BONUS BILL

—AN ANALYSIS

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INTRODUCTION

YEARS OF STRUGGLE HAD SUCCEEDED IN ESTABLISHING THE WORKERS' right to bonus. The Labour Appellate Tribunal (LAT) formula, as modified, amplified and applied by the Supreme Court had clearly brought out the one fact that bonus was not a matter of charity or of *ex gratia* payment by employers, but was a right of the workers. It had to be paid whenever in any particular accounting year, there was an available surplus after deducting various prior charges from the gross profits of that year.

However, the working class was not satisfied with the position as it existed. There was no law which made bonus payment obligatory and in each establishment, a fresh dispute had to be raised with respect to each accounting year. Prior charges were computed in a way which swallowed up most of the profits and out of huge profits, only small sums were left as available surplus, a portion of which was distributed as bonus. Then, many employers who had become "bonus-conscious" could and did manipulate balance sheets in a way which either left no surplus, or such a meagre amount that it, in fact, amounted to denial of bonus.

At the same time, due to the absence of a law and the necessity to raise fresh disputes every year in respect of each establishment, the number of bonus disputes was mounting every year.

The employers had on their side mounted an offensive to secure even greater benefits than those allowed under case law.

In these circumstances, the Government of India appointed a Bonus Commission on December 6, 1961. This Commission submitted its Report on January 18, 1964, but the Government not take any action on it. Finally, on September 2, 1964, the government announced its decision accepting the recommendations of the Commission subject to certain modifications. These

modifications were based on the one-man minute of dissent submitted by N. Dandekar, the representative of Big Business on the Commission. At the same time, the government not only rejected the recommendations of the other six members of the Commission (including the Chairman, the two independent members, the second representative of employers and the two representative of workers) but also failed to take any notice of the dissenting notes (incorporated in the body of the Report) of the AITUC representative, S. A. Dange, (See Appendix II.)

The resulting position was unacceptable to the working class. All major trade union organisations, including the INTUC, expressed openly their dissatisfaction at this blatantly pro-employer action of the Government. However, the Prime Minister is reported to have assured the INTUC that whatever bonus the workers were receiving under existing dispensation, they will continue to get it, if they were not entitled to more under the proposed bill. On September 18, 1964, D. Sanjivayya, the Union Labour Minister, gave the following statement on the floor of Parliament:

"...it was not government's intention that benefits which labour may have been enjoying in the matter of bonus in any establishment or industry should in any way be curtailed by the adoption of a new formula for the payment of bonus.

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

Though at best these assurances would merely lead to congealing present position in certain cases, and the government's anti-labour modifications would all stand, the INTUC withdrew its opposition to the proposed Bonus Bill. But the AITUC, HMS, UTUC and others continued to oppose the modifications.

The Rashtriya Sangram Samiti uniting AITUC, HMP, UTUC and several trade federations took the stand that since the government had unilaterally modified the recommendations of the Bonus Commission, which constituted a compromise package

deal, the trade union movement no longer was bound by the Bonus Commission's Report and was free to advocate and fight for its own bonus formula. (See Appendix I.)

The employers emboldened by the grains which they had made through an obliging government continued to mount offensive particularly on the minimum bonus clause and the assurance to protect existing benefits.

Two drafts of the "Payment of Bonus Bill" were circulated to central organisations of workers and employers by government, Discussions took place in the Standing Labour Committee in December 1964 and later in an ad hoc committee appointed for the purpose. But no progress could be made.

In this background, the government promulgated on May 29, 1965, the Payment of Bonus Ordinance. This ordinance made several further concessions to the employers and was so defective and full of lacunae and loopholes that even the meagre benefits still left to the workers became well-nigh unrealisable.

The Payment of Bonus Bill as introduced in the Lok Sabha on August 16, 1965 closely follows in all essential respects the ordinance except Section 22 which has been amended.

As it exists, the Bill will give rise to lengthy disputes and the position in this regard will be no better than it was earlier.

In the pages which follow, an attempt has been made to analyse some major provisions of the Bill in a broad way Apart from what has been written here, there are many more defects in the Bill but for the present, details have been left out The AITUC's view on the principles of bonus and its criticism of the Bill from this viewpoint has not been dealt with.

