# BASTI SUGAR MILLS CO. LTD.

*v.*

# STATE OF U.P. & ANR.

*September* 11, 1978

[V. R. KRISHNA IYER AND D. A. DESAI, JJ.]

*Payment of Bonus Act* 1965—*Sec.* 34—*U.P. Industrial Disputes Act,* 1947 —*s.* 3(*b*), 3(*c*) *Trade Unions Act* 1926 (*S.* 2*h*)—*Whether bonus can be paid under order passed under s.* 3 *of U.P. I.D. Act—Whether appointment of a Tripartite Committee amounts to agreement within meaning of s.* 34 *of Bonus Act—Whether an association of employers can bind individual employer.*

The appellant runs two Sugar Factories at two different places. There are about 71 such factories in U.P. The economy of U.P. in large measure, depends on the sugar industry. Moreover, sugar is an essential commodity. Thus, these factories and the army of workers employed therein fall within the strategic sector of the State economy. Section 3 of the U.P. Industrial Disputes Act, 1947 provides that if in the opinion of the State Govt., it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment it may by general or special order make provision for prohibiting strikes lock-outs and for appointing committees representative both of employers and workmen for securing amity and good relations between the employer and the workmen and for settling industrial disputes by conciliation. The Payment of Bonus Act, 1965 lays down what bonus is payable to the workmen. Using the power under S. 3(c) of the 1947 Act and based on the suggestion of the State Labour Conference (Sugar), the State Govt. appointed a tripartite committee in October 1968 consisting of 3 nominees of the Indian Sugar Mills Association and their representatives of the workmen, the Labour Commissioner being the Chairman of the Committee. The notification under s. 3(b) who issued with a view to consider and make recommendations to Government on the question of grant of bonus for 1967-68 by the Vacuum Pan Sugar Factories of the State on the basis of the Payment of Bonus Act 1965, subject to such modifications as may be mutually agreed upon. The Association is a Trade Union registered under the Trade Unions Act, 1926. Its functions are indicated in the definition of 'trade union' in Section 2(h) of that Act, and include regulation of relations between the workmen and employers. Thus, the Association was within its competence to nominate three representatives to sit on the Committee to regulate the relations between the Member-employees and the workmen employed. The appellant is a Member of the said Association.

The Committee held several sittings and at some stages, the appellant or his representative did participate directly or indirectly in the deliberations. The workers' representatives actually accepted the formula put forward by the President of the Management's Association. On receipt of the recommendation under Section 3(c), the Govt. issued an order under s. 3(b) implementing those recommendations. Although Section 3(b) does not depend for coming into play upon any report under s. 3(c), the Govt. constituted the Committee under s. 3(c) before taking any step under s. 3(b) as a measure to ensure the fairness to the concerned parties. The appellant filed a writ petition in the High Court. The learned single Judge dismissed the writ petition taking a view that an agreement which is recognised by s. 34 of the Bonus Act, existed in this case and, therefore, the order which merely gave effect to that agreement was not bad in law. On appeal the two Judges of the Bench disagreed and the case went before the third learned Judge of the High Court who upheld the order of the learned single Judge on the ground that there was an agreement under s. 34 of the Bonus Act. A B

The appellant contended :—

1. The State Govt. cannot act in the area of bonus without breach of the embargo in s. 34 of the Bonus Act, and, therefore, the impugned notification must fail for want of power.

2. Since the Bonus Act is a complete Code covering *profit* sharing bonus, no other law can be pressed into service to force payment of Bonus by the Management. C

3. Section 3(b) of the U.P. Act is independent of any agreement between the affected parties and the notification thereunder operates on its own and not by force of consensus or contract between the workmen and the management. It was, therefore, wrong for the High Court to have salvaged the notification under s. 3(b) as embodying the agreement to pay bonus. D

4. As a matter of fact, there was no agreement between the appellant and the workmen within the meaning of section 34 since the representatives of the Association had no power to bind its members by any agreement on bonus having been appointed solely to make certain recommendations. The appellant had specifically informed the Association that it did not agree to any variation from the approved balance-sheet of the Company. E

Dismissing the appeal the Court,

HELD : The effect of s. 34 is that anything inconsistent with the Bonus Act in any other law will bow and bend before it. If concluded agreement could be read into the recommendations of tripartite committee relating to bonus it would be valid despite s. 34. The two Courts have accordingly found that there was an agrement. This Court is rarely disposed to reverse a factual affirmation concurrently reached by the High Court at two tiers. [601 A, B, D] F

