

In the High Court of Judicature at Madras

Dated: 30.04.2019

Coram

The Honourable Dr.Justice ANITA SUMANTH

Writ Petition No.9215 of 2017

and WMP No.10142 of 2017

The Management of Sathyabama
University Rep by its Registrar S.S.Rau
Jeppiaar Nagar Chemmancherri
Chennai 119 Petitioner

Vs

- 1 The Presiding Officer
Industrial Tribunal Chennai
- 2 Pudhiya Jananayaga Vagana
Ottunargal Matturm Techniciangal Union
110/63 N.S.K.Salai Kodambakkam
Chennai 24 Respondents

PETITION under Article 226 The Constitution of India
praying for the issuance of Writ of Certiorari calling for the
records of the 1st respondent in I.D. No. 33 of 2014 and quash
its Award dated 24.3.2017.

For Petitioner: Mr.S.Ravindran, S.C.
For Mr.P.Nehru

For Respondents: Mr.Balan Haridass - R2

ORDER

The Management of Sathyabama University (in short
'Management/Institution') challenges an award passed by the
Industrial Tribunal (in short 'Tribunal') dated 24.03.2017.

2. The genesis of the matter was a claim statement filed
by Pudhiya Jananayaga Vagana Ottunargal Matturm Techniciangal
Union (in short 'Union') in I.D.No.33 of 2014 on 28.11.2015, to
which a counter was filed by the Management on 29.12.2015.
After completion of pleadings, the impugned award was passed
accepting the claim of the Union.

3. The dispute referred to the Tribunal is as follows:

"சத்தியபாமா பல்கலைக்கழகத்தில் ஓட்டுநர்களாக பணிபுரியும் வாகன ஓட்டுநர்களுக்கு 1965 ம் வருட போனஸ் பட்டுவாடச் சட்டத்தின்படி போனஸ் வழங்கப்பட வேண்டுமா? ஆமெனில் 2012/2013ம் நிதியாண்டிற்கு வாகன ஓட்டுநர்களுக்கு கொடுக்கப்படவேண்டிய போனஸ் தொகையினை நிர்ணயம் செய்க"

Roughly translated, the claim relates to bonus that the members of the Union believe that they are entitled to.

4. The case of the Union, comprising of drivers and technical personnel, is that they are entitled for bonus under the provisions of the Payment of Bonus Act (in short, 'Bonus Act') under which the Management is bound to pay bonus to its employees. The Management runs buses for the transportation of its students, teaching and non-teaching staff to the University, both morning and evening, and collects, according to the Union, substantial transportation fee from the students as well as the employees using the facility, in addition to the tuition fee collected from the students. As such, it is entitled to share the profits from such transport fee.

5. Before the Conciliation Officer, a stand was taken by the Management to the effect that the Bonus Act would not apply in the light of the exemption provided in terms of section 32(v) (b) thereof. This claim was sought to be rubbished by the Union on the ground that the University was run on commercial lines and is hugely profitable and the Institution is thus liable to share its profits with the union members. The Union also argued that the Institution was registered as an Undertaking under the Motor Transport Workers Act 1961 (in short 'MTW Act') and for this reason also, was entitled to bonus for its members.

6. The Tribunal was swayed by the arguments of the Union coming to the conclusion that the Institution was not just profitable, but was indulging in profiteering and thus would not be entitled to the exemption sought for by it. The claim of bonus by the Union of 20% along with interest at 18% for the year 2012-13 was granted by application of the doctrine of casus omissus and appending the words, 'not-for-profit' to Universities and Educational institutions exempted from the payment of bonus in terms of Section 32(v) (b).

7. Before me, learned counsel reiterated their respective stands as before the Tribunal.

8. The case of the Management as projected by Mr.Ravindran, learned senior counsel for Mr.P.Nehru, learned counsel for the petitioner is simple and hinges on the exemption provided under section 32 of the Bonus Act specifically 32 (v) (b) which exempts Universities and other Educational Institutions from payment of bonus to its employees.