1. APPLICABILITY OF THE ORDINANCE

(a) *Retrospective Effect*

The Bonus Commission had recommended that the provisions of the new formula would be applicable to *"all bonus matters relating to accounting year ending on any day in calendar year* 1962 *other than those cases in which settlements have been reached or decisions have been given."*

The Labour Minister in his statement of September 18, 1964 had not said anything regarding this and the presumption could therefore fairly be drawn that the government accepted this recommendation.

However, the Bill says (*Section* 33):

> "Where immediately before the 2nd September 1964, any industrial dispute regarding payment of bonus relating to any acounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate government or before any tribunal or other authority under the Industrial Disputes Act 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in a State, then, the bonus shall be payable in accordance with the provisions of this Act in relation to the accounting year to which the dispute relates and any subsequent accounting year, notwithstanding that in respect of that subsequent accounting year no such dispute was pending.
>
> "*Explanation*: A dispute shal be deemed to be pending before the appropriate government where no decision of that government on any application made to it under the Act or such corresponding law for reference of that dispute to adjudication has been made or where having received the report of the Conciliation Officer (by whatever designation known) under the Act or law, the appropriate Government has not passed any order refusing to make such reference."

Thus the earlier position has been modified in favour of the employers. Now the coverage is limited only to those matters which are "disputes" in the narrow sense defined by the ordinance which *ipso facto* means that in all cases where a dispute in this defined sense is not pending, no bonus will be paid for 1962-63 and if the accounting year ends before September 2, 1964, for 1963-64 as well. The earlier retrospective effect is wiped out and only in a handful of establishments will any claim survive.

Earlier, only those establishments where there were settlements/awards would be specifically excluded; now only those where disputes are pending will be included.

The Bonus Ordinance was promulgated on May 29, 1965. What happens to an industrial dispute which was pending in

the sense provided for by the ordinance and decided on any date between September 2, 1964 and May 29, 1965?

There are cases in which industrial tribunals have dismissed bonus claims because, according to the LAT formula, there was no allocable surplus. The Bill now provides for a minimum bonus of four per cent of total annual wages or Rs. 40 whichever is higher. The awards of the tribunals have been published and have become operative. What remedy can the workers have?

Then what about a case for bonus which was pending on September 3, 1964 and afterwards, but not on September 2, 1964? In such cases, unless a dispute with regard to accounting year 1962 was pending on September 2, 1964, again, minimum bonus will be denied.

The AITUC would therefore suggest that the Bill should be amended to provide for:

(i) Payment of minimum bonus in all cases relating to any accounting year ending on any day in the calendar year 1962 where claims have been dismissed because no surplus was available according to the LAT formula.

(ii) Retrospective effect being extended to all bonus matters relating to accounting year ending on any day in calendar year 1962 other than those cases in which settlements have been reached or decisions have been given except as provided in (i) above.

* * *

(b) *Exemption of certain establishments*

(i) The Bill exempts newly set-up establishments from the purview of the Act. Section 16 days:

"16 (1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act only—

(a) from the accounting year in which the employer derives profit from such establishment; or

(b) from the sixth accounting year following the acounting year in which the employer sells the products manu-

factured by him or renders services, as the case may be, from such establishment,

whichever is earlier:

Provided that in the case of any such establishment the employees thereof shall not, save as otherwise provided in section 33, be entitled to be paid bonus under this Act in respect of any accounting year commencing on any day in the year 1964.

Explanation I—For the purpose of this section, an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II—For the purpose of clause (a), an employer shall not be deemed to have derived profit in any accounting year unless—(a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III—For the purpose of clause (b), sale of the articles produced or manufactured during the course of the trial run of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-section (1) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before 29th May 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such depart-

ments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid."

With the audited balance-sheet having become sacrosanct under the Bill, it is not difficult to realise that this means immunity for new establishments from paying bonus for six years. Small concerns, in the home of small-scale industry, Punjab, have already embarked on a novel plan to avail of this generosity. Closure notices have been served, the workers thrown out, and after a brief interval, the concern opens again under a "new" name and title with "new" proprietors or partners. In some cases, the "new" owners are simply the wives of the "old" owners. Thus by a simple fictitious closure and sale, workers are sought to be deprived of bonus for six long years.

