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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th February, 2018

Pronounced on: 2nd July, 2018

+ W.P.(C) 17938/2004 & CM APP No. 13489/2004

MOOLCHAND KHARAITI RAM HOSPITAL Petitioner

Through: Mr.Dhannjai Rana, Adv.

versus

WORKERS THRU M.K.R.H.KARAMCHAR Respondent

Through: Mr.Abinash K. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. This writ petition, at the instance of M/s Shri Moolchand Khairati Ram Hospital & Ayurvedic Research Institute, challenges Award, dated 28 April, 2004, passed by the learned Industrial Tribunal-II, Karkardooma, holding the petitioner liable to pay bonus, to its employees, under the Payment of Bonus Act, 1965 (hereinafter referred to as “the Act”), for the year 1997-1998. The contention, of the petitioner, that it was exempt from the requirement of such payment, under sub-clause (c) of clause (v) of Section 32 of the Act [referred to, hereinafter, for the sake of expediency, as “Section 32(v)(c)”] of the Act, stands negatived by the learned Tribunal, relying

on earlier judicial pronouncements including the judgements of the Supreme Court in *Workmen of Tirumala Tirupati Devasthanam vs Management*, AR 1980 SC 604 and, perhaps more significantly, *State of T.N. v. K. Sabanayagam*, (1998) 1 SCC 318.

2. The neat issue that arises for consideration in the present case, therefore, is whether the benefit of Section 32(v)(c) of the Act would enure, in law, in favour of the petitioner. If it does, the employees of the petitioner would, by operation of the said provision, stand excepted from the applicability of the provisions of the Act itself; consequently, no liability to pay bonus, under the Act, could be fastened on the petitioner.

3. Before proceeding further, it would be apposite to extract Section 32(v)(c) of the Act, forming, as it does, the linchpin of controversy in the present case, thus:

“32. Act not to apply to certain classes of employees. –

Nothing in this Act shall apply to –

- (i) xxxxxxxx;
- (ii) xxxxxxxx;
- (iii) xxxxxxxx;
- (iv) xxxxxxxx;
- (v) employees employed by –
 - (a) the India Red Cross Society or any other institution of a like nature (including its branches);
 - (b) universities and other educational institutions;
 - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) *established not for purposes of profit;*”

4. The precise case of the petitioner is that it is an “institution established not for purposes of profit”; per corollary, its employees would stand excepted from the provisions of the Act.

5. The learned Industrial Tribunal has founded its judgement (impugned herein) on four judicial pronouncements, viz.

- (i) ***National Dairy Development Board v. National Dairy Development Board Employees Union, 1988 I LLJ 456 (Guj),***
- (ii) ***State of T.N. v K. Sabanayagam (supra),***
- (iii) ***Tamil Nadu Water Supply & Drainage Board v. Tamil Nadu Water Supply & Drainage Board Engineers Association, 1998 I LLJ 931 (SC)*** and
- (iv) ***Workmen of Tirumala Tirupati Devasthanam (supra).***

6. It may be noted, here, that one of the principal planks of the reasoning of the learned Tribunal, in the impugned Award, is that, in law, if an establishment has, in earlier years, been granting bonus to its employees/workmen under the Act, it is not open to the establishment to suddenly discontinue payment of bonus, unless it applies, under the Act, and obtains exception, from such payment, thereunder. Taking stock of the fact that, prior to 1997-1998, the petitioner-Hospital had, in fact, been paying bonus to its employees under the Act, and no exception having been obtained, by it, from the liability to continue to so pay bonus to its employees, the learned

Tribunal has concluded that the discontinuance of payment of bonus, by the petitioner-Hospital, to its workmen, was illegal.

7. A controversy, similar to the present, stands adjudicated *vide* my recent judgment in ***Batra Hospital Employees Union v. Batra Hospital and Medical Research, 2018 (168) DRJ 21***. In that case, the learned Industrial Tribunal had held Batra Hospital and Medical Research Centre (hereinafter referred to as “Batra Hospital”) as exempt from the requirement of payment of bonus, being an institution “established not for purposes of profit” and, therefore, excepted from the applicability of the Act by virtue of Section 32(v)(c) thereof. I had, after examining the legal position, and applying the same to the facts in that case, set aside the award of the Tribunal and declared Batra Hospital to be covered by the Act, and not entitled to the benefit of Section 32(v)(c) thereof. The said decision assumes especial significance in view of Ground B, in the present writ petition, which reads thus:

“Because in a case related to Batra Hospital of Delhi, an Industrial Tribunal by an award dated 3.11.03 in ID No. 20/2002 has categorically held that the provisions of Bonus Act are not applicable on the hospital considering the provisions of Section 32(v)(c) of the Bonus Act. A copy of the award in the case of Batra Hospital is already annexed as ANNEXURE P 2 to this petition. The two Tribunals *on same and similar issue* have taken different views. It is submitted, in view of difference of opinion in the two judgements of two Tribunals, it is the interest of justice that the present Petition be admitted and an authentic pronouncement by this Hon’ble Court on the issue may be made. It is submitted that the present petition raises question of vital importance whether for the charitable hospital, which is “established not for the

purposes of profit” whether provisions of the Bonus Act would be applicable.”