9. Learned Senior Counsel urges the Court to adopt the literal language of clause (v)(b) of section 32 pointing out

that there is no qualification whatsoever in the clause as regards the profitability of the educational institution or that it was, allegedly, run on commercial lines. He draws comparison with clause (v) (c) of section 32, which exempts Chambers of Commerce and other organisations from the payment of bonus, upon condition that such organisations not operate for purposes of profit. Thus the Legislature was, according to him, conscious of profit earning apparatus and had made a specific differentiation between the two clauses, deciding, in its wisdom, to purposely omit reference to 'profits' in clause (v) (b) of Section 32.

10. He points out that India is a knowledge capital and the activity of dissemination of education has necessarily to generate some profit for the sustenance of the Institution itself and for the improvement of the standards and quality of the Institution, the education imparted and the facilities and infrastructure offered. Thus the mere fact that the Institution is profitable is not relevant, as according to him, profitability is not a criteria to be taken into account for grant of exemption under clause (v) (b). In any event, he states that there is nothing untoward in the fees and charges levied by the University as the former were in line with the fee regulations imposed by the concerned authorities and the latter were structured bearing in mind the costs incurred in maintaining and running the buses. The transportation was offered only to the students and staff and not to the public and was intended to ensure that they did not have to bear the drudgery and difficulty of public transport.

11. The Management relies on the following decisions:

(i) Christian Medical College and Hospital, Vellore V. The Presiding Officer, Industrial Tribunal, Madras and others (2002 (1) MLJ 720)

(ii) Christian Medical College Hospital V. The Presiding Officer and others (2004 WLR 22)

(iii) Management of Gordon Woodroffe Agencies Pvt. Ltd. V. Presiding Officer, Principal Labour Court and others (2004) (3) LLJ 539

(iv) Steel Authority of India Ltd. V. National Union Water Front Workers (2001 2 LLJ 1087)

(v) Workmen of Tirumala Tirupathi Devasthanams V. The Management and another (1980 1 LLJ 211)

(vi) Ahmedabad Pvt. Primary Teachers' Association V. Administrative Officer and Ors. (2004 1 LLJ 596)

(vii) State Bank of Bikaner & Jaipur V. Om Prakash Sharma (2006 5 SCC 123)

12. The arguments of Mr. Balan Haridass for the Union are as follows:

Firstly he proceeds on the basis that the exemption sought for by the Institution not be so granted for the reason that the Institution engages in profiteering. He is quiet impassioned in his submission to the effect that education has always been regarded as a philanthropic activity, particularly in India and is not expected to be an activity solely to generate profit, as in the case of the Institution in question. He insists that the Institution earns substantial transport fee and has been called upon to produce its financials on several occasions, so that the Union could establish this point. The Management has however failed to do so, thus proving the Unions' point that they are indeed running a lucrative business in the name of education.

13. He takes me through the judgments of the Supreme Court in the case of Unnikrishnan J.P. and others V. State of Andhra Pradesh and others ((1993) 1 SCC 645) and P.A. Inamdar and others V. State of Maharashtra and others (2005) (6) SCC 537 to demonstrate the evolution of the law as far as activities of educational institutions are concerned.

14. In Inamdars' case the Full Bench of the Supreme Court had categorically stated that profiteering should not be indulged in, whereas profitability cannot be objected to as it is required to sustain the Institution and run it on competitive lines. Thus he would urge that the exemption to educational institutions in section 32(v)(b) should be extended only to those institutions that do not profiteer and those that are run with the dominant purpose of education alone and not profit making, as a commercial venture. The Institution in point, according to him, is guilty of the latter.

15. Secondly, he submits that the Institution itself is registered as an 'undertaking' under the provisions of the Tamil Nadu Motor Transport Workers Act 1961. He refers to various judgments to show that in a case where the Institution comprises within itself a Motor Transport Undertaking (in short 'MTU') as in the present case, the entity would assume the character of an MTU entitling the employees to bonus. The exemption under Section 32(v)(b) thus becomes unavailable to the Institution.

16. Parallely, and contradicting his earlier stand regarding the integration of the two personas, he also states that the two roles, one as a MTU and the other as an educational institution, are severable and the services rendered by members of Union should be regarded as services rendered by third party drivers/technicians. The logical conclusion from such an argument is that if the drivers/technicians are to be looked upon as third party service providers, they would fall outside

the definition of 'employees' for the purpose of payment of bonus and the claim of the Union members liable to be rejected straight away and at the threshold.