Of course, the "closure" can be challenged as *mala fide* and unjustified or in contravention of "Explanation I". But that requires the raising of an industrial dispute, securing reference to adjudication from an unwilling government, long and tortuous process of legal wrangling, may be upto the Supreme Court.

Where the workers are unorganised, even this "remedy" is not available. And by the time the case is decided, a new changeover may further prolong the no-bonus period

Then this section limits the retrospective effect and debars employees from bonus in respect of any accounting year prior to the accounting year *commencing* on any day in the year 1964, save as provided in Section 33. That section, as seen above, confers retrospective powers only with respect to disputes pending immediately before September 2, 1964. No dispute for any accounting year which *commences* in calendar year 1964 could ever be pending on September 2, 1964 for the simple reason that no such accounting year could possibly have ended before September 2, 1964 enabling the workmen to raise a demand.

Hence the AITUC would seek to amend the Bill by entirely deleting the six-year bonus holiday and providing for payment of bonus from the inception of the establishment.

(ii) Through Section 36, power has been conferred on the appropriate government that "having regard to the financial posi-

tion and other relevant circumstances of any establishment or class of establishments, it is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the official gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act."

This is an entirely unjustified provision by which bureaucrats of the government have conferred on themselves Draconian and dictatorial powers, which can be exercised for many considerations, none of which is naturally mentioned but all of which are well-known in these days of extensive operation of "Contact men."

The AITUC will seek deletion of this clause.

* * *

(c) *Public Sector*

With regard to the public sector, there is a whole lot of confusion and even contradiction in the Bill which may lead to depriving workers of bonus due or in any case, to a spate of court cases with all the attending complications.

Section 1(4) provides that the ordinance shall apply to every factory and every establishment as defined. This would include by implication every public sector factory and every public sector establishment if it otherwise comes within the purview of the definition.

Section 20, however, limits the application in case of public sector establishments, to "an" establishment whose income from sale of its products or from any services it renders in competition with any establishment in private sector amounts to at least 20 per cent of its gross income.

Section 32(x) further says that "nothing in this Act shall apply" "to employees employed by any establishment in public sector, save as otherwise provided in this Act."

The net result of these three provisions is utter confusion.

Thus while "employees" of all public sector establishments are ruled in by Section (I) and ruled out by Section 32(x) ex-

cept as otherwise provided, there is no section which lays down what this proviso is. Section 20 merely says which establishment will be covered but does not categorically confer the right on the employees of such establishments.

What a nice ground for lengthy disputes!

The 20 per cent competition condition will again give rise to endless disputes and may create genuine difficulties in the way of determining the applicability of the Bill.

The AITUC would suggest that a clear clause should be incorporated laying down that the provisions of this Bill shall be applicable to all public sector employees. The condition of 20 per cent competition with private sector should be deleted If there is a public sector establishment which enjoys a 100 per cent monopoly, its capacity to pay bonus is increased rather than decreased.

2. *Minimum Bonus*

The most tom-tommed provision in the Bonus Ordinance is the one which provides minimum bonus equal to four per cent of total annual earnings or Rs. 40 whichever is higher, to all employees covered by the Bill, even if the establishment concerned suffers a loss.

But there is no provision by which this minimum bonus can be recovered. Section 21 deals with "recovery of bonus due from on employer":

"Where any money is due to an employee by way of bonus from his employer under a settlement or an agreement or an award, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if the appropriate government or such authority as the appropriate government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue."

The operation of this section is thus plainly limited to cases where there is a settlement or an award. In both these eventualities, remedies are already available under other laws, and all that is done now is to add one more way in which recovery of an amount due under a settlement or an award may be made.

What happens in the case of those hundreds of factories and establishments where there is neither a settlement nor an award and bonus is due?

Hence in all such cases, where there is not a subsisting settlement or an award, minimum bonus can be recovered only by raising an industrial dispute under Section 22, securing reference to adjudication and through the process of fighting it out before the appropriate court.

It must be remembered that since balance-sheet with respect to each accounting year has to be taken as the basis for bonus in that particular year, fresh dispute will have to be raised every year with respect to each such establishment.

Or, a claim may be made under Payment of Wages Act or under section 33-C(2) of the Industrial Disputes Act, but in both such cases, only those employees can lodge a complaint who are covered by the definition of "workmen" in the particular Act. Such definition is much narrower than that of "employees" in the ordinance and hence employees not covered by the narrower definition would seem to have no course of recovery left except a civil suit.