(Emphasis supplied)

8. The petitioner having itself admitted that the case of Batra Hospital was “same and similar” to its own case, my judgement, in ***Batra Hospital Employees Union (supra)*** may, in a way, be said to cover the present issue against the petitioner. Though Mr. Dhananjay Rana, learned counsel for the petitioner, made valiant efforts to distinguish the present case from the case of ***Batra Hospital***, it is questionable whether, in the face of ground B in the writ petition, it would be open to him to so urge. Nevertheless, in order that complete justice is done, I have permitted Mr. Rana to argue the case independently on merits, and proceed, consequently, to consider the case, uninfluenced by the ultimate outcome of ***Batra Hospital Employees Union (supra)***.

A brief factual background

9. The petitioner-Hospital, which had been paying bonus, to its employees and workmen, for over ten years, suddenly discontinued such payment in the year 1997-1998. This prompted the workmen of the petitioner to raise an industrial dispute, which was referred, by the Secretary (Labour) Government of NCT of Delhi, to the learned Industrial Tribunal, *vide* reference dated 13th May, 1999 containing the following single term of reference:

“Whether the workmen are entitled to the payment of Bonus for the year 1997-98, and if so, what relief are they entitled and what directions are necessary in this respect?”

10. It may be mentioned, here that the workmen had also moved this Court, against the non-payment of bonus to them, by way of CWP 3128/1999. However, in view of the fact that the matter had, in the interregnum, been referred to the learned Industrial Tribunal on 13th May, 1999, this Court, *vide* order dated 8th December, 1999, disposed of CWP 3128/1999 with a direction to the learned Industrial Tribunal to adjudicate the reference as expeditiously as possible and in any case within a period of eight months from the date of receipt of copy of the order. It is another matter that the learned Industrial Tribunal ultimately came to adjudicate the reference a little over four and half years after the order of this Court.

11. Unfortunately, in this case the Statement of Claim, of the workmen, and the Written Statement by way of response thereto, by the petitioner-Hospital, were perfunctory in near equal measure. In its Statement of Claim, the respondent, after setting out the history of conflict between the management of the petitioner-Hospital and its workmen – which it may be mentioned, had nothing whatsoever to do with the subject matter of the reference – limited its submissions on the issue of entitlement, of the workmen of the petitioner-Hospital to bonus, only to averring, that, till 1997, the petitioner-Hospital had, in fact, been paying bonus to them, and that they were entitled thereto. The Written Statement by the petitioner-Hospital was equally non-committal, contenting itself to submitting that it was exempt from the applicability of the Act by virtue of Section 32(v)(c) thereof, as it was not a profitable venture, and the trustees, of the Trust which ran the

petitioner-Hospital, drew no profit therefrom. It was further averred that the fact that bonus had, in fact, been paid, to the workmen till 1996-1997, did not create a right, in their favour, to insist on continued payment of bonus, where the statute did not cast any liability on the petitioner in that regard. Reference was also invited, in the said Written Statement, to communications addressed by the petitioner to the Inspecting Officer (Labour); however, these communications, which are also on record, too, are equally non-speaking, merely relying, as they do, on Section 32(v)(c) of the Act.

12. The respondent led the evidence of Vijender Singh, General Secretary of the respondent Union, as WW-1. Vijender Singh filed his affidavit in evidence, dated 23rd May, 2002, basically reiterating the Statement of Claim filed by the respondent before the learned Industrial Tribunal, and alleging that the denial of bonus, to its workmen, by the petitioner was illegal, as the workmen were entitled to the said bonus which was being paid to them for over a decade.

13. Along with his affidavit, WW-1 Vijender Singh filed certain documents. While most of the said documents were in the nature of representations by the respondent-Union, against the denial, by the petitioner, of bonus to its workmen, note deserves to be taken of a letter, dated 13th May, 1986, by the Department of Health, Ministry of Health and Family Welfare to the Director of the petitioner-Hospital, especially as learned counsel for the respondent laid particular emphasis on the said document. The said letter reads thus:

“No. – Z – 28013/22(a)/

Govt. of India
Ministry of Health and Family Welfare
(Department of Health)

Nirman Bhawan, New Delhi.

Dated the 13th May, 1986

To

The Director,
Shri Moolchand Kharaitiram Hospital and
Ayurvedic Research Institute,
Lajpat Nagar,
New Delhi – 110024.

Sub: Declaration of Shri Moolchand Kharaitiram Hospital
and Ayurvedi Reseach Institute as a Public Charitable
Hospital.

Sir,

I am directed to refer to your letter No.PUR-102/483 dated 13.3.86 on the subject noted above, addressed to Director General, with a copy of Secretary (Health) and to say that Shri Moolchand Kharaitiram Hospital and Ayurvedic Research Institute cannot be declared a Public Charitable Hospital under the Ministry of Finance, Department of Revenue's Notification No. 419/33-Customs dated 30.9.83 as it does not satisfy the preconditions laid down there for this purpose.

