Management Of Fertilizer Corporation ... vs The Workmen on 15 November, 1968

Equivalent citations: 1970 AIR 867, 1969 SCR (2) 706, AIR 1970 SUPREME COURT 867, 1970 LAB. I. C. 743

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, Vishishtha Bhargava

PETITIONER:
MANAGEMENT OF FERTILIZER CORPORATION OFINDIA

Vs.

RESPONDENT:
THE WORKMEN

DATE OF JUDGMENT:
15/11/1968

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
BHARGAVA, VISHISHTHA

CITATION:
1970 AIR 867 1969 SCR (2) 706
CITATOR INFO :
RF 1974 SC1967 (11)

ACT:
Bonus--Ex-gratia payments made in the past--Production bonus scheme introduced eliminating ex-gratia payment-Option given to workmen to accept either previous or later--Claim for ex-gratia payment-Strike during conciliation proceedings, if justified.

HEADNOTE:
For the first year of production by a unit of the appellant Corporation (a Central Government Undertaking), it granted ad hoc bonus for good performance to the unit's employees. For the next year, the appellant granted bonus as recommended by the Bonus. Commission and also made ex-gratia payment for good performance. The appellant decided

to pay bonus for the third year, strictly in accordance with the Payment of Bonus Ordinance and the Act, which had come into force then. The Central Minister announced in the Lok Sabha that with the specific approval of the Central Cabinet ex-gratia payments had been allowed in the past by way of bonus to the employees and this was communicated by the Government of India by a letter. In the fourth year the production did not exceed the target, and the appellant offered to pay only the statutory bonus under the Bonus Ordinance and Act 'and stated that a production scheme had been introduced, that with the introduction of the production bonus scheme all ex-gratia payments were eliminated and that this scheme was approved by the Government of India. The workmen demanded that the bonus should be paid for the third and fourth years at the same rate as it had been paid in previous years and the appellant was bound to act according to the decision of the Central Cabinet and communicated by the letter. The workmen also stated that if their demands were not met within 15 days, they would be forced to adopt agitation approaches. Conciliation proceedings started. The appellant offered the workmen the option of either accepting the Cabinet decision or the production Bonus Scheme as formulated by the management. The workmen desired that the Cabinet's directions be made applicable to them, declined the offer to opt for the production bonus, and prepared a draft of a letter which was intended to be sent by the workmen to the appellant stating that the offer was also made. The workmen went on strike and the reference to adjudication was made. The Tribunal accepted the claim of the workmen, and held that the strike was justified.

HELD: (i) The appellant failed to establish that production bonus scheme was introduced with the consent and approval of the Central Government and that on its introduction the ex-gratia payment of bonus stood eliminated.

The evidence established that the Cabinet's decision was made known to the workmen, who were given the option either to accept the Cabinet decision or the production bonus scheme as formulated by the 'appellant. So long as the Cabinet decision had been communicated and option was given to the workmen, it did not matter at what stage the communication was made to the labour. The fact that the communication of the

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Cabinet decision after the submission of the charter of demands was of no consequence.

The striking down of s. 34(2) of the Bonus Act by this Court has no bearing in considering the claim of the. respondent in this case. When once it was established, as this case, that the Cabinet decision regarding ex-gratia payment of bonus had been communicated to the workmen with an option to accept the said decision or the production

bonus scheme and the labour wanted the Cabinet decision to be implemented, it followed that an agreement, under s. 34(3) of the said' Act had come into effect and it was valid. [720]

Therefore, the workmen were entitled to ex-gratia payment of bonus as in the previous years.

(ii) The management was prepared to pay at all times the bonus as per the Bonus Act. They had also announced the introduction of the production bonus scheme. They were actively taking part in the conciliation proceedings. The appellant also made to the Union certain proposals at the conference which 'proposals' the representatives of the workmen promised to discuss with the workmen and give a reply to the appellant. But, at a meeting of the workmen next day, they were incited to go on strike. The receipt of the telegram sent by the Labour Commissioner fixing a date for further discussions and inviting the Union and the management to attend the meeting, was falsely denied by the Union. The receipt of a telegram from a person representing the workmen at conciliation meeting, requesting the Union to put off going on strike by one day was admitted by the President of the Union, but that request was not complied with by the workmen. All these circumstances clearly established that the demand of the Union regarding ex-gratia bonus could not be considered to be of an 'urgent 'and serious nature'. They also showed that the launching of the strike was unjustified. [725 H]

Therefore, the workmen were not entitled to any wages for the period of strike.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 131 of 1968. Appeal by special leave from the Award dated December 8, 1967 of the Industrial Tribunal, Punjab in Reference No. 44 of 1966.

H.R. Gokhale, Anand Parkash, J.B. Dadachanji, K.P. Bhandare and Bhuvnesh Kumari, for the appellant. A. K. Sen, Rameshwar Nath and Mahinder Narain, for the respondents.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, is directed against the award dated November 24, 1967 of the Industrial Tribunal, Punjab, Chandigarh, in Reference No. 44 of 1966. The President of India, by order dated October 31, 1966 referred the following issues for adjudication under s. 10(1)(d) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Punjab, Chandigarh:

> "1. Whether the workmen are justified in demanding the minimum bonus payable for the years 1964-65, 1965-66 and future years being fixed @ Rs. 110/- and the maximum @ Rs. 360/- per worker ? If so, with what details ?