17. Thirdly, he refers to the provisions of the University Grants Commission Act 1956 (in short 'UGC Act'), to state that the definition of 'University' does not include a deemed University. Admittedly, the Institution in the present case, is a deemed University and hence, according to the Union, stands outside the ambit of the exemption.

18. The Union relies on the following decisions:

1. Workmen of Tirumala Tirupathi Devasthanam V. Management and another (1980 1 SCC 583)
2. Christian Medical College & Hospital V. The Presiding Officer and others (2003 3 CTC 158)
3. P.A. Inamdar and others V. State of Maharashtra and others (2005 6 SCC 537)
4. The Management of Christian Medical College (CMC Association, Vellore) Ida Scudder Road, Vellore 4, Rep. by its Secretary V. Government of Tamilnadu and another (W.A.No.1607 of 2015, dated 26.06.2018 passed by this Court)
5. Vipulbhai M. Chaudhary V. Gujarat Cooperative Milk Marketing Federation Limited and others (2015 8 SCC 1)
6. R.C. Gupta and others V. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and others (2018 14 SCC 809)
7. Unnikrishnan V. State of Andhra Pradesh ((1993) (1) SCC 645)
8. Pondicherry Housing Board Employees Union V. Government of Pondicherry (2009 (3) LLN 473)
9. ESI Corporation V. Sri Gangaram Trust Society (FAO No.284 of 2011 dated 17.01.2014)
10. Queen's Education Society V. Commissioner of Income tax (2015 (8) SCC 47)
11. Pradeep Phosphates V. State of Orissa (AIR 2018 SC 2108)
12. Dental Council of India and another V. Hari Prakash and others (2001 8 SCC 61)

13. Indian Dental Association, by its Secretary, Kerala and Another V. Union of India, by its Secretary, Delhi and Others (ILR 2003 KAR 4564)

14. Central Bureau of Investigation, Bank Securities and Fraud Cell V. Ramesh Gelli and others (2016 3 SCC 788)

In all, he urges this Court to dismiss the Writ Petition confirming the award passed by the Tribunal.

19. Having heard learned counsel, I am of the view that this Writ Petition deserves to be allowed, for the reasons set out below.

20. The payment of bonus is, in terms of section 10 of the Bonus Act, premised on the sharing of profits with the employees of an Organisation/Institution. Employee is defined in section 2(13) as follows:

2. Definition.- In this Act, unless the context otherwise requires,-

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding 1 [three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

21. Employer is defined in section 2(14) as follows:

(14) "employer includes- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of subsection (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

22. There is no dispute on the position that the petitioner and the second respondent, the Management/Institution and

members of the Trade Union, are employer and employee in terms of section 2(14) and 2(13) of the Bonus Act respectively. There is also no dispute on the position that the members of the Union are paid competitive salaries, in excess of the prescription under the Minimum Wages Act. These findings of fact emanate from the impugned order of the Tribunal.

23. I first address the arguments of Mr. Haridass on the constitution of an Undertaking in terms of the MTW Act. The argument appears to be that once constituted as a Motor Transport Undertaking under the aforesaid Act, the entire Institution/Organisation assumes such character, thus entitling the members of the Union to claim and receive bonus from the Institution/Undertaking. Reliance is placed on the decision of the Division Bench of this Court in the case of The Management of Christian Medical College (supra).

24. The Bench, in the aforesaid matter, was dealing with the following prayer:

'For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to issue a Writ of declaration, or any other Writ or direction in the nature of a Writ under Article 226 of the Constitution of India that the Motor Transport Workers Act, 1961, does not apply to the petitioner institution and thereby render justice.'

25. The Bench noted the definition of a MTU, in terms of Section 2(g) of the MTW Act, as follows:

A 'motor transport undertaking' means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

After an exhaustive analysis of the cases on point (See M.C.Mehta V. Union of India and others (2000 (9) SCC 519), Tata Iron and Steel Co. Ltd V. District Transport Officer and Others (2015 (11) SCALE 570) and Father Raymond Coelho V. Labour Inspector, Office of Regional Joint Labour Commissioner (1997 (2) WLN 118) and the provisions of the Motor Transport Workers Act 1961, the Bench concludes that it was only in circumstances where the facility of transportation was offered for hire or was rendered for reward that the entity would assume the character of a Motor Transport Undertaking. In the case of CMC (supra), the Bench noted that though the facility of transportation was offered only to the students and staff of the college itself, the averment that the transport service had, in fact, been rendered for a fee had not been controverted, but had been

accepted by the Management. Thus, the Bench concluded that the facility of transport was being provided for hire or reward and the entity would thus be construed as a Motor Transport Undertaking. This is a question of fact, as to whether the Institution operated for hire or collected a separate fee/reward for such services.