Yours faithfully,

Sd/-

(Kum.C. Cintury)

Deputy Secretary to the Govt. of India”

14. In his examination-in-chief on 10th October, 2002, WW-1 Vijender Singh relied on his affidavit in evidence dated 23rd May, 2002 (*supra*) and had the documents, filed by him therewith, exhibited

as Ex. WW-1/1 to WW-1/7. In his cross examination, Vijender Singh clarified that, by the expression “profit venture”, he meant that the petitioner-Hospital charged fees, room rent and charges for other facilities, from its patients. He reiterated that the workmen of the petitioner-Hospital were entitled to bonus.

15. The petitioner-Hospital led the evidence of M.K. Kaushik, Manager (Personnel) as MW-1. In his affidavit-in-evidence, dated 22nd February, 2003, MW-1 deposed that the petitioner-Hospital was a non-profit making organization, which did not pay any dividend or profit to any person, and that none of its trustees were drawing any benefit or salary from the Trust. The consultants discharging services in the hospital, it was submitted, were senior medical personnel, who were being recompensed for the services provided by them.

16. Subsequently, MW-1 M.K. Kaushik filed an additional affidavit, dated 3rd November, 2003, seeking to place, on record, documents exhibited as Ex. MW-1/1 to Ex. MW-1/9, of which Ex. MW-1/1 was the Will of late Lala Khairati Ram which created the Mool Chand Khairati Ram Trust, Ex. MW-1/2 was a letter, issued by the Income Tax Authorities, registering the Mool Chand Kharati Ram Trust (hereinafter referred to as “the Trust”) under Section 12A(a) of the Income Tax Act, 1961 (hereinafter referred to as “the IT Act”), Ex. MW-1/3 was a communication from the Income Tax Authorities, granting approval to the Trust under Section 10(23)(C)(via) of the IT Act, Ex. MW-1/4 (collectively) were letters, granting exemption, to the Trust under Section 80-G of the IT Act, Ex. MW-1/5 to MW-1/9

were Income Tax Assessment orders of the petitioner-Hospital for the Assessment Years 1995-1996 to 1999-2000 and Ex. MW-1/10 was a statement, showing receipts, expenditure, capital expenditure and resultant surplus of the petitioner-Hospital for the years 1991-1992 to 2000-2001.

17. In view of the two affidavits filed by him, MW-1 M.K. Kaushik was cross examined twice. During the said cross examination, MW-1 reiterated that the petitioner-Hospital was owned and run by a Trust which was a non-profit making organization, which did not pay any profit to any person and that the petitioner-Hospital was itself not established for the purposes of profit. He denied the suggestion that the petitioner-Hospital was working as a commercial institution making huge profits. He, however, admitted that there was no fixed ratio, for giving free treatment/hospitalization to needy patients, which varied from time to time and that the hospital charges themselves varied from patient to patient. He submitted that he was not in a position to state whether, in 1997-1998, the petitioner-Hospital had earned profit or suffered losses, but denied the suggestion that it was working as a commercial institution making huge profits.

18. Having thus assimilated the evidence adduced before it by the petitioner and the respondent, the learned Industrial Tribunal proceeded, *vide* the impugned Award dated 28th April, 2004, to answer the question referred to it *vide* reference dated 13th May, 1999 (*supra*), in favour of the respondent-Union and against the petitioner-Hospital. As already recorded hereinabove, the learned Industrial Tribunal

placed reliance on various judicial authorities, already noted in para 5 (*supra*), and further justified its conclusion on the ground that, having paid bonus to its workmen till 1996-1997, it was not open to the petitioner-Hospital to arbitrarily discontinue such payment in 1997-1998.

19. The petitioner-Hospital is before this Court, purporting to be aggrieved thereby.

Rival Submissions

20. Mr. Dhananjay Rana, learned counsel for the petitioner-Hospital advanced the following submissions:

- (i) The judgement of the Supreme Court in ***Tamil Nadu Water Supply and Drainage Board (supra)*** was limited to its own facts.
- (ii) The findings, of the learned Industrial Tribunal, in para 13 of the impugned Award, to the effect that the capital of the Management of the petitioner-Hospital had increased during the past years and was being used for other purposes and not for payment of bonus to its workmen, in 1997-1998, was unsupported by any evidence.
- (iii) The reliance, by the learned Tribunal, on Section 9A of the Industrial Disputes Act, in para 15 of the impugned Award, was misguided, as Section 9A was never pressed into service by the respondent-Union, and no chance was, therefore, given, to the petitioner-Hospital to lead any evidence thereon.

(iv) No evidence, to the effect that any profit was being made by the petitioner-Hospital, existed.

(v) It had been acknowledged, by the Income Tax authorities, in their assessment order dated 24th February, 1999, that the Trust had “fulfilled the objectives” as defined u/s 10 (22A) of the IT Act.