2. Whether the action of the management in treating 4 days advance bonus paid for the year 1965-66 as deductible from bonus payable in future years is justified? If so, are any conditions or stipulations necessary and if so with what details ?

3. Whether there is any justification for making any amendments in the production bonus-scheme introduced by the management in such a way that it enables payment of bonus to the lower paid workers at higher rates and higher paid workers at lower rates ? If so, with what details ?

4. Whether the workers are entitled to any wages or compensation for the period of strike viz., 12th October to 31st October, 1966."

It may be stated at the outset that this Court is not concerned with issue No. 3. The question of introduction of production bonus scheme arises only to a limited extent in so far as it has got a bearing on a contention raised by the appellant that the production bonus scheme has been introduced in substitution of ex-gratia payment of bonus which was being made by the management. Even as regards the strike period mentioned in issue no. 4, parties were agreed before the Tribunal that the period of strike in respect of which wages or compensation were claimed by the workmen was from 17th October to 31st October 1966 and not from 12th October as stated in the issue.

The circumstances under which the Reference came to be made by the President of India may be stated. The appellant Fertiliser Corporation of India is a limited company incorporated under the Companies Act, 1956 and it is also a Government company, as defined in s. 617 of that Act. The Nangal unit of the appellant went into production for the first time during the financial year 1962-63. On October 29, 1963, the appellant issued a Circular regarding the grant of ad hoc bonus for the year 1962-63. The General Manager states, in this Circular that the management has sanctioned payment of ad hoc bonus to employees of Nangal unit for good performance during the year 1962-63 and that bonus will be payable to all employees who are on the rolls of the Corporation on October 30, 1963 and had completed 1 year's service on March 31, 1963 and whose basic salary on that date did not exceed Rs. 500/- per mensem, The Circular proceeds to state that the amount of bonus payable will be 1 month's basic salary plus dearness allowance, subject to the condition that no employee will get less than Rs. 100/- or more than Rs. 300/-.

On December 17, 1964, the appellant issued a circular regarding the gram of bonus and ex gratia payment for the year 1963-64. This circular states that the management has decided to sanction bonus and ex gratia payment to the employees of the Nangal unit on the basis mentioned therein. The principles laid down in this circular regarding payment of bonus and ex gratia payment are: (1) Bonus is being paid to all eligible employees strictly in conformity with the Bonus Commission's recommendations, as accepted by the Central Government, and the said bonus is the minimum bonus payable as per the Bonus Commission's recommendations, equivalent to 4% of the total basic wage and dearness allowance (excluding all other allowances etc.) paid during the year 1963-64. The employees eligible for these payments are those who draw a total basic pay and dearness allowance up to Rs. 1,600 per mensem and the quantum payable to employees drawing over Rs. 750/- of basic

pay and dearness allowance will be limited to what they would get if their pay and dearness allowance were only Rs. 750/- per month. (2) An additional ex gratia payment to be made to all workers drawing basic pay up to Rs. 500/- per month, to the extent that such payment, together with the bonus indicated earlier, is equivalent to at least one month's full salary (basic pay plus dearness allowance); and the total payment, i.e., bonus and ex gratia, in the case of workers drawing basic pay up to Rs. 500/- per month would be subject to a minimum of Rs. 100/- and maximum of Rs. 300/-. (3) The minimum qualifying service .for ex gratia payment will be 3 months and the minimum qualifying service for payment of bonus as per Bonus Commission's recommendation is 30 days. On December 30, 1964 the appellant issued another circular stating that the minimum limit of Rs. 100/- in respect of bonus and ex gratia payment for the year 1963-64, as per its circular dated December 17, 1964 is raised to Rs. 110/- and that the enhanced amount will be paid along with the salary for the month of December 1964.

Regarding the grant of bonus for the year 1964-65, another circular was issued by the appellant on September 27, 1965. this circular it is stated that bonus for the year 1964-65 has been decided to be paid strictly in accordance with legal obligations arising out of the payment of bonus under the Payment of Bonus Ordinance, 1965 (Ordinance No. 3 of 1965) (hereinafter referred to as the Ordinance). According to that Ordinance, bonus that is payable is the minimum bonus which will be equivalent to 4% of the total basic pay and dearness allowance (excluding all other allowances) paid during the year 1964-65, or Rs. 40/-, whichever is higher. The employees eligible for the bonus will be those who draw a total basic pay and dearness allowance up to Rs. 1,600/- per month, but the quantum of bonus payable to employees drawing total pay and dearness allowance over Rs. 750/- per month will be limited to what it would be if their pay and dearness allowance are only Rs. 750/- per mensem. It may be stated at this stage that the Ordinance was promulgated on May 29, 1965 and the Payment of Bonus Act, 1965 (Act XXI of 1965) (hereinafter called the Bonus Act) came into force on September 25, 1965.