26. I now examine the repercussion of the above case to the case on hand. The allegation in the present case is that the Institution earns substantial fees/collection from the facility of transport offered to its students and staff. Though the financials of the Institution have been sought, the same have not been produced till date. The Institution does not dispute that a fee is collected for such service, but maintains that such fee is only for the purpose of meeting the running costs as well as the costs incurred for the management of this facility and the same is not being run on commercial lines.

27. I do not propose to delve into a fact-finding exercise to determine whether the fee collected for transport is only to meet costs or intended to generate profit as it is both beyond the scope of and unnecessary for the purposes of the issue raised before me. The Institution is, admittedly, registered as a MTU as, in terms of Section 5 of the MTW Act, being an entity that employs more than five (5) motor transport workers. However, the factum of registration as a MTU, by itself, therefore, does not advance the case of the Union for entitlement to bonus.

28. Then again, even if I were to assume that the fee collected for transport did generate a profit, I am of the categorical view that the dominant purpose of the Institution remains the dissemination of education and it thus continues to retain the character of an Educational Institution/University. Thus, even assuming the worst against the Institution, that it has made a profit from the transport facility offered, the exemption set out in terms of Section 32(v)(b) cannot be effaced or negated. The attempt of the Union appears to be that once the Institution assumes the character of a MTU, the employees, that is, the members of the Union, would become entitled to bonus. I disagree, as even if it were to be as suggested and urged by the Union, the payment of bonus would continue to be governed by the special enactment, the Payment of Bonus Act. Simultaneous therewith, the character of the Institution as a deemed University will also remain unaltered notwithstanding that the Institution is a MTU for the purposes of the MTW Act.

29. I do not see the two different personalities assumed by the Institution, one as a deemed University and the other as a MTU, militating against each other or one stepping into the shoes of the other. On the other hand, I see happy co-existence

of the two personas with there being no doubt in my mind, that the persona of the Petitioner as an educational Institution remains dominant and unaltered, thus attracting the exemption provided under Section 32(v)(b) of the Bonus Act. Thus, even if I were to accept this argument of the Union, nothing turns upon the same, that could persuade me or that leads to the conclusion that bonus is payable to the members of the Union.

30. The Union has relied on the judgement of the Supreme Court in the case of Workmen of Tirumala Tirupathi Devasthanams (in short 'TTD') V. The Management and another (1980 1 SCC 583). The TTD was registered as an Undertaking under the MTW Act. The question that arose in that case was, firstly, whether the Motor Transport Undertaking had subsumed/merged itself with the TTD so as to constitute one single unit and secondly, whether the resultant unit was one that operated for purposes of profit so as to attract the exemption provided under section 32(v)(c) of the Bonus Act. The Bench remanded the issue to the Tribunal for decision afresh, in the following terms:

'2. The Tirumala Tirupathi Devasthanam, a vast and unique religious organisation in the country, is certainly not founded for making profit and attracts people who want to offer worship to Shri Venkateshwara but then the specific question with which we are concerned is whether the transport operation by the administration falls within the category of institutions within the meaning of Section 32(5)(c). Is the Transport Department so merged in and integrated with the Devasthanam as to be incapable of independent identity? Is the Transport Industry run by the Devasthanam sufficiently spread as to be treated as an institution in itself? There is no doubt, as the Tribunal has rightly held, that it is an industry but the further question arises whether it is an institution in the context and within the text of the Payment of Bonus Act. This question has not been properly appreciated by the Tribunal. Secondly, assuming that it is an institution, it does not necessarily follow that Section 32 is excluded. On the other hand, there must be proof that the Transport Department (a) is an institution; and (b) established not for the purpose of profit. The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made in some years are ploughed back whether that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not clinch the issue whether the institution has been established not for

purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as a remunerative enterprise, that is decisive of the issue.

