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

% ***Reserved on: 16th January, 2023***
Date of decision: 26th May, 2023

\+ **LPA 576/2018 & CM No. 42341/2018**

MOOLCHAND KHARAITI RAM HOSPITAL
& AYURVEDIC RESEARCH INSTITUTE

..... APPELLANT

Through: Mr. Ramesh Kumar Mishra and Mr. Sandeep Pandey, Advocates.

V

WORKERS & OTHERS

….RESPONDENTS

Through: Mr. Abinash K. Mishra, Mr. Mohit Sharma and Mr. Gaurav Kumar Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

SUDHIR KUMAR JAIN, J.

1. The present judgment shall decide Letter Patents Appeal filed by the appellant Hospital to impugn the judgment dated 02.07.2018 (hereinafter referred to as "**the impugned judgment**") passed by the learned Single Judge in W.P.(C) bearing no. 17938/2004 titled as ***Moolchand Kharaiti***

Ram Hospital & Ayurvedic Research Institute V Workmen & others upholding the Award dated 28.04.2004 (hereinafter referred to as **"the Award"**) passed by the Industrial Tribunal No II (hereinafter referred to as **"the Tribunal"**) in Industrial Dispute No 11/1999 titled as ***M/s Shri Moolchand Kharaiti Ram Hospital & Ayurvedic Research Institute V Workmen represented by Shri Moolchand Kharaiti Ram Hospital Karamchari Union*** whereby the appellant Hospital was declared to be not exempted from payment of bonus under section 32(v)(c) of the Payment of Bonus Act, 1965 (hereinafter referred to as **"the Act"**).

2. The Secretary (Labour), Government of National Capital Territory of Delhi referred a dispute to the Tribunal for adjudication arising between the management of the appellant Hospital and its workmen represented by Shri Moolchand Kharaiti Ram Hospital Karamchari Union (hereinafter referred to as "**the respondent Union**") vide reference bearing no.F.24 (2068)/99-Lab/19704-08 dated 13.05.1999 with the following terms of reference:-

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

3. The respondent Union submitted the statement of claim before the Tribunal wherein primarily stated that the appellant Hospital was being

managed by a Trust under the name and style of Shri Moolchand Kharaiti Ram Trust involving several eminent persons and was providing free and charitable medical services to the people. However, the management of appellant Hospital since 1990 has been converted into a commercial venture. The management of the appellant Hospital did not pay the bonus to its workers for the year 1997- 1998. The respondent Union lodged a complaint dated 22.10.1998 before the concerned authority under the Act which was got delayed due to management of the appellant Hospital. The complaint was converted into an industrial dispute. The workmen were denied bonus for the year 1997-1998 illegally by the management of the appellant Hospital. The workmen employed in the appellant Hospital are entitled for the bonus for the year 1997-98. The respondent Union being aggrieved filed the writ petition bearing no. 17938/2004 titled as ***Moolchand Kharaiti Ram Hospital & Ayurvedic Research Institute V Workmen & others*** with prayer that an award be passed for declaring the workers to be entitled for the bonus for the year 1997-1998 and the management of the appellant Hospital be directed to pay the bonus to the workers along with interest @ 24% p.a. from the date of entitlements of the bonus till the date of realisation.

4. The appellant Hospital filed its written statement and in **preliminary objections** contended that the reference was bad in law because the demands were not served on the management of the appellant Hospital. The respondent Union is not competent to represent the workmen. No dispute is espoused by the respondent Union. The appellant Hospital is not an industry. The employees of the appellant Hospital are not regular members of the respondent Union. The provisions of the Act are not applicable to the appellant Hospital as the appellant Hospital falls within the exception. The management had received a notice from Inspecting Officer of the Govt. of NCT of Delhi which was replied by the management vide letter dated 19.11.1998. The workmen are not entitled for any bonus.

5. The Tribunal vide order dated 04.02.2000 framed the following issues:-

> *"1. Whether the union, which has filed the statement of claim, is competent to represent the workmen of the management? If not, its effect. (OPW)*
> *2. Whether the cause of the workmen has been properly espoused? (OPW)*
> *3. Whether the demand notice was served upon the employer? If not, its effect. (OPW)*
> *4. As per the terms of reference."*

6. The respondent Union in evidence examined its General Secretary namely Vijender Singh as WW1 who tendered affidavit dated 23.05.2002 in evidence wherein reiterated averments as mentioned in statement of claim.