On December 9, 1965 the Minister of Labour and Employment made a statement in the Lok Sabha regarding a decision having been taken by the Central Cabinet on December 2, 1965. In this statement the Minister has referred to the fact that with the specific approval of the Cabinet ex gratia payments had been allowed in the past by way of bonus to employees drawing upto Rs. 500/- per mensem in some undertakings in the public sector. After referring to the recommendations of the Bonus Commission, the Minister announced the decision of the Cabinet dated December 2, 1965. As the said decision of the Cabinet has been circulated to the appellant, the matters referred to in the said decision will be adverted to by us when we refer to the letter of the Government addressed to the appellant.' On December 21, 1965 the Government of India addressed a communication to the Chairman and Managing Director of the appellant company on the subject of bonus payable to employees in the public sector undertakings. As the claim of the labour in the case, for bonus being paid for 1964-65 and 1965-66 is substantially based upon the decision of the Central Cabinet dated December 2, 1965 and as according to the appellant this communication cannot be considered to be a direction or an order, it is desirable to quote, in extenso, the said communication:

> No. CH/COORD/64/65 GOVERNMENT OF/INDIA MINISTRY OF PETROLEUM & CHEMICALS (Department of Chemicals) New Delhi, the 21st December 1965 To Shri

Satish Chandra, Chairman & Managing Director, Fertilizer Corporation of India Ltd., F-43, New Delhi South Extension, Pt. I, New Delhi.

Subject :--Bonus-payable to employees in the Public Sector undertakings.

sir I am directed to refer to the payment of Bonus Act, 1965 (No. 21 of 1965) which provides for the payment of bonus to persons employed in certain establishments and for matter connected therewith. "Establishment in public sector" is defined in section 2(16) of the Act. Further, sub-section (1) of section 20 lays down that if in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year, than the provisions of this Act shall apply in relation to such employment in public sector as they apply in relation to a like establishment in private sector. It follows that the provisions of the Act do not apply to such of the establishments in private sector.

Notwithstanding the provisions 'of the Act, it has been decided by Government as a matter of policy that noncompetitive public sector undertaking should also make ex gratia payments to their employees of the minimum of 4 (four) per cent of annual gross earnings of the employees on the same lines as bonus will be payable by public sector undertakings falling within the provisions of the aforesaid Act. The benefit of six-year bonus holiday (vide section 10 of the Act) should be available to noncompetitive public sector undertakings.

2. Government have further decided that the following should be the guiding principles for determining the quantum of ex gratia payments to employees of noncompeting public sector undertakings:

(i) all non-competing public sector undertakings should pay ex gratia to their employees amounts which they would be liable to pay as bonus if they were to fall within the purview of the Payment of Bonus Act;

(ii) where such an undertaking has made ex gratia payment in the past, the amount of such payment should be treated as absorbed in the amount determined as in (i) above. In other words, any claim of employees to payment determined on the lines of the Bonus Law as an addition to payment on the scale of ex gratia payments in the past, should not be accepted. If the past ex gratia payment had been higher than the amount as worked out as in (1) above, the level of past ex gratia payment should be maintained;

(iii) the principle in (ii), above, shall also be followed in the case of competing public sector undertakings; and

(iv) the applicability of (ii) and (iii) above should be conditional upon the maintenance of the level of performance of the undertaking in individual cases.

It is requested that the decisions of Government referred to, may be noted for guidance and necessary action. Yours faithfully, Sd/- Nakul Sen Secretary to Govt.

of India."

Again, on September 9, 1966 the appellant issued a circular regarding payment of bonus for the year 1965-66. It is stated therein that the management has decided to pay bonus to the employees of the Nangal unit for the year 1965- 66 and that statutory bonus equivalent to 4% of basic pay and dearness allowance would be paid strictly in accordance with the provisions of the Bonus Act, 1965. It is further mentioned that in addition to this bonus it has been decided to pay production bonus at 3% of wages to employees whose maximum scale of pay does not exceed Rs. 1,400/- per mensem. Then the letter proceeds to state as to how exactly the production bonus is to be calculated and paid. The circular further states that in addition to the statutory bonus and production bonus the employees will also be paid 4 days' wages in the form of advance production bonus to be adjusted as and when total bonus payable to the workers exceeds 30 days' wages in future. There was a note appended to this circular on the subject of bonus payments, for the information of workers. That note proceeds to state that as production for the year 1962-63 exceeded the target the management has decided to pay ad hoc bonus equivalent to a month's salary for employees drawing up to Rs. 580/- per month.

For the year 1963-64 the employees were entitled to the minimum bonus of 4%, according to the recommendations of the Bonus Commission and that amount of bonus was paid. Though legally the workmen were not entitled to anything more, nevertheless, as the Nangal unit again exceeded the production target for the year 1963-64, the management decided to give an ex gratia payment for good performance so that the bonus as per the Bonus Commissions Report plus the ex gratia payment worked out to a month's wage. But during the year 1964-65 the production exceeded the target and the management decided to pay, in addition to the bonus payable under the Ordinance a performance reward equivalent to half a month's wages. The management was considering to introduce a production bonus scheme to provide an incentive for increased production. This became necessary in view of the advice given by the Labour Law Officer of the company that ex gratia payments should be avoided. The management further states that production bonus scheme has been approved by the Government of India and under that scheme employees are entitled to sums varying from 3% to 3.5% of their wages.

In the year 1965-66 the production had not exceeded the target and the employees of Nangal unit became entitled only to the statutory bonus of 4% of their wages, under the Bonus Act and production bonus was not admissible. Ex gratia payment also was ruled out in view of the advice of the Labour Officer and because of the fact that with the introduction of production bonus scheme all ex gratia payments stood eliminated. But, inasmuch as the workers in the Nangal unit have maintained peace and good industrial relations, the management decided, as a special case, to award production bonus of 3% under the production bonus scheme. The note summed up the

position by stating that for the year 1965-66 the Nangal workers were eligible to (a) statutory bonus at 4% of the annual wages under the Bonus Act; (b) production bonus at 3% of the annual wages and (c) 4 clays' wages in the form of advance production bonus to give the workmen a month's wages in all, which was to be adjusted as and when the total bonus payable to the workers exceeds 30 days' wages in future.

