bring them back to India, at least such of those women and children who are now there?

SARDAR SWARAN SINGH: Sir, we should leave it to the persons who are living there to take these decisions themselves after taking into consideration everything. It will not be quite correct for us to generalise even though some of the incidents that may have taken place may appear to be very ugly.

SHRI AKBAR ALI KHAN (Andhra Pradesh): May I know the strength of the Indian population there and the corresponding Indonesian population in India? Is the Government considering some reciprocal arrangements between Indonesia and India?

SARDAR SWARAN SINGH: I have not got that information with me, the number of Indians in Indonesia and the number of Indonesians in India.

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## PAPERS LAID ON THE TABLE

(i) ANNUAL REPORT (1963-64) ON THE ACTIVITIES OF THE COAL MINES LABOUR WELFARE ORGANISATION.

(ii) NOTIFICATION UNDER THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1960.

(iii) GOVERNMENT RESOLUTION RE THE COFFEE PLANTATION INDUSTRY.

THE MINISTER OF LABOUR AND EMPLOYMENT (SHRI D. SANJIVAYYA): Sir, I beg to lay on the Table:

(a) A copy of the Annual Report on the activities of the Coal Mines Labour Welfare Organisation for the year 1963-64 [Placed in Library. See No. LT-4921/65].

(b) A copy of Notification S.R.O. No. 181/64, dated the 8th May, 1964, under subsection (5) of section 34 of the Kerala Shops and Commercial Establishments, Act, 1960, issued by the Government of Kerala. [Placed in Library. See No. LT-4920/65].

(c) A copy of the Ministry of Labour and Employment Resolution No. WB. 3 (14)/65, dated the 19th September, 1965, regarding the acceptance by Government of the recommendations made by the Central Wage Board for Coffee Plantation Industry. [Placed in Library. See No. LT-4919/65].

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## MESSAGE FROM THE LOK SABHA

### THE EMPLOYEES PROVIDENT FUND (AMENDMENT) BILL, 1965

SECRETARY: Sir, I have to report to the House the following Message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"In accordance with the provisions of Rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 20th September, 1965, agreed without any amendment to the Employees Provident Funds (Amendment) Bill, 1965, which was passed by Rajya Sabha at its sitting held on the 18th February, 1965."

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## THE PAYMENT OF BONUS BILL, 1965—*continued.*

THE MINISTER OF LABOUR AND EMPLOYMENT (SHRI D. SANJIVAYYA): Sir, I am grateful to the hon. Members who have participated in the discussions relating to the first reading of the Bonus Bill. As many as sixteen of them have spoken. Quite a large number of points have been raised during this discussion. It will be my endeavour to answer as many of them as possible.

[Shri D. Sanjivayya.]

The first point raised relates to the provision of minimum and maximum bonus. Many hon. Members have doubts, maybe genuine, that this minimum bonus may not be upheld by courts. I am quite hopeful, Sir, that keeping in view the social and economic justice demanded by the working classes in India, the courts would uphold this particular provision. Mr. Govinda Reddy, an hon. Member of this House, who had the opportunity of serving on the Bonus Commission, made it very clear as to why the Commission thought of making a recommendation for the provision of minimum bonus irrespective of the losses incurred by certain establishments or factories. I do not want to repeat the arguments. I would only content myself by saying that I am fully in agreement with the arguments of the hon. Member and I would also make it clear that the Government took this particular decision keeping in view the same arguments.

Coming to the other question, namely, the provision of maximum bonus, here again I would like to emphasise the arguments put forward by the hon. Shri Govinda Reddy. Government accepted this recommendation keeping in view the reasoning given by the Bonus Commission. When we think of a minimum bonus, I think it is desirable to have a maximum bonus also. In fact, the Bonus Commission recommended a formula known as the "set off" and "set on" formula which would be workable only when both the minimum and maximum are fixed. A new establishment or factory enjoys a bonus holiday for the first six years unless the establishment or factory earns profits earlier and thereafter for four years this principle of set off and set on will function. If in a particular year an establishment does not earn profits which would be adequate to meet the minimum requirements for payment of bonus or a particular establishment does not earn profits at all then in that year the minimum bonus of 4 per cent. or Rs. 40 whichever is higher which has to be paid will be set off and when an establishment earns profits much more than necessary to pay the maximum bonus of 20 per cent., the surplus after paying the maximum bonus will be set on. This process goes on for four years. Therefore a new establishment which enjoys a bonus holiday for six years will have an opportunity for another four years to adjust the profits and losses in relation to the payment of bonus. A case may arise of an establishment or a factory which may not be in a position to earn any profits during the first ten years. Then such an establishment as was described by my hon. friend, Shri Abid Ali, must be an inefficient one or the people who manage it must be dishonest. I will go a step further and say that if a new establishment or a factory does not earn profits in a long period of ten years there is no justification for such a unit to exist and probably the remedy is elsewhere. Probably the Government will have to think of measures as to what the Government should do in respect of such establishments.

Then, Sir, another point which has been raised relates to the question of past benefits and the assurance that I gave to the working class of this country on the floor of this House. May I take a little more of the time of this House and quote what I said on the 18th September, 1964 in relation to this aspect?

> "At the same time, it was not Government's intention that benefits which labour may have been enjoying in the matter of bonus in any establishment or industry should in any way be curtailed by the adoption of a new formula for the payment of bonus. In the circumstances, Government desire to clarify that in the legislation to be promoted 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 the benefits on the existing basis or on the basis of the new formula, whichever be higher."

Now this assurance given by me has been incorporated in clause 34. In clause 34(2) it is stated:

"If in respect of any accounting year the total bonus payable o all the employees in any establishment under this Act is less than the total bonus paid or payable to all the employees in that establishment in respect of the base year under any award, agreement, settlement or contract of service, then, the employees in the establishment shall be paid bonus in respect of that accounting year as if the allocable surplus for that accounting year were an amount which bears the same ratio to the gross profits of the said accounting year as the total bonus paid or payable in respect of the base year bears to the gross profits of the base year."

This means that if in the past year the profits were Rs. 10 lakhs and if the bonus paid was Rs. 2 lakhs the ratio is two by ten which means one-fifth or 20 per cent. So in the accounting year where bonus has to be paid the ratio between the gross profit and the allocable surplus should be the same as the previous year's ratio, namely, the ratio between the gross profit and the bonus paid. So if in the accounting year again the establishment earns Rs. 10 lakhs they must pay Rs 2 lakhs; if the establishment earns Rs 5 lakhs they must pay one lakh. That means the ratio should be kept up and that is the assurance that I gave. And that is the intention of clause 34(2). I would also like to go a step further and say that not only when the quantum paid in the accounting year is less than the quantum paid in the past year do we come into the picture but also when it is more. For instance, if in the past year the profit is Rs. 6 lakhs and the bonus paid is only Rs. 2 lakhs—that is the proportion is 33-1|3—and if in the subsequent year the profit earned is Rs. 12 lakhs and suppose according to this formula the establishment has to pay Rs. 3 lakhs, even though this sum of Rs. 3 lakhs is more than the Rs 2 lakhs paid in the past year, all the same we do not agree with this because the ratio principle is not satisfied. Six to two means 33-1|3 per cent and three to twelve is only one-fourth or 25 per cent. Therefore, in spite of the fact that the quantum of the bonus paid in the current year is more than the quantum of the bonus paid in the past year, we expect that the percentage should be adhered to and so the establishment has to pay for the current accounting year Rs 4 lakhs and not Rs. 3 lakhs.

Another question which was raised relates to the provision for rehabilitation. In fact my hon. friend, Mr. Govinda Reddy, took some time to explain to the House why the Bonus Commission did not make any provision for deduction as prior charge so far as rehabilitation is concerned.

[THE DEPUTY CHAIRMAN in the Chair.]

This is a very difficult calculation and in fact my hon. friend, Mr. Govinda Reddy, narrated to us a case in which it took two years for a special Committee appointed by a tribunal to calculate what should be the minimum that should be deducted for rehabilitation. Therefore this has been disallowed rightly by the Commission and the Government have accepted the recommendation.

There was another point about the rate of return on equity capital and the rate of return on reserves. My friend sitting to my left, Shri Babubhai Chinai, who represents the employers has been pleading that the rate allowed by the Government, namely, 8·5 on equity and 6 on reserves is not adequate and it should be 10·5 and 8. On the other hand my friends sitting to my right have been pleading that the Government have done a great injustice to the working class by revising or modifying the rates recom-

[Shri D Sanjivayya ]

mended by the majority of the members of the Commission. The recommendation by the majority was modified and the rate allowed by Government is 8 5 and 6

SHRI AKBAR ALI KHAN (Andhra Pradesh). You have adopted the golden mean.

SHRI D. SANJIVAYYA: So when my friend, Shri Babubhai Chinai, is not happy with this and wants a little more and my friend, Mr. Kumaran, is not satisfied with this and wants it to be reduced, as my other friend sitting behind me tells me, probably the Government have taken a just and correct attitude.

SHRI ARJUN ARORA (Uttar Pradesh): The Government have protected the minority

SHRI D SANJIVAYYA: Whether the minority says or the majority says, Madam, it should be the duty of the Government to examine the whole question in a dispassionate manner, in an impartial manner, and come to a correct decision and I hope that in this case the Government have done so The next point I would like to deal with relates to the recommendation of the Bonus Commission which gives retrospective effect to the recommendations of the Commission The Commission said that the recommendations of the Commission should have retrospective effect and should apply to all bonus matters relating to the accounting year ending on any day in 1962 and thereafter That means bonus matters relating to 1961-62, 1962-63 and 1963-64 will have the advantage of retrospective effect So far as bonus matters relating to 1964-65 are concerned, they are covered by the Bill itself, because we say that the provisions of this Bill will be applicable to all bonus matters relating to the accounting year commencing on any day in 1964 Therefore, 1964-65 is covered prospectively Now, when we considered the question of retrospective effect, we thought that it may not be desirable to reopen all cases which have been settled, which means there will be disturbance of industrial peace Therefore, the Government came to the decision that the retrospective effect recommended by the Commission would have effect in respect of those disputes which are pending When we say pending, the next question that would arise is . . .

SHRI BABUBHAI M CHINAI (Maharashtra): Before whom?

SHRI D SANJIVAYYA: pending before whom and pending on what date Firstly, we thought that the date should be 2nd of September, 1964 There is nothing sacrosanct about this date, except that on this date the Government announced its Resolution on the Bonus Commission, but the Ordinance, as such, was promulgated on the 29th May, 1965 Difficulty arose like this. Suppose a dispute is pending on the 2nd of September, 1964 and, thereafter, it is settled Suppose it is before a Tribunal and the Tribunal gives an award or suppose by mutual negotiation or discussion the parties come to a setilement. So, the matter is closed The Ordinance which came into existence on 29th May, 1965 says that all these matters should be settled in the light of the Ordinance That means, those disputes which were pending on the 2nd September, 1964 but which were settled one way or the other before the 29th May, 1965 must be reopened, whether they are awards by Tribunals or whether they are mutual settlements, etc. This also we did not want because we did not want any disturbance of industrial peace Therefore, we said, instead of 2nd September, 1964, 29th May, 1965 would be the proper date on which the disputes must be pending, so that retrospective effect could be applied.

Now, the other question about which my hon friend, Shri Babubhai Chinai, is very particular relates to

this, namely, before whom the dispute should be pending. Now, we have stated very clearly.—

> "Where, immediately before the 29th May, 1965, any industrial dispute regarding payment of bonus relating to any accounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate Government or before any Tribunal or other authority under the Industrial Disputes Act, 1947 . . ."

Therefore, there are three authorities One is the Government or the appropriate Government, may be the Central Government or the State Government, whichever is the appropriate Government. Second is the Industrial Tribunal and the third any other authority under the Industrial Disputes Act Probably my friend, Shri Babubhai Chinai, wants to add the word 'constituted' under the Industrial Disputes Act When we use that word or insert that word, the meaning would be that this would relate to only industrial courts and nothing more, but as it is disputes pending before a Conciliation Officer also will be covered Probably this is not going to be a permanent feature This relates to the period between 2nd September, 1964 and 29th May, 1965, a period of four or five months These disputes will be over in another six months or so Therefore, my friend, Shri Babubhai Chinai, need not be very much perturbed over this and need not crave for the insertion of the word 'constituted'.

Now, I go to the next question, namely, the Government have not defined the word 'bonus'. True, we have not defined it, neither the Commission has defined it But it is so obvious that anyone who has a cursory glance at the various clauses will be in a position to understand what bonus means.

Now, clause 4 deals with computation of gross profits. Then, clause 5 deals with computation of available surplus. Now, gross profit is calculated and available surplus is calculated. Gross profit minus prior charges will be the available surplus Sixty per cent of the available surplus will be the allocable surplus and that will be distributed as bonus, of course, with one restriction, namely, up to 20 per cent of the total annual wage bill will be paid and it there is anything left that will be treated as a set on and set off according to the formula.

Now, much has been said about clause 32, which is intended to name the categories of employees to whom the provisions of this Bill will not apply. Most of them are in conformity with the recommendations of the Bonus Commission. Some, of course, we have added in the interests of the national economy and in the interests of public good.

One other question which has been raised by my hon. friend, Shri Patra, relates to contract labour. In fact, contract labour employed on building operations has been specifically excluded under clause 32 (vi), i.e., employees employed through contractors on building operations. That means other contract labour are eligible for bonus under this Bill.

Some criticism has been there with regard to the modifications made by the Government When I introduced this Bill, I made it very clear as to why the Government made the modifications and I do not want to repeat it once again.

My friend, Shri Abid Ali, while supporting the Bill, made very useful suggestions In spite of the best efforts on the part of the drafting section of the Legal Department and the Labour Department and in spite of all the best efforts of all concerned, there may be some loopholes and we may not know them now. After a length

[Shri D Sanjivayya]

of time we might discover some loopholes in the enactment, in which case he suggested that Government should not hesitate to come forward with an amending legislation Even if it is an amendment of a single clause, I fully agree with him, Government will not hesitate to do so If there is any mistake, Government woud certainly confess the mistake and would try to rectify it In fact, there may be certain difficulties that might arise in the implementation of this measure and we have provided a clause to remove those difficulties Clause 37 says —

> 'If any difficulty or doubt arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provision, not inconsistent with the purposes of this Act as appears to it to be necessary or expedient for the removal of the difficulty or doubt, and the order of the Central Government, in such cases, shall be final"

We will also utilise the powers under clause 37 to remove any difficulties that we might face.