3. The Tribunal has to decide whether the Transport Department, having regard to the features of its administration, the sources of its finance, the balance-sheet that is drawn up and the disposal of the profits, can be considered to be an institution in itself whether it has nexus with the Davasthanam or not. The fact that it is run by the Devasthanam, does not keep it out of its being an institution. This aspect has not been considered and must be decided de novo.

4. Likewise, merely because it is an institution, the Transport Department does not cease to be one established 'not for purposes of profit', that has got to be made out on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profits or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution. Was the institution 'not one for purposes of profit', motives apart? If it was one, definitely not for earning profit, but merely as an ancillary facility for pilgrims to reach and to return, Section 32(5) will exclude the institution. If we may tersely put it, the dominant purpose of the Transport Department will be the decisive factor.'

31. The case on hand is distinguishable simply for the reason that we are not concerned with the provisions of 32(v)(c) that exempts certain Institutions from the payment of bonus, subject to the condition that they do not generate profit, but 32(v)(b) that touches solely upon the activity of impartation of education, which the petitioner before me, admittedly does, the generation of profit not being a factor for consideration. The issue regarding the constitution of the Institution as a MTU under the MTW Act is answered as aforesaid.

32. The Union also cites the decision of this Court in The Christian Medical College and Hospital (supra). In this case, while holding that the College was entitled to the exemption under Section 32(v)(b), the Hospital was held to be a Commercial Institution, one generating profits, thus not entitled to the exemption provided in terms of section 32(v)(b) of the Bonus Act.

33. I now move on to the merits of the claim of exemption under section 32(v) (b) as canvassed by the Management.

34. The relevant statutory provision under which exemption is claimed is extracted below:

32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to -

(i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), and employed by registered or listed employers;

(iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a Local authority;

(v) employees employed by -- (a) the Indian 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;

(vi) employees employed through contractor on building operations;

(viii) employees employed by the Reserve Bank of India;

(ix) employees employed by -- (a) the Industrial Finance Corporation of India;

(b) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951 (63 of 1951);

(c) the Deposit Insurance Corporation;

(d) the National Bank for Agriculture and Rural Development;

(e) the Unit Trust of India;

(f) the Industrial Development Bank of India;

(fa) the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989;

(ff) the National Housing Bank;

(g) any other financial institution (other than a banking company), being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify, having regard to -

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

(xi) employees employed by inland water transport establishment operating on routes passing through any other country.'

35. Reliance is placed by the Management on the provisions of Section 32(v) (b) above. Even before adverting to this point in detail, I may make reference to a preliminary submission of the Union to the effect that the Institution in question will not be covered by the exemption clause seeing as it is only a 'deemed' university that does not fall within the ambit of 'University' as defined by the University Grants Commission Act 1956 (in short 'UGC Act'). The provisions of the aforesaid Act however would establish otherwise. A 'University' is defined in Section 2(f) as follows:

(f) 'University' means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

36. According to the Union, the definition does not include a deemed University which then stands outside of the ambit of

the exemption in Section 32(v) (b) of the Bonus Act. However, the provisions of Section 3 of the UGC Act state thus:

3. The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

37. In the present case, the Notification issued by the UGC in the case of the Institution reads thus:

‘(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART-1 SECTION-1)

No.F.9.11/2001/U3

Government of India

Ministry of Human Resource Development

Department of Secondary & Higher Education

Fax No.3381355, 3386278,

3382947 Shastri Bhawan,

New Delhi, July 16, 2001

NOTIFICATION

In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956 (3 of 1956), the Central Government, on the advice of the University Grants Commission, hereby declares the Sathyabama Institute of Science and Technology, Chennai (formerly known as Sathyabama Engineering College, Chennai), Tamil Nadu as Deemed to be University for the purpose of the aforesaid Act with immediate effect.

(Champak Chatterji)
Joint Secretary to the Government of India

The Manager,
Government of India Press,
Faridabad (Haryana).’