From the circular letters dated September 27, 1965 and September 9, 1966 it will be seen that the management offered to pay only the statutory bonus under the Ordinance and the Bonus Act and that ex gratia payment of bonus has been discontinued. In particular, in the note annexed to the circular of September 9, 1966 the management has taken the specific stand that a production bonus scheme has been introduced and that the said scheme has been approved by the Government of India. They also maintained that with the introduction of the production bonus scheme all ex gratia payments are eliminated.

As the appellant did not pay bonus for the years 1964- 65 and 1965-66 at the rate at which it was paid for the year 1963-64, the Union submitted a charter of demands to the appellant on August 19, 1966. The Union demanded that bonus should be paid for the years 1964-65 and 1965-66 at the same rate as it had been paid in previous years and that the appellant was bound to act according to the decision of the Central Cabinet dated December 2, 1965 and communicated to it by the circular letter of the Government of India dated December 21, 1965. That is, according to the Union the minimum bonus that a worker was entitled to get was Rs. 110/-. There were certain other demands which are not necessary to consider in this appeal. By this letter the Union also indicated that if the demands were not met within 15 days, it would be forced to adopt agitational approaches to seek compliance with its demands. The management did not comply with this demand regarding payment of bonus and attempts at mediation failed and the workmen went on strike from October 17, 1966 and the reference to adjudication was made on November 2, 1966. Before the Tribunal the workmen pressed their claim for bonus on the basis contained in their charter of demands. They also raised the plea that the introduction of production bonus scheme had no effect regarding the ex gratia payment of bonus made by the appellant. As the management had not complied with the reasonable demands of the labour and as it was acting in violation of the Cabinet decision, the workmen were justified in going on strike from October 17, 1966 and they were entitled to full wages for the strike period.

The appellant resisted the claims of the Union. They raised certain objections regarding the jurisdiction of the Industrial Tribunal to entertain the suit, but that again is not the subject. of the present appeal. The management pleaded that the claim for bonus for the years 1964-65 and 1965-66 had to be considered and adjudication made only according to the provisions of the Bonus Act and that the workmen were not entitled to claim anything beyond what was provided in the said Act. No legal claim could be based on ex gratia payments of bonus in the previous years. They accepted the position that under article 110 of the Articles of Association of the company the President of India could issue direction which become binding on the company, but pleaded that no such directive had been issued by the President. Even assuming that such direction had been issued by the President to the company, the workmen, who were third parties, could not seek to enforce any rights based upon such directives. The appellant Corporation is a public limited company and as

such an autonomous statutory body. They further pleaded that the rate of bonus mentioned in the Cabinet decision would become payable only if the level of performance or production was properly maintained and in the case of the Nangal unit the level had not been kept up.

The management further averred that in consultation and with the approval of the Central Government the appellant introduced the production bonus scheme with effect from 1965-66 and the said scheme replaced the previous system of ex gratia payments, made on ad hoc basis for the initial two years of the Nangal Unit's operation. The production bonus is payable in addition to the statutory bonus which the workmen are entitled to under the Bonus Act. As the Central Government had approved the scheme of payment of statutory bonus and production bonus, in lieu of the past system of making ex gratia and ad hoc payments, the management pleaded that the Cabinet decision of December 2, 1965 stood modified to that extent.

Regarding the treating of the 4 days' advance bonus paid for the year 1965-66 as deductible from bonus payable in future years and management pleaded that in order to keep industrial peace and as the new production bonus scheme substituting the old ex gratia payment had come into force the appellant decided to pay advance bonus of 4 days wages. This advance bonus was specifically stated as being deductible when the total bonus payable to workers in future years exceeded 30 days. Therefore the management averted that they were entitled to adjust this advance payment in future years.

The management further pleaded that there was absolutely no justification for the workmen starting agitation from August 27, 1966 nor for going on strike from October 17,' 1966. The conciliation proceedings started under the Act had not terminated and the appellant also was participating in the conciliation proceedings and was anxious to meet the demands of the workmen if it was otherwise possible. The production bonus scheme for the year 1965-66 had been announced on September 9, 1966. The strike was both illegal and unjustified and hence the workmen were not entitled to any wages during the strike period.

The Industrial Tribunal in its award has held that the appellant was bound to comply with the Cabinet decision dated December 2, 1965 and communicated to it by the Government by its Circular letter dated December 21, 1965. The decision of the Central Cabinet had been publicly announced by the Minister concerned in the Lok Sabha on December 9, 1965. The principles laid down for ex gratia payments by non-competitive public sector undertakings had been made applicable to competitive public sector undertakings also. The Tribunal held that as the appellant was a competitive public sector undertaking and the directions regarding ex gratia payments of bonus as well as the prin-

ciples for determining the quantum of such payments had all been laid down in the Circular letter of December 21, 1965 and the appellant was bound to implement those directions, the claim of the labour for such payments for the years in question was perfectly justified. The ex gratia payment to be made under the Cabinet decision was to be in accordance with the level of past ex gratia payments. No doubt such payments were to be made provided the level of performance was maintained.