(vi) It had been specifically averred, by the petitioner-Hospital, in paras 15 to 17 of its written statement before the learned Industrial Tribunal, that the payment of bonus, to the workmen for the year 1996-1997 did not entitle them *ipso-facto* to bonus to the year 1997-1998. This submission had not been answered by the respondent-Union, in its replication, before the learned Industrial Tribunal.

21. Finally, Mr. Rana urged that, should this Court be of the view that the matter required consideration, it deserved, at best, to be remitted back to the learned Industrial Tribunal as had been done by the Supreme Court in ***Workmen of Tirumula Tirupati Devasthanam*** (*supra*).

22. Arguing *per contra*, Mr. Abinash Kumar Mishra, learned counsel for the respondent relied on paras 4 to 8 of the Statement of Claim, filed by his clients before the learned Industrial Tribunal, as also on the letter, dated 13th May, 1986 (*supra*) by the Ministry of Health and Family Welfare. He further drew my attention to Sections 32 and 36 of the Act.

Legal Position

23. As already noted by me hereinabove, I have had occasion to examine the legal position, in respect of liability to payment of bonus, especially in the light of claims by hospitals, for exemption from applicability of the Act in the light of Section 32(v)(c) thereof, in my judgement of *Batra Hospital Employees Union (supra)*. I had noticed, in the said judgement, several judicial authorities on the point, including the judgements of the Supreme Court in *Workmen of Tirumala Tirupathi Devasthanam (supra)*, *T.N. Water Supply & Drainage Board (supra)* and *State of Tamil Nadu v. K. Sabanayagam (1998) 1 SCC 318*, a Division Bench of the High Court of Madras in *Christian Medical College and Hospital v. Presiding Officer, 2003 (III) LLJ 650 (Mad)*, a Division Bench of the High Court of Karnataka in *Workmen, Bangalore Water Supply and Sewerage Board v. Bangalore Water Supply and Sewerage Board, 1994 Kar LJ 574* and of a learned Single Judge, each, of the High Courts of Bombay and Gujarat, respectively, in *Maharashtra State Electricity Board v. M.C. Chitale MANU/MH/0158/1980* and *National Dairy Development Board (supra)*.

24. The said decisions have been dealt with, in detail, in my judgement in *Batra Hospital Employees Union (supra)*, and I do not intend to burden this judgement by an exhaustive reproduction, or even reiteration, of the observations contained therein. The salient findings in the various decisions cited hereinabove may, however, be set out to advantage as under:

(i) ***Workmen of Tirumala Tirupati Devasthanam (supra)*** held that

(a) “ploughing back of profits”, or whether the institution was a “remunerative enterprise” or not, were not definitive tests to determine the applicability of Section 32(v)(c) of the Act,

(b) the motive for which the institution was established, i.e. whether, at the time of such establishment, it was designed or intended to make profit, or not, was also irrelevant,

(c) the manner in which the institution used the profits generated by it, even in cases where such usage was for charitable purposes, was also irrelevant, and

(d) the determinative test was the “dominant purpose” of the institution – in the case of the Devasthanam, if the dominant purpose was not for earning profit but for merely for the pilgrimages to reach and return, it would stand excluded from the applicability of the Act; else it would be covered thereby.

(ii) ***Tamil Nadu Water Supply and Drainage Board (supra)*** held that

(a) the fact that the organization had been set up for a public purpose did not, *ipso facto*, indicate that it was established “not for the purposes of profit” and,

(b) where the institution

- (i) had its own assets and liabilities,
- (ii) had its own method to recover costs, make investment and manage its funds,
- (iii) had a scheme for profit and loss, and
- (iv) carried out its activities in a commercial manner with a capital structure of profits and labour force,

the establishment had to be treated as designed for making profit.

(iii) *State of Tamil Nadu v. K. Sabhanayagam (supra)* held that the following two questions were required to be addressed, while examining whether an institution would be entitled to exemption from the applicability of the Act, by virtue of Section 32(v)(c) thereof:

- (a) whether the functions of the organization were likely to earn profit, and
- (b) whether profit was, in fact, generated.

(iv) *Christian Medical College (supra)* which specifically dealt with a case of a Hospital, such as the present, held that the fact that the hospital was

- (a) being run on commercial lines,
- (b) charging its patients,
- (c) selling its medicines at a profit,
- (d) ploughing back the surplus generated to the institution,

(e) earning a majority of the income from the Hospital,
and

(f) not providing free service to all patients,

indicated that the Hospital could not be said to have been established “not for the purposes of profit”.

(v) *Maharashtra State Electricity Board (supra)* again reiterated the legal position that the fact of the primary purpose of the petitioner-Board, in that case, being discharge of a public purpose, was irrelevant so far as the issue of whether the Board would, or would not, be entitled to exemption from the applicability of the Act. Equally irrelevant, it was held, was the fact that the Board was investing the profits earned by it in the objects for which it has been constituted. A Division Bench of the High Court of Bombay ruled that, as the Board was working on a commercial basis and earning profit, it could not be treated as exempt from the applicability of the Act.