The AITUC would therefore suggest amendment of the Bill providing for recovery of any money due as bonus under the Act, settlement or award, instead of only under a settlement or award as at present.

3. EXISTING BENEFITS CLAUSE

Labour Minister Sanjivayya's declaration in Parliament on September 18, 1964 has been quoted above and as has already been pointed out, the INTUC found in this a convenient peg on which it hung its withdrawal of the entire opposition to government's modifications.

Such a provision, however, is always built-in in all reports, etc., because existing rights and privileges cannot be curtailed.

All that it amounted to was that the workers will continue to get earlier quantum of bonus. Now, instead of this customary safeguard, we have a clause in the Bill which does not achieve even this meagre objective.

The two drafts of the Payment of Bonus Bill circulated by the government had provided as under (Section 29):

"The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of this Act;

"Provided that where under any such award, agreement or contract of service, employees employed in an establishment are entitled to bonus under a formula which is more favourable than that under this Act, then, the employees shall continue to be entitled to the bonus under that formula."

"(2) Nothing contained in this Act shall be construed to preclude employees employed in any class of establishments from entering into an agreement with their employer from granting them an amount of bonus under a formula which is different from that under this Act."

The Bill as introduced finally on August 16, 1965 has altered all this. Its section 34 provides that if the bonus payable under the Act bears a lesser proportion to the gross profits of the year than the bonus paid did to the gross profits of a base year (the immediately preceding 12 months of the year immediately preceding the relevant year in case a dispute is pending), then, subject to a ceiling of 20 per cent and provided the establishment is required to pay more than the minimum bonus, a sum will be allocated as bonus which bears the same proportion to the gross profits of the year, as was the proportion in the base year.

In both cases, gross profits would be arrived at after deducting all direct taxes payable.

The only thing guaranteed is the ratio and that also, irrespective of the number of workers in the establishment. In rapidly expanding units, the number of workers may have gone up con-

siderably since the base year and though the ratio of bonus to gross profits may be maintained, the quantum per worker will decrease. Hence, in many cases, this safeguard clause will, in fact, provide no safeguard.

Then again, the operation of even this clause is limited to establishments where there are subsisting awards, agreements, settlements or contracts of service. Two major categories—one where bonus and its quantum are customary and, second, where there is an ad hoc arrangement—are both excluded. Thus, "puja" bonus, where paid acording to custom—as distinct from award or settlement—would not be covered by this clause. Nor would the ad hoc arrangements as in Bombay textiles.

The Draft Bill, based on Labour Ministers' assurance did not provide for ceiling of 20 per cent. Obviously this section would apply to cases where bonus has been paid for many past years and the concern is well-established. Obviously also, such a concern could almost be ruled out from ever coming under the minimum bonus provision. The Bill has thus quietly introduced another pro-employer provision.

Section 32 of the Bill read with Section 34 has the effect of saving only those settlements in which bonus has been linked with production or productivity in lieu of profit bonus. No award or settlement or contract of service providing a straight profit bonus is saved except as a "ratio".

The AITUC would therefore suggest that the Bill should be amended to provide for saving payment of bonus made under existing dispensation (which would mean law, award, settlement, contract of service or custom) if the employees so desire.

4. FUTURE SETTLEMENTS

The Bill not only makes a mockery of the assurance to protect existing benefits, its provisions also have startling effects with regard to future settlements.

The Bonus Commission had squarely rejected the proposal of employers for linking bonus with production/productivity in place of a profit bonus. In para 4. 6, the Bonus Commission says:

"In view of the objections to the proposal by large sections of employers as well as by almost all the unions, and the practical difficulties inherent in any such proposal, we are unable to recommend that the concept of bonus based on profits should be replaced by an annual bonus linked with production or productivity. It is doubtless true that properly devised incentive systems in manufacturing concerns form a useful part of the wage structure and would help to increase production; but they cannot be suggested as a substitute to replace the annual profit sharing bonus. Where in particular Companies, as in the case of Indian Aluminium Co. Ltd., the employer and the Union have adopted or, in future, opt for such a scheme in substitution of bonus based on profits, it would be a different matter; and our recommendations would then have no application to such cases."

The earlier draft Bills had made no specific provision in this regard leaving such contingencies to be covered under proviso (2) of section 29.