One other hon Member felt very sorry that this is not made applicable to the State of Jammu and Kashmir I know it is not, but certain formalities have to be gone through The Companies Act will have to be extended to the State of Jammu and Kashmir Slowly we are extending several Central Acts to the State of Jammu and Kashmir Once the provisions of the Companies Act are made applicable to the State of Jammu and Kashmir, we will certainly make the provisions of the Bonus Bill also applicable to the State of Jammu and Kashmir

My hon friend, Shri Poonacha, who is very much interested in plantations, mostly coffee and tea, raised one or two points which I would like to answer before I resume my seat He said that with regard to depreciation the organised industries, the factories, etc are benefited because in the Income-tax Act there are some provisions, but the plantations are not given the same advantage I would like to draw his attention to clause 6(a)

> 'any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be,"

So, if the agricultural incomt-tax law makes any provision or has made any provision with regard to depreciation, that will be available to the plantation industry I do not know whether the State Governments or Legislatures have made any provision with regard to that

SHRI C M. POONACHA (Mysore). The point is that even the State Agricultural Income-tax Acts do not provide for any type of statutory depreciation on the assets like land, the field assets, the bushes, the crop bearing trees, etc, while in a processing factory or a manufacturing unit every item of it, the building, the machinery items, every installation, all are entitled for the depreciation benefit So, this is the difficulty which I have been trying to point out to the hon Minister, that such a depreciation benefit is not available to the plantation industry even under the Agricultural Income-tax Act

SHRI D SANJIVAYYA Probably the State Governments will have to be approached for amendment of the Agricultural Income-tax Acts Anyway, we will certainly examine further the point raised by the hon Member

Then I have got one other point which I would like to answer before I conclude This relates to a doubt expressed by an hon Member this side that according to clause 22—

> "Where any dispute arises between an employer and his employees with respect to the bonus payable

under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947", etc

His doubt was that in the Industrial Disputes Act the worker was defined as one who gets Rs 500 and below and here an employee is described as one who gets even Rs 1,600, and so how the provisions of the Industrial Disputes Act would apply to those employees who are eligible for bonus and who are drawing between Rs 500 and Rs 1,600 Let me draw his attention to clause 39 Clause 39 says

"Save as otherwise expressly provided"—

Now it is expressly provided here with regard to employees—

"Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947," etc

Therefore, that difficulty does not arise and there is no scope for any apprehension of that sort whatsoever

Madam Deputy Chairman, I hope I have covered most of the points which have been raised, and now I conclude my reply by saying that the discussion on the first reading was really very interesting and I hope the hon Members are satisfied with my reply and may not press their amendments

SHRI T V ANANDAN (Madras): I would like to ask this The hon Minister is silent on the point as to why the public sector has been excluded from the operation of the Bonus Bill

SHRI D SANJIVAYYA I will answer that Yesterday I think the hon Member was not here when the hon Member, Shri Govinda Reddy, made his speech In the terms of reference it was said that the term "industrial employment" would include employment in the private sector and in establishments in the public sector not departmentally run and which compete with establishments in the private sector Therefore, in view of this particular term of reference to the Commission, the Commission recommended that the recommendations of the Commission would not apply to public sector undertakings which were departmentally run They will of course apply to others which are not departmentally run if they compete with the private sector to the extent of 20 per cent in the matter of sale of goods or rendering of services in respect of their own production

SHRI D L SEN GUPTA (West Bengal) One clarification On the question of set on and set off provided in clause 15, Fourth Schedule, I made a categorical point for being replied to by the hon Minister when I opened the debate, and I wanted him to say why it is that after the fourth year the amount deposited by way of set off will lapse to the employers Sixty per cent of the allocable surplus is distributable as bonus subject to a maximum of 20 per cent of the gross earnings If it is more than 20 per cent. that excess amount will be set on for being set off in certain years of crisis. I put it to the hon Minister while participating in the debate that it was workers' money If it was not required to be set off in the course of the four years, it should be given back to the workers Why should it lapse to the company? On this I wanted the Minister to give a reply

SHRI D SANJIVAYYA The simple answer is it is a question of set off and set on If there is a loss, it will be a set off Suppose in an establishment during the four year period it is only continuous loss, what will happen to the establishment after the end of the four years? Can the establishment claim from the workers all the minimum bonus of 4 per cent or Rs 40 which they have been paying

[Shri D. Sanjivayya.]

all the four years? When the hon. Member wants to know what would happen to the surplus at the end of the four years, I will put this counter-question.

SHRI LOKANATH MISRA (Orissa): Madam, just a clarification. I cannot follow when the Minister said that the terms of reference to the Bonus Commission were limited or restricted. It is not I who restricted it, it is not you who restricted it, maybe it was his predecessor or he himself restricted it. Why did he restrict it in favour of private sector undertakings while the public sector undertakings were also examined by the Bonus Commission? He said that because the Bonus Commission acted under certain restrictions, because of the terms of reference, they could not include the public sector undertakings. Why was it not included when the terms of reference were given to the Bonus Commission, and who is responsible for it?

SHRI D. SANJIVAYYA: The reason is very obvious. The profits in a private sector establishment will go to the pockets of those who run that whereas here the profits will go to the public in general.

THE DEPUTY CHAIRMAN: The question is:

"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."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

*Clause 2—Definitions*

SHRI D. L. SEN GUPTA: Madam, I move:

6. "That at page 2, line 39, for the words 'sixty per cent.' the words 'sixty-seven per cent.' be sugstituted."

SHRI P. K. KUMARAN (Andhra Pradesh): Madam, I move:

7. "That at page 3, lines 39 and 40 be deleted."

8. "That at page 3, lines 41 to 44 be deleted."

9. "That at page 4,—

(i) in line 1, the words and brackets '(other than an apprentice)' be delted; and

(ii) at the end of line 6, after the word 'implied' the words 'and includes a person employed by or through a contractor' be inserted."

10. "That at page 4, line 13, after the words 'so named' the words 'and includes the principal employer in case of all employees employed by or through a contractor' be insertd."

11. "That at page 4, at the end of line 18, after the words 'managing agent' the words 'and includes the principal employer in case of all employees employed by or through a contractor' be inserted."

*(The amendments also stood in the names of Sarvashri M. N. Govindan Nair, Bhupesh Gupta and D. L. Sen Gupta.)*

SHRI BHUPESH GUPTA (West Bengal): Madam, I move:

12. "That at page 5, line 8, after the words 'dearness allowance' the words 'supervisory allowance, Head Clerk's allowance, etc.' be inserted."

*(The amendment also stood in the name of Sarvashri P. K. Kumaran and D. L. Sen Gupta).*

SHRI D. L. SEN GUPTA: Madam, I move:

13. "That at page 5, line 10, after the words 'cost of living' the words 'and other personal or special allowances' be inserted."

SHRI BHUPESH GUPTA: Madam, I move:

14. "That at page 5, lines 18 and 19 be deleted."

15. "That at page 5, line 26 be deleted."

*(The above amendments also stood in the names of Sarvashri P. K. Kumaran, Mulka Govinda Reddy and K. Damodaran.)*

SHRI D. THENGARI (Uttar Pradesh): Madam, I move:

92. "That at page 3, lines 38 to 40 be deleted."

93. "That at page 3, lines 41 to 44 be deleted."

94. 'That at page 4, line 1, the brackets and words '(other than an apprentice)' be deleted."

95. "That at page 4, at the end of line 6, after the words 'implied' the words 'and includes all persons employed by or through a contractor' be inserted."

96. "That at page 4, line 13, after the words 'so named' the words 'and in the case of contract labour, the principal employer' be inserted."

97. "That at page 4, line 18, after the word 'agent' the words 'and in the case of contract labour, the principal employer' be inserted."

98. "That at page 5, lines 11 and 12 be deleted."

*(The above amendments also stood in the name of Shri V. M. Chordia).*

*The questions were proposed.*

THE DEPUTY CHAIRMAN: Mr. Sen Gupta, you will speak on amendments No. 6 and 13 in your name.

SHRI D. L. SEN GUPTA: I have so many amendments. Nos. 6 and 13 are not connected with each other.

THE DEPUTY CHAIRMAN: You speak one after the other on both your amendments.

SHRI D. L. SEN GUPTA: Madam, my amendment No. 6 relates to the point I just now mentioned, namely the aspect which gives more money, the workers' share of the bonus, to the employers four years after. I have sought to amend the provision of 60 per cent. by 67 per cent. of the allocable surplus for being distributed as bonus to the workmen. That will leave more amount for being distributed afterwards. Madam, it has got to be read with the other part of it where I have wanted 20 per cent. of the worker's earning salary to be raised up to 33⅓ per cent. It has got to be explained afterwards as to how this 67 per cent. and 33⅓ per cent. go together. For a moment, when I say that 60 per cent. should be increased to 67 per cent., I really want it to be well settled by a judicial pronouncement by the highest court, the Supreme Court of India, to be brought on the Statute Book. Sixty per cent. is an arbitrary figure. They have two figures in their view. In the case of foreign companies they want 67 per cent. of the allocable surplus to be distributed as bonus, but in the case of Indian companies they make 60 per cent. If you look at clause 2(4), "allocable surplus" means:

"(a) In relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the

[Shri D. L. Sen Gupta.]

provisions of section 194 of that Act, sixty-seven per cent. of the available surplus in an accounting year;

(b) in any other case, sixty per cent. of such available surplus,".

Why in other cases should it be 60 per cent. and not 67 per cent.?

My friend, Mr. Arjun Arora was very much in favour of the Bill in preference to the Supreme Court decision. The Supreme Court has given a judicial basis in the Rajendra Mills' Case. When this question of apportionment of the available surplus as bonus came up for consideration, the Supreme Court said that the allocable surplus—at that time it was known as available surplus; "allocable surplus" is only a new phrase—will be distributed in the ratio of 50:50. It was said that taking into consideration the income-tax refund, both sides will get 50:50. And if my amendment is accepted, it will put this thing in order, say, Rs. 1 lakh as the allocable surplus. Rs. Sixty seven thousand given to the workers as bonus leaves Rs. 33,000 with the management to start with. Of this Rs. 67,000 given as bonus, the employers will get more than Rs. 33,000 as income-tax refund. Taking the income-tax refund as the amount that will be in their hands, it will become 50:50. But if the position in the Bill remains, more money will remain, with the companies in spite of 8·5 per cent. being given away as dividend, 6 per cent. as return on reserve plus all sorts of direct taxes and depreciation. In spite of giving everything, why should there be more than 50 per cent. ratio in the hands of the company for being distributed?

Now I submit my argument in support of a judicial pronouncement by the Supreme Court of India. Whereas that 60 per cent. is arbitrary, they take 67 per cent. in the case of foreign companies and only 60 per cent. in the case of Indian companies. I cannot understand why in the matter of allocable surplus foreign companies and Indian companies should be demarcated. Employees working with foreign companies are as much exploited as those working in the Indian companies. Or is it that the Indian companies exploit them less and pay them more money? Rather, I know, the foreign companies pay much more money.

SHRI N. PATRA (Orissa): Are these employees foreigners or Indians?

SHRI D. L. SEN GUPTA: Indians, you should know that. No foreigners work there. If at all, only a few foreigners work there. The question is: Why 67 per cent. there and why not the same percentage here? You must understand my argument. I want that 67 per cent. to be brought in the Indian companies also. Otherwise you give a premium to the Indian employers who also exploit in the same manner as the foreign companies do. I am not saying a word in favour of the foreign companies. But I am, only strengthening my argument, namely, the same argument should hold good in the matter of apportionment of the allocable surplus in respect of the Indian companies; it should be 67 per cent.

THE DEPUTY CHAIRMAN: You have spoken on amendment No. 6. I would like each Member to be as brief as possible because we have 125 amendments.

SHRI ARJUN ARORA: Madam, the time allocated for this Bill is very meagre.

THE DEPUTY CHAIRMAN: That is all right. But there are 125 amendments. I am only appealing to Members. They can be cogent, relevant and brief.

SHRI D. L. SEN GUPTA: Madam, so far as amendment No. 13 is concerned, that relates to insertion of certain words:

"and other personal or special allowances".

Clause 2 at page 5 defines "salary or wage" as:

"All remuneration (other than remuneration in respect of over-time work capable of being expressed in

terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living).

After that I want to add:

"and other personal or special allowances".

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There are certain things which have been excluded. If the exclusions are taken note of, then the proposed amendment will be appreciated. What are excluded are:

"(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex-gratia* payment made to him;

(vii) any commission payable to the employee."

I am not including any of these which have been specifically excluded but what I want to add is either personal or special allowances. What has been excluded, let it remain. I have no quarrel with that. They want to bring within the words 'salary or wage' pay and dearness allowance, but what about his personal or special allowance? If he is officiating, if he is getting certain special allowances what about them? What are excluded are of a general character—provident fund contributions, T.A. etc. but if the man is entitled to some personal allowance for a certain job done by him in consideration of his personal merit I think that should also be taken as part of his wage and that is what I have suggested.

SHRI P. K. KUMARAN: My amendment No. 7 relates to sub-clause (12) on page 3—items (iii) and (iv)—that is, the Companies (Profits) Surtax Act, 1964 and the agricultural income-tax law. The Bonus Commission in their recommendations have made it very clear that only to Direct Taxes, that is the Income-tax and Super Profits Tax should be excluded. These two have been added by the Government. After the publication of the Bonus Commission report, the Government made some modifications as and when the employers in the different industries brought pressure on the Government and they went on adding to the list. So also you find many categories of employees are excluded. If these taxes are included, the quantum available for distribution of the bonus will be considerably reduced.

In clause (b)—that is regarding my amendment—the Government has taken power to declare any other tax apart from this as direct tax. That means there is no limit and when they go on adding the taxes, it would reduce the amount available for distribution as bonus. In fact what will happen is the amount available for the workers will be reduced and the measure will become almost useless. In many cases that I have examined, I found that the formula existing

[Shri P. K. Kumaran.]

before the Bonus Ordinance was more favourable to the workers. Of course yesterday I went through a memorandum of the Salem Erode Electric Supply Corporation and I found that when they got Rs. 6 lakhs as profit, the workers got four months' bonus and under the present law, for last year when the Company made Rs. 10 lakhs profit, they would get only four per cent. That is how the present formula works. So I want both these taxes—the Companies (Profits) Surtax and the agricultural income-tax—and also the power for the Government should go.

Regarding amendment No. 9, sub-clause (13) defines 'employee' as any person other than an apprentice. That means an apprentice will not be eligible for bonus. Under the Industrial Disputes Act, now an apprentice is treated as a worker. If this 'other than apprentice' is included, the difficulties are, apart from the fact that they will not be entitled to bonus, the establishment of a factory will take a long time to give them the status of a worker and for years together, for seven, eight or nine years, they will never confirm them but actually work will be extracted from them and they will be denied the benefit of bonus. This exclusion of apprentices will have two effects. They are denied the benefits to which an ordinary worker is entitled and another is, they will never get confirmed or get the status of workers. So I want 'other than apprentice' should be removed.

At the end of the clause I want 'includes a person employed by or through a contractor'. In several factories, apart from the category which the Bonus Commission referred to as building workers, there are others. There are mines and in the quarries labour is extracted through the contract labour and if contract labour is excluded, nearly fifty per cent. of the workers in India will be excluded. Not only now but always a considerable amount of construction is going on in this country. New Railway lines are constructed, new roads and buildings are constructed. All these constructional activities—the building up of a new India—are executed through contract labour. So if contract labour is not permitted to get this bonus, that means it will be doing a disservice to fifty per cent. of the labour employed in this country. It is possible, even while entering the contract to put a condition that the amount which would go as bonus to contract labour can be reduced from the amount which the main employer gives to the contractor.

Regarding amendment No. 11, it is the same thing. In the definition of 'employer' I want to add 'and includes the principal employer in case of all employees employed by or through a contractor'. Here I want the responsibility to be fixed not on the contractor but on the principal employer, the person who gives the work to the contractor.

Amendment No. 12 is also the same.

SHRI LOKANATH MISRA: The workers will get two bonuses because the Government is the principal employer.

SHRI P. K. KUMARAN: The contractor should pay . . . (*Interruptions.*) As long as you do not pay a living wage or even a minimum wage, a certain amount of consolation should be there . . .

SHRI LOKANATH MISRA: You have to be realistic. Once you refer to the principal employer . . .

SHRI P. K. KUMARAN: I am very realistic. In the coal-mines also, contract labour is there. Otherwise fifty per cent. of the labour will be denied.

Regarding amendment No. 12, in sub-clause (21) it says:

> "'salary or wage' means all remuneration (other than remuneration in respect of over-time work)

capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance . . ."