The contention that the authority of the tripartite committee was limited to making recommendations on the grant of bonus subject to such modifications as mutually agreed upon is formally correct but why could the committee which had representatives of both the wings of the industry not mutually agree upon bonus formula ? There was nothing in the notification prohibiting it. There was everything in the notification promoting it. The whole process was geared to mutually agreed solutions. Once the representatives of management and labour reached an agreement, substantially on the basis of the Bonus Act, they would proceed to recommend to Govt. the acceptance of that agreement. The first notification did not shut out, but, on the other hand, welcomed mutual agreement. As between the two wings, an agreement materialised. Then it became Government's responsibility effectively to resolve the crisis and behoved it to put teeth into the agreement by making it a binding order under s. 3(b). The Association is a Trade Union. It can bind its members. The notifi- G H

4—549SCI|78

cation under s. 3(c) itself authorised the Committee consider the grant of bonus on terms mutually agreed upon. The authority to reach agreement on behalf of the appellant is implicit under the notification under s. 3(b). Throughout the several meetings and investigations of the tripartite Committee, the appellant supplied all the facts and details sought concerning the formulation and the data for arriving at an acceptable solution. The formula of the Committee was based largely on the Bonus Act. What the employees' representatives did was merely to accept the proposal of the President of the Association of employers. There was a written agreement dt. 5th June, 1969 to which the representatives of both sides were signatories. To dismiss the whole consensual adventure and the culminating written agreement as nothing but an exercise in recommendatory or advisory futility is to bid farewell to raw realities. Social justice is made of rugged stuff. Industrial jurisprudence does not brook nice nuances and torturesome technicalities to stand in the way of just solutions reached in a rough and ready manner. Broad consensus between the two parties does exist here, as is emphatically underlined by the circumstances that, all the mill owners except the appellant have stood by it and all the workers. There is no substance in the submission of the appellant that there was no agreement for payment of bonus within the meaning of s. 34.
[601 E-H, 602 F, G, 603 A-C, F]

Section 3 of the U.P. Act is not inconsistent with the Bonus Act. The Bonus Act is a long range remedy to produce peace. The U.P. Act provides a distress solution to produce truce. The Bonus Act adjudicates rights of parties, the U.P. provision meets an emergency situation on an administrative basis. [604 B-C]

These social projections and operational limitations of the two statutory provisions must be grasped to resolve the legal conundrum. A broad national policy on bonus, however admirable, needs negotiation, consultation, inter-state co-ordination and diplomacy and causes delay. Hungry families of restive workers in militant moods urgently ask for bonus for onam in Kerala, Puja in Bengal, Dewali in Gujarat, or other festivals elsewhere for a short spell of cheer in a long span of sombre life. The State Govt. with economic justice and welfare of workers brooding over its head is hard pressed for public order and maintenance of essential supplies. [604 D—607 G, H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2148 of 1977.

Appeal by Special Leave from the Judgment and Order dated 19-10-76 of the Allahabad High Court in Special Appeal No. 412 of 1971.

*Y. S. Chitale, S. Swarup* and *Sri Narain* for the Appellants.

*G. N. Dikshit, M. V. Goswami* and *O. P. Rana* for Respondent No. 1.

*Yogeshwar Prasad, Miss Meera Bali* and *Rani Chhabra* for Respondent No. 2.

The Judgment of the Court was delivered by

KRISHNA IYER, J. Undaunted by a direction of the State Government under the Uttar Pradesh Industrial Disputes Act, 1947 (the U.P.

Act, for short), unsuccessfully attacked before a learned Single Judge and in appeal from his judgment, the appellant-owner of two sugar factories in Uttar Pradesh—has secured special leave to reach this Court and press before us a few jurisdictional points which, if valid, are deprivatory of the impugned notification under s. 3(b) of the Act. Before we open the discussion, and, indeed, as paving the way for it, we may remind ourselves of a jural fundamental articulated elegantly in a different context by Mr. Justice Cardozo(1) :

> "More and more we lawyers are awaking to a perception of the truth that what divides and distracts us in the solution of a legal problem is not so much uncertainty about the law as uncertainty about the facts—the facts which generate the law. Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light."

Social realities mould social justice and the compulsions of social justice, in the context of given societal conditions, constitute the basic facts from which blossom law which produces order.

The search for the social facts behind s. 3 of the U.P. Act takes us to the Objects and Reasons Act set out therein :

> "Following the lapse of Rule 81-A of the Defence of India Rules, the Government of India enacted the Industrial Disputes Act, 1947, *but this Act was found inadequate to deal with the spate of strikes, lock-outs* and *industrial disputes* occurring in the province. *Government were, therefore, compelled to promulgate* the United Provinces Industrial Disputes Ordinance, 1947, *as an emergency measure* till more comprehensive Legislation on the subject was enacted.
>
> Although more than two years have passed since the termination of the war, normal life is still far from sight. There is a *shortage of foodgrains and all other essential commodities and necessities* of life. Maximum production is required to relieve the *common want and misery*. Prices continue to be rising and *life has become very difficult* for the common man. The *loss of every working hour* adds to the suffering of the community. In these circumstances, it is essential that *Government should have powers for maintaining industrial peace and production* and for the speedy and amicable settlement of industrial disputes. The bill, which is similar to the ordinance already in force, provides for such powers."