Not so the present Bill. In the anxiety to serve the employers, the government has introduced section 32 and has failed to provide a very necessary provision, namely that in order to opt out of the Act, the formula must be more favourable to the employees than the one provided for by the Act

The net result is that, firstly, in future no settlement can be made on the basis of a straight profit bonus and, secondly, leaving the door wide open for exploitation of workers.

Clause (vii) of section 32 exempts those employees from the purview of the Bill "(*a*) *who have entered before the 29th May* 1965 *into any agreement or settlement with their employers for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits; or* (*b*) *who may enter after such commencement into any agreement or settlement with their employers for payment of such annual bonus in lieu of the bonus payable under this Act.*"

Thus, in future, the road is cleared for employers to refuse to negotiate on production bonus unless it is in lieu of profit bonus. The courts may take a similar view. Similarly, any settlement for profit bonus will be refused unless it takes the form of production bonus.

In many concerns now, workers are getting both production bonus and profit bonus. In future, this will be ruled out.

The unions should be prepared also for a spate of "settlements" in which workers will 'willingly" give up profit bonus for some production bonus scheme!

Obliging unions will be formed to enter into such settlements, in places some workmen will be coerced and in others bought over to sign settlements on behalf of all workers. And such documents will be used to ban the operation of the minimum bonus clause.

Specially in unorganised sections of workers, this development is likely to proceed rapidly.

The government is never tired of repeating how the Bill is going to benefit lakhs of unorganised workers who never previously got bonus. But what it forgets to point out is the big door left open by it through which employers can walk out at will.

In view of this, the provisions of section 34(3) become almost meaningless and a mere eye-wash except where the workers through their struggle and unity succeed in imposing them. Or except when the employers utilise them to deprive the workers of whatever benefits they may be getting even under this Bill.

Hence the Bill must be amended to delete section 32(vii) and to amend Section 34(3) by changing the words "a formula which is different from that under this Act" to "a formula which is more favourable than under this Act."

[Also see NOTE on page 23]

5. COMPUTATION OF BONUS

(a) *Return on capital and reserves*:

The Bonus Commission had provided for a 7 per cent return on capital (compared to the earlier 6 per cent allowed by the LAT and Supreme Court) and 4 per cent return on reserves (compared to 24 per cent allowed by LAT and the Supreme Court).

The Bill, basing itself on the government's modification, raises these rates to 8.5 per cent on capital and 6 per cent on reserves. In case of reserves, no proof of utilisation of reserves as work-

ing capital is now required nor of the period for which they were so utilised in the relevant accounting year

In the capital-intensive industries, these huge concessions may well wipe out a substantial portion of the surplus available for bonus.

The employers' arguments that they have to pay high rates on borrowings and high dividends in order to attract capital do not have relevance in the context The rates of return allowed are, in fact, notional—the actual rate of dividends on capital is not taken into account

(b) *Taxes*

The Bonus Commission had provided for deduction of only income-tax and super-tax from gross profits in order to arrive at the available surplus. The Bill allows deduction of all direct taxes defined to include income tax, super-profits tax, companies (profits) sur-tax, agricultural income-tax and any other tax which may be declared by the Central Government "to be a direct tax for the purposes of this Act."

Thus apart from increasing deductions to cover all direct taxes, an overriding power is given to the Central Government to notify any tax, which may or may not really be a direct tax, to be such for the purposes of calculating bonus!

(c) *Development Rebate*

The Bonus Commission had this to say about development rebate:

> "Under the Income tax Act, development rebate is not part of the depreciation allowance and is granted over and above the depreciation allowance It is a special allowance to encourage companies to instal new machinery In a year in which installations of machinery are very large, the inclusion of the whole of the development rebate together with the statutory depreciation, as prior charge, might wipe off or substantially reduce the available surplus, even though the working of the concern may have resulted in very good profit."

It is on this ground that the Commission refused to allow development rebate as a prior charge as had also been done by the Supreme Court under the LAT formula.

However, now the Bill says that prior charges will include "any amount by way of development rebate and development allowance which the employer is entitled to deduct from his income under the Income-tax Act."

At present, this rebate stands at 20 per cent of the actual cost of new machinery and 40 per cent in the case of ships.