On the materials placed before it, the Tribunal held that the said condition was satisfied. The Tribunal rejected the claim of the appellant that production bonus scheme was introduced in consultation and with the approval of the Central Government and it further held that the introduction of that scheme was not in lieu of the ex gratia payments made on an ad hoc basis in the previous years. The Tribunal has further held that as the decision of the Central Cabinet, dated December 2, 1965 stands and has not been modified in any way by the Government, the management was bound to continue the ex gratia payments. It further held that the striking down, by this Court, of sub-s. (2) of s. 34 of the Bonus Act had no effect on the claim made by the Union because the claim of the Union was sufficiently safeguarded by sub-s. (3) of s. 34. Ultimately the Tribunal accepted the claim of the workmen for payment of minimum bonus for the years 1964-(35 and 1965-66 being fixed at Rs. 110/- and regarding the maximum the Tribunal held that was a matter of calculation, having regard to the wages of an employee; but it restricted its direction in this regard to the two years in question and declined to express any opinion regarding future years. The Tribunal also negatived the claim of the appellant to treat the 4 days' bonus paid in advance for the year 1965-66 as deductible from the bonus payable in future years. Regarding the wages claimed by the workmen for the period October 17 to October 31, 1966, the Tribunal held that the strike was both legal and justified and it directed the management to pay the workmen half their wages for that period.

The same stand that has been taken before the Tribunal by the parties has been urged before us by Mr. Gokhale, the learned counsel for the appellant-management and Mr. A.K. Sen, the learned counsel for the Union.

We shall first consider the correctness of the decision of the Industrial Tribunal regarding the claim of the workmen for ex gratia payment of bonus. We are not inclined to accept the contention of Mr. Gokhale that the appellant was not bound to implement the directions contained in the Circular letter of the Government dated December 21, 1965, containing the Cabinet deci-

sion of December 2, 1965, nor his further contention that the claim of the workmen for bonus should have been adjudicated upon exclusively as per the provisions of the Bonus Act without reference to the Cabinet decision. The appellant company, registered under the Companies Act, is no doubt an autonomous unit; but there are several articles in the Articles of Association of the appellant-Corporation which give power to the President of India and the Central Government to give directions in the working of the appellant. In fact, it may not be necessary to deal elaborately with this matter as the, appellant itself, in sub-paragraph (1) of paragraph 8 of its reply dated January 25, 1967 filed before the Industrial Tribunal, has categorically admitted the position that trader article 110 of the Articles of Association of the company the President of India can issue directives which become binding on the company; but the stand taken therein is that no such directive was ever issued by the President. The further stand taken by the appellant is that the production bonus scheme was introduced with the consent and approval of the Central Government and that, on its introduction, the ex gratia payments of bonus were eliminated and, to that event, the decision of the Central Cabinet, dated December 2, 19.65 stood modified. Even in respect of the Central Cabinet decision, relied on by the Union, the stand taken by the appellant, in its letter dated September 21, 1966 to the Chief Conciliation Officer, Punjab was that the Nangal unit had not 30 far received any

instructions from the controlling Ministry regarding the Cabinet decision and that the position with regard to the Cabinet decision would be checked up by the management with their Head Office and the Ministry. Therefore, it will be seen that it was not the case of the appellant that it will not be bound by the Cabinet decision, if the decision was there as a fact. We will only refer to articles 67 and 110 of the Articles of Association of the appellant. Under article 67 the Board of Directors of the company are entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do, but subject to the provisions of the Act and the directives, if any, the President may issue from time to time as contained in article 110. Article 110 is as follows:

> "110. Notwithstanding anything contained in any of these articles, the President may, from time to time, issue such directives as he may consider necessary in regard to the conduct of the business of the Company or Directors thereof and in like manner may vary and annul any such directive. The Directors shall give immediate effect to directives so issued."

Reading the two articles together, the position is very clear that the exercise of the powers of the Board of Directors of the com 4 Sup. C1/69-13 pany are, apart from other restrictions, subject to the directives, if any, issued by the President from time to time, with regard to the conduct of the business of the company or Directors. Any direction given by the President may, in like manner, be varied and annulled. The Directors are bound to give immediate effect to the directives so issued.

As we are of opinion that the draft letter of October 14, 1966 (which is discussed later on by us) constitutes an offer made by the appellant to the workmen to opt for payment of bonus either according to the Cabinet decision or according to the production bonus scheme, it becomes unnecessary for us to investigate the nature of the power that is exercised either by the President or the Central Government when giving directions to the appellant company, under the Articles of Association. For the same reason the question as to whether the circular letter of the Central Government, dated December 21, 1965 is a direction or order, as envisaged by the Articles of Association, does not also arise for consideration.

The decision of the Central Cabinet dated December 2, 1965 has been announced by the Minister in the Lok Sabha on December 9, 1965 and this decision has been communicated to the appellant by the concerned Ministry by Circular letter dated December 21, 1965. There is no controversy that if the Cabinet decision is given effect to, the claim of the workmen for ex gratia payment of bonus as in previous years will have to be accepted, unless the appellant is able to establish its plea that the production bonus scheme was introduced with the consent and approval of the Central Government in lieu of ex gratia payments of bonus. As to whether the appellant has succeeded in establishing this plea is an aspect which will be adverted to by us at a later stage.

In this case it is not necessary to consider the wider question as to how far, without anything else, the workmen would be able to lay any claim on the basis of any decision communicated by the Government to the appellant alone. As pointed out by Mr. Sen, it is clear that the Central Cabinet's decision was made known to the workmen who were given the option either to accept the Cabinet decision, as conveyed to the appellant by the Circular letter of December 21, 1965 or the production

bonus scheme as formulated by the appellant Corporation.