After the word 'dearness allowance' I want 'supervisory allowance' Head Clerk's allowance, etc.' to be included. My intention is, under the K.T. Desai Award, for bankmen, supervisory allowance, Head Clerk's allowance and other incidental allowances admissible for the bank employees were treated as part of the wage. Here this is not included. This may work against bank employees who are now entitled to them. So in order to bring in the bank employees also under the purview of this definition, all such allowances which have been treafed as part of the allowances by previous tribunals have to be included.

Then I come to amendment No. 14 which seeks to delete the clause in the Bill "any bonus (including incentive productions and attendance bonus)". Here the hon. Labour Minister wants to exclude incentive bonus, etc. from "salary or wage". Here I would like to explain what an incentive bonus is and I will take an example. Suppose there is a driller working in an 8-hour shift. Now he is supposed to drill 180 holes on some metal plates. Then a study is conducted and they decide that if he drills 200 holes—that is the maximum which an ordinary man can go up to—it will be the normal limit, and if he does any hole above 200 holes, then only he is eligible for the incentive bonus. So a worker who normally drills 180 holes, only if he drills holes exceeding 200, say, 201 or 203 or 210, then only he is eligible to the incentive bonus; this is the sort of incentive bonus which is earned by sweated labour and this also, which he earns by hard labour, is not to be included in his 'wage'. So also production and attendance bonus cannot be included in his 'wages' for purposes of calculating the yearly bonus due to him. Now all these things earned by the employee or worker by hard labour are excluded from 'wages' or 'salary'. So my contention is that any money which he is earning by means of sweated labour, regular labour and hard labour should not be so excluded.

Now I come to amendment No. 15. According to the Bill clause "any commission payable to the employee" is not to be included in "salary or wage". Take Usha sewing machines. Their machines are sold by people, and even in their show-rooms their employees are employed on a very meagre pay, and the major part of their income is derived from the commission which they get on sales. So also in certain hotels—even in some of the hotels in Delhi—the waiters are paid a monthly remuneration of only Rs. 25 and the remaining part of their wage is made up by service charge or by tips or whatever it is. Now that also is in the nature of a commission and should be included in "salary or wage". Then there are the travelling salesmen; a number of travelling salesmen are travelling up and down the country selling the goods produced in the different factories and other places. Their salary also is small, Rs. 200 or Rs. 250, but they get a commission on the quantity of goods they sell, and if this commission is excluded from "salary or wage", it will be doing an injustice to them, because the eligible bonus will be based on their minimum emoluments, on their salary or wage. So that is why I seek the deletion of this clause and the inclusion of commission.

THE DEPUTY CHAIRMAN: I think all your amendments you have spoken on.

SHRI P. K. KUMARAN: Yes.

SHRI BHUPESH GUPTA: Madam Deputy Chairman . . .

THE DEPUTY CHAIRMAN: You want to speak on which amendment?

SHRI BHUPESH GUPTA: On all these amendments.

THE DEPUTY CHAIRMAN: Let Mr. Thengari first speak on his amendments and you can speak afterwards.

SHRI D. THENGARI: With respect to my amendment No. 92 I only request the Government to follow exactly what the Bonus Commission has prescribed. I now refer to my amendment No. 93. It is obvious that if other taxes are also included in "direct tax" then, naturally, the slice of the workers would be curtailed, and there is no justification whatsoever for adding, just by notification in the Official Gazette, any other tax to the direct tax and thus cut down the slice of the workers.

Then comes my amendment No. 94. Here, as I pointed out yesterday, this provision is in contravention of the provision in the Industrial Disputes Act because, under that Act, apprentices are included in the definition of "workman", and there is also the apprehension that, if this is allowed, naturally, the apprentices would be continued as apprentices and would not be regularised for years to come.

Then I come to my amendment No. 95. Here the fate of contract labour has been totally ignored by the hon. Labour Minister, and unless they are given specifically, in clear terms, this protection, and included in the definition of "employee", naturally, they would be left defenceless.

Then comes my amendment No. 96. Here again the same consideration holds good. Contract labour is already defenceless and therefore it is necessary to provide specially that the principal employer should be responsible for payment of bonus to them.

I take up now amendment No. 97. Here also the same principle applies; contract labour should not be ignored in this fashion.

Now comes amendment No. 98. Here it refers to the deletion of the Bill provision "any other allowance which the employee is for the time-being entitled to". There are allowances which should be included in the wage. Also I had said yesterday about the inclusion of travel concessions and other allowances, that they also should be included in the wage.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, this series of amendments given by us collectively seek to modify the preposterous scheme of things presented in this Bill by the hon. Minister in order to please the employing class and, naturally, his aim has been how to deprive the worker as far as possible. He could not escape this Bill altogether. Therefore, having accepted that the Bill has to be there, and the recommendations of the Bonus Commission have to be given effect to, he took the line of modifications, all modifications including the modification of the definitions—here you find them—are in favour of the employers; not one really is in favour of the working class. This therefore is the main basis on which we proceed with our amendments. We want to alter the scheme of things, as far as possible, within the scope of this measure, namely, to make more funds available for distribution to labour, and not to allow the employers to take advantage of it in order to deprive the workers of even what has been promised in the Bonus Commission report. Now the point has been made out—the first thing—that where the Bonus Commission said about the taxes, there was a definition of it. Why other taxes are being included, we do not understand, because we find, in other economic matters, the employers are being given incentives, rebates and so on. Very many things the employers are given in order to carry on the industry, many of which are already unjust and certainly should not be given. But even after that, having allowed them such incentives by way of rebates, tax-holiday and so on, again now we find that even in the matter of deductions here, not only Income-tax and Super-tax but other

taxes, agricultural tax, surtax and all other things are also to be deducted. This, therefore, is something which is most objectionable. Now quite clearly the employers had been making this demand and this Government, my friend Mr. Sanjivayya, yielded to the employers. That is all. The only argument that I can find in favour of it is that he does not still have the courage to stand up to the employers and say, "No; thus far; no farther." That is why he has brought in a series of modifications.

Now there are the commission agents. My friend, Mr. Kumaran, has pointed out the case of the Usha sewing machine and the employees of that company working on a commission basis also. The same applies to the Bata company workers also where, in the matter of distribution of their things, they function on a commission basis, and if these commissions are not to be included in this characterisation of wages, and so on, then it means that many of these people will not be receiving the bonus to which they, normally, should be entitled. I could have understood the Government if the Government had forced the employers to fix a minimum fair wage, which they have not yet accepted. Now these companies run their business on some minimum wage and then a commission because it is to their advantage. Now by exempting this thing they are actually putting a premium on an arrangement which has been brought about by the employers in the Batas or in the Usha Sewing Company and other concerns; they are putting a premium on it. Therefore they gain on two counts. They refuse in some cases a proper type of emoluments, having regard to the prosperity of their industry, to the wrokers and introduce the mechanism of commission, and now, when it comes to the calculation for purposes of bonus, they will not be regarded, these earnings of the workers and employees will not be taken into account for such purposes. It is double injustice done to the workers and the Government is responsible for it. Therefore, we have suggested the deletion of this provision, I mean my hon. friend Shri Kumaran has suggested the deletion of this thing and to keep it in a restrictive form.

Then I have to speak about contract labour. Here this is very very important, because today our industrial set-up is such that we have got a large number of people who work on contract labour. One would like to see in India a situation when things are put on a proper and right footing. Today the reality of the situation is that the working classes and employees in the contract labour system occupy a big position and this system involves lakhs and lakhs of workers. This has been pointed out earlier by unions with which most of us on this side of the House are associated and also by unions like the I.N.T.U.C. with which the Congress Party Members are vitally and intimately associated and even in the other House, the speeches of Mr. Sharma and others, I believe, all of them had made out that particular point about contract labour and so on. But now we find that these employees are excluded really from the benefit of this measure in quantitative terms also. Even apart from the basic injustice of it that a large number of workers will not be getting their share, and will not be normally entitled to their bonus, even those who may get something, they will not get what they should on the basis of their basic wages, but their bonus would be cut down. Therefore, on principle this is unacceptable and in quantitative terms also this is unjust and unfair and this again has been done with a view to pleasing the masters of the Congress party, namely, the capitalist class. The other point here is that the apprentices also are excluded. This is the set-up you have for your regular employees and workers also, those who work absolutely on wages and so on. There are, as I said a large number of workers who come under contract labour and they are all to be exclud-

[Shri Bhupesh Gupta.]

ed according to this plan. And there are others who earn a little basic wage, like those in Bata and Usha concerns and in various other industries. Their earnings naturally come from the commissions and so on, which thus become part of their earnings. It is this business which yields commissions to the employees and which again earns enormous profits to the management. Why, in that case, should that not be allowed to be taken into account, I mean the earnings of these workers and employees? Therefore, my amendment, I think it is No. 14, seeks to delete this portion. In the definition it is sought to exclude incentive bonus and other kinds of bonus. Why should it be so? If these things are there, it means that the employers would be benefited. It is part of the routine work in certain situations. When it comes to a share in the bonus, then they have one type for the employers and when it comes to incentives and so on, well, it is excluded from computation or calculation of wages. Is this not double standard again? They say: head you lose, tail we win. When it comes to bonus sharing, the employers should be obliged. When it comes to incentive bonus, the workers are to be excluded. Their paypacket is to be reduced. Through the representations of the capitalists, our Minister, Shri Sanjivayya, has been made to bring forward this kind of definitions in the Bill and their arguments have been accepted by him and they have come in the form of this particular clause, the clause dealing with definitions. Never have I seen such a monstrosity perpetrated in the name of definitions. I do not know when they will define capitalists and monopolists as something divine and angelic, when they will say a "capitalist" means an "angel". Who says these are not workers and these things which they earn do not form part of their wages? How can you say that contract labour and apprentices should not be treated as if they are eligible to get their full share of the benefit out of this Bill, whatever it is, bonus and so on? You cannot after the facts of life by tampering with definitions, and by introducing extraneous things, just because your capitalist friends have argued about it in that way, Mr. Dandekar and others. Mr. Dandekar is nobody there, a retired I.C.S. Officer and chairman of the Indian Oxygen Company or some such thing. But behind him stand the big class, the capitalist class. Is it because the elections are coming that you should oblige them in this manner? That is quite clear and I have my doubts. They are open to the charge that because you want to oblige the capitalist class you have accepted all these things and reduced the worker's pay packet and cut his benefits by your definitions. You see, Madam Deputy Chairman, how this thing is a masterpiece of anti-working class posture. Is this the way we are supposed to build the so-called Socialist State in our country? I think it was when Shri Sanjivayya was the Congress President that their resolution was changed from speaking of "socialist pattern of society" to the "Socialist State". But on coming to the Labour Ministry and sitting with the capitalist class, listening to them and hearing their memoranda, he has now come with such definitions. But this is not only the height of conservatism but is also not showing even elementary decency to the workers. It does not have even the semblance of fair play and this will not meet with the satisfaction of the broad masses of our people, not only of the working classes but of all the masses. Therefore, I say you are absolutely on the other side. You grudge giving things to the workers. When the workers have forced you to bring forward this Bill after a lot of sacrifice and trouble, having been driven to the position when you can no more evade the task of bringing forward a Bill, you have come with a Bill which is manipulated, truncated and these definitions are given in such a manner that they hit the interests of the working classes to the maximum possible extent and please and placate and appease the capitalist class to the

maximum possible extent. If this is their idea of justice, then the Preamble of the Constitution has no meaning and the Directive Principles of the Constitution have no meaning.

THE DEPUTY CHAIRMAN: Come to the amendment.

SHRI BHUPESH GUPTA: Madam, Deputy Chairman, I have to give my arguments and ask them to . . . .

THE DEPUTY CHAIRMAN: Speak on the amendment, that is what I say.

SHRI BHUPESH GUPTA: I am speaking on the amendment, Madam, and I ask the Government why they have come with such definitions, such monstrous definitions. That is what I have pointed out. You can understand what it means. But the motives behind it has to be unmasked and it is the duty of the working classes today to see unmasked by what the Government is motivated in this matter. That is what I say. Therefore, I am speaking precisely on the amendment and I am going behind the amendment in order to unveil the veiled face of the Government, and the moment you unveil it, then the ugly face of the employer is what you see. That is what I am saying.

SHRI AKBAR ALI KHAN: You don't trust the Bonus Commission's recommendation also?

SHRI BHUPESH GUPTA: I will come to that in a moment. Mr. Akbar Ali Khan comes from a feudal set-up and he will not understand the working class problem, but I can understand it.

SHRI AKBAR ALI KHAN: And Mr. Sanjivayya understands it much better than Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Mr. Sanjivayya certainly understands it and he understands the feudal system also and that is why no land has come from Andhra for distribution to the agricultural classes. And now he has these definitions which . . .

SHRI D. SANJIVAYYA: Six lakh acres of land were available and I appointed a Deputy Tahsildar in every taluka specifically for the purpose of the distribution of the government wasteland.

SHRI BHUPESH GUPTA: As for that . . .

THE DEPUTY CHAIRMAN: Let us come back to the amendment.

SHRI BHUPESH GUPTA: He cannot say that. Let him read the note prepared by the . . .

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, come to the amendment.

SHRI JOSEPH MATHEN (Kerala): The hon. Member is the son of a zamindar.

THE DEPUTY CHAIRMAN: That is why he understands the position.

SHRI BHUPESH GUPTA: But Madam Deputy Chairman, it is not very fair that the hon. Minister should say that. He cannot mislead the House even by an interruption. He said something about land distribution. Let him read what has been written about land reform and tenancy reform in Andhra Pradesh and then . . .

SHRI D. SANJIVAYYA: What I said does not refer to surplus land that would be made available on account of legislation about land ceiling. What I

[Shri D. Sanjivayya.]

said referred to the distribution of government cultivable wasteland.

SHRI BHUPESH GUPTA: Yes, I may refer to government cultivable wasteland also. Whatever might have been done about government cultivable wasteland, you know that note which said that in Andhra Pradesh only 63,000 acres have been located and not a single acre has yet come to the possession of the Government as surplus land for distribution? That is what is recorded in your own official reports, not by Bhupesh Gupta. Such is the position and he understands everything. He understands how to sabotage land reforms in Andhra and he understands how to sabotage whatever little was given by the Bonus Commission. That is my charge.

SHRI D. SANJIVAYYA: I think the hon. Member is very unfair to me when he says that I know how to sabotage land reforms in Andhra. In fact, it is the other way round.

SHRI BHUPESH GUPTA: Anyway, I am glad. Don't sabotage . . .

THE DEPUTY CHAIRMAN: Mr. Gupta, it is 12·30 now. The House stands adjourned till 2 P.M.

The House adjourned for lunch at half past twelve of the clock.

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The House reassembled after lunch at two of the clock.

THE DEPUTY CHAIRMAN in the chair.

THE DEPUTY CHAIRMAN: I hope you will be brief, Mr. Gupta.

SHRI BHUPESH GUPTA: I press my amendments, Madam.

SHRI D. SANJIVAYYA: Madam Deputy Chairman, with regard to amendment number 6 moved by Shri Sen Gupta, I would like to quote the recommendation of the Bonus Commission:

> "In the case of non-resident companies chargeable to tax at a higher rate, tax should be deducted at the chargeable higher rate as in such cases the available surplus would be greatly reduced by the high rate of tax while the saving on tax on bonus paid would be larger. We are of the opinion that in the case of such companies the percentage of the available surplus allocated as bonus should be increased by seven per cent. So that it should be sixty-seven per cent. instead of sixty per cent. in the case of other companies."