Thus, it is easy to see how in a year when there has been large installations of machinery in any concern, the entire surplus may be wiped out. And that too automatically, whereas earlier, in the case of rehabilitation allowance, the case had to be proved by the employer.

(d) *Remuneration to Partners*

According to the Bill, each partner is entitled to Rs. 48,000 per annum as remuneration and this, without having to prove whether he is working for the establishment and what his qualifications, etc., are.

Previously, both these had to be proved and even after proof, the adequate remuneration in each case could be fixed by the court in its discretion. All that is now gone, and a "wife" who may not even have seen the factory is entitled to Rs. 48,000 as a matter of right simply because she is a partner. Hence the changeover from the husband to the wife does not even entail this risk of losing Rs. 4,000 per month.

Of course, a person may be a partner in many establishments. And from each of these, he can draw Rs. 48,000 a year as his "remuneration" !

In the course of a Memorandum to the Members of Parliament, the Rashtriya Sangram Samiti has pointed out that "the Bonus Commission Report is a comprehensive package deal, wherein the workers' representatives agreed to scale down workers' demands and accept positions which were not acceptable to the workers, as a measure of compromise and achieving agreement. Now, the government has unilaterally set aside this compromise and accepted the pleadings of Big Business on major points. Hence the issue is open once again and the workers feel free to put forward their own formula for bonus."

Appendix I gives the formula put forward by the Rashtriya Sangram Samiti on the lines of which the AITUC would seek to get the Bill amended.

6. DISTRIBUTION OF BONUS

(a) *Contract Labour, Apprentices*

The Bonus Commission had excluded workers engaged through contractors on building construction while they had specifically included workers directly engaged by construction companies.

However, the Bill has excluded all contract workers.

Section 2(13) defines "employee" as any person who is "employed". Applying the Supreme Court tests and the distinction between contract of service and contract for service, this would mean prima facie that all contract labour would be excluded.

The definition in the same clause also excludes apprentices.

This position cannot be accepted by the workers and the AITUC would like to amend the Bill specifically ruling in contract labour and apprentices.

(b) *Dismissed workers*:

Section 9 debars those employees from receiving bonus who have been dismissed from service for fraud; or, riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.

Apart from the fact that this is an unreal distinction, the position cannot be accepted because two punishments cannot be given for the same offence. The employee having been dismissed for an alleged offence, the matter is finished. He cannot be deprived of a share of the profits of his toils merely on account of his dismissal being the result of certain type of charges.

The AITUC would therefore seek deletion of this clause. However, if there has been a financial loss to the establishment due to fraud, theft, misappropriation or sabotage, on the part of the worker, the amount of that loss may be recovered from bonus due to him and the balance, if any, paid to him.

(c) *Computation of Days Worked*

Section 14 lays down the provisions with regard to the computation of days worked by an employee during an accounting year Clause (a) lays down that all those days on which he has been laid off under an agreement or standing orders or any Act shall be counted as days worked But what happens in case of factories where Standing Orders Act is not applicable (limit 100 workers) or where the lay-off provisions of Industrial Disputes Act are not applicable (limit 50 workers)? In such cases, presumably the workers who may not get any lay-off compensation will also forfeit bonus for those days.

Clause (b) says that an employee will deem to have worked on days on which he has been on leave with salary or wage. Not considering for the time being the numerous instances where an employee may be on authorised leave without wages, what happens to the workers who get no wages for the two days waiting period under the ESI Act? Presumably, those days will not be counted towards computation of bonus Then there is no reference to days on which a worker may have been locked out or may have been on strike which has not been declared illegal by a competent authority.

The AITUC would seek to amend section 14 by deleting the reference to lay-off under a law, standing orders or settlement and covering all lay-off, by deleting the reference to leave with salary or wages and changing it to authorised leave whether with or without pay, and by including the days on which workers have been locked out or are on strike. In all these cases, the worker should be deemed to have earned on each day the average of his daily wages in the immediately preceding month.