(vi) *Workmen, Bangalore Water Supply and Sewerage Board (supra)* held that the Act had to be interpreted in a workman-centric manner. The fact that the Board was carrying on commercial activities, demanding and collecting service charges and possessing a fund corpus, it was held, disentitled it to exemption from the applicability of the Act.

(vii) *National Dairy Development Board (supra)* similarly, held that the fact that income of the Board was applied towards

the promotion of its objects and no part thereof was transferred, directly or indirectly, by way of dividend/bonus or by way of profit to any person, did not entitle the Board to the benefit of Section 32(v)(c) of the Act. Inasmuch as the activities of the Board contemplated generation of profit by way of surplus, it was held that the Board was *ipso facto* running on a commercial basis, and the mode of distribution or utilisation, of the profits earned, was irrelevant.

25. Having noticed the above decisions, I had, in para 46 of the judgement of ***Batra Hospital Employees Union (supra)***, culled out the following propositions which emerged therefrom, as useful guidelines to determine the issue of applicability, in any given case, of Section 32(v)(c) of the Act.

“(i) The question of whether an institution is, or is not, established "not for the purpose of profit" cannot be decided merely by referring to the original intent and purpose for which the institution may have been set up, as reflected in its Memorandum of Association, Bye-Laws, or any other similar instrument. Else, it would be easily possible for any institution to avoid the bonus under the Act, merely by incorporating a clause in, or wording, its Memorandum of Association or Bye- Laws, to the effect that it is established for charitable purposes, and not for the purposes of profit. Such subterfuge would obviously be impermissible in law.

(ii) If any institution is making profits, given the object of the Act, it would not be possible to treat it as an institution "established not for the purpose of profit". The making of profit has an indelible nexus with the payability of bonus, during the Full Bench Formula regime as well as thereafter. As Tirumala Tirupati Devasthanam (*supra*) succinctly put it, the moot question would be - "Was the institution „not one for purposes of profit“, motives apart?" The Act cannot be interpreted in such a manner as would enable organizations,

which are profiting from their activities, to escape the liability to pay bonus to their employees or workmen. Such an approach would entirely defeat the socialist structure of our nation, and violate the preambular declaration in the Constitution of India which would always remain the grundnorm.

(iii) Equally, if any institution is set up with the purpose of making profits, the fact that they may not be actually making profits, would not exclude it from the applicability of the Act.

(iv) One of the definitive tests, which would assist in determining the issue, would be the dominant purpose for which the enterprise is set up.

(v) "Ploughing back" of the profits made, into the institution itself, for its maintenance or otherwise, would, equally, not be a justification to avoid liability under the Act. What is material is the earning of profits, and not the manner in which the profits earned are distributed.

(vi) An organization which is run on commercial lines, ex facie, cannot be regarded as "established not for the purpose of profit".

(vii) Among other things, the following features of an organization would indicate that it cannot be regarded as having been "established not for the purpose of profit":

- (a) having its own assets and liabilities,
- (b) having a method of recovery of cost incurred in its operations and making of investments,
- (c) having a profit and loss account, and depositing of profits into specified accounts, resulting in a capital structure of profit with attendant liabilities,
- (d) having its own labour force,
- (e) actual earning of profits while discharging its activities, i.e. having surplus of income over expenses,
- (f) substantial funding, of the institution and its activities, from the earnings made therefrom, as Contra distinguished from earnings from donations etc, and
- (g) charging of customers, or a majority thereof, on commercial, rather than charitable, basis."

26. I had further, in the said decision, examined, in detail, the contention that, having been extended the benefit of Section 85-G of the IT Act, the Hospital was entitled, by virtue thereof, to be treated as established "not for the purposes of profit" under Section 32(v)(c) of the Act. As in the present case, Batra Hospital, too, had been granted the benefit of Section 80-G under sub-section (5) of the said Section. My observations/findings on the issue, as contained in paras 49 to 52 of the said decision, apply, *mutatis mutandis*, to the present case and, are therefore, reproduced, *in extenso*, as under:

"49. A perusal of the certificates, issued to the respondent-Hospital under Section 80-G of the Income Tax Act, reveal that they have been issued under sub-section (5) thereof. Without reproducing the entire provision, it may be noted that exemption, under sub-section (5) of Section 80-G of the Income Tax Act, is available "to donations to any institute or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose..." Mr Sharma would submit that there is no real difference between the expressions "established not for the purpose of profit" and "established for a charitable purpose" and that, therefore, the certificates issued to his client under Section 80-G of the Income Tax Act effectively conclude the factual position that the respondent- Hospital was established not for the purpose of profit.