WW1 filed certain documents Ex. WW1/1 to WW1/7 including certain representations submitted by the respondent Union regarding denial of the bonus to the workmen. WW1 in evidence clarified the expression "profit venture" by deposing that the appellant Hospital charged fees, room rent and charges for other facilities from its patients.

7. The appellant Hospital in evidence examined M.K. Kaushik, Manager (Personnel) as MW1 who in affidavit dated 22.03.2003 tendered in evidence deposed that appellant Hospital was a non-profit organisation which did not pay dividends or profits and none of its trustees receives any benefit or salary. The senior medical personnel were the consultants discharging services and they were being recompensed for the services rendered.

7.1 MW1/M.K.Kaushik also filed additional affidavit dated 03.11.2003 in evidence to place on record various documents which are Ex. MW1/1 to Ex. MW1/9. Ex. MW1/1 was the Will of late Lala Kharati Ram who created the Moolchand Khiraiti Ram Trust. Ex. MW1/2 was a letter issued by the Income Tax Authorities registering the Moolchand Kharaiti Ram Trust under section 12A(a) of the Income Tax Act, 1961. Ex. MW1/3 was a communication from the Income Tax Authorities, granting approval to the Trust under section 10(23)(C) of the Income Tax Act, 1961. Ex. MW-1/4

(collectively) were letters granting exemption to the Trust under section 80 G of the Income Tax Act, 1961. Ex. MW1/5 to MW1/9 were Income Tax assessment orders of the appellant Hospital for the Assessment Years 1995-1996 to 1999-2000. Ex. MW1/10 was a statement showing receipts, expenditure, capital expenditure and resultant surplus of the appellant Hospital for the years 1991-1992 to 2000-2001.

7.2 MW1/M.K. Kaushik during cross-examination deposed that the appellant hospital was owned and operated by a Trust which was a non-profit organisation and it never paid any profit to anyone. The appellant Hospital was not established for the purposes of profit. MW1 during cross examination denied that the appellant Hospital worked as a commercial entity and generated large profits. MW1 admitted that there was no fixed ratio for providing free treatment or hospitalisation to needy patients which varied from time to time and from patient to patient. MW1 could not tell whether the appellant Hospital generated profit or suffered losses in 1997-1998 but refuted that the appellant Hospital was working as a commercial entity and generating huge profits.

8. The Tribunal on the basis of evidence led by the concerned parties answered the issues no. 1, 2 and 3 in favour of the respondent Union and

against the appellant Hospital. The Tribunal regarding the issue no 4 after referring various decisions of the superior courts held as under:-

> *"12. As discussed above in above mentioned judgements their Lordships are of the consistent opinion that the management earning the profits must grant the bonus to its workers and if the management want to have the exemption under Section 32(v)(c) of Payment of Bonus Act then the management should must obtain the same from the authorities under the Payment of Bonus Act. It has also been held by their Lordships that the management once extending the benefits to the workers by way of bonus or any other form like ex-gracia payment etc should continue to extend the benefit to the workers.*
>
> *13. In the present case it is admitted case of the parties that management had been extending the benefit of the bonus to its workers prior to year 1997-98 but as some differences arisen between the management and workmen, the payment of bonus was not made in the year of 1997-98. The plea taken by the management that the management was Institution established not for earning the profits was not liable to pay the bonus, is not acceptable as there was no substantial change in law or in the provisions of Payment of Bonus Act for the year of 1997-98. It is also not in dispute that the capital of the management has also increased during the past years but the same was being used for other purposes and not for the payment of bonus for the year of 1997-98. It is also evident from the record rather admitted fact that the management has sought any exemption in the year of 1997-98. Even apart from the above mentioned facts it is pertinent to mention here that discontinuity/stopping of payment of bonus without issuance of any notice u/s 9A of I.D. Act would be render the non-payment as illegal.*
>
> *14. As mentioned above it is consistent opinion of the Hon'ble Supreme Court and High Courts that once the bonus is being paid to the workers the management has to seek exemption*

from the competent authority before stopping the payment of the same.