Appendix I

BONUS FORMULA PROPOSED BY RASHTRIYA SANGRAM SAMITI

The All-India Trade Union Congress, Hind Mazdoor Panchayat, United Trades Union Congress, All-India Bank Employees Association All-India Cement Workers' Federation, National Federation of Insurance Field Workers of India Mahagujarat Sangram Samiti, All-India Newspaper Employees Federation, and the National Federation of Indian Road Transport Workers, united in the Rashtriya Sangram Samiti, unanimously put forward the following formula, on November 21, 1964, for acceptance as the formula which should be incorporated in the Bonus legislation

(a) A minimum bonus equal to one-twelfth of the total earnings in perennial industries and one-sixth of the total earnings in seasonal industries be paid by all concerns irrespective of the number of their employees and irrespective of their financial position

(b) The available surplus for distribution as bonus should be arrived at and distributed as follows

From GROSS PROFITS, deduct

— Depreciation,

— 6 per cent return on actual paid up capital excluding bonus shares;

— 2 per cent return on reserves employed as working capital in the relevant year and on bonus shares,

— Statutory income-tax on profits after deducting bonus payable

Sixty per cent of the available surplus thus calculated should be paid as bonus in cash, without any ceiling

(Gross profits for calculating bonus will be arrived at before deducting Managing Agency commission and allowances/salaries of managing partners)

(c) Rehabilitation, development rebate, super tax shall not be admitted as prior charges

(d) There should be no freezing of any part of the bonus amount into savings certificates

(e) Accounts of companies must be made available for inspection on demand from the union.

(f) New concerns must pay minimum bonus till they start making profits. New establishments of old companies shall be treated along with the parent company for the purpose of bonus.

(g) All public sector concerns whether departmentally run or otherwise and whether enjoying monopoly or not must pay bonus to all its employees without any discrimination, on the basis suggested herein.

(h) All workers including casual, temporary, contract workers shall be paid pro rata bonus according to the number of days put in by them with the concern in the relevant year. This also applies to dismissed workers.

(i) Bonus shall be recoverable through Payment of Wages Courts.

(j) Employers failing to pay bonus due before the expiry of the eighth month after the end of the bonus years shall be punished.

(k) Wherever there exist awards/settlements for payment of higher quantum of bonus, or customary bonus is paid, these shall continue.

Appendix II

DISSENTING VIEWS OF S. A. DANGE RECORDED IN BONUS COMMISSION REPORT

In the main body of the Bonus Commission's Report, it has been recorded that Com. S. A. Dange, who represented the AITUC on the Commission, did not agree with the Commission's observations or recommendations on various issues. For the information of trade unions, extracts noting the dissenting opinions of Com. S. A. Dange are reproduced below.

1. ON COMMISSION'S OBSERVATIONS ABOUT BONUS FORMULA SUGGESTED BY TRADE UNIONS

"Our colleague, Shri S. A. Dange, does not agree with our assessment of the formulæ suggested by trade unions. However, he does not want to press his views at this stage in view of the common understanding on the formula arrived at by the Commission." (page 30)

The Commission had stated in the report: "Having considered the various views on this matter, we are unable to recommend that bonus should be determined at a certain percentage of the gross profits after deducting only depreciation..." (as suggested by the trade unions — EDITOR).

2. ON RATE OF RETURN ON PAID UP CAPITAL

"Our colleague, Shri Dange, does not think that 'a sufficient change in the circumstances, since the Full Bench Formula was devised, warrant

some increase in the rate of return on paid up capital.' He, however, has given his consent to raise the return to 7 per cent because of the common understanding on minimum bonus." (page 50)

The Commission had stated in the report: "Having given careful consideration to the representations made before us, we are of the view that the return on paid up capital to be allowed as a prior charge in the bonus formula should be at 7% (Subject to a Minute of Dissent by Shri Dandekar). There has been a sufficient change of circumstances since the Full Bench formula was devised to warrant some increase in the rate of return on paid up capital."

3. ON BONUS IN NEW CONCERNS

"Our colleague Shri Dange does not agree with this recommendation as he feels that this will deprive thousands of workers for such a long period as six years, despite their being in production, from the benefit of even the minimum bonus, in concerns which are expected to have enough financial resources to meet this extra addition of only four per cent to their normal wage bill, which today is, in no case, backed on the need based minimum convention." (page 57)

The recommendation made by the Commission, referred here is "that the general bonus formula proposed by us should not apply to new concerns until they have recouped all early losses including all arrears of normal depreciation admissible under the Income-tax Act, subject to a time limit of six years. In other words, in such cases we recommend that the liability to pay bonus (including minimum bonus) in accordance with our formula should commence only — (a) from the year in which there is for the first time on overall net profit, i.e., sufficient profit, after providing for that year's normal depreciation, to wipe off all accumulations of previous losses and arrears of depreciation; or (b) from the sixth year following the year in which the undertaking begins to sell its products and/or services; whichever may be earlier."