50. At first glance, there appears to be some substance in the contention of Mr. Manish Sharma. However, the definition of "charitable purpose", as contained in clause (15) of Section 2 of the Income Tax Act, defeats the said contention, so assiduously pressed. "Charitable purpose" is defined, in clause (15) of Section 2 of the Income Tax Act, thus:

"(15) 'charitable purpose' includes the poor, education, medical relief, and preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or

objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for or in consideration of any fee or other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the 1st proviso shall not apply if the aggregate value of the receipts from the activities referred to the rain 25 lakh rupees or less in the previous year;"

Reading the above definition of "charitable purpose", as contained in the Income Tax Act, carefully, it is seen that providing medical relief, ipso facto, is treated as a "charitable purpose" thereunder. Even more significant is the proviso to the said clause, which excepts, from the scope of the clause, i.e., from the scope of the definition of "charitable purpose", carrying on of activity in the nature of trade, commerce or business, whether or not the income from such activity is retained by the assessee concerned, or not. This exception, however, is expressly made applicable only to the last category of "purposes" referred to in the definition, i.e., to the "advancement of any other object of general public utility". In other words, the limitation imported into the definition by the proviso thereto, is not apply to providing of medical relief. An institution which provides medical relief is, therefore, per definition, treated as discharging a "charitable purpose", irrespective of whether its activities partake of the character of trade, commerce or business, or not. Such legislative latitude is not provided, by any provision of the Payment of Bonus Act. In view of the somewhat peculiar definition of "charitable purpose", contained in clause (15) of Section 2 of the Income Tax Act, therefore, it is not possible to regard grant of a certificate, under Section 80-G (5) of the Income Tax Act, as automatically excepting the holder of such

certificate from the applicability of the Payment of Bonus Act.

51. Even otherwise, on first principles, it would be hazardous to presume that every organization, which is certified under Section 80-G of the Income Tax Act, would, of necessity, be entitled, ipso facto, to immunity from the applicability of the Payment of Bonus Act. There is substance, in the contention advanced by Mr. Sanjay Ghose, learned counsel for the petitioner, that the word "charitable purpose", as used in Section 80-G (5) of the Income Tax Act, may not readily be equated with the words "not for the purpose of profit", as used in Section 32(v)(c) of the Payment of Bonus Act. It is well-settled principle, of interpretation of statutes, that different words used in one statutory instrument, have to be accorded different meanings, on the presumption that the legislature, in using such different words, must have intended it to be so. The Income Tax Act uses the expression "not for purposes of profit" in various sub-clauses of Section 10(23C) which, it is well settled, is a provision closely interlinked to Section 80-G. Where the two expressions "charitable purpose" and "not for purposes of profit" are used in the same statute, in cognate provisions, even if situated at some distance from each other, they cannot be accorded the same meaning, without due justification. In the present case, the situation would be worse, as Mr. Manish Sharma would exhort this court to equate the words "for charitable purpose", as used in Section 80-G of the Income Tax Act, with the words "not for purposes of profit" used in Section 32(v)(c) of the Payment of Bonus Act. This, in my opinion, would be entirely impermissible in law.

52. That apart, the object and purpose of the Income Tax Act, and of the Payment of Bonus Act, are completely distinct and different from each other. Per sequitur, the purpose of grant of exemption, in respect of donations made to an organization certified under Section 80-G of the former Act, would be distinct from the purpose of granting immunity, to an organization or institution, from the applicability of the Payment of Bonus Act, under Section 32(v)(c) thereof. No attempt has been made, before me, to equalise, or even analogise, the objects and purposes of the two statutes. What is being sought to be contended is that recognition under

Section 80-G of the Income Tax Act would, for that very reason, exclude the institution from the applicability of the Payment of Bonus Act. I am unable to agree with the said contention.”

Analysis

27. The pleadings, whether by petitioner or by respondent, before the learned Industrial Tribunal, are unhelpful in equal measure, in aiding an adjudication of the present dispute. The respondent has merely contended that the petitioner had, till 1996-97, been paying its workmen bonus and could not, therefore, arbitrarily discontinue such payment suddenly in 1997-1998. The petitioner-Hospital, for its part, merely relies on Section 32(v)(c) of the Act, claiming the benefit thereof.

28. Mr. Rana, appearing for the petitioner, has emphatically contended that the learned Industrial Tribunal was thoroughly misguided in holding that, as the petitioner-Hospital had been paying bonus, to its workmen, till 1996-1997, the discontinuance, by it, of such payment in 1997-98 was *ipso facto* illegal. He contends that the mere fact that bonus might have been paid, by the petitioner-Hospital to its workmen till 1996-1997, would not create an estoppel, in favour of the workmen and against the Hospital, as would require the hospital to continue to pay such bonus, even if the statute did not require it to do so.

29. Empirically viewed, there can possibly be no quarrel with the aforesaid proposition of Mr. Rana. There is no estoppel against the

statute and, if the statute does not, in terms, require the petitioner-Hospital to pay bonus to its workmen, the payment of such bonus, by it in the past, could not possibly create an estoppel in favour of the workmen or against the Hospital, to maintain a claim to continue the payment of such bonus in future. Having said that, the fact that the petitioner-Hospital had, for as long as 10 years, been paying bonus to its workmen, till 1997-1998 when it suddenly discontinued such payment, would undeniably place the onus, to justify such discontinuance, on the petitioner-Hospital. The petitioner-Hospital would be perfectly within its rights in contending that, where the Act did not require it to pay bonus to its workmen, no amount of such payment, in the past, could fasten, on it, such an extra-statutory liability for the future. It would be, however, for the petitioner-Hospital to establish and prove that, in fact, the Act did not require it to pay bonus to its workmen, and not for the workmen to prove to the contrary.