15. In above mentioned facts and the circumstances and the judgements of Hon'ble Supreme Court and High Courts in case of National Dairy Development Board Vs. National Dairy Development Board Employees Union, Ahmedabad reported in 1986 I LLJ 456, State of Tamilnadu Vs. Sabanayagam K. and Others reported in 1998 I LLJ 214, Tamil Nadu Water Supply & Drainage Board Vs. Tamil Nadu Water Supply & Drainage Board Engineers Association & Others reported in 1998 I LLJ 931 and in case of Workmen of Tirumala Tirupathi Devasthanamas Vs. The Management and others reported in 1980 (40) FLR 45 and non-payment of continuous benefits of the payment of bonus from the earlier year without any notice u/s 9A of I.D. Act would make the action of the management of non-payment of bonus for the year 1997-98 would culminated into illegality and unjustification.

16. Consequently, I am of the considered opinion that non-payment of bonus for the year of 1997-98 is neither permitted by law nor justified. So it is held that the non-payment of bonus to its workers is illegal and unjustified. The management is required to be directed to make the payment of bonus to its workers for the year of 1997-98 unless they are exempted for the payment under any agreement/settlement entered with the individual worker as case maybe.

The award is passed accordingly."

9. The appellant Hospital being aggrieved filed the W.P. (C) bearing no. 17938/2004 titled as ***Moolchand Kharaiti Ram Hospital V Workers through Moolchand Kharaiti Hospital*** to challenge the Award passed by the Industrial Tribunal.

10. The learned Single Judge vide impugned judgment upheld the Award passed by the Industrial Tribunal and writ petition was accordingly dismissed. The learned Single Judge observed as under:-

> *"27. The pleadings, whether by petitioner or by respondent, before the learned Industrial Tribunal, are unhelpful in equal measure, in aiding an adjudication of the present dispute. The respondent has merely contended that the petitioner had, till 1996-97, been paying its workmen bonus and could not, therefore, arbitrarily discontinue such payment suddenly in 1997-1998. The petitioner-Hospital, for its part, merely relies on Section 32(v)(c) of the Act, claiming the benefit thereof.*
>
> *28. Mr. Rana, appearing for the petitioner, has emphatically contended that the learned Industrial Tribunal was thoroughly misguided in holding that, as the petitioner-Hospital had been paying bonus, to its workmen, till 1996-1997, the discontinuance, by it, of such payment in 1997-98 was ipso facto illegal. He contends that the mere fact that bonus might have been paid, by the petitioner-Hospital to its workmen till 1996-1997, would not create an estoppel, in favour of the workmen and against the Hospital, as would require the hospital to continue to pay such bonus, even if the statute did not require it to do so.*
>
> *29. Empirically viewed, there can possibly be no quarrel with the aforesaid proposition of Mr. Rana. There is no estoppel against the statute and, if the statute does not, in terms, require the petitioner Hospital to pay bonus to its workmen, the payment of such bonus, by it in the past, could not possibly create an estoppel in favour of the workmen or against the Hospital, to maintain a claim to continue the payment of such bonus in future. Having said that, the fact that the petitioner-Hospital had, for as long as 10 years, been paying bonus to its workmen, till 1997-1998 when it suddenly discontinued such payment, would undeniably place the onus, to justify such*

discontinuance, on the petitioner-Hospital. The petitioner-Hospital would be perfectly within its rights in contending that, where the Act did not require it to pay bonus to its workmen, no amount of such payment, in the past, could fasten, on it, such an extra-statutory liability for the future. It would be, however, for the petitioner Hospital to establish and prove that, in fact, the Act did not require it to pay bonus to its workmen, and not for the workmen to prove to the contrary.