38. The Union relies on a judgement of the Supreme Court in Dental Council of India V. Hariprakash ((2001 (8) SCC 61) and one of a learned single judge of the Karnataka High Court in

Indian Dental Association V. Union of India (ILR 2003 Kar 4564) in support of the aforesaid submission. The judgements in the case of Dental Council of India (supra) and Indian Dental Association (supra) dealt with the issue of whether a 'deemed university' under Section 3 of the UGC Act falls within the sweep of the phrase 'University established by law' used in Section 3(d) of the Dentists' Act 1948. The conclusion was that it would not. The aforesaid decisions do not assist the case of the Union as the provisions of Section 3 of the UGC Act and the Notification issued in the case of the petitioner Institution make it clear that the Institution is to be understood as a 'University' under the UGC Act.

39. Thus, and in the light of Section 3 of the UGC Act, the petitioner Institution is also a 'University' within the meaning of Section 2(f) of the UGC Act. This argument is thus rejected. In any event and even otherwise, Section 32(v)(b) covers Universities as well as 'other educational institutions' and the petitioner would evidently fall with the sweep of the latter.

40. A short analysis of Section 32 of the Bonus Act indicates that Legislature has, in its wisdom earmarked demarcated certain categories of persons who would not receive the benefit of bonus even though they are employees of an Organisation/Institution. The first category relates to employees of the Life Insurance Corporation, a profit making concern. Moving on, clauses (ii) and (iii) deal with seamen and dock workers, who are entitled to other beneficial schemes under the relevant statutes that govern them. They have thus been excluded from the benefit of payment of bonus. Then, employees in an Industry set up under the Central or State government or a local authority and those in certain specified banks and financial establishments are also excluded by virtue of the exemption.

41. Clause (v) of Section 32 is divided into three categories:

(a).....

(b) universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

42. The petitioners' case all along has been in terms of clause (v)(b) of Section 32. Thus there is really no reason to consider the provisions of sub-clause (c) at all that uses the phrase 'not for profit' except that the Union seeks to interpolate that phrase into the previous sub-clause as well.

The Union would have me read sub-clause (b) by adding the phrase 'that do not make profit' by application of the doctrine of casus omissus which is what the Tribunal has done. Evidently, that is impermissible as there has to be a strict construction of a statutory scheme. Though the statute in question is a Welfare Legislation, it is a well settled proposition that the interpretation of the Bonus Act would have to be on the language of the Act itself. I am thus unable to accede to the argument of the Union to the effect that the concept of 'earning of profit' should be introduced into clause (v) also.

43. In the case of Central Bureau of Investigation V. Ramesh Gelli (2016 (3) SCC 788) relied upon by the Union, the Supreme Court was considering whether a person who holds the position of a Chairman/Managing Director/Executive Director of a private bank operating under a licence issued by the Reserve Bank of India under the provisions of the Banking Regulation Act would come within the ambit of 'public servant' for the purposes of the Prevention of Corruption Act. While agreeing that it would, the Court stated that the Court should supply any omission by Legislature to make the operation of the relevant Act effective and purposive. Though the proposition laid down is well settled, the doctrine of casus omissus is inapplicable to the facts and circumstances of the present case. The cases cited by the Management to this effect support my conclusion and are briefly discussed below:

44. In Management of Gordon Woodroffe Agencies Pvt. Ltd. (supra), the Supreme Court concludes thus:

'13.This Court in the case of N.S.Giri (supra) held: "An award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced." Thus, it is clear from the pronouncements of this Court that the Labour Court or for that matter the High Court had no authority in law to direct payment of any additional sum by way of ex gratia payment otherwise than what is provided under the statute when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid or offered in time. In such a situation, contrary to the statute, the principle of social justice cannot be invoked since the Legislature would have already taken note of the same while fixing the compensation payable.'

45. In Steel Authority of India Ltd. (supra), a Constitution Bench of the Supreme Court states thus:

'25.It is a well-settled proposition of law that the function of the Court is to interpret the Statute to ascertain the intent of the legislature-Parliament. Where the language of the Statute is clear and explicit the Court must give effect to it because in that case words of the Statute unequivocally speak the intention of the legislature. This rule of literal interpretation has to be adhered to and a provision in the Statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore the words used therein must be construed in their natural ordinary meaning as commonly understood.

26.We are afraid we cannot accept the contention that in construing that expression or for that matter any of the provisions of the CLRA Act, the principle of literal interpretation has to be discarded as it represents common law approach applicable only to private law field and has no relevance when tested on the anvil of Article 14, and instead the principle of public law interpretation should be adopted. To accept that contention, in our view, would amount to abandoning a straight route and of treaded road in an attempt to create a pathway in a wildness which can only lead astray.