4. ON BONUS TO SEAMEN

"Our colleague, Shri Dange, however, is not inclined to agree with this view." (page 84)

The Commission observed in the Report "In the view we have taken, our recommendations would not apply to seamen. Even otherwise the question of bonus to them raises certain difficulties which must be borne in mind. If Indian shipping companies engaged in foreign trade were required to pay bonus to seamen, it would put them at a disadvantage in competition with foreign shipping companies, and it would be difficult to attempt to apply the bonus formula to foreign shipping companies. Any attempt to force the bonus formula on them would discourage the employment of Indian seamen, and foreign companies may well prefer to employ seamen from other countries. It may therefore be unwise to apply the bonus formula in respect of these em-

ployees. Our colleague, Shri Dange, however, is not inclined to agree with this view."

5. ON BONUS TO WORKMEN IN "INSTITUTIONS"

"Our colleague, Shri Dange, however, thinks that Bonus formula should be applicable to those institutions which are within the meaning of the Industrial Disputes Act." (page 87)

The Commission Report recommended that "The bonus formula should obviously not apply to employees of institutions such as Chambers of Commerce, Red Cross Associations, Universities, schools, colleges, hospitals and social welfare institutions, etc. Such institutions are not established with a view to make profits, though they may have a surplus of income over expenditure. It is necessary to go into the question as to which of these are industries within the meaning of the Industrial Disputes Act. We recommend that the bonus formula should not apply to such institutions."

6. ON BONUS TO WORKMEN IN PUBLIC SECTOR UNDERTAKINGS

"Our colleague Shri Dange does not agree with this recommendation, as he holds that public sector undertakings should pay bonus from the moment they go into production/service irrespective of whether they are competitive or not." (page 89)

The Report stated on this point : "Talking generally in the light of what has been said earlier, we feel that a practical, rough and ready but objective yardstick for assessment of the competitive character of public sector enterprises is necessary. And we recommend, therefore, that if not less than 20% of the gross aggregate sales turnover of a public sector undertaking consists of sales of services and/or products which compete with the products and/or services produced and sold by units in the private sector, then such undertakings should be deemed to be competitive and our formula should apply to such units. We recommend further that in the event of any disputes in particular cases as to whether any anomalous and marginal cases fall within or outside the dividing line of being "20% competitive," the machinery for deciding them should be that recommended by us in paragraph 19.23 Chapter XIX for the settlement of bonus disputes generally."

7. ON BONUS TO "DISMISSED" EMPLOYEES

"However, our colleague Shri Dange totally disagrees both with the approach as well as the recommendation on this question. He does not mind the present position being retained in which bonus is withheld on account of misconduct involving financial loss to the Company." (page 93)

The Commission had recommended that "for the present, the existing practice may continue, but with the addition that bonus may be withheld for dismissal only in cases of riotous or violent behaviour on the

work premises, theft, fraud, misappropriation or sabotage of property of the concern, and further extension may be deferred to a more propitious moment."

8 STATEMENT AT END OF REPORT

'Our colleague Shri Dange desires that the following statement be incorporated in the Report

"'There are certain points in the general body of the Report and in the Bonus Formula adopted here on which I would have liked to add a separate dissenting note detailing my views But I have refrained from doing so in the hope that what has been accepted herein may do away with the complications which the workers had to face on the bonus question in the last few years and may give *all* of them a better deal for the time being at least" (page 93)

NOTE (*See page* 14)

Section 34(3) which deals with future settlements make no reference to ceiling of 20 per cent This ceiling is specifically mentioned in Section 34(2) which deals with existing settlements and awards But employers are already raising the plea that ceiling applies to Section 34(3) also

Again, in some cases, there may be genuine difficulty with regard to income tax rebate if more than 20 per cent is paid as bonus under a formula which is different than the Act If it is intended that no bonus payment should be more than 20 per cent of the annual earning of a worker, there is very little point in having a formula which is different from that under the Act

Hence a specific mention should be made in Section 36 that the ceiling does not apply to such cases