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

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

32. While examining the material produced by the Hospital, to justify its claim to the benefit of Section 32(v)(c) of the Act, it is necessary to remember the position, reflected in the judicial decisions cited hereinabove, that the expression "established not for the purposes of profit", as contained in the said clause, has been understood and interpreted in a somewhat narrower manner than the meaning which the expression would normally carry, as understood in common parlance. If one were to read the expression "established not for the purposes of profit" in its ordinary sense, all that one would be required to be seen, in order to examine whether the expression applied, or not, would be the purpose for which the institution was established. Such an interpretation, if placed, would enable any, and every institution, to contend that, as it had been established "not for the purposes of profit", it was, by

that very fact, entitled to exemption from the applicability of the Act, irrespective of whether it was actually making profit or not. Such an interpretation would effectively efface the applicability of the Act to organizations which might be making huge profits, merely by the organization showing that, at the time of its establishment, it was not intended to generate profits. The various judicial authorities cited hereinabove have, justifiably, not accepted such an interpretation, and have emphasized that, irrespective of the purpose or motive for which the institution was established, if, in fact, it was generating profits, it could not escape its liability under the Act. This interpretation coheres perfectly with the jurisprudential concept of "bonus" itself. Bonus is not a bounty or charity, given to workmen working in an institution. It is a sanctified right, relatable directly to the labour put in by the workmen, and reflective thereof. It is a statutory recognition of the liability, of the institution, to share the profits earned by it with those who are responsible for the earning of such profits. It acknowledges the fact that workmen make the enterprise, and not vice versa, and that it is the collective labour of the workmen which results in the enterprise being in a position to generate profits. It accords legal imprimatur to the basic and moral duty of the enterprise to share, with its workmen, who have put in their sweat and toil into ensuring that the enterprise makes profits, a portion of the profits so made.

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

34. Once this position, in law, is understood, the conclusion, in a case such as the present, is self-evident. It is, ex facie, preposterous to suggest that the petitioner-Hospital, a multi-bedded super speciality enterprise, is not run on commercial lines, or that it does not generate profits. It might be that, at the time of its establishment, the Hospital was not intended to

be a profit-making institution; even this assumption, however, would not be strictly accurate, as the intention could not have been to run the Hospital without making profits; at best, the intention could have been that the profits generated would not be distributed amongst the trustees of the Trust, but would be ploughed back into the corpus of the Hospital, to better its facilities and augment its quality of service. That, however, by itself would not except the petitioner-Hospital from the applicability of the provisions of the Act; neither would the non-profit making nature of the Trust – assuming that it were so – take the petitioner-Hospital itself outside the clutches of the Act, as held in ***Workmen of Tirumala Tirupati Devasthanam (supra).***

35. Though an attempt has been made, by the petitioner, to contend that it was not making profits, such a statement, at its very face, deserves to be rejected outright. In this context, a reference to the various documents relied upon, by the petitioner-Hospital before the learned Industrial Tribunal, and exhibited as Ex. MW-1/2 to Ex MW1/9, is instructive. Ex. MW-1/1, being the will of Lala Khairati Ram, really does not assist the adjudication of the present dispute one way or the other. Regarding the remaining exhibits, it is worthwhile to note the following:

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

> *"This certificate of registration u/s 12A (a) of the IT Act, 1961 does not by itself confer any right or any trust/institution to claim exemption from tax in respect of its income inasmuch as such exemption depends on the satisfaction of all other conditions in this behalf laid down in Sections 11, 12, 12A(b) and 13 of the Act."*

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

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

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

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

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

(i) that the "hospital or other institution", referred to in the said sub-clause (via) has necessarily to be "existing solely for philanthropic purposes and not for purposes of profit"; this, however, would not imply, as a necessary sequitur, that no part of the income of the "hospital or other institution" constitutes "profits or gains of business", and

(ii) income of the "hospital or other institution" which, despite "existing solely for philanthropic purposes and not for purposes of profit", nevertheless, constitutes "profits or gains of business" would continue to be entitled to the benefit of Section 10(23C)(via) of the IT Act, subject only to the condition that the business is incidental to the attainment of the objectives of the "hospital or other institution", and separate books of accounts are maintained in respect thereto.

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

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

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

(v) Ex MW-1/10 was a statement, showing receipts, expenditure, capital expenditure and result in surplus/deficit of the petitioner-Hospital, for the years 1991-92 to 2000-2001. A glance at the said chart makes it clear that the petitioner Hospital was, in certain years, earning profits, and in others, sustaining losses, and was, overall, being run as a commercial enterprise, with all the risks and rewards attending the running of such an institution. This single exhibit, by itself, would be sufficient to indicate that the petitioner-Hospital cannot regard itself as a hospital established "not for the purpose of profit", so as to be insulated against the liability cost by the Act, to pay bonus to its workmen.