(emphasis added)

(1) Benjamin Nathan Cardozo "What Medicine can do for Law" address before the New York Academy of Medicine, Nov. 1, 1928—Readings in Law and Psychiatry.

The immediate concern of the court in this case is with s. 3 which, in its opening part, luminously projects the State control obligated by community well-being. Even here, we may read the relevant part of s. 3.

> 3. *Power to prevent strikes, lock-outs, etc.*—If, in the opinion of the State Government it is *necessary or expedient* so to do for securing the *public safety* or convenience or the *maintenance of public order or supplies and services essential to the life of the community,* or for *maintaining employment*, it may, by general or special order, make provision —
>
> (emphasis, added)
>
> (a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;
>
> (b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;
>
> (c) for appointing committees, representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation; for consultation and advice on matters relating to production, organisation, welfare and efficiency;
>
> (d) for constitution and functioning of Conciliation Board for settlement of industrial disputes in the manner specified in the order;
>
> xx xx xx
>
> Provided that no order made under clause (b) —
>
> (i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;
>
> xx xx xx

The testimony from these texts, which are part of the legislative package, is the critical factor underlying governmental order in our constitutional system. An insight into it is worthwhile as a tool of interpretation of s. 3 of the U.P. Act and its harmonisation with s. 34

of the Payment of Bonus Act, 1965 (the Bonus Act, for brief). A A synthesis of these two statutes is the key to the problems posed by Shri Chitale before us, arguing the case for the appellant.

When crisis conditions grip the community the first imperative of good government, 'order', takes precedence; and the Executive transfixed between 'govern' or 'get out' and guided by value judgments B resorts to firm action. Exigent solution of problems affecting the well-being of the have-nots, in a social justice setting, desiderates provisional directives to the haves to disgorge payments, not as final pronouncements on rights but as immediate palliatives to preserve the peace. This is police power at its sensitive finest when State and society are con- C fronted by the dilemma of 'do or die'. And, in a broader perspective, Governments of the Third World must hear the voice which moved the Objective Resolution in the Constituent Assembly, while seeking light to keep loving peace :

> "The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance D and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and sufferings, so long our work will not be over.(1)

E

The problems of law are, at bottom, projections of life.

> "Law is a form of order and good law must necessarily mean good order."(2)

We touch these chords because the roots of jurisprudence lie in the soil of society's urges, and its bloom in the nourishment from the F humanity it serves. To petrify statutory construction by pedantic impediments and to forget the law of all laws, viz. the welfare of the people, is to bid farewell to the grammar of our constitutional order. Its practical application arises in the present case. Before going further we sketch the facts of the present case and then on to the larger principles, an understanding of which will unlock the crucial questions G arising in the case.

The appellant, as stated earlier, runs two sugar factories at two different places. There are around 71 such factories in Uttar Pradesh whose economy, in large measure, depends on the sugar industry.

H

(1) The Indian Constitution—Cornerstone of a Nation by Granville Austin, 1972 Edn. p. 26.

(2) Politica, Book VII, Chapter 4, Section 5.

Moreover, sugar is an essential commodity. Thus, these factories and the army of workers employed therein fall within the strategic sector of the State economy. It is but natural that Government is highly sensitive in the matter of maintenance of sugar supplies and the smooth working of the sugar factories. Any explosive situation in the shape of an industrial dispute and any disruptive factor throwing out of gear the employment in factories is sure to throw into disarray public safety, public order, public production and distribution system and public employment, using these expressions in their social connotation. Roscoe Pound's words are jurisprudentially apt :[1]

> "Law is more than a set of abstract norms or legal order. It is a process of balancing conflicting interests and securing the satisfaction of the maximum wants with the minimum friction."

And, Paton has set the tone for Part IV of our Constitution to be used as background music, if we may say so :

> "the law itself cannot be impartial...for its very *raison d'etre* is to prefer one social interest of another."[2]

As was the wont, presumably, there was apparently a clamour in 1968 for workers' bonus which hotted up, threatening community tranquillity, smooth supplies essential to the life of the community and maintenance of employment and public safety.

Every industrial dispute has a potential for large scale breach of the peace when the factories and workmen affected are numerous. But the general unrest induced by industrial demands and resistance may, on critical occasions, blow up unless *quia timet* action to de-fuse are taken. This measure has necessarily to be at the administrative level, since the judicial process is prone to suffer from slow motion. The U.P. Legislature, with comprehensive vision, provided for long-range adjudicative resolution of industrial disputes and short-run executive remedies to pre-empt and contain outbreaks which may get out of control once ignited, and may even cost human lives in the 'fire-fighting' police actions :

> "A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for

(1) Interpretation of Legal History, p. 165, quoted in "Criminal law—Principles of Liability by T. S. Batra, p. 612.