That is the reason why we have made it as sixtyseven and sixty respectively. There is one more difference. According to the LAT or the Full Bench formula, bonus was payable on basic wages alone. Now, bonus is payable on basic wage *plus* dearness allowance. Having got that, the intention seems to be to include various other allowances. That is not fair. So, I am not in a position to accept those amendments relating to the addition of various other allowances.

In amendment number 9, hon. Members want that an apprentice should also get the benefit but those in the Industrial Disputes Act an apprentice is included in the definition of the worker in a latter enactment, the Apprentice Act, 1961, this has been deleted and this has an overriding effect on the previous enactment.

Another amendment relates to the question of including contract labour in the definition of a worker. That, I think, is not necessary because in the Industrial Disputes Act itself, it is not mentioned though it is implied there. Therefore, it is not necessary to make it specific.

So far as construction labour employed by the contractors is concerned. this set has been specifically excluded on the recommendation of the

Bonus Commission. To make principal employer responsible for the payment of bonus, etc., is not, I think, necessary now because we are thinking of a separate legislation for contract labour and when we bring forward that measure, probably this would be taken care of.

SHRI P. K. KUMARAN: In the draft Bill which has been circulated about the proposed legislation in respect of contract labour there is no mention of bonus.

SHRI D. SANJIVAYYA: Everybody knows that a decision has been taken and the Bill also has been drafted.

I have already answered the questions relating to the inclusion of various allowances. They will draw these allowances, whether it is the Head Clerk allowance or the supervisory allowance but to include those things into this basic wage *plus* dearness allowance, to increase the quantum of bonus is not called for because we have already included the dearness allowance. There are already in existence incentive bonus and production bonus and if we include them in the basic wage plus dearness allowance, it would amount to getting bonus on bonus which is not contemplated either by the Bonus Commission or by the Government.

SHRI MULKA GOVINDA REDDY (Mysore): That means, tahat these bonuses, production bonus and incentive bonus, will continue in addition to this.

SHRI D. SANJIVAYYA: They will get the incentive bonus and the production bonus but these will not be taken into account for the calculation of bonus under this Bill.

I think I have covered fairly all the amendments moved by the hon. Members. Anyway, I am not in a position to accept any one of them.

*Amendment Nos. 6 and 13 were, by leave, withdrawn.*

THE DEPUTY CHAIRMAN: The question is:

7. "That at page 3, lines 39 and 40 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

8. "That at page 3, lines 41 to 44 be delected."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

9. "That at page 4,—

(i) in line 1, the words and brackets '(other than an apprentice)' be deleted; and

(ii) at the end line 6, after the word 'implied' the words 'and includes a person employed by or through a contractor' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

10. "That at page 4, line 13, after the words 'so named' the words and includes the principal employer in case of all employees employed by or through a contractor" be inserted.

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

11. That at page 4, at the end of line 18 after the words 'managing agent the words and includes the principal employer in case of all employees employed by or through a contractor' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

12. "That at page 5, line 8, after the words 'dearness allowance' the words "supervisory allowance, Head Clerk's allowance, etc., be inserted'

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

14. "That at page 5, lines 18 and 19, be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

15. "That at page 5, line 26 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

92. "That at page 3, lines 38 to 40 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

93. "That at page 3, lines 41 to 44, be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

94. "That at page 4, line 1, the brackets and words '(other than an apprentice)' be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

95. "That at page 4 at the end of line 6, after the word 'implied' the words 'and includes all persons employed by or through a contractor' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

96. "That at page 4, line 13, after the words 'so named' the words 'and in the case of contract labour, the principal employer' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

97. "That at page 4, line 18, after the word 'agent' the words 'and in the case of contract labour, the principal employer' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

98. "That at page 5, lines 11 and 12 be deleted."

*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—Establishments to include departments, undertakings and branches*

SHRI D. L. SEN GUPTA: Madam, I beg to move:

16. "That at page 6, line 1, after the word 'branch' the words and the same is completely independent of the Head Office in respect of its business' be inserted."

I want to make it very clear that I will not withdraw this amendment, and I insist upon the hon. Minister to appreciate my gesture in withdrawing some of my amendments. He would agree with me that so far as my amendment to clause 3 is concerned.

SHRI M. P. BHARGAVA (Uttar Pradesh): Is this on a reciprocal basis or what?

SHRI D. L. SEN GUPTA: You do not reciprocate. You do not believe in it. I do sometimes. Let us see what happens.

So far as clause 3 is concerned, there is a proviso which says:

"Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that ac-

counting year treated as part of the establishment for the purpose of computation of bonus."

On this question we have to look at the proposition from the point of view of practical application. I know of a particular case—and there may be many such cases—and with that case before me and having profited by the experience of this case I want the hon. Labour Minister to apreciate that it is necessary for him to accept this amendment of mine. It is clear on the point; I want to add the words "and the same is completely independent of the Head Office in respect of its business" in this proviso after the word "branch."

SHRI ARJUN ARORA: How can the branch be independent of the Head Office?

SHRI D. L. SEN GUPTA: It can, so far as its financial transaction aspects are concerned. That way how can there be a separate balance-sheet and profit and loss account for the branch? So when you say that the branch account will be separate and Head Office account will be separate and the branch's profits will be distributed among the employees of the branch and the profits of the Head Office among the employees and that danger is this, you have already got two ceilings one 60 per cent of the allocable surplus and again 20 per cent. Where a branch makes a profit the branch is making the profit at the cost of the Head Office. In the branch there are a few men and they will get a few thousand rupees within the ambit of the 60 per cent of the allocable surplus and 20 per cent of the ceiling. That big amount being taken away the Head Office allocable surplus will be less; there will be less profit and consequently less bonus in the Head Office and four years after the 'set on' amount will be wiped out but in the Head Office they are not getting even Rs. 20 which otherwise they would have got. That is the case in Karamchand Thapar about which I mentioned during the second reading also. Theirs is a case in point. Their Head Office people are going to suffer; they are not getting any amount set on. So far as the Punjab unit is concerned they will have a big amount set on and four years afterwards the whole amount set on will be wiped out and there will be no amount in deposit in the Head Office. This difficulty will not be there if the position was that this will be allowed only if the branch is independent of the Head Office for tht purpose of earning profits. As a matter of fact I can mention here two important cases; one is the Tata Oil Company case and the other Hamilton Jewellery Company case. In the Tata Oil Company case this question was gone into as to what was 10 years' income. In the Hamilton Jewellery Company case this question was gone into in more detail. In Calcutta in the Head Office of Hamiltons there was a bonus dispute. In Delhi they have some buildings and they earn about Rs. 2 lakhs as rent from those buildings and this sum of Rs. 2 lakhs is the income of the Delhi branch and the Calcutta Head Office cannot claim anything out of it. The Supreme Court and the tribunal took the view that the branch account cannot be deemed to be a separate account because the Calcutta Head Office employees had contributed something to it. This branch office income is the product of the investment from the Head Office. You pay 8:5 per cent as dividend on the paidup capital and that capital of the Head Office is invested again as working capital in the branch and you pay again. How many times do they get returns? They get once in the Head Office and then again in the branch. So they are doubling it; multiplying it so far as deductions are concerned and so far as the income part is concerned it is being taken away from the Head Office and leads to suffering so far as the Head Office employees are concerned and correspondingly does not benefit the branch office employees either. So my suggestion is this. If from the trading point of view the Head Office has not to contribute anything in any manner to the branch office then only this proposition can be correct; otherwise not. The Head

[Shri D. L. Sen Gupta.]

Office is contributing for the earning of the profit in the branch but for the purpose of the distribution of bonus you are saying that the Head Office will have nothing to do with the branch. This is not in conformity with the law so far established. The appellate tribunals and the courts have never taken this view. This is a view which you are now imposing for the first time without any legal sanction, without any judicial sanction. You are laying down something which was so long deemed to be illegal. You are now doing something in the name of law which has so far been declared by the courts as illegal, unlawful. So it is necessary that my amendment for adding these words "and the same is completely independent of the Head Office in respect of its business" after the word "branch' in the proviso should be accepted.

*The question was proposed.*

SHRI D. SANJIVAYYA: Madam, the main clause purports to convey the same idea which the hon. Member has in mind. If an establishment has branches departments or separate undertakings, their accounts will be taken as one, prepared at the Head Office and the bonus paid. But there is a proviso which says that in case there are separate profit and loss accounts for any such undertaking. department or branch, they will be taken into account separately and bonus will be paid separately at each level of the department, branch or undertaking. This is only a sort of a precaution to cover very remote cases. So I cannot accept the amendment.

THE DEPUTY CHAIRMAN: The question is:

16. "That at page 6, line 1, after the word 'branch' the words 'and the same is completely independent of the Head Office in respect of its business' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

*The motion was adopted.*

*Clause 3 was added to the Bill.*

*Clauses 4 and 5 were added to the Bill.*

*Clause 6 (Sums Deductible from Gross Profits)*

SHRI P. K. KUMARAN: Madam, I move:

17. "That at page 6, lines 31 to 33 be deleted."

*(The amendment also stood in the names of Sarvashri M. N. Govindan Nair, Bhupesh Gupta, D. L. Sen Gupta and Arjun Arora.)*

SHRI D. THENGARI: Madam, I move:

"That at page 6, lines 31 to 33 be deleted.

*The questions were proposed.*

SHRI P. K. KUMARAN: Madam, clause 6 deals with sums to be deducted. from the gross profit as prior charges to arrive at the amount available for distribution as bonus. Sub-clause (b) says any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income-tax Act shall be deducted. Now the bonus Commission did not recommend the development debate to be deducted.

The development rebate will take away almost in many cases a substantial amount of money from the profit, In the majority of industries the development rebate permitted is 20 per cent to instal the latest machinery. In the case of priority industries it is 35 per cent. In the case of shipping companies it is 40 per cent. So, if this amount is deducted from the money available, that is, the available surplus as it is called in this Bill, there will be very little money left. I will illustrate this point by citing an example. In todays' papers the address of Sir A. Ramaswami Mudaliar. Chairman, Indian Steamship company Limited, has appeared. He says in his speech:—

"The Directors' Report shows that the freight earned during the year

was Rs. 8,30,47,416 as against Rs. 8,28, 05,846 in the previous year. After meeting all expenses and providing for depreciation of Rs. 1,08,01,095 and interest on Government loans amounting to Rs. 28,91,144 there was a trading profit of Rs. 32 lakhs of which Rs. 31 lakhs has been transferred to Development Rebate Reserve."

Now, what does it mean? After earning Rs. 169 lakhs, the Company finds itself with a surplus of only Rs. 1 lakh. Out of this Rs. 1 lakh 8:5 per cent is the interest on the working capital and 6 per cent on the reserve fund. All this has got to be deducted. The net result is that the Company is left with a deficit. There will be no bonus. If this development rebate reserve was not taken away from the trading profit of Rs. 32 lakhs, a sum of Rs. 32 lakhs would have been available as surplus, out of which, after paying the taxes, some amount would have been available for distribution to the workers as bonus.

Another thing is that if a certain amount is distributed as bonus, it becomes a qualified expense and the qualified expense gets 50 per cent rebate from income tax. So, there would be sufficient money with them to meet all the expenses. Now, it is ridiculous to say that after making almost Rs. 170 lakhs of profit, the Company is left with a deficit as far as bonus is concerned. This is the result of this development rebate. That is why I insist that the hon. Minister should reconsider the whole thing and remove the development rebate which has been allowed. If a certain amount is paid as bonus, they get 50 per cent rebate on that Suppose 60 per cent is paid, actually the employer pays only 30 per cent of the money. So, this is an unjustified deduction, which is calculated to deprive the worker of the meagre income which he should get at the end of a year. I hope the hon. Minister will reconsider it and at least accept this amendment as a gesture of goodwill to the workers of this country.

SHRI D. THENGARI: Madam it would be improper to put it as either by way of development rebate or development allowance. As a matter of fact, both these items should have been considered separately. As I said yesterday, development rebate has not been conceded by any court, not suggested by the Adarkar Committee, not even considered by the Bonus Commission and not even demanded by the employers themselves. That is the mysterious part of it and still the Government is going out of its way to give something which they themselves did not demand. Formerly, the rebate was 20 per cent. Now, it is 35 per cent generally and 40 per cent in the case of shipping companies. It is a big proportion. and, therefore, to deprive the worker of such a big amount would be highly unjust. I request the hon. Labour Minister to consider this and withdraw the development from this clause.

SHRI D. L. SEN GUPTA: Madam, my friend, Mr. Bhupesh Gupta, enters into a gentleman's agreement about not speaking. Sometimes I also enter into a gentleman's agreement about not speaking. So, it is reciprocal. Anyway, on the question of my amendment, I shall not repeat what my friends, Mr. Kumaran and Mr. Thengari, have stated. I know you are running against time. It needs to be stated that this question of allowing development rebate as a prior charge over bonus or as an item of deduction from the gross profit was rejected in the Surat Electric Supply Company's case by the Labour Appellate Tribunal, in the U.P. Electric Supply Company's case by the Labour Appellate Tribunal, by a full Bench of the Labour Appellate Tribunal and subsequently by the Supreme Court of India in the Meenakshi Mills case. They said this is not depreciation. The development rebate is not depreciation. It is a form of incentive given to the employers for starting new ventures or expanding their business,

[Shri D. L. Sen Gupta.]

so that they may feel that in the first year they shall gain something in the nature of income-tax in the name of development rebate. I shall illustrate it. Suppose a man gets Rs 1 lakh as profit. Out of that the employer might have to pay, say, Rs. 40,000 as tax. This Rs. 1 lakh profit will be diminished by the amount of machinery purchased during the first year which, as my friend, Mr. Thengari, said has been raised from 20 per cent to 40 per cent. If it is 20 per cent rebate on the Rs 2 lakhs worth of machinery purchased in that year, Rs 40,000 would be deducted from Rs 1 lakh. Then, Rs. 60,000 would be allowed for the purpose of income-tax. Therefore, some sort of incentive is given to the entrepreneurs so that they may feel encouraged to buy new machines and also start new industries and thereby solve our unemployment problem or do certain economic advancement in their own way. But what has that got to do with bonus calculation? The Supreme Court has said that it is not a charge at all. It is an incentive given to the employers for starting new business You are getting the normal depreciation The development rebate was known formerly as initial depreciation. There are three types of depreciation, *viz.*, normal depreciation, initial depreciation and additional depreciation. The initial depreciation has now been renamed as development rebate or development allowance. But that is not depreciation at all. I do not grudge so far as depreciation allowance is concerned. Let depreciation be a charge That depreciation is there In addition to that, the Bill is bringing in something in the name of development rebate as a prior charge The hon Labour Minister conveniently sometimes quotes what the Bonus Commission has said like the devil quoting scriptures, but this time how does he show his face? The Bonus Commission has not referred to it. There is no demand from the employers and there is no judicial sanction. So, it was somebody's brainwave—whose brainwave, I do not know—and this works to the serious detriment of the working class. Possibly we are being told by China: You will have to face serious consequences We are taking note of the serious consequences. The country may have to face a serious situation because the workmen will rise in revolt Possibly they have not taken note of it. That is the warning with which I am moving my amendment.

SHRI BHUPESH GUPTA: I am very grateful to my friend, Mr. Sen Gupta, for elucidating this point and also for referring to the decision of the court. Naturally here the Government has gone to serve the capitalists unsolicited. Now, in other matters they do give them, but here they do not even ask for it I do not know if the Minister dreams of capitalists in the night in order to feel in the morning that he must serve them. That is what I felt. Otherwise why should they get it? Nobody asked for it. Even the employers perhaps have participated in the Bonus Commission through their representatives, and they felt a little shy of pressing too many claims. When they were feeling shy not to press this allowance, this development rebate, the Minister comes and tells: "you have got something; I am giving you this thing". What kind of Labour Minister we have got in the country, sometimes I ask myself. You see the Labour Ministers are employers' Ministers or Ministers for Employers, that would be the proper designation, just as we have Minister for External Affairs, and so on.