30. The onus to prove lack of liability, on its part, to pay bonus to its workmen, would additionally be cast on the Hospital, on the basis of the fundamental premise, in law that the burden would always be on the person claiming exemption from a statutory liability, to justify his liability, to such exception. This premise, which is well established in tax law, governs other statutes as well, in equal measure. Being the claimant to exemption from the applicability of the Act, under Section 32(v)(c) thereof, it was for the Hospital to establish its entitlement to the benefit of the said provision.

31. Has the Hospital done so? In my opinion the answer has necessarily to be in the negative.

32. While examining the material produced by the Hospital, to justify its claim to the benefit of Section 32(v)(c) of the Act, it is necessary to remember the position, reflected in the judicial decisions cited hereinabove, that the expression “established not for the purposes of profit”, as contained in the said clause, has been understood and interpreted in a somewhat narrower manner than the meaning which the expression would normally carry, as understood in common parlance. If one were to read the expression “established not for the purposes of profit” in its ordinary sense, all that one would be required to be seen, in order to examine whether the expression applied, or not, would be the purpose for which the institution was established. Such an interpretation, if placed, would enable any, and every institution, to contend that, as it had been established “not for the purposes of profit”, it was, by that very fact, entitled to exemption from the applicability of the Act, irrespective of whether it was actually making profit or not. Such an interpretation would effectively efface the applicability of the Act to organizations which might be making huge profits, merely by the organization showing that, *at the time of its establishment, it was not intended to generate profits*. The various judicial authorities cited hereinabove have, justifiably, not accepted such an interpretation, and have emphasized that, irrespective of the purpose or motive for which the institution was established, if, in fact, it was generating profits, it could not escape its liability under the Act. This interpretation coheres perfectly with the jurisprudential

concept of “bonus” itself. Bonus is not a bounty or charity, given to workmen working in an institution. It is a sanctified right, relatable directly to the labour put in by the workmen, and reflective thereof. It is a statutory recognition of the liability, of the institution, to share the profits earned by it with those who are responsible for the earning of such profits. It acknowledges the fact that workmen make the enterprise, and not *vice versa*, and that it is the collective labour of the workmen which results in the enterprise being in a position to generate profits. It accords legal imprimatur to the basic and moral duty of the enterprise to share, with its workmen, who have put in their sweat and toil into ensuring that the enterprise makes profits, a portion of the profits so made.

33. If, therefore, an enterprise is being run on commercial lines, involving generation of profit, it cannot escape liability under the Act, by contending that it was established “not for the purpose of profit”.

34. Once this position, in law, is understood, the conclusion, in a case such as the present, is self-evident. It is, *ex facie*, preposterous to suggest that the petitioner-Hospital, a multi-bedded super speciality enterprise, is not run on commercial lines, or that it does not generate profits. It might be that, at the time of its establishment, the Hospital was not intended to be a profit-making institution; even this assumption, however, would not be strictly accurate, as the intention could not have been to run the Hospital without making profits; at best, the intention could have been that the profits generated would not be distributed amongst the trustees of the Trust, but would be

ploughed back into the corpus of the Hospital, to better its facilities and augment its quality of service. That, however, by itself would not except the petitioner-Hospital from the applicability of the provisions of the Act; neither would the non-profit making nature of the Trust – assuming that it were so – take the petitioner-Hospital itself outside the clutches of the Act, as held in *Workmen of Tirumala Tirupati Devasthanam (supra)*.

35. Though an attempt has been made, by the petitioner, to contend that it was not making profits, such a statement, at its very face, deserves to be rejected outright. In this context, a reference to the various documents relied upon, by the petitioner-Hospital before the learned Industrial Tribunal, and exhibited as Ex. MW-1/2 to Ex MW-1/9, is instructive. Ex. MW-1/1, being the will of Lala Khairati Ram, really does not assist the adjudication of the present dispute one way or the other. Regarding the remaining exhibits, it is worthwhile to note the following:

(i) Ex. MW-1/2 was a communication from the Income Tax Officer (ITO) to the Trust, conveying the decision, of the Commissioner of Income Tax (the CIT) to accord registration to the Trust in terms of the provisions of Section 12A(a) of the IT Act. Significantly, the communication contained a Note, which read thus:

“This certificate of registration u/s 12A (a) of the IT Act, 1961 does not by itself confer any right or any trust/institution to claim exemption from tax in respect of its income inasmuch as such exemption depends on

the satisfaction of all other conditions in this behalf laid down in Sections 11, 12, 12A(b) and 13 of the Act.”

This Note, consciously appended in the communication Ex MW-1/2, clearly indicates that the said communication merely conveyed the decision of the CIT to grant registration, to the Trust, under Section 12A(a) of the IT Act. Such grant of registration did not operate as a basis, for the Trust, to claim exemption under the said Act; still less could such registration be used as a basis for the Trust – far less, the petitioner-Hospital – to claim exemption from the applicability of the Payment of Bonus Act, an entirely different statute.