(2) A Text Book of Jurisprudence p. 31, quoted in "Criminal Law Principles of Liability by T. S. Batra, p. 612.

> which it is responsible, free from every other control but a A
> regard to the public good and to the sense of the people.(1)

From this angle, s. 3 has been designed as an emergency provision to be exercised in an excited phase of industrial collision.

Using the power under s. 3(c) of the Act and based on the suggestion of the State Labour Conference (Sugar) the State Government B appointed a tripartite committee in October, 1968 consisting of three nominees of the Indian Sugar Mills Association and three representatives of the workmen, the Labour Commissioner being the Chairman of the Committee. The notification under s. 3(c) was issued with a view to — C

> "consider and make its recommendations to Government on the question of grant of bonus for 1967-68 to workmen by the Vacuum pan Sugar factories of the State on the basis of the Payment of Bonus Act 1965, subject to such modifications as may be mutually agreed upon."(2)

D

No one, at any stage, has assailed the presence of the statutory preconditions of social urgency. We proceed on the footing that a flare-up was in the offing and the State acted to pre-empt a break-down.

It is pertinent to note that the Association is a trade union registered under the Trade Unions Act, 1926. Its functions are indicated E in the definition of "trade union" in s. 2(h) of that Act and include regulating the relations "between workmen and employers". Thus, the Association was functionally within its competence to nominate three representatives to sit on the Committee to regulate the relations between the member-employers and the workmen employed. The appellant is a member of the said Association. F

It is significant to remember that the State Government constituted the tripartite committee under s. 3(c) as an emergency measure before taking steps under s. 3(b) of the Act so that it may inform itself in a responsible way through the recommendations made by the Committee which represented both the wings of the industry. Although s. 3(b) G does not depend, for coming into play, upon any report under s. 3(c) this was a measure to ensure fairness to the concerned elements. The Committee held several sittings and, at some stages, the appellant or his representative did participate directly or indirectly in the deliberations. Equally relevant is the circumstance that the worker's representatives

(1) The Administration of Justice—Melvin P. Sikes, Chapter 7, Pawns of Politics and of power, P. 120

(2) Notification dated 17.10. 1968 of the U.P. Govt. Labour (C) Dept. H

A actually accepted the formula put forward by the President of the Managements' Association. We mention these circumstances to indicate that the scales, if at all, were tilted in favour of the mill owners and Government, on receipt of the recommendations and anxious to freeze the situation, issued an order under s. 3(b) incorporating and B implementing those recommendations. That notification which was impugned before the High Court and is challenged before us reads :

"WHEREAS on the recommendations of the State Labour Tripartite Conference (Sugar) held on June 16, 1968, a Committee was constituted under Labour (C) C Department, notification No. 7548(HI)XXXVI-C-109(HI)/68, dated October 17, 1968, to consider the question of grant of bonus for the season 1967-68 to their workmen by the vacuum pan sugar factories of the State on the basis of the Payment of Bonus Act, 1965 subject to such modifications as may be mutually agreed upon and to make its D recommendations.

AND WHEREAS, the said Committee has considered this question in various meetings the last meeting having been held on June 5, 1969, and has submitted its recommendations to the State Government :

E AND WHEREAS, the said Committee has succeeded in bringing about an agreement in regard to the payment of bonus for the season 1967-68 between the representatives of employers and employees on the basis of Payment of Bonus Act, 1965, with certain modifications and adjustments and has made recommendations on the subject accordingly F which have been accepted by the State Government;

AND WHEREAS, in the opinion of the State Government it is necessary to enforce the recommendation of the said Committee for securing the public convenience and the maintenance of public order and supplies and services G essential to the life of the community and for maintaining employment;

NOW, THEREFORE, in exercise of the powers under clause (b) of section 3 of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor of H Uttar Pradesh is pleased to make the following order and to direct with reference to section 19 of the said Act that the notice of this be given by publication in the office Gazette;

ORDER

xx xx xx

2. (a) All the Vacuum Pan Sugar Factories in the State whose names have been mentioned in the Annexure 'A' except the Kisan Co-operative Sugar Factory, Majhola (Pilibhit), shall pay bonus for the year 1967-68 to all their employees, permanent seasonal or temporary including contract labour who have worked for not less than 30 working days in the accounting year 1967-68;

xx xx xx

The High Court repelled the challenge and upheld the notification, taking the view that an agreement as recognised in s. 34 of the Bonus Act existed in this case and so the order which merely gave effect to that agreement was not bad in law.