Mr. Sen, the learned counsel for the Union, has invited our attention to the draft of a letter, dated October 14, 1966, which was intended to be sent by the workmen to the appellant. That letter, which is addressed to the appellant Corporation, states:

> "You have given us the option of accepting either the Cabinet decision conveyed to you vide Department of Chemical's letter No. CH/COORD/64/65 dated 21st December 1965, the terms of which are annexed to this letter, or the Production Bonus Scheme as formulated by the FCI Board .... "

That the Circular letter of December 21, 1965 of the Government was made known to the workmen is clear from the evidence of the appellant's witness R.W. 7 Shri Wadehra. He has categorically stated that he joined the discussions between the representatives of the workmen and the Managing Director of the appellant corporation which took place at Delhi on October 15, 1966. He further states that he came to know at that time that on October 14, 1966, during the discussions between the labour and the management at which he was not present, the workmen's representatives had desired that the Cabinet's directions may be made applicable to them with regard to bonus. This witness further states that the Managing Director made an offer during the discussions and that offer is contained in the draft letter dated October 14, 1966, to which we have already referred. The witness further states that the workmen declined to accept the offer of the management to opt for the production bonus scheme. His evidence clearly shows that the management has communicated to the workmen the Cabinet decision, as conveyed by the Circular letter of the Government dated December 21, 1965. This evidence further makes it clear that the workmen declined to opt for the production bonus scheme, but, on the other hand, insisted that bonus must be paid to them according to the Cabinet's decision.

Mr. Gokhale attempted to explain away the effect of the draft letter of October 14, 1966 by urging that the Cabinet decision has been communicated only after the Union had submitted its charter of demands as early as August 19, 1966. So long as the Cabinet decision has been communicated and option was given to the workmen, it does not in our opinion matter at what stage the communication was made to the labour. Under the circumstances, it is idle for the management to contend either that the appellant is not bound to comply with the Cabinet decision or that the workmen are not entitled to make any claim on the basis of that decision.

That leaves us with the alternative contention, raised by the management, that production bonus scheme was introduced with the consent and approval of the Central Government and that on its introduction the ex gratia payment of bonus stood eliminated. No doubt this is the stand that has been taken in the note attached by the appellant in its Circular letter dated September 9, 1966.

we have already adverted to that note in the earlier part of our judgment. No materials, whatsoever, have been placed by the appellant in support of this contention. The production bonus scheme itself does not state that it is in lieu of all other ex gratia payments. There is no order of Government on record to show that the Circular letter of December 21, 1965 has been modified by the Government

in any manner whatsoever. The only evidence relied on by the appellant in this connection was the statement of R.W. 7, Shri Wadehra. He says that after a full consideration of all the relevant factors and in consultation and with the approval of the Central Government, a production bonus scheme was introduced by the appellant with effect from the year 1965- 66 and that he was himself present at a meeting in the Ministry when a decision was taken that the Corporation might introduce the production bonus scheme and that the workmen should be paid production bonus in addition to the bonus payable under the Bonus Act. He further speaks to the fact that production bonus scheme replaced the ad hoc ex gratia bonus made in the past years. Excepting this bare statement in the oral evidence, no order of the Central Government to this effect, or modifying its previous decision, has been placed before the Tribunal. Under those circumstances, the Tribunal was perfectly justified in holding that the appellant has not established that on the introduction of the production bonus scheme, all payments of ex gratia bonus ceased.

The striking down of sub-s. (2) of s. 34 of the Bonus Act, by this Court, has no effect, as rightly held by the Tribunal, in recognising the claim of the workmen. When once it is established, as in this case. that the Cabinet decision regarding ex gratia payment of bonus has been communicated to the workmen with an option to accept the said decision or the production bonus scheme and the labour wanted the Cabinet decision to be implemented. it follows that an agreement, under s. 34(3) of the said Act has come into effect and it is valid. Hence we are in agreement with the views expressed by the Tribunal that the ex gratia payments, claimed by the workmen, are saved by sub-s. (3) of s. 34 of the Bonus Act.

There was a feeble argument, attempted to be raised by Mr. Gokhale, that the application of the Cabinet decision is conditional upon the maintenance of the level of performance of the undertaking in individual cases. The Tribunal has held that the level of performance of workmen, in the years in question, has been maintained. In this connection, among other matters, it has referred to a statement made in the April-May 1966 issue of the "FCI News", a journal published by the appellant. This journal is issued after the year has come to an end and there is a state-

ment to the effect that the Nangal Fertilizer factory has exceeded the revised production targets fixed for Calcium Ammonium Nitrate (CAN) and Heavy Water and the said performance, despite the serious handicap suffered because of the severe power cuts enforced since November 1965, was commendable. We are satisfied that the finding recorded by the Tribunal, on this point, is justified.

Once it is held, as we do, in agreement with the Tribunal, that the appellant was bound to implement the Circular of the Central Government, dated December 21, 1965, it follows that the appellant was bound to pay the ex gratig, payment of bonus, as claimed by the workmen for the years in question and that the appellant is further not entitled to deduct the advance wages of 4 days paid for the year 1965-66. The decision of the Tribunal, on this aspect is correct and is affirmed.