(ii) Exhibit MW-1/3 was an order, dated 26th November, 2002, issued by the Central Board for Direct Taxes (CBDT), in exercise of the powers conferred *vide* Section 10(23C)(via) of the IT Act, approving the Trust, for the purposes of the said sub- class, for the assessment years 2000-2001 to 2002-2003.

Interestingly, condition (iii), in the said Order, reads thus:

“this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business”.

This caveat, as entered in the Order, itself indicates that the approval, of the Trust, under Section 10(23C)(via) of the IT Act, did not automatically go to indicate that no part of its income constituted “profits and gains of business”. The statute,

too, reflects this position. Section 10(23C)(via) of the IT Act reads as under:

“10. Incomes not included in total income. – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

(23C) any income received by any person on behalf of –

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiia) or sub-clause (iiiae) and which may be approved by the prescribed authority.”

The seventh proviso, to Section 10 (23C) of the IT Act, reads thus:

“Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:”

If one were to read Section 10 (23C)(via) of the IT Act, in conjunction with the seventh proviso thereto, two aspects become immediately apparent, viz.

- (i) that the “hospital or other institution”, referred to in the said sub-clause (via) has necessarily to be “existing solely for philanthropic purposes and not for purposes of profit”; *this, however, would not imply, as a necessary sequitur, that no part of the income of the “hospital or other institution” constitutes “profits or gains of business”, and*
- (ii) income of the “hospital or other institution” which, despite “existing solely for philanthropic purposes and not for purposes of profit”, nevertheless, constitutes “profits or gains of business” would continue to be entitled to the benefit of Section 10(23C)(via) of the IT Act, subject only to the condition that the business is incidental to the attainment of the objectives of the “hospital or other institution”, and separate books of accounts are maintained in respect thereto.

This, however, is not the position obtaining in the case of Section 32(v)(c) of the Act, as is apparent from the various judicial authority sided hereinabove; the mere fact that the hospital garners profits, and is run on commercial lines, would itself disentitle it from the benefit of the said provision. Clearly, therefore, the scope and ambit of the benefit available to a “hospital or other institution”, under Section 10(23C)(via) of the IT Act, and under Section 32(v)(c) of the Payment of Bonus Act, are markedly distinct and different, and it would be folly, therefore, to treat the order, approving the Trust, for the purposes of Section 10(23C)(via), as *ipso facto* excepting the Hospital run by the Trust, from the rigour of the Payment of Bonus Act.

(iii) Ex. MW-1/4 to MW-1/7 relate to the benefit, granted to the Trust, of Section 80-G(5) of the IT Act. For the reasons already set out, in detail, in my earlier decision in ***Batra Hospital Employees Union (supra)***, grant of exemption, under Section 80-G(5) of the IT Act cannot, in any manner, serve as a basis for the Hospital to claim the benefit of Section 32(v)(c) of the Payment of Bonus Act, especially in view of the distinct definition of “charitable purpose”, as contained in Section 2(15) of the IT Act.

(iv) Ex MW-1/8 and MW-1/9 were assessment orders, issued by the Income Tax authorities, for the Assessment Years 1995-1996 and 1996-1997, respectively. These Assessment Orders extend, to the petitioner-Hospital, the benefit of Section 10(22-A) of the IT Act, which was worded identically to Section 10(23C)(via). As such, they cannot assist the appellant, in its claim for being extended the benefit of Section 32(v)(c) of the Act.

(v) Ex MW-1/10 was a statement, showing receipts, expenditure, capital expenditure and result in surplus/deficit of the petitioner-Hospital, for the years 1991-92 to 2000-2001. A glance at the said chart makes it clear that the petitioner-Hospital was, in certain years, earning profits, and in others, sustaining losses, and was, overall, being run as a commercial enterprise, with all the risks and rewards attending the running

of such an institution. This single exhibit, by itself, would be sufficient to indicate that the petitioner-Hospital cannot regard itself as a hospital established “not for the purpose of profit”, so as to be insulated against the liability cost by the Act, to pay bonus to its workmen.

36. Inasmuch as I have independently satisfied myself, regarding the applicability, the petitioner-Hospital, of the Payment of Bonus Act, and the attendant liability, cost on it under the said Act, to pay bonus to its workmen, it is not necessary to examine the other grounds of challenge, urged by learned counsel for the petitioner, to the impugned Award.

Conclusion

37. For the aforementioned reasons, it is clear that no exception can be found, with the impugned Award, to the extent it holds the petitioner-Hospital to be liable to pay, to its workmen, bonus for the year 1997-1998.

38. The writ petition is, therefore, dismissed. All benefits that would accrue to the workmen/members of the respondent-Union, consequent on the impugned Award dated 28th April, 2004, would, therefore, follow, and would be disbursed, to the workmen, within a period of four weeks from the date of receipt of a certified copy of this judgement.

39. There shall be no order as to costs.

**C.HARI SHANKAR
(JUDGE)**

July 2, 2018
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