The main ground of attack before us is that the State Government cannot act in the area of bonus without breach of the embargo in s. 34 of the Bonus Act and so the impugned notification must fail for want of power. Although this is the thrust of the submission, Shri Chitale has trichotomised it, as it were. First, the Bonus Act being a complete Code covering profit-sharing bonus, no other law can be pressed into service to force payment of bonus by the managements. Secondly, s.3(b) of the U.P. Act is independent of any agreement between the affected parties and the notification thereunder operates on its own and not by force of consensus or contract between the workmen and the managements. In this view, it was wrong for the High Court to have salvaged the notification under s. 3(b) as embodying an agreement to pay bonus. The third submission of counsel was that as a fact there was no agreement between the appellant and his workmen within the scope of s. 34 of the Bonus Act since the representatives of the Association had no power to bind its members by any agreement on bonus, having been appointed solely to make certain recommendations. Moreover, the appellant had specifically informed the representatives of the Association that it did not agree to any variation from the approved balance-sheet of the company and had withdrawn its consent to the formula which found favour with the Committee. Finally, though feebly, it was argued that if an agreement could be spelt out under s. 34 of the Bonus Act enforcement should be left to s. 21 of that Act and not to the punitive recovery provisions of the U.P. Act.

The Single Judge of the High Court dismissed the writ petition reading an agreement into the Committee's recommendations and the eventual order under s. 3(b) of the Act. This agreement was valid under s. 34 of the Bonus Act. On appeal, the two Judges on the Bench disagreed and the case went before a third Judge, who in an elaborate judgment, agreed with the learned Single Judge and upheld the order of the Government as an agreement under s. 34 of the Bonus Act. We now proceed to discuss the merits of counsel's contentions.

We focus our attention on two principal facets of the question. They are (a) whether s. 3(b) is inconsistent with the Bonus Act; and (b) whether an agreement within the meaning of s. 34(1) (as the law then stood) could be spelt out of the facts of the present case.

There is no challenge to the competence of the State Legislature to enact s. 3 of the Act. Indeed, more than one item in Lists II and III will embrace legislation of the pattern of s. 3. Even so, the short point sharply raised by Shri Chitale is that Parliament, having enacted the Bonus Act in 1965, occupied that part of industrial law, and s. 34 in terms contains a *non-obstante* clause. That section reads :

> "*Effect of laws and agreements inconsistent with the Act.*
>
> 34. (1) Save as otherwise provided in this section, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service made before the 29th May, 1965.
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> 34. (2) .................. ..................
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> 34. (3) Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act :
>
> Provided that any such agreement whereby the employees relinquish their right to receive the minimum bonus

> under section 10 shall be null and void in so far as it pur- A
> ports to deprive them of such right."

The effect of this provision is that anything inconsistent with the Bonus Act contained in any other law will bow and bend before it. Secondly, agreements made after 29th May 1965 will be valid regarding bonus even if they be inconsistent with the formulae in the bonus B Act.

Shri Chitale did not dispute the proposition that if a concluded agreement could be read into the recommendations of the tripartite Committee relating to Bonus, it would be valid despite s. 34; but he urged before us that it was impossible to weave out of mere recommendations the web of a concluded contract on bonus. He canvassed C before us, further, that if an agreement on bonus was necessarily inferable from the proceedings of the tripartite committee, the enforcement thereof could be only under s. 21 of the Bonus Act and not by reliance on the more drastic processes of the U.P. Act.

A torrent of objetive circumstances has emerged in this case to D wash out these submissions. This Court is rarely disposed to reverse a factual affirmation concurrently reached by the High Court at two tiers. Even so, we may rush past the more potent circumstances which have a compulsive force in arriving at the conclusion aforesaid.

Shri Chitale stressed that the Committee itself had a functional E limitation writ on the face of the order under s. 3(c). Its authority was limited to making recommendations on the grant of bonus for 1967-68 on the basis of the Bonus Act, subject to such modifications as *mutually agreed upon*. Formally, this is correct. But why could the Committee which had representatives of both the wings of the industry not mutually agree upon a bonus formula ? There was nothing in the F notification prohibiting it. There was everything in the notification promoting it. The whole process was geared to mutually agreed solutions. Of course, once the representatives of managements and labour reached an agreement, substantially on the basis of the Bonus Act, they would proceed to recommend to Government the acceptance of that agreement. The notification under s. 3(c) contemplated *mutual* G *agreement* upon bonus as the first step and the recommendation of the formula so reached as the second step. The good offices of the Labour Commissioner was also available. In short, the first notification did not shut out, but, on the other hand, welcomed mutual agreement. As between the two wings, an agreement materialised. Then it became Government's responsibility effectively to resolve the crisis and behoved H it to put teeth into the agreement by making it a binding order under s. 3(b). Thereafter, the arm of the law, as provided in the U.P. Act, went into action if there was violation. The object of the Government being to keep the peace and to interdict disruption it did not rest content with an agreement within the meaning of s. 34 and resort to the leisurely processes of s. 21. Exigent situations demand urgent enforcement; and therefore government went a step further than the agreement and embodied it in an order under s. 3(b). This incorporation in a notification under s. 3(b) did not negate the anterior agreement between the parties. The order of Government under s. 3(b) makes the dual stages perfectly plain. For instance, there is the following tell-tale recital! "Whereas the said Committee has *succeeded in bringing about an agreement in regard to the payment of bonus* for the season 1967-68 between the representatives of the employers and employees on the basis of Payment of Bonus Act, 1965, with certain modifications and adjustments". In unmincing language, the notification states that an agreement on the payment of bonus has been successfully brought about substantially on the lines of the Bonus Act. In the same notification, Government proceeds to state that the said agreement has been forwarded to it in the shape of recommendations which have been accepted and enforced in exercise of the powers conferred by clause (b) of s. 3 of the Act. The anatomy of the order under s. 3(b) being what we have explained above, the inference is inevitable that there is a clear agreement in regard to the payment of bonus for the relevant season between the employers and employees and ingenious argument cannot erode that effect.