Before we take up the question regarding the wages for the strike period, it is necessary to give a clarification regarding an observation made by the Tribunal regarding the production bonus scheme. While discussing the claim of the Union regarding ex gratia payment of bonus as per the Cabinet decision, the Tribunal has observed .that the production bonus scheme introduced by the

appellant is in addition to the ex gratia payment which the workmen are entitled to We do not express any opinion regarding the correctness or otherwise of this view of the Tribunal, excepting to state that the opinion expressed by the Tribunal was uncalled for and outside the scope of the reference.

This leaves us with the question of the claim of labour for wages for the strike period from October 17 to October 31, 1966. The Tribunal has held that the strike was both legal and justified and it has awarded the workmen half the wages for that period. This finding of the Tribunal is attacked on behalf of the appellant by Mr. Gokhale. The learned counsel did not urge that the strike was illegal., but on the other hand he pressed before us that the strike was thoroughly unjustified and the finding of the Tribunal was contrary to the evidence on record and also perverse. The counsel urged that various items of evidence which have a very vital bearing on a consideration of this question had not been adverted to at all by the Tribunal. On the other hand Mr. Sen, learned counsel for the Union, pointed out that the Union made various attempts ,for having its claim regarding bonus amicably settled with. the management. The management would not even agree to implement the directions given by the Central Government. It was very evasive in its replies when pressed to act upon the Cabinet decision. Several mediation talks were held and conciliation also failed. Therefore, under those circumstances, the workmen honestly felt that a responsible body like the appellant was not amenable to reason and hence a sense of frustration set in and in consequence the workmen went on strike to draw the pointed attention of the management to the demands made by the Union. Under those circumstances, the counsel urged that the workmen's going on strike was justified and the Tribunal had also awarded only half wages for that period. Counsel urged that this finding had been arrived at on a proper consideration of the materials available before the Tribunal.

We are not satisfied that the Tribunal has properly considered and adverted to the relevant evidence on record before it came to a finding in favour of the workmen. The Union submitted a charter of demands on August 19, 1966. One of the demands related to the payment of bonus for the years 1964-65 and 1965-66 at the same rate at which it was paid for the previous years. The Union has stated that the workmen will resort to coercive measures if the demands are not complied with within 15 days. The period of notice given should have expired on September 3, 1966. By that time the Conciliation Officer had intervened and he sent a letter, dated August 30, 1966 to the management and the Union that he had taken up the dispute for the purpose of conciliation and requested both' the management-and the Union to attend the conciliation proceedings on September 14, 1966. In the meanwhile the Union had started agitation on September 3, 1966 by starting a general hunger strike and actually on September 5, 1966 a 96-hour hunger strike was also resorted to This appears to have continued till September 12, 1966. The appellant announced on September 9, 1966 the introduction of the production bonus scheme with effect from 1965-66 and also indicating the circumstances under which the ex gratia payment of bonus was being made on prior occasions and as to why it was being discontinued. The hunger strike by Shri Ramthirtha, the President of the Union, was commenced from September 12 and continued till September 17, 1966.

The conciliation proceedings which had been posted to September 14, 1966 could not be taken up on that day as the Officer was on tour. On September 17, 1966 the workmen started a one hour strike in each of the shifts. The Chief Conciliation Officer intervened and he fixed a meeting for September

20, 1966. The appellant management gave a written statement to the said officer on September 21, 1966 setting out its stand in reply to the demand made by the workmen. They referred,, in this written statement, to the Circular issued by them on September 9, 1966 regarding the principles governing the payment of bonus. The management also stated that the Nancy unit had not received instructions from the Controlling Ministry regarding the Cabinet decision and that it would check up with the Head Office and the Ministry about this matter.

Nevertheless, on October 3, 1966, Shri Ramthirth, the President of the Union and his group started an agitation that the management had gone behind its commitments. On October 12, 1966 the Chief Conciliation Officer again visited Nangal and had discussion with the representatives of the management and the Union and this continued till October 15, 1966. Shri Wadehra, R.W. 7, speaks to these facts and he also states that Shri Amarnath Vidhyalankar, a Member of Parliament, attended the proceedings on October 15, 1966 on behalf of the workmen.

Shri Wadehra, in his affidavit dated June 24, 1967 has again stated that the Chief Conciliation Officer invited representatives of the workmen to come to Delhi to discuss the matter with the higher authorities of the appellant Corporation. Shri Wadehra further states that he himself joined the negotiations which took place at Delhi from October 15, 1966 and that the said negotiations were attended by the Managing Director & Chairman on behalf of the appellant and Mr. Vidhyalankar attended the proceedings along with certain other representatives of the workmen. Mr. Wadehra further states that on the evening of October 15, 1966 the workmen's representatives intimated that they would discuss the outcome of the negotiations at Delhi with the general body of the workmen at Nangal, the next day, and then return to Delhi and report the reaction of the workmen regarding the proposals discussed during the negotiations. But, instead of keeping this promise the representatives of workmen addressed a public meeting on the evening of October 15, 1966 and incited the workmen to strike work from October 17, 1966. The strike was actually commenced from October 17. Mr. Wadehra also stated that a telegram from the Secretary of the Labour Ministry inviting all the parties to attend the conciliation meeting at Chandigarh on October 17, 1966 was received but the labour did not care to attend that meeting.