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

Conclusion

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

11. The appellant Hospital being aggrieved filed the present appeal and challenged the impugned judgment on the grounds that the impugned judgment dated 02.07.2018 passed by the learned Single Judge is erroneous, arbitrary, perverse, devoid of material on record and legally not sustainable and resulted into miscarriage of justice. The learned Single Judge

erroneously placed the onus on the appellant hospital to prove that it was not run primarily for the purpose of profit. The appellant Hospital satisfied the prima facie requirement that the establishment was not being run for profit by exhibiting documents. The learned Single Judge in the absence of evidence incorrectly assumed that profit earning is the appellant hospital's predominant purpose and completely negates the concept of enterprises operating on a no-profit, no-loss basis. It was erroneously decided that the non-profit making nature of the Trust will not exclude the appellant hospital from the applicability of the Act. The ratio as laid down in ***Workmen of Tirumala Tirupathi Devasthanam V Management and others,***(1980) 1 SCC 583 was not applied in right perspective. The appellant Hospital was neither established for profit nor is running for the purposes of profit as no profit has ever been distributed to any person including the trustees. The statement showing receipts, expenditures, capital expenditures and the resultant surplus/deficit of the appellant hospital from 1991-1992 to 2000-2001 showed a deficit with capital expenditure in every year except 1993-1994. The appellant Hospital has satisfied conditions required under section 80G of the Income Tax Act,1961 and provisions of Income Tax Act,1961 for ascertaining whether an institution is running "for charitable purpose or

not" are far more stringent than the provision under the Act which requires that the enterprise is 'not established for the purpose of profit'.

12. The learned counsel for the appellant advanced oral arguments and also submitted written arguments. The learned counsel for the appellant argued that the learned Single Judge while upholding the order passed by the Tribunal held the appellant Hospital liable for payment of bonus but has not upheld the reasoning of the Tribunal as mentioned in the Award. The learned Single Judge has relied on the guidelines as mentioned in Clause (ii), (v), (vi) and (vii) of para 46 of the ***Batra Hospital Employees Union V Batra Hospital and Medical Research***, 2018 (168) DRJ 21 which are legally erroneous as these guidelines exclude every institution which runs on commercial lines and has the potential of earning surplus from exemption from payment of bonus under section 32(v)(c) of the Act and because of the guidelines that establishments running on "no profit no loss" basis or establishments whose profit cannot be shared will not be treated as establishments "not for purposes of profit". The learned counsel for the appellant relied upon the judgment of the Supreme Court titled as ***Workmen of Tirumala Tirupati Devsthanam V Management And Another,*** 1980 (1) SCC 583 which supports the view that the test of "dominant purpose" is the

correct test in law.

12.1 The learned counsel for the appellant Hospital further argued that activities of the Trust that surplus income will not change the charitable character of the Trust and the dominant purpose of each establishment would be determined on basis of its peculiar facts and circumstances. If the primary objective of an establishment is to carry out a charitable activity rather than making profits then character of charitable purpose would not be lost merely because the establishment earn some profits from its activities. The learned counsel for the appellant has placed reliance on the case of ***Additional commissioner of Income Tax, Gujarat Ahmedabad V Surat Art Silk Cloth Manufacturers Association, Surat,*** AIR (1980) 2 SCC 31.

12.2 The evidence led on behalf of the appellant Hospital proved that the Trust is a non-profit making organisation and none of the trustees draws any salary or benefits from the Trust. The Trust is approved by the Income Tax Department under section 10(23C) of the Income Tax Act, 1961 and was granted exemption under section 80G of the Income Tax Act, 1961 and Trust was not deriving any profit as per Income Tax Assessment orders.

13. The learned counsel for the respondents submit that once an organisation begins to pay bonus, it cannot stop payment of bonus without seeking

exemption from the competent authorities and without providing opportunities to the workers. This procedure must be followed to preserve industrial harmony and peace.

