next to the question . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): How long are you likely to continue, Mr. Gupta? You have already taken 25 minutes.

SHRI D. L. SEN GUPTA: I shall take about fifteen minutes.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): There are other speakers also.

SHRI D. L. SEN GUPTA: There are but I have not gone to the important points. How much time can I take?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Take another seven or eight minutes.

SHRI D. L. SEN GUPTA: All right Sir.

Then, there is a provision where you say that if there is a balance-sheet for any branch, then that will

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be taken as a separate unit. What do you mean by that? For a branch, in law, there should not be normally a balance-sheet And if there is a branch, it must be connected with the head office, otherwise, the work of the branch would be independent of the head office A branch, automatically and necessarily, shall have a relation with the head office So, if you say that there should be a branch account, then the bonus of the Head office and Branch office must be separated for the purpose of the bonus payment It makes the position absurd I have a submission to make so far as the Karamchand Thaper Company is concerned It has its head office in Calcutta. There are 34 or 35 companies with which they are connected either as managing agents or as secretaries and treasurers or as associate companies They have one unit in Punjab The whole thing is done from the Calcutta head office. I will not make unnecessary or harsh remarks But what happened when the question of bonus payment came? The Punjab office was shown to be very, very prosperous and that small office was credited with a profit of Rs. 5 lakhs approximately out of the total profit of the Company They will give to dozens of people 20 per cent. of their income only, not exceeding that, at Punjab unit and they will deprive the head office, employees when rupees five lakhs are taken out and so they say that the head office and the branch are separate and there will be a meagre 'set on' amount here in the head office This is the Bonus Bill. I have given notice of an amendment When I come to the clauses, I shall deal with it in detail. But what I am saying is that there is no sense in such clauses, sub-clauses, etc. If you want to make the law very simple and want to avoid litigation, there should be a different approach. Why not keep a clause as in other Acts that any better advantages available either under an agreement or under any formula shall not be disturbed by it? You should have a clause, call it a protective clause or a saving clause that no man will be adversely prejudiced because of this legislation, that notwithstanding the provisions of this Bonus Act, the employees will continue to get their better bonus under the existing law or under an agreement, if any. You do not do it That was the minimum thing which the Minister assured on the 18th September, 1964 here in this House The Minister says that in the Standing Committee, the employers and the unions could not agree and hence this Bill It appears that the Union was made to suffer, the workers were made to suffer because the right of veto was given to the companies The Government have changed the stand taken by the Minister because of the veto given by the employers The hon Minister's assurance of the 18th September was an unconditional one—if the employers agreed, then I shall do it, otherwise not, was never the case I shall only expect from the hon. Minister hereafter that before making any statement on the floor of this House, he will consult the employers and his department and then give a statement, otherwise not

Sir, there is an important point which I shall touch and then finish. So far as this Bill is concerned, the most important and interesting thing which you will find is that the Bonus Commission said that this Bill should come into effect from 1962 He says, "Well, we could not accept that recommendation because that might involve reopening many closed accounts" They make a law that on the day of the Ordinance any dispute pending before a Tribunal shall be governed by this Bonus Ordinance. Mr Malviya, the hon. Deputy Minister, is here. For his information, he has also got representations from them, the union of the workers in the Barbil Mines in Orissa They had a long-drawn dispute and that dispute, following a strike, was referred to the Central Government Industrial Tribunal at Dhanbad. After hearing

the parties for a number of days, the Tribunal gave its award which was published in the Central Government Gazette of 9th June. On the 29th May this Bonus Ordinance came with the language that all the disputes pending before the Government or the Tribunal shall be governed by this Ordinance. The employers say, "Well, we are not bound by the award. This has no legal effect because on the 9th of June, in the eyes of law, the Tribunal is deemed to be pending, even after the publication of the award upto 30 days. So it was pending, it will be governed by the Bonus Ordinance, it will not be governed by the award. Those poor people, they gave a strike notice and there was a reference, there was an award in their favour. The award came on the 9th June. They did not know that on the 29th May there will be a Bonus Ordinance. Prior to the Bonus Ordinance, the judgment of the Supreme Court in Associated Cement case was followed. According to my learned friend, Mr. Arjun Arora, that judgment was very bad. In spite of that they got two months' pay as bonus on the principles of the said judgment. Under this Bonus Bill they will get nothing, only 4 per cent. or Rs. 40. They fought and fought, got an award in their favour, and now they are being told that it is all in vain in legal effect because it is the Ordinance that will be there. This is another aspect.