.....

104.The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature.'

46. The unassailable conclusion that I draw from the judgements extracted above is that the Statute, though a Welfare legislation, would have to be construed strictly and there can be no insertions or interpolations thereto. The petitioner is entitled to the exemption set out in terms of Section 32(v)(b) of the Bonus Act on the plain language of the statutory provision.

47. Having said so, the line of argument adopted by the Union is indeed attractive. Mr. Haridas refers to the judgements of the Supreme Court in the cases of Unnikrishnan J.P. and others (supra) and P.A. Inamdar and others (supra) to illustrate that profiteering is directly apposite to the concept of an Educational Institution. He points out that the spread of education, in India at least, has always been regarded as a social responsibility and a philanthropic activity. Institutions such as the petitioner that engage in profiteering should thus not be extended the benefit under section 32(v)(b), to the detriment of the employees.

48. He refers to the case of Vipulbhai M. Chaudhary (supra) where the Supreme Court considers the silences within the Constitution and grants Courts the power to legislate, judicially, in compelling, extreme and critical circumstances as follows:

"24. No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243-ZT has given a period of one year to frame/reframe the statutes in consonance with Part IX-B and thereafter i.e. with effect from 12-1-2013, those provisions which are inconsistent with Part IX-B, cease to operate.

25. Silence in the Constitution and abeyance as well has been dealt extensively by Michael Foley in his celebrated work The Silence of Constitutions. To quote from the Preface:

"Abeyances refer to those constitutional gaps which remain vacuous for positive and constructive purposes. They are not, in any sense, truces between two or more defined positions, but rather a set of implicit agreements to collude in keeping fundamental questions of political authority

in a state of irresolution. Abeyances are, in effect, compulsive hedges against the possibility of that which is unresolved being exploited and given meanings almost guaranteed to generate profound division and disillusionment. Abeyances are important, therefore, because of their capacity to deter the formation of conflicting positions in just those areas where the potential for conflict is most acute. So central are these abeyances, together with the social temperament required to sustain them, that when they become the subject of heightened interest and subsequent conflict, they are not merely accompanied by an intense constitutional crisis, they are themselves the essence of that crisis."

In Part II, Chapter Four, the author has also dealt with the constitutional gaps and the arts of prerogative. To the extent relevant, it reads as follows (p.82):

"Gaps in a constitution should not be seen as simply empty space. They amount to a substantial plenum of strategic content and meaning vital to the preservation of a constitution. Such interstices accommodate the abeyances within which the sleeping giants of potentially acute political conflict are communally maintained in slumber. Despite the absence of any documentary or material form, these abeyances are real, and are an integral part of any constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a constitution as its more tangible and codified components. ..."

26. Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. "[T]he job of the Supreme Court is not to expound the meaning of the

Constitution but to provide it with meaning." The reference obviously is to the United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so.

"... It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express."

According to Lord Mersey in *Thompson (Pauper) v. Goold and Co*: (AC p.420)

".... It is a strong thing to read into an Act of Parliament, words which are not there, and in the absence of clear necessity, it is a wrong thing to do".

In the case of cooperative societies, after the Ninety-seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as democratic institutions.

'45. ... The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity.'

49. The above judgement, while elaborating on the methods by which and the scenarios in which obvious gaps in statutes can be filled judicially, also cautions that such unilateral acts of attributing meaning to the silences has to be done with care and only very selectively.

50. He makes reference to the judgement of the Supreme Court in the case of *Queens Educational Society (supra)* to bring home the point that once the prime motivator of an educational institution becomes profit, it must lose all benefits granted to it under various statutes, in that case, under the provisions of the Income tax Act 1961. The Supreme Court, in the aforesaid case, has stated that the availability or otherwise of an exemption would be completely reliant upon the Institution

retaining its prime focus on education alone and any deviation from or dilution of this focus would render it unfit for such benefit. The Bench states thus:

'The main issue before the Supreme Court was as to the scope of applicability of the exemption for educational institutions under Section 10(23-C)(iii-ad) and Section 10(23-C)(vi) of the Income Tax Act, 1961.