14. It is apparent that the appellant Hospital was paying bonus to its workmen and had paid the bonus prior to 1997-98. The appellant Hospital did not pay the bonus to its workers for the year 1997-98. The issue which needs judicial consideration and assessment is that whether the appellant Hospital is entitled to be exempted from the applicability of the Act for year 1997-98 and is not liable to pay bonus to its workmen being established not for purpose of profit.

15. The Act was enacted with objective to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. Section 1 of the Act provides that the Act shall apply to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. Section 32 of the Act exempts certain classes of employees from their entitlement to bonus. The hospitals which are "established not for the purposes of profit" are exempted from the applicability of the Act by virtue of sub-clause (c) of clause (v) of section 32 which reads as under:-

> *"32. Act not to apply to certain classes of employees. – Nothing in this Act shall apply to -*
> *(i) xxxxxxx;*
> *(ii) xxxxxxx;*
> *(iii) xxxxxxx;*
> *(iv) xxxxxxx;*
> *(v) employees employed by-*
> *(a) the India Red Cross Society or any other institution of a like nature (including its branches);*
> *(b) universities and other educational institutions;*
> *(c) institutions {including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit."*

15.1 The Supreme Court, *in* ***Jalan Trading Company V Mill Mazdoor Union,*** MANU/SC/0185/1966 while considering the vires of the Act including section 32 observed as under:-

> *"It may be broadly stated that bonus, which was originally a voluntary payment, out of profits made, to workmen to keep them contented, acquired the character, under the bonus formula, of a right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act."*

15.2 Section 32(v)(c) of the Act has come up for judicial interpretation on many occasions and referred ***Workmen of Tirumala Tirupathi Devasthanam V Management,*** AIR 1980 SC 604. In this case, the issue before the Supreme Court was whether the Transport Department of the Tirumala Tirupati Devasthanam was an institution by itself and, if so,

whether it was exempt from the operation of the Act by virtue of section 32(v) (c) thereof. The Supreme Court held as under:-

> *"2.... On the other hand, there must be proof that the Transport Department (a) is an institution; (b) established not for the purpose of profit. The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made some years are ploughed back whatever that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not clinch the issue whether the institution has been established not for purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as a remunerative enterprise, that is decisive of the issue.*
>
> *4. Likewise, merely because it is an institution, the Transport Department does not cease to be one established 'not for purposes of profit', that has got to be made out on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profits or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution. Was the institution 'not one for purposes of profit', motives apart? If it was one, definitely not for earning profit, but merely as an ancillary facility for pilgrims to reach and to return. Section 32(5) will exclude the institution. If we may tersely put it, the dominant purpose of the Transport Department will be the decisive factor."*

15.3 The learned Single Judge also referred ***T.N. Water Supply & Drainage Board V T.N. Water Supply & Drainage Board Engineers Association,*** (1998) 5 SCC 370 and ***State of Tamil Nadu V K. Sabanayagam,*** (1998) 1

SCC 318. In ***T.N. Water Supply & Drainage Board***, the Supreme Court observed as under:-

> *"Learned Single Judge has referred to the functions of the Board and its powers and rightly held that the purpose behind the functions of the Board is to provide protected drinking water supply and drainage facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its method of recovery of the cost of the scheme, making investment and constituting its funds by 'all moneys received by or on behalf of the Board ..., all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other moneys accruing to the Board and all moneys and receipts', deposited into the public accounts of the Government under such detailed heads of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and lose in another year. Thus, in its commercial activities of sort, it has got a capital structure of profit, liabilities and labour force to care for. We see reason to hold in accordance with the Rule indicated by the Supreme Court in the case of Workmen v. Tirumala Tirupathi Devasthanam that the Board is an institution designed for profit in the limited sense that when the Government's department found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meagre revenue and other resources of the State.*
>
> *Applying the test as above, we have no hesitation in holding that the learned Single Judge has fallen in error in holding that the respondent-Board is an institution established not for purposes of profit. Employees of the Board qualifying for*

bonus under the Act, in our opinion, are entitled to minimum amount of bonus."