SHRI ARJUN ARORA: He is also Minister for Employment.

SHRI BHUPESH GUPTA: We are concerned with labour Labour is another type, and therefore it should be Minister for Employers. Here the Bonus Commission has said:

"Under the Income-tax Act development rebate is not a part of the

depreciation allowance and is granted over and above the depreciation allowance. It is a special allowance to encourage companies to instal new machinery. In a year in which installations of machinery are very large the inclusion of the whole of the development rebate together with the statutory depreciation as a prior charge might wipe off and substantially reduce the available surplus even though the working of the concern may have resulted in very good profit."

Therefore, you find that the Commission was seized of this problem. The Commission discussed it. It is not as if it is something which had not been mooted before the Commission. Well, somehow or other it got mooted and then the Commission rejected this thing—which is provided for now in the Bill—and gave its own argument. There is no dissenting note in that in regard to this matter. On that thing even Mr. Dandekar felt that he should not be too much unreasonable. Such is how it emerged. Now the Government says: "All right, we will still give you". I will ask the Congress friends sitting here: will not they somehow or other control their Ministers? Sometimes they should control some of them. Who decided it? Did the Congress Party decide it in a general body meeting by a majority or by consensus? No. Did the Working Committee of the Congress Party decide it? No. Then I am left with the Cabinet. I do not know their secrets. But the Cabinet decided at whose instance? I am certain this matter did not become a big thing in the Cabinet with Kutch, Kashmir and everything on. Therefore, our Labour Minister who is greatly under the influence of the capitalist class thought why not make another gesture to the capitalists. I am very grateful to him that he has not provided other allowances discounts and other things for marriages of the employers' sons, daughters, and so on, for their flirtations, boozing, and so on. It is a good thing that you have not done that. But here it is an absurd thing. Here when it came to the question of bonus incentive to the workers, it is taken out of the calculation of the surplus. Just previously we discussed it. When it came to the question of the working class, you allow something to be taken out of the allocable surplus, the development rebate.

Madam Deputy Chairman, therefore, we are opposed to this kind of thing, opposed to it not merely as it is stated here. The whole idea behind this is reprehensible. As far as the development rebate is concerned, you know when we discussed the Budget every time, many Members on this side of the House and on that side also opposed the manner in which generously the Government was offering the so-called development rebate to the concerns irrespective of their role, their status and standing. In fact the institution of development rebate has been a source of abuse, and that is objected to by us and many on that side of the House. One should have thought that this should be restricted even in the matter of development rebate in other cases for calculation of income-tax and so on. Having them in the matter of income-tax now it is brought in in order to deprive the working class of what they would have otherwise got but for this thing. All I can say is, I am not making any appeal to him. My friend, Mr. Kumaran, did it, and it is a good thing that some of us do make an appeal. I am not making an appeal because without anybody appealing he did it, provided for it. The Bonus Commission rejected it, he did it. I can say that such kind of tampering with the report of the Bonus Commission in the form of a Bill is unheard of. Such kind of tampering with the report of an expert body we have rarely known even in this Parliament. As far as the amendment is concerned I have no illusion about it. In my thirteen years in Parliament only one amendment I got accepted. Therefore, I think the Government

[Shri Bhupesh Gupta.]

needs to be condemned and I hope the House will at least express that condemnation. That is all I have to say. If he wants to wake up to good sense, then he should really take it back and accept the amendment suggested. I do not wish to say anything more than that.

SHRI ARJUN ARORA: Madam, I want to say a few words about it. This development rebate is not a new thing. It was there before the Labour Appellate Tribunal and the employers' representatives many a time pressed for development rebate being treated as a prior charge, and every time the Labour Appellate Tribunal which always consisted of retired High Court Judges rejected it as unjustified. The claim was pressed before the Bonus Commission and the Bonus Commission also rejected it.

There are two observations of the Bonus Commission to which I must draw the attention of this hon. House because I am sure many Members have not found time to read this valuable report. The Bonus Commission said:

> "Development rebate is not a part of the depreciation allowance and is granted over and above the depreciation allowance . . . .

SHRI BHUPESH GUPTA: I read it.

SHRI ARJUN ARORA: You may have read it out of a book written by a trade unionist. I am reading it out of the Bonus Commission report.

SHRI BHUPESH GUPTA: I also read the same.

SHRI ARJUN ARORA: The Bonus Commission said it is a special allowance to encourage companies to instal new machinery. Madam, it is all right for the Government not to collect certain taxes to enable employers to instal new machinery. It is improper to ask the workers to go without a portion of the bonus only to enable the employers and the companies to instal new machinery. The workers' job in industry is not to provide capital. That is the job of the capitalists. That is the job of the enterepreneur, the investor. The workers' job is to provide labour. Why should the workers be asked to forego a portion of the bonus merely to enable the employers to instal machinery as the Bonus Commission has observed. The Bonus Commission has also been clear about the effect that the allowing of development rebate as a prior charge will mean. It has said:

> "In a year in which installations of machinery are very large the inclusion of the whole of the development rebate together with the statutory depreciation as prior charge might wipe off or substantially reduce the available surplus even though the working of the concern may have resulted in very good profit."

That was why the Bonus Commission rejected this thing. It is strange, Madam, that this Bill which is supposed to be based on the recommendations of the Bonus Commission contains a provision which will defeat the object of the Bill. The employer will every time decide whether to give workers the bonus or instal new machinery. And whenever he instals a substantial amount of new machinery, he expands his own capacity to earn profit. The result is that bonus will disappear. I am sure, Madam, the Minister has been ill-advised in including development rebate as a prior charge. That is nowhere done. It is not the job of the workers to forego bonus merely to provide employers an opportunity to instal new machinery, help the owner of that machinery, not the workers. The owners will be the employers, the company. So it is not the job of the workers to forego bonus to enable the industry to expand. The Government is keen to have some sort of expansion. It has got some illusions and that is why it gives tax concessions to employers and entrepreneurs. Let it not ask the workers to give the concession

Madam, one result of this one clause, to which I along with many others have moved amendment, will be that all clever employers will go in for expansion and the workers will not get any bonus more than the minimum of 4 per cent. So, in effect, the whole object of the Bill will be defeated. The workers, who have been getting three months' or four months' pay as bonus, will now, as a result of this development rebate, get only Rs. 40 as bonus every year. With these words, Madam, I request the learned Minister to consider the implications of this amendment and accept it if he wants to go down in history as the Labour Minister who ensured bonus for the workers.

SHRI BHUPESH GUPTA: Suppose he does not accept, how will he go down?

SHRI ARJUN ARORA: If he does not accept the amendment and development rebate is allowed as a prior charge, he will go down as the Labour Minister who ensured that nobody should get more than the minimum bonus.

SHRI D. SANJIVAYYA: Madam, it is a wrong presumption to say that the basis for this Bill is nothing but the report of the Bonus Commission . . .

SHRI ARJUN ARORA: If that is so, why did you waste three years waiting for the report?

SHRI D. SANJIVAYYA: . . . the modification being that the basis is the resolution of the Government according to which some provisions have been made. Therefore, this development rebate has come into being.

Now, I am told that the development rebate is intended to encourage installation of new machinery. This does not happen every year. Whenever new machinery has to be replaced, or is installed, the industrialist will get the development rebate. Moreover, when development rebate is given to the industrialist, it is not with a view to making it available for distribution as bonus, it should be utilised for the installation of new machinery. My hon. friend, Shri Arjun Arora, has been saying that intelligent industrialists will certainly utilise this and expand industry. That is what exactly we want. We want expansion of the existing industries. We want more industries so that our country can be highy industrialised.

SHRI ARJUN ARORA: Not at the cost of labour.

SHRI D. SANJIVAYYA: It will go a long way to enhance the wealth of the nation.

SHRI GURUDEV GUPTA (Madhya Pradesh): May I know, Madam, whether this development rebate is kept separately by the industrialist in order to develop the industry or whether it will be utilised . . .

SHRI D. SANJIVAYYA: I am coming to that point. I will just quote what the Government have decided. it is said:—

> "In addition, tax concessions given to industry to provide resources for future development should not be utilised for payment of larger bonuses to employees. On the other hand, it should be ensured by law, if the existing tax law and regulations do not sufficiently safeguard this, that amounts involved in such tax concessions are, in fact, used only for purposes for which the tax concessions are given."

If the existing regulations do not provide for such, a safeguard Government would certainly undertake legislation so that these tax concessions are in fact utilised for purposes for which they are intended.

SHRI GURUDEV GUPTA: May I know, Madam, whether the present law enables the employer to keep this

[Shri Gurudev Gupta.]

amount separately or whether they are utilising it for their regular nature of work?

SHRI D. SANJIVAYYA: If the existing law does not provide, we will get it examined. If the present law provides for it, we will not bring forward any fresh legislation. The fresh legislation will be there in order to safeguard this.

With regard to the point raised by my hon. friend, Shri Bhupesh Gupta, that I am anti-labour, I do not know whether he would repeat the same thing when we have accepted to grant the minimum bonus, irrespective of the loss incurred by establishments. There at least, I think, I am pro-labour.

SHRI BHUPESH GUPTA: This Bill is anti-labour.

THE DEPUTY CHAIRMAN: Mr. Kumaran, do you press it?

SHRI P. K. KUMARAN: Yes, Madam.

THE DEPUTY CHAIRMAN: The question is:

17. "That at page 6, lines 31 to 33 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: Since amendment No. 99 is the same as amendment No. 17 it is barred.

THE DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

*The motion was adopted.*

*Clause 6 was added to the Bill.*

*Clause 7—Calculation of direct tax payable by the Employer*

SHRI P. K. KUMARAN: Madam, I move:

19. "That at page 7, lines 15 to 19 be deleted."

21. "That at page 7, lines 36-37, the brackets and words '(other than development rebate or development allowance)' be deleted."

(*The amendments also stood in the names of Sarvashri Bhupesh Gupta, Mulka Govinda Reddy and K. Damodaran.*)

SHRI D. THENGARI: Madam, I move:

101. "That at page 7, lines 36-37, the brackets and words '(other than development rebate or development allowance)' be deleted."

*The questions were proposed.*

SHRI P. K. KUMARAN: My amendment seeks to delete sub-clause (a) (iii) of clause 7. It reads:

"(a) in calculating such tax no account shall be taken of—

(iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;".

This exemption or concession from the Income-tax Act has been granted, it has been stated by the Finance Minister also, to encourage these people to re-invest. Now when the employer gets some concession from the Government, they get a relief. I do not understand, why? When they get considerable amount of relief on tax, why should a part of it not go to the worker, because even here if he is asked to part with a certain amount he will be actually paying half of it because half he will get back as concession on the basis that it is a qualified expense? So the amount involved will be negligible. Therefore, I move that my amendment be accepted.

Another is amendment No. 21. Clause 7(e) says:

> "no account shall be taken of any rebate (other than development rebate or development allowance".

I want the words in the brackets to be removed. This amendment also means the same thing as amendment No. 17. My idea is that the development rebate or allowance should not be deducted from the amount available. So many people have spoken in support of this and I hope the Minister will accept this amendment.

SHRI D. THENGARI: The Labour Minister seems to be over-optimistic about the attitude of the employers but I may suggest that this development rebate is going to be a regular feature now after the enactment of this measure and therefore this wording should have been dropped. I very much doubt whether he will accept this amendment because my earlier argument has not gone home. Nevertheless I press my amendment.

SHRI D. L. SEN GUPTA: In support of this amendment I shall be really replying to what the Minister said earlier. He takes the view that industries should be encouraged. As a matter of fact he wants that what the Government was doing so long by giving development rebate should now be done by the workers also. When the workers are put in such a position, he has to test whether in the name of introduction of more industries, in the name of installation of more machinery there will be actual industrial growth or industrial unrest. If he feels that allowing development rebates, thereby giving two concessions to the employers—one in the name of tax reduction and another in the name of bonus reduction—he will be helping the industrial growth, he is welcome, but if it means industrial unrest and the workers would be getting less or no bonus at all and they will not remain satisfied or there will be really breaking of each other's head, then that cannot be a climate for industrial growth. It will be really disturbing the climate for industrial growth. Industrial growth is possible when the labour is contented. Industrial growth does not mean installation of new machinery. You are creating industrial unrest by denying bonus and you are thinking that it is a method of industrialising the country. There you are very very wrong. Please correct yourself.

SHRI D. SANJIVAYYA: I have already said so much about the development rebate. These two amendments—Nos. 21 and 101—relate to the same point. So I need not say anything more.

With regard to amendment No. 19, I have already made it very clear that the Government decided that all tax concessions which an industrialist is entitled to should be given to him and they should not be made available for distribution of bonus because we want that industries should grow and the employment potential should be created.

SHRI ARJUN ARORA: Installation of new machinery does not necessarily mean more employment because old machinery is scrapped and the employment potential in the new machinery is much less.

SHRI D. SANJIVAYYA: When it becomes a scrap, the factory will be closed.

SHRI BHUPESH GUPTA: Mechanisation may mean retrenchment also.

SHRI D. SANJIVAYYA: Retrenchment is covered by the decisions of the 15th Indian Labour Conference and retrenchment cannot be done by mechanisation or by improvements. It should not be done in that fashion.

THE DEPUTY CHAIRMAN: The question is:

> 19. "That at page 7, lines 15 to 19 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

21. "That at page 7, lines 36-37, the brackets and words '(other than development rebate or development allowance)' be deleted.

*The motion was negatived.*

THE DEPUTY CHAIRMAN: Amendments Nos. 21 and 101 are the same. So Amendment No. 101 falls. I will put the clause.

*THE DEPUTY CHAIRMAN: The* question is:

"That clause 7 stand part of the Bill."

*The motion was adopted.*

*Clause 7 was added to the Bill.*

*Clause 8 was added to the Bill.*

*Clause 9—Disqualification for bonus.*

SHRI D. L. SEN GUPTA: Sir, I move:

22. "That at page 8, lines 11 and 12 be deleted."

SHRI D. THENGARI:

102. "That at page 8, after line 14, the following proviso be inserted, namely:

'Provided that he is convicted by the appropriate court for any of the above offences'."

*The questions were proposed.*

SHRI D. L. SEN GUPTA: So far as my amendment is concerned, I want the item—riotous or violent behaviour while on the premises of the establishment—which as it now stands qualifies a man from getting bonus to be deleted. Everybody knows that there are certain acts of misconduct which merit dismissal and these dismissals are intended to enforce discipline and the standing orders give a catalogue of the acts of misconduct and I do not for a moment say that it is not an act of misconduct. I say that violent behaviour while on the premises is an act of misconduct. Riotous or violent behaviour while on the premises of the establishment as in clause 9(b) is an act of misconduct. Theft, misappropriation or sabotage of any property of the establishment as mentioned in 9(c) is also an act of misconduct. There are more than two dozen acts of misconduct such as insubordination, habitual absence, sleeping on duty, etc. but what is the position? So far as this law is concerned, it tends to disqualify a man from getting bonus for three acts of misconduct. One is fraud, another is riotous or violent behaviour and the third is theft, misappropriation and sabotage. I am not against (a) or (c), that is, disqualifying a man from getting bonus on the ground of dismissal for fraud or on the ground of theft or misappropriation. In fact clause 18 of this Bill says:

"Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any."