The next limb of the argument of Shri Chitale is that in fact there is no evidence of his client having authorised the representatives of the Association to act on its behalf in *agreeing to the bonus formula.* On the contrary, he had withdrawn the authority originally conferred. We cannot agree with this specious, though plausible, submission. It admits of no doubt that the Association is a trade union registered under the Trade Unions Act and the functional competence of a trade union definitionally extends to regulating the relations between workmen and employers. S. 2(h) to negotiate an agreement on payment of bonus surely falls within the scope of regulation of the relations between the workmen and the employers. Secondly, the notification under s. 3(c) itself authorises the Committee to consider the grant of bonus on terms *mutually agreed upon.* Authority to reach agreement on behalf of the managements is thus implicit in the notification under s. 3(c). Moreover, the Association, having the capacity to represent all the members within the area of its authority, sat on the committee though its representatives and became effective proxies of the appellant was present in the tripartite Conference at Naini Tal on June 16, 1968 and it was at that Conference the decision to set up the Committee was made and a resolution to that effect passed, leading to the notification of October 17, 1968. Moreover, throughout the several meetings and investigations of the tripartite Committee, the appellant supplied all the facts and details sought concerning the formulation and the data for arriving at an acceptable solution. The formula of the Committee was based largely on the Bonus Act itself with some variation regarding the valuation of the closing stock. Importantly, what the employees' representatives did was merely to accept the proposal of the President of the Association of employers. There was a written agreement dated June 5, 1969 to which the representatives of both sides were signatories. To dismiss the whole consensual adventure and the culminating written agreement as nothing but an exercise in recommendatory or advisory futility is to bid farewell to raw realities. Industrial jurisprudence does not brook nice nuances and torturesome technicalities to stand in the way of just solutions reached in a rough and ready manner. Grim and grimy life-situations have no time for the finer manners of elegant jurisprudence. Social justice is made of rugged stuff. Broad consensus between the two parties does exist here, as is emphatically underlined by the circumstance that 'all the mill owners except the appellant have stood by it—and all the workers'. Where social justice is the touch-stone, where industrial peace is the goal, where the weak and the strong negotiate to reach workable formulae unruffled by the rigidities and formalisms of the law of contracts, it is impermissible to frown down the fair bonus agreement reached by the representatives of both camps and accepted by the employees in entirety and the whole block of employers minus the appellant, on a narrow construction of the notification under s. 3(b) of the U.P. Industrial Disputes Act, 1947 or s. 34 of the Bonus Act or s. 2(c) of the Contract Act. Labour law is rough hewn and social justice sings a different tune. We reject, without hesitation, the appellant's submission that there was no agreement for payment of bonus within the meaning of s. 34 of the Bonus Act and affirm the concurrent finding of the High Court on that issue.

The second seminal problem of power that falls for consideration here has deeper jurisprudential import and wider political constitutional portent, somuch so decisional elucidation becomes necessitous. We have stated earlier that s. 34 of the Bonus Act has a monopolistic tendency of excluding other laws *vis-a-vis* profit-sharing bonus. The basic condition for nullification of s. 3(b) of the U.P. Act is that, when it enters the area of bonus, it is *inconsistent with* the provisions of the Bonus Act. "Inconsistent", according to Black's Legal Dictionary, means 'mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establish-