The hon. Minister said that there was another recommendation in the Ordinance. It would govern all disputes after the 2nd September, 1964. The Government have changed it into 29.5.1965. If you do not like to reopen the disputes, if that is the stand, then there might have been some disputes at least one year older. You could cover them also. But you do not do that. You take the date 29-5-65. Everybody knew, as a warning, that the recommendations of the Bonus Commission, that was appointed, may be given effect to retrospectively. So nobody closed the account. Sir, closing the account or reopening the account are very often done to suit the convenience of the management. There is no legal bar in your reopening the bonus accounts by legislation. Now the law will take its own course. But you have not done that. It is a completely different matter. But do not say that you do not like to reopen it. Why should you not reopen it. The Bonus Commission gave its recommendations in this regard certainly for very good reasons. Expectations were raised. People thought that they would get it. Now because of your not giving bonus from 1962, what is the position? Those who would have got minimum bonus, will have got it for three years, 1962, 1963 and 1964, back three years. Now, by not implementing this part you will deprive them for two years. Is it in the interest of labour? No. So I do not see any point anywhere in this Bill which will encourage me to support it. Four per cent. minimum subject to a minimum of Rs. 40 is what you are going to give. Sir, I am in great doubt whether on the question of bonus you can really do that. Bonus is now well-defined, well settled. It is not production bonus, it is not attendance bonus.

AN HON. MEMBER: He has not defined it.

SHRI D. L. SEN GUPTA: He has not defined, I know. But the whole background is profit bonus. You are going to legislate fixing 4 per cent, or minimum Rs. 40, as bonus which has the appearance of profit bonus, though there is no profit. One will have to pay it. I am in great doubt as to the legal position that might ultimately recoil around it. As a matter of fact, your intention may be very good. But good intentions badly done may lead you to disaster. In that even that good part will go and the bad part will remain. Small employers will escape and big employers will thrive at the cost of the labour This is what you are going to do. You will not take our advice. I know that like the Industrial Disputes Act, which you had to amend

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and amend possibly more than a dozen times, you will have to amend it. But you will not do it now.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): That will do.

SHRI D. L. SEN GUPTA: I am sorry I have to point out that for the last several years the legislation on labour is taking a reactionary turn.

SHRI AKBAR ALI KHAN (Andhra Pradesh): No.

SHRI D. L. SEN GUPTA: In 1947 you had section 33 of the Industrial Disputes Act covering all cases of discharge and dismissal during the pendency of the Tribunal. Under that provision, termination of service of any description could be made with the previous permission of the Tribunal. That provision was further liberalised in favour of labour in 1950. In 1956 you have completely changed that section. Now only cases of misconduct come before the Tribunal for approval. Is it for the benefit of the labour? I do not know who advised you in this matter? Surely it must be very, very bad counsel. If the situation deteriorates in that way, I am afraid the writing on the wall will have to be noted. Here is a booklet. 'Forward to united action', by the Rashtriya Sangram Samiti. They have decided to fight this Bonus Bill, and the day was also fixed as 21st September. It has now been postponed because of this national calamity. Sir, the working class loves this country much more than the employers or anybody in the Treasury Benches. But they will not spare you. If you adopt this Bonus Bill, if it is passed in the form you are doing, they will continue the fight and they will fight and fight till it is changed.

SHRI ARJUN ARORA: Mr. Vice-Chairman, I rise to support this Bill in spite of the fact that the Bill has many defects. I hope the amendments I have given notice of will be accepted by the Minister and then the Bill will really become worthy of support of all friends of labour and of the entire working class in the country.

Sir, I do not agree with the criticism of my very learned friend, Mr. Sen Gupta. It is a progressive measure which the Labour Minister has brought. It is, as a matter of fact, a great day in the history of labour movement in the country that bonus is being given a statutory recognition. I remember that not long ago bonus was treated as an *ex-gratia* payment. As late as 1939 there were decisions of the High Courts, notably by Justice Nanavati of the Bombay High Court, in which the High Court refused to interfere in a dispute relating to labour on the ground that the High Court then considered that bonus was an *ex-gratia* payment and it was not something which the workers could demand as a right. One of the first successes of the working class in the country during the post-war period was that the concept that bonus was an *ex-gratia* payment was given the go-by and the courts, not only labour courts and industrial tribunals but High Courts and the Supreme Court, held the view that bonus was the right of the workers over which an industrial dispute could be raised. This decision of the industrial tribunals was confirmed by the Labour Appellate Tribunal in 1950 and, as Mr. Sen Gupta has pointed out, that famous decision in the Bombay Bonus dispute which the Labour Appellate Tribunal gave in 1950 won the approval of the Supreme Court. One of the effects of this approval of the bonus formula of the Labour Appellate Tribunal was that bonus became a law of the land. But today by bringing forward this Bill the Labour Minister is carrying us a step forward and I congratulate him for that.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You can continue later. The House stands adjourned till 10 A.M. tomorrow.

The House adjourned at four of the clock till ten of the clock on Friday, the 17th September 1965.

GMGIPND—RS—690 RS—3-2-66— 570.