15.4 The High Court of Madras in the case of ***Christian Medical College and Hospital V Presiding Officer,*** 2003 (III) LLJ 650 (Mad**)** analysed the applicability of section 32(v)(c) of the Act. As observed by the learned Single Judge examined issue whether the Christian Medical College & Hospital was exempted from the application of the Act by virtue of section 32(v) (c) of the Act:-

> *"(i) The CMC was being run on commercial lines.*
> *(ii) The cost of education for a single Medical student was Rs. 64,000/- per year, whereas the fee charged from a student for a year, was only Rs. 3,000/-. This indicated that it was only from the earnings of the hospital, that subsidy could be provided for the student for their education.*
> *(iii) The minutes of the Extra Ordinary Meeting of the Association of the CMC indicated that income from patients during 1978-88 was 88%, whereas contribution from the Members was only 1.42%, collections from students amounted to 1.5%, collection from other sources was 2.5% and earnings from the division of community health was 3.4%.*
> *(iv) Of 1484 beds in the hospital, only 161 beds were assigned for free treatment, i.e. a mere 11%. 90% of the inpatients and 60% of out-patients were charged on commercial basis.*
> *(v) The CMC manufactured 144 items of medicines, sold them to patients at a profit and ploughed back the surplus from the sales to the institution itself.*
> *(vi) 90% of the income of the institution came from the hospital. Even if the purpose of establishment, and the object of the institution at that time, had been to serve the poor, it was not necessary that the said object continued.*

(vii) Free service, on charitable lines, was no longer available to all patients, as was admitted by the CMC itself."

16. We have perused the Award. The Tribunal in the Award observed that the management of the appellant Hospital has extended the benefit of bonus to its workers prior of the year 1997-98 but no payment of bonus was made in the year 1997-98. The Tribunal has not accepted the plea advanced on behalf of the appellant Hospital that the appellant Hospital is not an institution which was established for earning profits and as such not liable to pay the bonus to its workers on consideration that there was no substantial change in the legal provisions applicable for the payment of bonus to the workmen. The Tribunal also observed that the capital of the management of the appellant Hospital was also increased during the past year which was used for other purposes but not for payment of bonus to the workmen for the year 1997-98. The Tribunal also observed in para no.15 of the Award that the appellant Hospital has also not sought exemption from the competent authority before stopping the payment of bonus to its workmen in the year 1997-98. The Tribunal has also observed that non-payment of bonus for the year 1997-98 is neither permitted under law nor justified and rightly held that the management of the appellant Hospital is required to pay the bonus to

its workers for the year 1997-98.

17. The learned Single Judge in the impugned judgment has relied upon the judgment delivered in ***Batra Hospital Employees Union*** which was also rendered by the learned Single Judge. The learned Single Judge in para no.46 of the judgment delivered in ***Batra Hospital Employees Union*** culled out the legal proposition as emerged from various judicial pronouncements on the issue of liability of an establishment to pay the bonus which are reproduced as under:-

> *"25. Having noticed the above decisions, I had, in para 46 of the judgement of Batra Hospital Employees Union (supra), culled out the following propositions which emerged therefrom, as useful guidelines to determine the issue of applicability, in any given case, of Section 32(v)(c) of the Act.*
>
> > *"(i) The question of whether an institution is, or is not, established "not for the purpose of profit" cannot be decided merely by referring to the original intent and purpose for which the institution may have been set up, as reflected in its Memorandum of Association, Bye-Laws, or any other similar instrument. Else, it would be easily possible for any institution to avoid the bonus under the Act, merely by incorporating a clause in, or wording, its Memorandum of Association or Bye- Laws, to the effect that it is established for charitable purposes, and not for the purposes of profit. Such subterfuge would obviously be impermissible in law.*
> >
> > *(ii) If any institution is making profits, given the object of the Act, it would not be possible to treat it as an institution "established not for the purpose of profit". The making of profit has an indelible nexus with the payability*

of bonus, during the Full Bench Formula regime as well as thereafter. As Tirumala Tirupati Devasthanam (supra) succinctly put it, the moot question would be - "Was the institution „not one for purposes of profit", motives apart?" The Act cannot be interpreted in such a manner as would enable organizations, which are profiting from their activities, to escape the liability to pay bonus to their employees or workmen. Such an approach would entirely defeat the socialist structure of our nation, and violate the preambular declaration in the Constitution of India which would always remain the grundnorm.