A ment of the one implies the abrogation or abandonment of the other'. So we have to see whether mutual co-existence between s. 34 of the Bonus Act and s. 3(b) of the U.P. Act is impossible. If they relate to the same subject-matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and B repugnant in their terms and impact that one must perish wholly if the other were to prevail at all—then, only then, are they inconsistent. In this sense, we have to examine the two provisions. Our conclusion, based on the reasoning which we will presently indicate, is that 'inconsistency' between the two provisions is the produce of ingenuity and consistency between the two laws flows from imaginative under- C standing informed by administrative realism. The Bonus Act is a long-range remedy to produce peace; the U.P. Act provides a distress solution to produce truce. The Bonus Act *adjudicates* rights of parties; the U.P. provision meets on emergency situation on an *administrative basis.* These social projections and operational limitations of the two statutory provisions must be grasped to resolve the legal conundrum. D When 'the sequestered vale of life' is in imminent peril of disruption immediate tranquillisers are the desideratum. The escalating danger to law and order, to public safety, to maintenance of supplies essential to the life of the community, the break-down of production and employment—these anti-social consequence of 'the madding crowds' 'ignoble strife' are sought to be controlled by a quick shot in the arm E by use of s. 3(2). It is a balm for the time, not a cure which endures. Indeed, it is an administrative action, not a quasi-judicial determination. We may easily visualise other explosive occasions which traumatise society and so attract s. 3(b).

The specific fact-situation which confronted the State must be seen F in perspective. Labour and capital are partners in production. When one of the partners numerous but needy, demands a share in the profits, beyond wages, to better its lot, industrial legislation chalks out rights and limits, prescribes formulae, creates adjudicatory machinery, awards are made, reviewed and enforced and parties seek social justice through the judicial process. The Bonus Act, read with the G Industrial Disputes Act, codifies this branch of rights and remedies. But it is a notorious infirmity of the noble judicative methodology that adherence to certain basic processual norms makes procrastinatory delay a besetting sin and an inevitable evil. The end product is good were it delivered promptly but the operation tantalises and sometimes self-defeats.

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The working class though a weaker class, when organised, is militant. Their privations are too desperate to stand delay. Policy formulation by Government takes time, involves consultation; adjudication involves long hearing and appeal upon appeal.

The discussion of legal prophylaxis as part of the dynamics of jurisprudence becomes relevant at this stage. Necessity is the mother of tension; tension frays temper and maddened men turn violent. When both sides are psyched up into frenzy, public safety, maintenance of essential supplies, people's employment and societal order become casualties. A wise administration anticipates and acts before the flames spread. Once the industrial war is sparked off, the use of force becomes unobviable. And police force pitted against mob fury may mean blood and tears. And Indian lives in Free India, even though of workers, are more precious than the profits of the corporate sector, Confronted by escalating disorder, the wise ruler cannot afford wait for lethargic legal justice to deliver its verdict but armed with crisis powers and anxious to arrest a blow-up, adopts administrative nostrums which give quick relief but do not frustrate ultimate justice. Prophylatic processes are not the enemy of normative law. Socially-oriented prompt action tranquillises where drift, vacillation and inaction may traumatize. Section 3 serves this limited purpose of legalising administrative intervention to prevent disorder without prejudice to judicial justice which will eventually be allowed to take its course. An order under Sec. 3(b) is administrative; a proceeding under the Bonus Act is judicial. The former manages a crisis, the latter determines rights. Even when a direction under the exigency power involve payments towards bonus or other claim it never can possess finality and is subject to judicial decision—except, of course, where parties agree to settle their claims, and then the agreement gives it vitality.

The jural scheme of Sec. 3 is duel, each operating in its own stage and without contradicting the power of the other. The first say, in crisis management, belongs to the administrator; the last word in settlement of substantive rights belongs to the tribunal. The pragmatic dichotomy of the law is flexible enough not to put all its peace-keeping eggs in the judicial basket. Government acts when the trouble brews and when the storm has blown over, judicial technology takes over. There are no rigid compartmentalisations. Sometimes, the judicial process itself has quick-acting procedures. Likewise, sometimes the executive prefers to consult before going into action. Under our constitutional order, guidelines are given by the status to ensure reasonableness in administrative orders. And in a Government with social justice as the watchword, value judgments are essential to exclude arbitrariness. So it is that the executive power under Sec. 3

A has the leading strings writ right at the top. The power shall be used only for 'public safety or convenience or the maintenance of public order or supplies and services' essential to the life of the community or for maintaining employment. It prevails for the nonce, produces (hopefully) tentative truce, and then the judicial process decides decisively. It is like an executive magistrate passing a prohibitory order B regarding disputed possession or unruly assembly to prevent breach of the peace and making over to a judicial magistrate to hear and decide who is in actual possession or whether the restriction on movement was right. Or, maybe, it is like a magistrate quickly passing orders regarding a possessory dispute leaving it to the civil court to C adjudicate on valid title. No one can argue that preventive magisterial power, admittedly provisionally and reasonably, is inconsistent with the civil judicial machinery which speaks finally.