Look at the inconsistency between them. Under clause 18 if there is any loss, you are entitled only to a deduction of the amount involved. If a man gets Rs. 1,000 as bonus and he has stolen Rs. 500, Rs. 500 will be deducted and the balance Rs. 500 should be given to him but under clause 9 he is totally disqualified from getting bonus but I am not on fraud or theft. I am only suggesting deletion of the item (b) which says: 'riotous or violent behaviour while on the premises of the establishment'. Why I want this sub-clause to be deleted is for the simple reason that no man comes to the factory or office for doing riot or for doing violent

acts. Things do happen on the spur of the moment under great provocation, under serious provocation. When a man does commit an offence under a serious provocation or on the spur of the moment, he merits dismissal. The standing order is there. Why for that offence should he also lose his bonus? It is not moral turpitude; if the offence involves some moral turpitude I would not have asked for any amendment. It is not moral turpitude. Why then don't you make insubordination as an item to disqualify for pension? Why don't you make continued absence or habitual absence as a ground for disqualifying one for bonus? You don't do that. Then why should you make this item alone for disqualifying one to get the bonus? Madam, in this connection I can incidentally mention a recent decision of the Supreme Court of India in the Garment Cleaners case; in the Garment Cleaners case they have said that for no type of misconduct should a man forfeit his right to get gratuity. Why? The proposition laid down by the hon. Supreme Court is this that it is earned because of his past years of service. So, if it is past years of service, you cannot deprive him of his gratuity because of misconduct. Similarly here it is earned by his past years of service; it is because he has contributed his labour in the past that there has been an earning of profit. If for his misconduct his gratuity could not be denied, for the same reason—for misconduct on account of riotous or violent behaviour in a factory a man may be dismissed, or otherwise punished but—he should not be deprived of a bonus which relates to his past contribution to the business of the company; these are past earnings.

3 P.M.

SHRI D. THENGARI: The point is whether he has earned an amount of bonus or not. If he has committed any offence, he is punished for it. Secondly, it is an everyday occurrence that straightway workers, particularly trade union workers, are proceeded against by the managements, and false charges are levied against them, and in view of this it is necessary to amend the clause and I am suggesting that the proviso "Provided that he is convicted by the appropriate court for any of the above offences" be inserted at the end of Bill clause 9, because only departmental enquiry would not do; it should be the appropriate court that would punish him, and only in that case he should be deprived of his right to bonus. Another small point; under the Criminal Procedure Code theft of Rs. 250 is a compoundable offence. So there is no reason why theft should be included in this particular clause.

SHRI BHUPESH GUPTA: This again is atrocious. I will tell you how. My friend, Mr. Sen Gupta, perhaps missed one point, and I am sure the hon. Minister will take advantage of it. He will say that "I am not disqualifying him simply because of riotous or violent behaviour". He will say, "I am disqualifying him provided he is dismissed on account of riotous or violent behaviour. So you see that unless he is dismissed it does not come into operation". I anticipate this thing. Now I take the Bill provision as it is. It is entirely against the rules of natural justice. Now here, when I have a claim to bonus, it relates not to what I am earning in future, but to what I have already earned; it is a kind of deferred wage which is payable to me under the provisions of this Bill. Now suppose it has become due to me along with other workers and not paid to me, and shall we lay, on the 12th of December, or 31st of December, like that, or take any date, well, I am dismissed on the ground of my behaviour on that day or, shall we say, the previous day, on the ground of my alleged violent or riotous behaviour. What happens to me? I am penalised; I am dismissed. That itself is a punishment meted out to me. Secondly what happens after that? What has become due to me will also be taken away. Is it not against natural justice? Even under

[Shri Bhupesh Gupta.]

the ordinary criminal law such a thing is unthinkable. Suppose I commit murder. You may hang me. But will you say—if I were an officer in a company—that I should not get my wages too if they were in arrears, say, for three years, just because today I have been hanged or rather, on a charge of murder I have been put up before a court? The court may say that so and so has been found guilty of murder and should be hanged by the neck till he is dead, but no court will say that the wages that had accrued to me over the year preceding should not be paid to me. Even in a case of murder such a position will not be taken. But here I find that the worker, that first of all he suffers his dismissal, and then, well, he is not given what is his due, what may have become due prior to the act in question, the act of, shall we say, violent behaviour or riotous behaviour here. Therefore it is a question of where things had become due; had he been dismissed before, perhaps it might not have become due. But it has already become a due and it is only a question of payment in this matter. Now you will not be given, the Bill clause says, and it is utterly against natural justice.

SHRI D. THENGARI: What is the practice in communist countries?

SHRI BHUPESH GUPTA: The practice in the communist countries is to refer the matter to the Swatantra Party. The point raised by such a ridiculous question can only be answered in so ridiculous a manner.

SHRI GURUDEV GUPTA: May I ask a question of the hon. Member? The hon. Member citing an instance in the matter of wages said that if a man commits a murder then there is no justification for withholding his wages. So may I ask him whether he takes bonus as part of the wages of the worker, or is bonus an incentive for putting in more work?

SHRI BHUPESH GUPTA: Bonus or whatever it is, is deferred wages; bonus is not *ex gratia* payment.

SHRI ARJUN ARORA: Under the Payment of Wages Act it is wages.

SHRI BHUPESH GUPTA: Only here it is being laid down as a theory of *ex gratia* payment and all that trivial rigmarole is meant to convey. Now it is being solemnly asserted, special thanks to the working class movement, and it has become a due. Assuming that it is not wages, assuming that it is something, it has become due to me, and due to me before I committed this particular offence for which I am dismissed. Why should you not give me that? Why should you penalise me and award me two penalties for the same offence, one dismissal, and another, a thing due to me and which relates to a period before I have committed the offence? Such a thing is contrary to the rules of natural justice. And then another point I should like to make out here referring to the "riotous or violent behaviour". Now all that the employers have to do in order to intimidate the workers, or to deal with certain people who, they think, are responsible for developing the organisation of the trade unions and so on, or who carry on trade union activities, is to dismiss them and penalise them, first by dismissal and then by denying their wages, or the bonus which has become their due, all that. And what is "riotous behaviour"? Well, what about employers' riotous behaviour or violent behaviour? Nothing. Well, in that case we don't get any deductions from them. But here it is done in the case of workers and it is for the employers to see and act. But this will lead to litigation and various other things. The employer is being given a handle to be vindictive against the working class, the workers and the employees, and always this will be used as a kind of threat that "not only you will lose your job, but also what has become due to you under this particular Bill, or Act when it comes into operation,

will not be available to you. And "riotous behaviour"; suppose I stand in a body in a deputation, some of our employers get very panicky and when they see many people going on a deputation, they will call it riotous behaviour, some of them, as indeed it happens; in many cases it happens, and then they will be dismissed.

SHRI P. K. KUMARAN: Generally it happens.

SHRI BHUPESH GUPTA: Yes, generally it happens and these people are frightened; the capitalist class is a scared class; it knows that morally it is in a very very bad state and therefore, the moment they see some people, they get panicky; they think that the whole world has come down upon them—because of their guilty conscience. Now "violent behaviour" or "riotous behaviour", who defines? Am I to understand that those people who are interested in suppressing the working class and denying them their due will now be dictating as to what is violent behaviour or not? Then where is my remedy? Where do I go? I have to go to a court of law in order to say, even after my dismissal, that I have not been dismissed for violent behaviour or riotous behaviour. The fact that I have been dismissed and the fact that the capitalist employer will put in an affidavit and say that I have been dismissed for riotous behaviour will practically preclude me from questioning his denial of the bonus to me. Therefore, I say that this should not be there and Mr. Sen Gupta is right, being an intelligent lawyer, in bringing in this amendment. Here again I would ask the hon. Minister not to think in terms of workers as people who indulge in violent behaviour, in riotous behaviour. This is very very wrong and an altogether wrong attitude. Therefore, you should take away this from here and not put in another instrument in the hands of the employers to deny what is due to the workers, even in this very very perverted way of giving things in this Bill.

SHRI ARJUN ARORA: Madam, I would like to say just one word on this amendment, namely amendment No. 22, and I shall be brief, as brief as I can. Madam, clause 9 says that the worker will be deprived of the bonus if he is dismissed from service for certain offences. Now, the law relating to dismissal appears to have been lost sight of by the framers of this clause. The law relating to dismissal is such that normally the employer is the sole judge. It is the employer who charge-sheets the worker. It is the employer who conducts the enquiry and it is again the employer who decides to dismiss the workman. There can in law be no appeal against his decision. The Labour Appellate Tribunal in the famous Buckingham-Carnatic Mill case said that the Industrial Tribunals cannot sit in appeal against the judgment of an employer, and that decision of the Labour Appellate Tribunal has been upheld by the Supreme Court. So there is no appeal against dismissal. The only exceptions are victimisation and colourable exercise of powers by the management. It is only when these things take place that . . .

SHRI D. L. SEN GUPTA: No, there are other grounds also.

SHRI ARJUN ARORA: Yes, there are others also, but they are not effective. There are four exceptions I know. Madam, I am not a practising lawyer but I know the labour laws.

SHRI GURUDEV GUPTA: You are really a labour leader.

SHRI ARJUN ARORA: I know the laws as well as Mr. Sen Gupta, if not better, and I know there are these four exceptions. But the experience of the workers since that famous decision of the Labour Appellate Tribunal on the Buckingham-Carnatic Mill case has been that only when there is an overt case of victimisation, the dismissal is set aside. So it means that the employer will have the right not only to dismiss the worker but also to deny him his bonus. The law

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relating to dismissal is also in urgent need of some attention and I rise to support this amendment only in order to draw the attention of the Labour Minister and of this House to the faulty law relating to dismissal and I urge upon him—I am sure he will not accept any amendment—but I urge upon him . . .

AN HON. MEMBER: He can do so at a later date.

SHRI ARJUN ARORA: . . . to do something about this very faulty law of dismissal.

SHRI D. SANJIVAYYA: Madam, my hon. friend Shri Arjun Arora is correct so far as the question of dismissal is concerned, that it is done by the employer. But an opportunity is given to the worker against whom these allegations are made and after a proper enquiry the dismissal takes place. I am sorry to disagree with my hon. friend when he says that there is no remedy. In fact, if there is pendency of a case before a Tribunal, the employer will have to take the permission of the Tribunal.

SHRI ARJUN ARORA: But even in granting permission, the Tribunal is governed by the Buckingham-Carnatic Mill case, and those four exceptions, namely, violation of the principles of natural justice, victimisation, colourable exercise of power, etc. are the governing factors.

SHRI D. SANJIVAYYA: If an individual worker is dismissed he can certainly take the case to the Tribunal. Recently we have amended the Industrial Disputes Act. But there is still one lacuna and I agree with the hon. member and that is, the Industrial Tribunal cannot go into the merits of the case. In fact, there is a decision or a resolution of the Standing Labour Committee or the Indian Labour Conference, to the effect that the Industrial Disputes Act should be amended to enhance the powers of the Industrial Tribunals. On that the Government have not yet taken a decision. If the Government takes a decision, then probably the Industrial Disputes Act will be amended to enhance the powers of the Industrial Tribunals.

Now coming to the clause as such, I would like to invite the attention of the hon. Members to page 92 and paragraph 19:15 of the Bonus Commission's Report, where it is stated:

> "The next question for consideration is whether a dismissed employee should be eligible for bonus payment. There is nothing anomalous in combining bonus stoppage with the dismissal—indeed it would be rational—because such cases warrant severity in order to act as a deterrent. After all, bonus can only be shared by those workers who contribute to the stability and welfare of the industry and not those who positively display disruptive tendencies. Bonus certainly carries with it the obligation of good behaviour which helps to sustain the industry."

This is the unanimous recommendation of the Bonus Commission to which Mr. Dange is a party.

SHRI P. K. KUMARAN: How is that? What about the other things?

SHRI BHUPESH GUPTA: But you have rejected it and modified it. It was a package deal. So you accept the whole thing. Now you take one thing and say Mr. Dange was party to it. His dissenting note is also there.

THE DEPUTY CHAIRMAN: The question is:

> 22. "That at page 8, lines 11 and 12 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

102. "That at page 8, after line 14, the following proviso" be inserted, namely:—

'Provided that he is convicted by the appropriate court for any of the above offences'."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill."

*The motion was adopted.*

*Clause 9 was added to the Bill.*

*Clause 10—Payment of minimum Bonus.*

SHRI P. K. KUMARAN: Madam I beg to move:

23. "That at page 8, lines 21 t o24 be deleted."

(*The amendment also stood in the names of Sarvashri Bhupesh Gupta and D. L. Sen Gupta.*)

SHRI P. K. KUMARAN: Madam I beg to move:

123. "That at page 8, line 16, after the words 'an accounting year' the words 'not being an accounting year earlier than the accounting year ending on any day in the year 1962' be inserted."

*The questions were proposed.*

SHRI P. K. KUMARAN: Madam, I shall speak first on my amendment No. 123. By this amendment I want to insert a few words in this clause 10. The clause says:

"Subject to the provisions of sections 8 and 13, every employer shall be bound to pay to every employee in an accounting year"—

and here I want to insert the words:

"not being an accounting year earlier than the accounting year ending on any day in the year 1962"—

and then it will read:

"a minimum bonus which shall be four per cent. of the salary or wage earned"

and so on. I want that the bonus which is now sought to be sanctioned by this clause should have retrospective effect from the year 1962. The Bonus Commission recommended that their recommendations will have effect from the year ending 1962. On that also I have given notice of an amendment, *i.e.*, amendment No. 4. But after going through the Bill and working out the effect of the application of the Bill to many industries, especially to organised industries, industries in the organised sector, I am convinced that if this is going to have retrospective effect, the employees in almost all organized sectors except a few, here and there, would lose. So I will not be pressing my amendment No. 4. But I press my amendment No. 123 because it relates to minimum bonus and this minimum bonus will be available mostly to the employees who are not organised. At least this is a case where the organised workers will be raising the unorganised workers to a higher stage. This should be given retrospective effect.

My second amendment, number 23, seeks to delete the proviso which says:

"Provided that where such employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words 'forty rupees' the words 'twenty-five rupees' were substituted."

If the employee is below fifteen years of age, he will get a minimum bonus of twentyfive rupees. In these days of mechanisation, simplification and so on, with all the rationalisation that we are having in factories, young boys

[Shri P. K. Kumaran.]

could operate these machines and they would be turning out work equal to the one turned out by adult people because it is only a question of operating the machines. Even with the minimum bonus of forty rupees a man cannot buy two pairs of clothes with the prices as they are. So, this difference between major and minor should be done away with. I want the Minister to give the minimum bonus of forty rupees and I want his provision, as I said earlier, to be given retrospective effect from 1961-62. In most of the industries, nothing has been done and this issue has been kept pending the receipt of the Bonus Commission's Report. By accepting this, he would be doing a service to the unorganised sections. The organised sections are going to fight it out.