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

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

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

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

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

(a) having its own assets and liabilities,

(b) having a method of recovery of cost incurred in its operations and making of investments,

(c) having a profit and loss account, and depositing

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

18. The learned counsel for the appellant Hospital also argued that the appellant Hospital was granted exemption under section 80G of the Income Tax Act, 1961 being established for charitable purposes and if the primary objective of an establishment is to carry out a charitable activity rather than making profits then character of charitable purpose would not be lost merely because the establishment earn some profits from its activities. This argument advanced by the learned counsel for the appellant Hospital is without any justification in view of observations made by the learned Single Judge in ***Batra Hospital Employees Union.*** The observations regarding the grant of benefit under section 80G(5) of the Income Tax Act, 1961 made by the learned Single Judge in impugned judgment are reproduced as under:-

"26. I had further, in the said decision, examined, in detail, the contention that, having been extended the benefit of Section 85-G of the IT Act, the Hospital was entitled, by virtue thereof, to be treated as

established "not for the purposes of profit" under Section 32(v)(c) of the Act. As in the present case, Batra Hospital, too, had been granted the benefit of Section 80-G under sub-section (5) of the said Section. My observations/findings on the issue, as contained in paras 49 to 52 of the said decision, apply, mutatis mutandis, to the present case and, are therefore, reproduced, in extenso, as under:

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

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

"(15) 'charitable purpose' includes the poor, education, medical relief, and preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or

business, or any activity of rendering any service in relation to any trade, commerce or business, pharmacists or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

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

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

51. Even otherwise, on first principles, it would be hazardous to presume that every organization, which is certified under Section 80-G of the Income Tax Act, would, of necessity, be entitled, ipso facto, to immunity from the applicability of the Payment of Bonus

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

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

19. It is true that the appellant Hospital is within its rights not to pay bonus to its workmen in 1997-98 if the law so warranted and payment of bonus in the past cannot fasten liability for the future. However, it was for the appellant Hospital to establish and prove that the Act does not require it to pay bonus to its workmen for year 1997-98. The learned Single Judge has rightly observed that the onus to prove lack of the liability and exemption from payment of bonus to the workmen for the year 1997-98 was on the appellant Hospital which it could not discharge.

20. The learned counsel for the appellant Hospital also argued that surplus income would not change the charitable character of the Trust and the dominant purpose of the appellant Hospital would be determined on basis of its peculiar facts and circumstances. These arguments advanced by the learned counsel for the appellant Hospital are without any judicial justification. If an enterprise is being run on commercial lines involving generation of profit then it cannot escape liability under the Act by contending that it was not established for the purpose of profit. The learned Single Judge rightly observed that a multi bedded super-speciality enterprise like the appellant Hospital cannot be said to be neither running on commercial lines nor it is generating profits. Although the profit generated

by the appellant Hospital might not be distributed amongst the Trustees and might be ploughed back into the corpus of the Hospital to better its facilities and augment its quality of services would not allow the appellant Hospital to be exempted from the applicability of the provisions of the Act. The learned Single Judge has rightly laid emphasis on various documents as referred in para no. 35 of the impugned judgment to establish the liability of the appellant Hospital to pay bonus to its workers. The dominant purpose of the Trust which is running the appellant Hospital is established to be to earn profit.

21. We have carefully perused the Award and impugned judgment which are well reasoned and passed on relevant factual and legal propositions. The Award and the impugned judgment are not perverse, illogical or contrary to the factual and legal propositions. It is based on sound factual and legal reasoning. The learned Single Judge while upholding Award passed by the Tribunal has rightly concluded that the provisions of the Act are applicable to the appellant Hospital and the appellant Hospital cannot be exempted from the liability to pay bonus to its workmen for the year 1997-98. The arguments advanced by the learned counsel for the appellant and the

respondents are considered in right perspective. There is no merit in appeal, hence dismissed.

22. The present appeal, along with pending applications, if any, stands disposed-off.

(SUDHIR KUMAR JAIN)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 26, 2023
N/SD