Dealing with the identical provisions in an identical situation where an appeal reached this Court and the parties were identical, Mudholker, J., speaking for the Court, explained the scheme of the D same Section(1) 3 and its scope which fits into the pattern we have explained. The learned judge observed(2) :—

> "The opening words of s. 3 themselves indicate that the provisions thereof are to be availed of in an emergency. It is true that even reference to an arbitrator or a conciliator E could be made only if there is an emergency. But then an emergency may be acute. Such an emergency may necessitate the exercise of powers under cl. (b) and a mere resort to those under cl. (d) may be inadequate to meet this situation. Whether to resort to one provision or other must depend upon the subjective satisfaction of the State Gov- F ernment upon which powers to act under s. 3 have been conferred by the legislature. Dealing with the canons of statutory construction the learned judge observed : No doubt this result is arrived at by placing a particular construction on the provisions of that section but we think we are justified in doing so. As Mr. Pathak himself suggested in the course G of his arguments, *we must try and construe a statute in such a way, where it is possible to so construe it, as to obviate a conflict between its various provisions and also so as to render the statute or any of its provisions constitutional. By limiting the operation of the provisions of cl. (b) to an*

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(1) An amendment to Sec. 3 (e) has since been made.

(2) [1961] 2 SCR 330 at 342-343, *State of U.P. & Ors.* v. *Basti Sugar Mills Co. Ltd.*

> *emergency* we do not think that we are doing violence assuming that the width of the language could not be limited by construction it can be said that *after the coming into force of the Constitution the provisions can, by virtue of Art.* 13, *have only a limited effect* as stated above and to the extent that they are inconsistent with the Constitution, they have been rendered void.
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> In the strain, the court rebuffed the unreasonable argument based on 'reasonableness' in Art. 19(6) : In our view, therefore, the provisions of cl. (b) of s. 3 are not in any sense alternative to those of cl. (d) and that *the former could be availed of by the State Government only in an emergency and as a temporary measure.* The right of the employer or the employee to require the dispute to be referred for conciliation or adjudication would still be there and could be exercised by them by taking appropriate steps. Upon the construction we place on the provisions of cl. (b) of S. 3 it is clear that no question of discrimination at all arises. Similarly the fact that *action was taken by the Government in an emergency in the public interest* would be a complete answer to the argument that that action is violative of the provisions of Art. 19(1)(g). The restriction placed upon the employer by such an order is only a temporary one and having been placed in the public interest would fall under cl. (6) of Art. 19 of the Constitution".
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> (emphasis added)

In a practical sense, this dichotomous reconciliation has humanistic value in administration. Let us take the case of bonus. A broad national policy on bonus, however admirable, needs negotiation, consultation inter-state co-ordination, diplomacy and causes delay. Likewise, an industrial adjudication on bonus, with all the trappings of natural justice, appeal and writ proceedings, consumes considerable time. Hungry families of restive workers in militant moods urgently ask for bonus for *Onam* in Kerala, *Pooja* in Bengal, *Dewali* in Gujarat or other festival elsewhere, for a short spell of cheer in a long span of sombre life. The State Government, with economic justice and welfare of workers brooding over its head, is here-pressed for public order and maintenance of essential supplies. Immediate action may take trigger-happy policing, shape or emergency direction to make *ad hoc* payments, worked out in

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administrative fairness. This latter course may often be favoured, given the correct orientation. But even here some governments may prefer to confer, persuade parties to concur and make binding order. This requires legislative backing. So Sec. 3. But such an improvised solution may leave one or the other or even both dissatisfied with regard to ultimate rights. While enforcing the *ad-interim* directive by the authority of law, the door is left ajar for judicial take-over of the industrial dispute. If workers have got more, the excess will have to be adjusted; if less the employers will pay over. This will be taken care of by Section 3(e) (before amendment) and by the Bonus Act now. A crisis is best solved by this procedure at the State level on a fair administrative basis. But lasting policy solutions are best produced at the Central level and final rights crystallised at the tribunal level. The lengthy judicial process may, as here, be obviated if, by a tripartite arrangement an agreement within the scope of s. 34 of the Bonus Act is reached.

The ruling of this court in *State of U.P. & Anr.* v. *Basti Sugar Mills Co. Ltd.* (Supra) supports the synthesis we have evolved. The only difference is that there is now no reference of a bonus dispute under S. 3(e) of the U.P. Act. Instead, the same dispute will—where no agreement or settlement stands in the way, as it does here—on application, be referred for adjudication under the Bonus Act read with the Industrial Disputes Act, 1947.

The analysis shows the absence of basic inconsistency and presence of intelligent method in the U.P. and the Central provisions.

We hold, after this long tour, that the goal of social justice and public peace, essential to good Government is best reached by reading together and not apart. The High Court's order is upheld and the appeal dismissed, of course, with costs.

P.H.P. *Appeal dismissed.*