

Workers of Mysore Kirloskar Ltd. Vs. Mysore Kirloskar Ltd.

Workers of Mysore Kirloskar Ltd. Vs. Mysore Kirloskar Ltd.

SooperKanoon Citation : sooperkanoon.com/370481

Court : Karnataka

Decided On : Sep-29-1958

Reported in : (1959)ILLJ329Kant

Judge : D.H. Chandrasekhariya, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1) and 25F

Appeal No. : I.T. No. 21 of 1957

Appellant : Workers of Mysore Kirloskar Ltd.

Respondent : Mysore Kirloskar Ltd.

Judgement :

Acts/Rules/Orders:

[Industrial Disputes Act, 1947](#) - Sections 10(1) and 25F

AWARD

1. In exercise of the powers conferred by Clause (d) of Sub-section (1) of S. 10 of the [Industrial Disputes Act, 1947](#) (Central Act XIV of 1947), the Government of Mysore in their order No. L.S. 8446/L, W. 19-56-66, dated 30 July, 1957, referred to this tribunal for adjudication the industrial dispute existing between the above parties and comprising of the points of dispute specified in the said order and mentioned hereunder :

'Are the employees of the Mysore Kirloskar, Ltd., Harihar, entitled to three months' additional bonus for the year 1954-55 ?'

* * *

2. At this stage it may be useful to refer to a few facts relating to the working of this company and to the demand made under reference. This is a public limited company with an authorized and issued capital of Rs. 25 lakhs as at 30 June, 1958. Ever since it was incorporated seventeen years ago, it has made steady progress from year to year and has come to attain a reputation of its own for high skill and efficiency. Under the general control of the board of directors with the Government director as its ex officio chairman, the affairs of the company were being looked after till 15 August, 1956 by the managing agents, Kirloskar Brothers, Ltd., who were entitled under the agreement with the board to appoint the general manager and ex officio director of the company. As their managing agency came to an end on 15 August, 1956 as per the provisions of the new Companies Act, 1956 (I of 1956), fresh managing agents, viz., Kirloskar Associates, are stated to have taken up the management of the concern from 9 December 1956 with the sanction of the Central Government.

3. The company's labour force is said to consist of about 1,200 employees. As per the agreement made between the two parties, the daily wage of the lowest-paid employee seems to have been raised from 10 annas to 14 annas from 1 January, 1956 though the dearness allowance remained the same as before at the flat rate of Rs. 23 per mensem. So far as the bonus for the year 1954-55 is concerned, we are informed from the directors' report in Ex. M. 14 that a proposal to pay bonus to all the employees including the staff and general manager at 1/12 of their basic earnings in that year subject to certain provisions was placed before the annual general meeting of the company held on 25 December, 1955 for approval. This is stated to have been approved then. Not satisfied with this quantum, the I party began to agitate for additional bonus as shown by the correspondence carried on with the II party and the conciliation officer at Bhadravathi. Finally after the attempt at conciliation ended in failure, the Government have referred the dispute for adjudication to this tribunal.

4. Let me briefly refer to what the parties have stated in their pleadings regarding the point of dispute. The I party has in its claim statement alleged as follows :- The present dispute has arisen as the demand for three months' wages as bonus for the year ending 30 June, 1955 made by the workmen in the beginning of 1956 was refused by the management. In Muir Mills case [1955 - I L.L.J. 1] the Supreme Court has held that the claim for bonus arises when the actual wages falls short of the living wage and when the concern makes trading profits. The bonus may be paid even in a year of loss as a term of employment. The formula laid down by the Labour Appellate Tribunal in 1950 L.L.J. 1247 should not be taken to govern strictly the quantum of bonus to be paid especially as that body itself had been abolished from 1950. Even this formula has been modified in subsequent decisions. The Supreme Court has neither approved nor disapproved that formula in Muir Mills case, but has in substance approved that the workmen who contribute to the prosperity of a concern and whose wages are below the 'living wage' should be allowed to have a share in it by the grant of bonus. Even the industrial tribunals are bound to fill up the gap between the wage and the actual wage by granting as much bonus as is warranted by the prosperity of the concern without being strictly bound by any formula. The fact that the minimum wage of the workers in the concern was raised from 1 January, 1956 is proof of its inadequacy in 1955. Further, owing to the rising prices of the basic commodities during the year, the real wages also depreciated. A comparison of the financial results of the years 1954 and 1955 would reveal that the latter year was more prosperous than the former thereby justifying the payment of a larger quantum of bonus for 1955. Before 1948 the practice was to pay bonus at three months' wages when the dividend declared was 5 per cent and after 1948 bonus was being paid at two months' wages as against a dividend of 6 per cent declared. Thus, there is a prima facie case to pay higher quantum of bonus for 1955. In order to calculate the amount of bonus payable as per the Labour Appellate Tribunal formula, the management should be called upon to furnish information and documents as suggested.