SHRI M. N. GOVINDAN NAIR (Kerala): While replying to another amendment, the hon. Minister mentioned this clause which provides for the payment of bonus irrespective of the concern making a profit or a loss. What is demanded by this amendment is to give retrospective effect to this provision. This is a recommendation made by the Bonus Commission itself and in all propriety, I believe, he should accept it. We know our fate; our philosophy is:

"कर्मण्येवाधिकारस्ते मा फलेषु कदाचन"

We have to accept this position. Even though he feels that most of the amendments moved from this side are good ones, they ought to be accepted, he will not accept them. I know that. He made a tall claim about this clause. I have to remind him that for the first time they have accepted the principle of bonus being a deferred wage. If there is anything in this Bill which should give credit to him, it is this acceptance of the principle of bonus being a deferred wage instead of an *ex gratia* payment. That principle is accepted but I do not think this is the first time that such a thing has been done. This principle was accepted in this country, I know, in 1945 before independence in the erstwhile Travancore State in the case of the cashewnut industry. In 1946 it was accepted throughout the State, in respect of all the industries. I am mentioning this just to tell hon. friends here like Prof. Wadia who wanted to know as to what would happen to concerns which are losing. You need not have any apprehension because once you accept this principle of treating bonus as deferred wages the management will be setting apart an amount for this while calculating wages and so this will not upset the working of the industry as such. There is no room for any apprehension but my point is that once the Labour Minister accepts this principle that bonus is deferred wage the logic of its acceptance must lead him to the other position that the workers are entitled to bonus from the year 1962 as recommended by the Bonus Commission. If you accept this principle, you should have no difficulty in coming to this conclusion, as recommended by the Bonus Commission, that the people should get bonus from 1962. You might ask as to why there should be emphasis on this question by the workers. As has been pointed out by my friend, this benefit goes mostly to unorganised workers. Those in the unorganised sectors are in the most pitiable condition. They do not have the organised strength to fight for their rights and that is why they were not so far benefited by any of these things. You have, therefore, to show a special concession to these unorganised workers and as such we recommend to the hon. Minister to accept this amendment and thus better this Bill.

**श्री रामकुमार भुवालका** (पश्चिमी बंगाल) : मैडम, इस बोनस बिल के क्लाज 10 में एक लाइन है :

". . . whether there are profits in the accounting year or not"

अभी तक जितने भी कारखाने हैं और उनमें जितने वेजेज दिये जाते हैं, उस पर बोनस के लिये बराबर, हमेशा, साल के साल

वर्ष के वर्ष झगड़ा होता है कि कितना बोनस देंगे और कितना नहीं देंगे और कितना प्राफिट हुआ । अब यह बिल कहता है कि बोनस बिना प्राफिट के भी देंगे । तो मेरा ऐसा मंत्री जी से कहना कि इसका नाम बोनस न रख कर के थर्ड बेजेज रखते तो बड़ा अच्छा होता । बेसिक बेजेज और डियरनेस अलाउंस ये दो तो चलते ही हैं और बोनस को लेकर कर के बराबर हर साल हमारे कलकत्ता में इसके लिये लेबर जलूस निकालते हैं और यह कहते हैं :

मालिकेर जुलुम चलबे ना
आमादेर दावी मानते हवे

बतलब यह है कि मालिक का जुल्म नहीं चलेगा, और हमारा जो हक है वह मानना होगा । यह बात ठीक है कि जुल्म नहीं चलेगा और जो हमारे लेबर हैं, मजदूर हैं, वर्कर हैं, उनको पूरा पैसा मिलना चाहिए और मिलता है । बेजेज कहीं ढ़ाई रुपया है, कहीं दो रुपया है, कहीं दस रुपया है, कहीं बीस रूपया है, इस तरह सब कारखानों की अलग अलग बेजेज हैं; क्योंकि उनके काम अलग अलग हैं । लेकिन यह जो बोनस बिल है, इसमें यह कहा गया है कि बिना प्राफिट के बोनस दो । यह बिलकुल नहीं होना चाहिए और इस वास्ते नहीं होना चाहिये कि अब बोनस का नाम इसमें आ जाने से जितना होगा, उतना ही मिलेगा । आगे ऐसे आदमी हमारे आफिस में देखने में आते हैं कि एक एक आदमी को लाखों रुपया दिया जाता है, लेकिन ऐसा नहीं होना चाहिये कि प्राफिट का सवाल रहे ही नहीं । फिर यह होगा कि जितना मिल गया, उतना ठीक है । इस लिये मेरा मंत्री जी से निवेदन है कि बोनस के बजाय थर्ड बेजेज कर देते, तो अच्छा होता । बिना प्राफिट के बोनस रखना अच्छा नहीं है ।

SHRI D. THENGARI: Madam, the Government is not willing to allow the reopening of the cases that are already decided but the point is that in this Bill the Government has evolved certain principles for payment of bonus and there is no reason why if the decisions taken are in contravention of the principles involved or set out in this Bill in that case reopening should not be allowed. The argument put forward by the Labour Minister is that if such reopening is allowed industrial peace would be disturbed. It may be the other way round; probably if reopening is not allowed industrial unrest may be created and therefore this amendment should be accepted.

SHRI D. L. SEN GUPTA: Madam Deputy Chairman, this clause 10 is really the central point of the whole Bill. If this provision had not been there nobody would have touched it with a pair of tongs even. Actually by saying this here in clause 10 a great mischief is going to be done in the bonus world. There are many well-meaning people here and I particularly mention Shri Arjun Arora, a very good friend, a very respected friend. He waxed elequent on this Bill and he said that for the first time legal sanction was being given and the workers were going to get bonus. This is particularly wrong because the sanction has already been given long long before. He may be conversant with law much more than I do, I know. I am not making any boast but he should have known that bonus was recognised as a right of the worker by the Federal Court as early as 1949 in the Shumshere Jute Company case. The company not content with the tribunal's award took the matter to the Federal Court and the Federal Court said that bonus is an industrial subject and it is the right of the workers to get it and as such the industrial tribunal or the conciliation officer had the right to go into and fix it on principles of equity. So nothing new is going to be done by this statute.

SHRI N. PATRA: This is going to be universal; you are speaking of an isolated case.

SHRI D. L. SEN GUPTA: That was also of universal application. You please take your seat. You learn the subject well before you put a question. It was of universal application. It got the stamp and recognition of the Federal Court that every worker is entitled, provided there was profit, to get bonus. Bonus was recognised as the right of the workers. It was not meant to be applicable to X or Y; it was a universally recognised right. So your question is unintelligible and I do not like to be disturbed by unintelligible questions.

Now comes the question as to whether the hon. Minister has applied his mind to the seriousness of the situation that will centre round this clause 10. This morning while he was replying he said that unless we made a provision for set on there could be not set off. Years later how will the employees get the benefit unless there was a provision for set off? It is true this clause 10 guarantees a minimum bonus whereas clause 15 provides for set on or set off. A losing concern does not come into the picture of set on; only a profit-earning or rather a huge profit-earning concern comes into the arena of set on. My question was about a smaller employer as against a big employer; or he may be a big employer but a losing employer. This clause 10 may be good so far as labour is concerned but it may be very bad so far as the employer is concerned and it may be very bad for the industry also. So what I want to know is whether this provision has been tested by consulting the Attorney-General whether we can make such a provision for a minimum bonus, a bonus which has the character and appearance of a profit bonus. Any concern which does not make a profit will naturally question this. I know there are already certain employers who have filed cases and they say that they cannot be compelled to give profit bonus when they are losing. If this clause 10 goes what will be the position? The big employers will never have an occasion for set off in the matter of bonus; they will set on and on and on for four years and then it will lapse to them. That being the position this clause 10 cuts both ways. You say to the employees that they will get a minimum bonus and by clause 15 the big concerns will be setting on and on.

So far as my amendment is concerned, the proviso says that where the age is less than 15 the amount payable will be Rs. 25 instead of Rs. 40. Madam, there are many industrial concerns which do not keep any service records showing the age of their employees. Who will see to this? Who will protect the interests of these people. You say that 45 lakhs of people will be getting bonus but of these 45 lakhs I believe 40 lakhs are not organised. The trade union movement and other things are there only in the big concerns but there are a large number of small concerns where the workers are not so organised and the 45 lakhs who are expected to get this bonus will not be getting it properly unless there is strict supervision. Only the other day in this House a statement was made that only a few States have appointed Inspectors under the Bonus Act. Now two or three Inspectors are not sufficient for the purpose. The Central Government cannot take any cognisance of this because this will be in the States sector in most of the cases except in the case of certain specified industries. Unless there are sufficient number of Inspectors to supervise the whole thing you can only keep it on record that 45 lakhs of workers will get this bonus. Who will see how many are getting it?

SHRI D. SANJIVAYYA: The Government will see to it.

SHRI D. L. SEN GUPTA: Have you seen how many are observing the provisions of the Factories Act? Have you seen whether the awards of the industrial tribunals are being implemented? We know the limitations of the Government. And because of

these limitations many unscrupulous employers will evade the provisions of this clause 10. This clause 10 is a nightmare; by this you promise minimum bonus but at the same time you are depriving the employees of the big concerns of the bonus they would have got.

SHRI BHUPESH GUPTA: Madam, I would not have spoken but for the provocative speech made by my friend there.

SHRI ATAL BIHARI VAJPAYEE: Why do you get provoked?

*SHRI BHUPESH GUPTA:* I do get provoked for any good cause. He was even quoting certain Bengali slogan:

'मालिकेर जुलुम चलबे ना'

I do not wish to say very much on it. What are the workers to say when they are indulging in this kind of excesses against the working class? Therefore let him not be upset. I wish it was said a little louder and all over the country because we have produced a set of capitalists thanks to this regime who are not only extravagant in other ways but also unsocial and inhuman in their attitude towards the working class and the working class should at least have the right to denounce such things and express their views. Now, here Mr. Bhuwalka said: No profit, no bonus. Well, Mr. Kumaran has suggested that it should have retrospective effect. Otherwise, a large number of unorganised workers will not have got the benefit.

**श्री राम कुमार भुवालका :** ऐसा मैंने नहीं कहा। ऐसा मैंने कहा कि प्राफिट होने से ही बोनस होता है। बोनस का नाम प्राफिट होने से है, बिना प्राफिट के बोनस का नाम लेना ठीक नहीं है।

SHRI BHUPESH GUPTA: I fully understand the lamentations of your class voiced in this House, but the point is today we are accepting the minimum bonus and you have to pay it. You can ask, Mr. Bhuwalka, your friends in Calcutta, many of whom I know. (*Interruption*). You can ask them why they run these industries if they run at a loss. Maybe in a given year on book they may show a loss in one year or some such thing. But the industries would not be run by them if loss became the order of the day. Well, in that case Mr. G. D. Birla and others whom you know very well would have been paupers asking for relief. Now, they have become multimillionaires by running industries at a loss. Therefore, do not go into that story. That story, that double book-keeping you do. Here now you have to pay bonus. It is a part of the wages. You have to pay and pay it with good grace. I would ask the Minister to accept the suggestion put forward by my friend, Mr. Kumaran, so that it comes into force with retrospective effect. Do now try to take away what you propose to give by an arrangement of this kind. And as far as Mr. Bhuwalka is concerned, I am sure the working class will have to fight many a big battle in order to convince him that their ways will not prevail.

SHRI D. SANJIVAYYA: Madam, with regard to the proviso to clause 10, Mr. Kumaran says that the distinction between an adult worker and a worker below 15 years should be deleted. In fact in most of the labour enactments like the Factories Act, etc. special provisions have been made to safeguard the workers who are below 15 years with regard to hours of works, etc. Therefore, they stand on a different footing and this is in accordance with the recommendation of the Bonus Commission.

Now, coming to the other question, namely, that this should have retrospective effect from the accounting year ending on any day in 1962, I would like to invite the attention of the hon. Member to clause 33 which says:—

"Where, immediately before the 29th May, 1965, any industrial dispute regarding payment of bonus

[Shri D. Sanjivayya.]

relating to any accounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate Government or before any Tribunal or other authority under the Industrial Disputes Act, 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in a state, then, the bonus shall be payable in accordance with the provisions of this Act in relation to the accounting year to which the dispute relates and any subsequent accounting year, notwithstanding . . . .

Therefore, if the dispute is pending on the 29th . . .

SHRI P. K. KUMARAN: If they had not raised it, what is the position?

SHRI D. SANJIVAYYA: If they were not raised, they are not eligible. If they had raised it and it is pending, certainly the provisions of this Bill with regard to the minimum as well as the maximum bonus will be applicable retrospectively from 1961-62.

SHRI D. THENGARI: What about the cases decided earlier?

SHRI D. SANJIVAYYA: I have already made it very clear that we do not want to reopen the cases which have been settled either by awards or by Tribunals or through mutual negotiations.

SHRI ARJUN ARORA: What happens where an award has been given and the employers have gone to the High Court in writ or to the Supreme Court in appeal? That, I presume, is pending.

SHRI D. SANJIVAYYA: Yes, if it is pending before an appropriate authority or any other authority.

THE DEPUTY CHAIRMAN: The question is:

23. "That at page 8, lines 21 to 24 be deleted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

123. "That at page 8, line 16, after the words 'an accounting year' the words 'not being an accounting year earlier than the accounting year ending on any day in the year 1962' be inserted."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

"That clause 10 stand part of the Bill."

*The motion was adopted.*

*Clause 10 was added to the Bill.*

*Clause 11—Payment of maximum bonus.*

SHRI P. K. KUMARAN: Madam, I move:

24. "That at page 8,—

(i) in line 30, after the words 'accounting year' the words 'but shall not be less than the proportion prevailing in the establishment by agreement or custom before the commencement of this Act' be inserted; and

(ii) in lines 30-31, the words 'subject to a maximum of twenty per cent. of such salary or wage' be deleted.

*(The amendment also stood in the names of Shri Bhupesh Gupta and Shri D. L. Sen Gupta).*

SHRI D. L. SEN GUPTA: Madam, I move:

25. "That at page 8, line 31, for the words 'twenty per cent.' the words 'thirty-three per cent.' be substituted.

SHRI ARJUN ARORA: Madam, I move:

26. "That at page 8, lines 31-32, the words 'subject to a maximum of twenty per cent. of such salary or wage' be deleted."

SHRI D. THENGARI: Madam, I move:

104. "That at page 8, lines 30-31, the words 'subject to a maximum of twenty per cent. of such salary or wage' be deleted."

*The questions were proposed.*

SHRI P. K. KUMARAN: Madam, in this case . . .

THE DEPUTY CHAIRMAN: I think we should be able to finish this clause at least before we rise today. We have taken 8½ hours on this Bill already.

SHRI P. K. KUMARAN: It is a very controversial Bill. It reads here:

"Where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees under *section 10, the employer shall*, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year . . ."

After that I want to add:

" . . . but shall not be less than the proportion prevailing in the establishment by agreement or custom before the commencement of this Act."

Then, after that, the words "subject to a maximum of twenty per cent. of such salary or wage" should be deleted. Here my intention is to protect the minimum quantum of bonus which they are already enjoying. If this clause gets passed as it is, the employees will lose in many cases, especially in industries where the employees have been agitating and fighting and are in the habit of securing some bonus either by custom or as an *ex-gratia* payment or as a practice. I will read out a small sentence from a memorandum. This is a memorandum submitted to the hon. Minister of Labour. I do not know whether the hon. Minister has read it. It has been submitted to the hon. Minister of Labour, Government of India, New Delhi, by the Salem-Erode Electricity Distribution Company Limited Employees' Union, Salem. In the course of their memorandum they have brought it to the notice of the hon. Minister that it will be unfair to the workers to get a lower amount of bonus simply because of the existence of a law to regulate the payment of bonus. This is what is sought to be done by this Bill. It would be an irony of fate for the workers to get 4 per cent minimum after the Ordinance when the profit is Rs. 10 lakhs and four months basic pay as bonus which is higher than even 20 per cent for certain categories when the profit was only Rs. 6 lakhs. So, when the Electric Supply Company of Erode in the year 1961 . . .

SHRI D. SANJAVAYYA: May I ask a question? What was the gross profit in the previous year when they earned Rs. 10 lakhs and what was the bonus paid?