We have referred to some of the incidents which have taken place prior to October 17, 1966 only to show the attitude that the labour was adopting in respect of their demands. There is a further circumstance that a telegram, dated October 13, 1966 had been sent by the Labour Commissioner fixing conciliation proceedings for October 17, 1966, at Chandigarh and a telegram was also sent by Shri Vidhyalankar, who was representing the workmen, to the Union President request his to stay the strike for a day. So far as the telegram stated to have been sent by Shri Vidhyalankar, the receipt of the same is admitted, but the Union is not prepared to accept the receipt of the telegram, dated October 13, 1966 stated to have been sent by the Labour Commis-

sioner. We will presently show that the plea of the Union in this regard cannot be accepted because there is sufficient evidence on record to show that the telegram had been sent by the Labour Commissioner and must have been received by the President of the Union.

We have already referred to the statement of Shri Wadehra about the receipt, by the management, of the said telegram fixing conciliation proceedings for October 17, 1966. The telegram is Exhibit RW 3/1 which is dated October 13, 1966 and sent from Chandigarh. The telegram is sent to the appellant and to the Union. The Labour Commissioner requests the attendance of the parties to the conciliation meeting on October 17, at 11 a.m. Exhibit R.W. 14 is a letter dated October 13, 1966 sent' by the Labour Commissioner to the appellant and the unions concerned, containing a copy of the telegram sent by him on that date regarding the conciliation proceedings being fixed on October 17, at Chandigarh and requesting the parties to appear before him. That the said telegram and letter have been sent is proved by the evidence of R.W. 1 who is an Assistant in the Labour Commissioner's Office at Chandigarh and who has produced the necessary file pertaining to the same. That the telegram sent by the Labour Commissioner has been delivered is also proved by R.W. 3 who has produced the delivery sheets in respect of the telegram. Relying upon these circumstances, quite naturally Mr. Gokhale strenuously urged that the receipt of the telegram issued by the Labour Commissioner is purposely denied by the Union to profess ignorance about the conciliation proceedings being taken up on October 17, 1966, because the Union was in no mood to participate in those proceedings.

Mr. Sen, no doubt relied upon the evidence of the workmen's witness No. 3, Shri Ramthirtha, President of the Union, that no telegram was received from the Labour Commissioner regarding conciliation proceedings to take place on October 17, 1966, but this witness himself accepts that the telegram sent by Mr. Vidhyalankar was received by him. We are inclined to accept the contention of Mr. Gokhale that the denial by the Union of the receipt of the telegram sent by the Labour Commissioner cannot be accepted. Mr. Gokhale, learned counsel, referred us to the decision of this Court in The Managemnt of Chandramalai Estate, Erna Kulam v. its Workmen (1) and particularly to the following observations at p. 455:

> (1) [1960] 3 S.C.R. 451. ' "While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects.

There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified ."

Mr. Gokhale urged that there was absolutely no urgency in the case before us because the management was prepared to pay the bonus as admitted by them and the controversy was really regarding the additional ex gratia payment. Further, counsel pointed out that the Conciliation Officer had not made any report about conciliation having failed and in fact the telegram sent by the Labour Commissioner as late as October 13, 1966 clearly showed that he was still 'continuing the proceedings. Counsel also pointed out that after having separated from the Delhi meeting on October 15, 1966, promising to consider the proposals put before it by the management and

communicate the same to the management, the leaders of the workmen incited them to go on strike at the meeting held the very next day and actually the strike itself commenced from October 17, 1966. No doubt Mr. Sen, learned counsel, pointed out that there was nothing for the management to consider in their meeting the demands of the workmen, because the Cabinet decision was well known. He also urged that the workmen obviously felt that the management was not adopting a reasonable attitude and hence they resorted to a strike, which was justified under the circumstances.

We may also indicate that there is evidence, let in by the management, to show that during the strike period and even prior to that, several of the workmen resorted to violence and other acts of indecency. Evidence has also been let in to show that the workmen continued to strike even after a notification, dated October 31, 1966 was issued by the President of India prohibiting the strike and requiring the workers to report for duty. We do not propose to dwell on these matters, because we have only to consider the justification or otherwise of the strike from October 17 to October 31, 1966.

The management was prepared to pay at all times the bonus as per the Bonus Act. They had also announced on September 9, 1966 the introduction of the production bonus scheme. They were actively taking part in the conciliation proceedings. The appellant also made to the Union certain proposals on October 15, 1966 at the conference held at Delhi which 'proposals' the representatives of the workmen promised to discuss with the workmen and give a reply to the appellant. But, on October 16, 1966, at a meeting of the workmen, they were incited to go on strike. The receipt of the telegram of October 13, 1966 of the Labour Commissioner, fixing October 17, 1966 for further discussions and inviting the Union and the management to attend the meeting, is falsely denied by the Union. The receipt of Sri Vidhyalankar's telegram requesting the Union to put off going on strike by one day is admitted by the President of the Union, but that request was not complied with by the workmen. Sri Vidhyalankar, it must be remembered, was representing the workmen in certain conciliation meetings. All these circumstances clearly show that the demand of the Union regarding ex gratia bonus cannot be considered to be of an 'urgent and serious nature'. They also show that the launching of the strike was unjustified. It therefore follows that the workmen are not entitled to any wages for the period of the strike viz., from October 17 to October 31, 1966. To this extent the award of the Industrial Tribunal will have to be set aside.

In the result, we set aside the award of the Industrial Tribunal in so far as it directs the appellant to pay the workmen half the wages for the strike period from October 17 to October 31, 1966; and, to that extent, the appeal is allowed. In other respects the appeal will stand dismissed. As the appellant has failed on the substantial question, it wilt pay the costs of the respondent-workmen.

Y.P. Appeal partly allowed.