The assesses submitted that the wrong test has been adopted and followed by the assessing officer, which is a test laid down by the assessing officer and not by any Supreme Court judgment, namely, that whenever a profit/surplus is made by an educational institution, it ceases to exist solely for educational purposes and becomes a profit-making enterprise. The Revenue, on the other hand, contended that Section 10(23-C) does not contemplate the making of large profits. If an educational institution in fact makes large profits then even though it may plough such profits back into the purchase of assets for education, yet such institution cannot be said to be existing solely for educational purposes. It would then become an institution which would really be for profit.

Reiterating and summarising the manner of applicability of dominant object test to find out whether activities of the assessee institution can be covered for the purposes of exemption (that is, education and/or public utility purpose) as distinguished from the purpose to earn profit, the Supreme Court."

51. He also quotes the Supreme Court in the case of Paradeep Phosphates Limited (supra) as follows:

'11.Undoubtedly, it is a cardinal principle of law that beneficial laws should be construed liberally. The Industrial Dispute Act, 1947 is one of the welfare legislations which intends to provide and protect the benefits of the employees. Hence, it shall be interpreted in a liberal and broad manner so that maximum benefits could reach to the employees. Any attempt to do strict interpretation would undermine the intention of the legislature. In a catena of

cases, this Court has held that the welfare legislation shall be interpreted in a liberal way.'

52. In all, a compelling argument. However, I am afraid it does not derive support from the statutory provisions that exist as on date and neither am I persuaded to judicially legislate though permitted to do so by the dictum of the Supreme Court in the case of Vipulbhai (supra). The depositions of the parties reveal that the petitioner nowhere admits that it derives a profit from the services of transportation. Though, Mr. Ravindran fairly states that the costs for the provision of such infrastructure will be collected by the petitioner by way of consolidate payments imposed upon the students and faculty, there is nothing to support the conclusion of the Tribunal that the petitioner is engaged in 'profiteering'. There is a difference in the terminology between 'profit making' and 'profiteering'. While the former is accepted to be a legitimate exercise, necessary for the sustenance of all Institutions, even those engaged in charitable or philanthropic activities, including those disseminating education, profiteering, defined as 'taking advantage of unusual or exceptional circumstances to make excessive profits; eg. selling of scarce or essential goods at inflated prices during time of emergency or war', is frowned upon.

53. The Union has been seeking the copies of financials of the Institution to establish its case. The same have not been produced by the Institution till date. However, no adverse inference can, in my view, be drawn from this fact, as the relevant provision, that is, section 32(v)(b) does not refer to 'profitability' as a factor to be taken into consideration at all.

54. One walks a fine line while appreciating submissions in relation to changing times, evolving circumstances and stark realities on the one hand and the rigour of a statute that binds one in decision making, on the other. No doubt there are those times that present an opportunity to legislate judicially and make an imprint on the changing sands of time and circumstances, and one must, if such an opportunity presents itself, avail the same, albeit cautiously and in appropriate measure. But this is not one such occasion.

55. Though it cannot be said that every educational institution profiteers, we are not strangers to several such institutions in our midst today. Though regulations have been formed for streamlining the charges collected by educational institutions, such regulations do not encompass all institutions

and there are aberrations that operate outside of such restrictions. There is a point in stating that when an Institution is operating on a purely commercial basis, the dominant purpose shifts from being the dissemination of education to the generation of profit and such an Institution should be equated to any other commercial Industry. Such an Institution would then be a commercial concern per se and not one engaged in the pursuit of education as envisaged in terms of section 32(v)(b), particularly since the exemption compromises persons who are more economically fragile than the Institution they serve. There is thus some justification in the point agitated by the Union and perhaps the Legislature could take note of this position and bring into effect suitable amendments, in the manner and where, necessary.

56. For the present, however, one has to rest content with the provisions of sections of section 32(v)(b) that, in my firm view, support the stand of the Management. In the light of the discussion as above, the impugned order of the Tribunal is set aside and this Writ Petition is allowed. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Sl

To

The Presiding Officer,
Industrial Tribunal Chennai.

+1 cc to Mr.Balan Haridass, Advocate SR.No.42849

+1 cc to Mr.P.Nehru, Advocate Sr.No.42963

Writ Petition No.9215 of 2017

and WMP No.10142 of 2017

NA(CO)

CSL/12.06.2019