SHRI P. K. KUMARAN: When the gross profit was Rs. 6 lakhs, they got four months' basic wage. When the gross profit is Rs. 10 lakhs, they get 4 per cent, that is 14 days' wages. This is the effect of this Bill on many organised industries. This should not be put into effect. That is why while moving my previous amendment I said, not to give retrospective effect, except for the minimum bonus. So, this is the case. If you examine the balance sheet and the eligible bonus for almost all organised industries, this is going to be the pattern. The Tata Iron and Steel Company some time back—I do not exactly remember the figure—have come to a settlement by which they have given more than the formula.

SHRI D. SANJIVAYYA: They have paid Rs. 1,92,00,000.

SHRI P. K. KUMARAN: In the case of many of the engineering concerns of West Bengal, their bonus dispute is pending because under this formula they are eligible for less while they were getting a higher bonus. This is the situation that has been brought about by this. So, I hope the Minister will accept at least this which will protect the existing quantum, the quantum which they were getting until last year.

SHRI D. L. SEN GUPTA: Madam, I have two amendments to clause 11, one is No. 24 and another is No. 25. So far as amendment No. 24 is concerned, Mr. Kumaran has dealt with it at length and so I am not going to repeat it. But I may add something which he has not stated.

So far as clause 11 is concerned, it reads;

> "Where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees under section 10, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage."

In place of this 20 per cent my amendment No. 25 says that 33 per cent be substituted. Why do I say 33 per cent? You have got to appreciate it by reference to sub-clause (6) of clause 2. While I was speaking on sub-clause (6) of clause 2 I stated that I should have to take this matter up again along with clause 11. In this clause 11 my grievance is, if 20 per cent of the total earning is actually fixed, then there will be less bonus than what the employees used to get before this Act came into existence. As I mentioned earlier, say, in 1963-64 in Shaw Wallace they got eight months' bonus; Jessops 6½ months' bonus; Burn and Company 5½ months' bonus. But that was so much of basic pay. We are going to give dearness allowance also. But does it come to 6 months' basic pay? You may give it along with dearness allowance, but that will be less than what they were actually getting. There is no charm in your saying that you are getting it along with dearness allowance. I have already indicated that it should be 33 per cent., but that is subject to its being within 60 per cent. of the available surplus. Within 60 per cent. of the available surplus if you can give me 33 per cent., why should you not give me? If there is anything left beyond 33 per cent., you provide for set off and set on and all that. Here I should tell you by reference to the debate of the Rajya Sabha of 18th September, 1964 what the hon. Minister said, what we asked him and what he answered on that date. I am therefore reading that portion:—

> "SHRI D. L. SEN GUPTA (West Bengal): There was formerly a Full Bench formula for the determination of the quantum of bonus out of profit. I am not talking of the customary bonus. I am not talking of the condition of service bonus. I am talking about the bonus payable to the workmen according to the Full Bench formula. Now a new formula is emerging. We do not know what shape it will take exactly, but the Government's decision is now given to us. Is it the position, as stated by the hon. Minister, that if according to the Full Bench formula anybody is entitled to get more bonus than what is envisaged in the present scheme, then rate of bonus according to the Full Bench formula will be given?"

That was my question. His answer was this:

> "SHRI D. SANJIVAYYA: Yes, that is made clear."

He said that is made clear.

"If workers are in a position to get more under the L.A.T. formula than under this formula, certainly they will get the higher bonus under the earlier formula."

So he made it clear. He said that under the earlier bonus formula if they get more bonus, that will be maintained, not this one. But what is happening? Actually the workers are going to get less. I do not know his difficulty. He cannot change the Bill so far as clause 34 is concerned, but certainly one minor amendment he can accept.

AN HON. MEMBER: He can.

SHRI D. L. SEN GUPTA: Then he will not. If he can, then he will not. He gave a solemn assurance to this House and through this House to the working class and the country at large. Now in fact his formula is going to give me less than what the L.A.T. formula gave. In clause 34 he is specifically withdrawing it by saying that if anybody was to get more under any formula, that will stand abrogated because of this Bill. So, instead of keeping his promise, he is doing just the contrary. Clause 34 is there, I have asked for deletion of that. At the moment what he can do is he can certainly raise this 20 per cent. to 33 per cent., and that will be functioning within the limit of 60 per cent. of the available surplus. Sixty per cent. of the available surplus is my share, there is no dispute about that; 40 per cent. will straightway go to the company. There is also income-tax refund which the company will get. So, within the 60 per cent. of my share, I submit there cannot be any difficulty for the Government to accepting 33 per cent., unless the Government is absolutely in the pocket of the employers, unless the Government stands committed to the employers that it is not going to change even a syllable in the Bill. If you mean that 60 per cent. of the available surplus is the workers' share, within that limit please accept my amendment and make it 33 per cent., instead of the 20 per cent. as in the Bill.

SHRI D. THENGARI: Madam, my amendment No. 104 virtually means . . .

THE DEPUTY CHAIRMAN: Mr. Arora, your amendment is No. 26. You may speak.

SHRI ARJUN ARORA: I may speak tomorrow morning.

THE DEPUTY CHAIRMAN: We want to finish this clause now. I would like the House to finish this clause and then rise. You go on, Mr. Thengari.

SHRI D. THENGARI: Madam, my amendment No. 104 virtually means that there should be no ceiling on the percentage of the salary to be paid as bonus. The reasons are obvious. Firstly, the Bill lays down certain basis for the computation of the quantum of bonus. No doubt the basis is not as favourable as the L.A.T. formula or the Bonus Commission formula. Nevertheless some basis has been prescribed. In view of that there is no propriety in putting down a ceiling of 20 per cent.

The hon. Labour Minister has been very earnest, and he has expressed it very often, to protect the higher quantum of bonus the workers used to get earlier according to different formulae or agreements. But I must say with regret that clause 34 does not give adequate or assured protection to the workers. Secondly, it is not guaranteed or assured that the set on amounts would not go to the coffers of the employers but would come back to the workers. That assurance is lacking. In view of all this I think there should be no ceiling on the percentage or the quantum of bonus.

4 P.M.

SHRI ARJUN ARORA: Madam, this is a very important section. I must have some time to say a few words on this section. This section imposes a limit. As Mr. Thengari pointed out, there is a formula for determining the available surplus

[Shri Arjun Arora.]

given in this Bill. That formula is such that most of the workers will get only the minimum bonus prescribed under clause 10. Why should the Government be so anxious after prescribing that formula that nobody should get more than 20 per cent.? If the profits of the concern are such that in spite of this rigid formula which allows all sorts of deductions, more than 20 per cent. of the salary and wages of a worker can be given to him as bonus, why should there be a bar to it?

Madam, the Labour Appellate Tribunal, the Supreme Court and every one concerned with the determination of bonus has held that bonus is an effort towards bridging the gap between the existing wages and the living wage standard. This country is committed to a living wage. Far from giving a living wage, we do not give our workers a fair wage. As a matter of fact, far from giving our workers a bare wage, as defined not by a trade union leader but by the Fair Wages Committee appointed by the Government, we are not even giving our workers a minimum living wage. The Labour Minister in reply to one of the speeches of Mr. Bhupesh Gupta today referred to the Fifteenth Indian Labour Conference held in July 1957 which led to a decision regarding rationalisation and held that there shall be no retrenchment as a result of rationalisation. One thing that he knows, and I may remind this House of, is that in spite of the decision of the Fifteenth Indian Labour Conference, rationalisation is everywhere accompanied by retrenchment, and, what is worse than retrenchment, reduction in employment potential? But at the moment I am not concerned with retrenchment and reduction in employment potential. I want to remind the Labour Minister and this hon'ble House of another decision taken at the Fifteenth Indian Labour Conference. That was regarding the minimum living wage. It is worthwhile reminding the country that the decision of 1957 regarding a minimum living wage has not been implemented anywhere in the country. So bonus continues to be essentially an effort towards bridging the gap between the present wages and the living wage. So, if, Madam, bonus is only an effort towards bridging this most undesirable gap, which is a blot on the fair name of this country, if bonus is only that, why should we by law lay down that the effort at bridging the gap will be limited to 20 per cent. of a worker's wages and dearness allowance. I am sure this House does not think that workers will become rich. No industry will lose much if this maximum ceiling of 20 per cent. goes because this 20 per cent. or whatever higher rate of tax there may be, has to come out of the available surplus and only 60 per cent. of the available surplus can be distributed as bonus. There are so many safeguards for the industry in the country that this ceiling is unnecessary. Let the Labour Minister accept this amendment, do away with the ceiling and earn a good name.

SHRIMATI SHAKUNTALA PARANJPYE (Nominated): Madam, I fully agree with the opinion that there should be no ceiling on the maximum bonus. Already we have made so many concessions. (*Interruptions*). Time is short. Let me go on. We have made so many concessions to the employers that I really ask myself if ever an occasion will arise of there being enough surplus that they will be able to give more than 20 per cent. because, as I was listening to the speech of Mr. Inderjit Gupta the other day in the Lower House, I feel he was right when he said that this Bill is not a Payment of Bonus Bill but a non-payment of bonus Bill. I really feel there is something in what he said.

SHRI ARJUN ARORA: Madam, it is a payment of minimum bonus Bill.

THE DEPUTY CHAIRMAN: It is a matter of opinion.

SHRIMATI SHAKUNTALA PARANJPYE: There have been so many concessions like 6 per cent., 8.5 per cent., so many other *Chhoots* like surplus tax concession, development rebate and so on. I do not think that the workers should be deprived of possible extra bonus, higher than 20 per cent., if it comes their way. So I fully support the amendment of Mr. Thengari.

THE DEPUTY CHAIRMAN: Mr. Gurudev Gupta. Briefly, please.

**श्री गुरु देव गुप्त** : उपसभाध्यक्ष महोदय, श्री अर्जुन अरोड़ा जी ने यह संशोधन दिया है, उसका मैं समर्थन करता हूं । धारा 11 में जो अधिकतम बोनस देने की रोक लगा दी है उसको मैं अनुचित समझता हूं । चूंकि धारा 10 द्वारा जहां मिनिमम बोनस देने का प्राविधान किया गया है, उससे मुझे यह भावना इसमें दिखाई देती है कि सरकार कर्मचारियों को किसी भी प्रतिष्ठान में वर्किंग पार्टनर के रूप में मानने की नीति बना रही है । इसे मैं एक काफी शुभ लक्षण समझता हूं और जब तक यह नहीं होगा तब तक औद्योगिक शान्ति की बात करना शायद साकार स्वप्न नहीं रहेगा । तो ऐसी स्थिति में जब आप धारा 10 द्वारा मिनिमम बोनस देने की गारण्टी करते हैं और जब किसी प्रतिष्ठान में अधिक मुनाफा होता है तब कोई सीलिंग लगा देते हैं तो यह बात समझ में नहीं आती है । जब किसी प्रतिष्ठान में अधिक मुनाफा हो रहा है तो ऐसी दशा में निश्चित रूप से वहां के कर्मचारियों को अधिक मुनाफा मिलना चाहिए । जब आप बोनस के सिद्धान्त को मानते हैं तो एक्सग्रेसिया पेमेन्ट वाली बात को नहीं माननी जाना चाहिये । जैसा कि श्री अर्जुन अरोड़ा ने बतलाया कि वेजेज पेमेन्ट एक्ट के मुताबिक बोनस वेतन का एक भाग माना जाता है, जब वह वेतन का एक भाग माना जाता है तो किसी प्रतिष्ठान को जब अधिक लाभ हुआ है तो कोई कारण नहीं कि वहां पर उसके लिए प्रतिबन्ध लगा दिया जाए और उससे अधिक न दिया जाए । अतएव मैं चाहता हूं कि इस संशोधन को स्वीकार किया जाये । अगर इसे स्वीकार नहीं किया जाता है तो यह बात निश्चित दिखलाई देती है कि इससे काफी हद तक देश में औद्योगिक अशान्ति रहेगी । बोनस बिल रखने का जो उद्देश्य था कि इसके द्वारा देश में औद्योगिक शान्ति रहेगी और कर्मचारियों में संतोष रहेगा, वह भावना बिल्कुल समाप्त हो जाएगी और इस बिल का उद्देश्य ही नष्ट हो जायेगा ।

SHRI JOSEPH MATHEN: I support the amendment of Mr. Arora requesting that there should not be any limit to the percentage of bonus to be paid. I do point out that most of the firms have been paying more than twenty per cent. for so many years and now, because of this Bonus Bill which we have introduced for the benefit of the working class, we are limiting the benefits that have already been extended to the working class. For instance, I can point out that in the Travancore Cements they have been paying thirty-five to forty per cent. bonus in the past years and because of this Bill they have now limited it to twenty per cent. and there is going to be a lot of trouble in that industry. So it is my request that the amendment may be accepted so that there should not be ceiling limit of twenty per cent. with regard to the bonus.

SHRI D. SANJIVAYYA: Shri Sen Gupta's amendment is that twenty per cent. should be replaced by 33 per cent. whereas Mr. Arora's and Mr. Thengari's amendments are that the twenty per cent. limit should be done away with . . .

SHRI D. L. SEN GUPTA: I am for complete deletion . . .

SHRI D. SANJIVAYYA: . . . or the maximum limit should be done away with. The Bonus Commission recommended a minimum of four per cent. and a maximum of twenty per

[Shri D. Sanjivayya.]

cent. limits. They have also recommended a formula called set-off and set-on. When there is a loss, it will be set-off and when there is a gain or profit it will be set-on So this goes on for four years If a particular establishment earns huge profits which would be more than twenty per cent of the total annual wage bill, then the remaining will be set-on and in the subsequent year if the establishment does not earn any profits, that will be utilised for payment of minimum bonus Therefore it is to mutual advantage Moreover I do not think that there would be many establishments where workers will be eligible for more than twenty per cent An hon Member here was saying that in the past certain establishments were paying bonus to the extent of twenty thirty or forty per cent but on what? Previously they were paying on basic wage alone Now it will be on basic wage plus D.A If you take the basic wage and the D A. into consideration, I do not think it would be thirty or forty per cent Therefore I am not accepting the amendments

THE DEPUTY CHAIRMAN: The question is:

24 "That at page 8,—

(i) in line 30 after the words 'accounting year' the words 'but shall not be less than the proportion prevailing in the establishment by agreement or custom before the commencement of this Act' be inserted; and

(ii) in lines 30-31, the words 'subject to a maximum of twenty per cent of such salary or wage' be deleted "

*The motion was negatived*

THE DEPUTY CHAIRMAN: The question is:

25. "That at page 8, line 31, for the words 'twenty per cent' the words 'thirty-three per cent.' be substituted."

*The motion was negatived*

THE DEPUTY CHAIRMAN: Amendments Nos 26 and 104 are barred because amendment No 24 is negatived

THE DEPUTY CHAIRMAN The question is:

"That clause 11 stand part of the Bill "

*The motion was adopted*

*Clause 11 was added to the Bill*

THE DEPUTY CHAIRMAN I want to make a request to the House that we have done only 36 amendments today and 89 are to be done tomorrow plus the Third Reading We have taken 8½ hours on this Bill, not that I want to shut out any argument on this but I would request that tomorrow before lunch we should finish all the three stages of this Bill I am requesting Members so that they may come prepared . . .

SHRI ARJUN ARORA That is impossible

THE DEPUTY CHAIRMAN: We shall try if you co-operate The House stands adjourned till 10 A M tomorrow

The House then adjourned at fourteen minutes past four of the clock till ten of the clock on Wednesday, the 22nd September, 1965

GMGIPND—RS—705RS—3-2-56—570