5. In opposing the claim of the I party, the II party has in its counter-statement urged thus : The reference is illegal as it contains the claim for the additional bonus of three months' wages, while the actual demand of the association is only

for two months' wages in addition to the bonus of one month's wages already paid. The Muir Mills case decided by the Supreme Court has been misunderstood and does not support the contention of the workmen. It is denied by the company that the wages paid by it are low or that it made trading profits. The quantum of bonus payable in any year depends on the availability of surplus profits in that year and not on the quantum paid in the previous years. The Labour Appellate Tribunal formula still holds good since the principles underlying the same have been accepted by the Supreme Court in the Muir Mills [1955 - 1 L.L.J. 1] case. From the fact that the wage-level was agreed to be raised from 1 January, 1956 and not from an earlier date, it may be inferred that the wage-level before that date was reasonable. The reference to the rise in the cost of basic commodities is not relevant to the issue of bonus. The comparison of the financial results of the years 1954 and 1955 is misleading and incorrect and the conclusions drawn therefrom are denied by the company. The rates of bonus paid in the past have varied from one to three months' wages whether the dividend paid was at 5 per cent or 6 per cent and this belies the inference that the bonus was being paid on the basis of dividends declared in previous years. It is also settled now that bonus cannot be tagged on to dividends. It is well established that the audited balance sheet and the profit and loss account of the company form the basis for formulating the demand for bonus for the year in question. The attempt of the I party to get information and documents amounts to a fishing enquiry into the accounts of the II party to which it is not entitled. The I party is resorting to a misconceived and untenable course. It is prayed that the claim of the workmen be dismissed with costs.

6. On the basis of the above pleadings the following issues were settled :-

I. Are the employees of the Mysore Kirloskar, Ltd., Harihar, entitled to three months' additional bonus for the year 1954-55, as stated in the reference

Or II. Are they entitled to three months' wages as bonus for the year ending 30 June 1955 as pleaded by the I party

III. Whether the II party earned no adequate surplus profits in the year 1954-55 to meet the above demand of the employees

IV. Is the reference illegal and invalid in law as contended by the II party ?'

7. But the above issues were reconsidered in the light of the recorded evidence and of the new Government order issued subsequently in the matter. What happened was that in the first order of reference the demand was for three months' additional bonus for the year 1954-55 and taking advantage of this, Sri Narasimham began to assert that the same was correct and in support of that view he produced a letter dated 3 January, 1956 and exhibited as W. 1 in which he had written to the Assistant Commissioner of Labour at Bhadravathi demanding three months' additional bonus for the year ending 30 June, 1955 [as at Ex. W. 1(a)] among other matters. But when he was confronted with his own letter dated 25 February, 1958 addressed to the general manager of the company at a later date and marked as Ex. M. 1, in which he had referred to the demand for 'three months' wages (two months' in addition to declared one month's bonus),' all he could say was that it was written by mistake without looking into the records. He admitted that he did not possess any proof of having written to the management demanding three months' additional bonus for the year 1954-55. But the letter dated 16 December 1955 written by Sri Narasimhan to the II party and marked as Ex. M. 18 shows actually that the demand was for 'three months' bonus for all employees for the year 1955.' Even in the claim statement of the I party. The demand is for three months' wages as bonus for the year ending 30 June, 1955 and the word 'additional' is not used. Thus the probabilities clearly point to the demand having been made for additional bonus of only two months' wages and not three months' wages as contended by the I party. However, this controversy has been set at rest by the corrigendum issued by the Government in their order No. LLH 194 ILD/57, dated 17 April, 1958, substituting the words 'two months' for the words 'three months' in the reference. In view of this correction issue II was deleted, issue IV was not pressed, issue III was allowed to remain as settled and issue I was amended as follows :

'Are the employees of the Mysore Kirloskar, Ltd., Harihar, entitled to two months' additional bonus for the year 1954-55 ?'

It may be noted that the issues I and III go together because unless there are adequate surplus profits, the question of paying additional bonus for 1954-55 does not arise at all.

8. It is needless to say that the subject of bonus has assumed great importance everywhere in the present-day industrial set-up. The need and justification for payment of bonus to the employees and the principles and factors governing the determination of the available surplus were authoritatively dealt with for the first time by the Full Bench of the Labour Appellate Tribunal of India' in its decision in *Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh and others, Bombay* [1950 - II L.L.J. 1247], and usually referred to as the Full Bench formula. According to this formula the gross profits are to be first ascertained after paying wages and dearness allowance to the employees and meeting other items of expenditure that go to make up the total cost of the goods produced and sold. Then from these gross profits certain deductions which are termed 'prior charges' have to be made in order to find out whether surplus profits become available or not for payment of bonus and these prior charges are :

(1) charges on account of depreciation as allowed by the incometax authorities on a certain percentage basis of the written-down value of the machinery, etc.;

(2) an extra amount set apart annually under the heading of 'reserves' for the purpose of rehabilitation, replacement and modernization of machinery where the depreciation available is not sufficient for these purposes;

(3) payment of incometax on the profits earned;

(4) a fair return on the paid-up capital invested in the industry;

(5) return to a lesser extent on the reserves employed as working capital.

The necessity and desirability of making provision for these prior charges have been explained in the Full Bench decision itself and therefore it is not necessary for me to dilate upon them here. But the remarks expressed by the Labour Appellate Tribunal in Para. 37 of that decision emphasize the essential background to be kept in view in fixing the quantum of bonus to be paid to the

employees and they are quoted below :

'After the aforesaid deductions there remains a surplus and the issue is whether the employees are entitled to any and, if so, to what bonus. The answer to this issue is not easy, for we have to consider in this context the needs of the employees, the claims of the shareholders, and the requirements of the industry. The subject is not readily responsive to any rigid principle or precise formula and so far we have been unable to discover a general formula. This does not, however, mean that the answer to this issue is in any way fortuitous nor or we in any doubt as to the considerations which must prevail in deciding what the amount of bonus should be. Essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review, and that prosperity is probably best reflected in the amount of the residuary surplus; the needs of labour at existing wages is also a consideration of importance, but we should make it plain that these are not necessarily the only considerations; for instance, no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees' efforts and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject. Our approach to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of the industry. This can be achieved by having a contented labour force on the one hand, and on the other hand an investing public who would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer. It goes without saying that if the residuary surplus is appreciably larger in any particular year, it should be possible for the company to give a more liberal bonus to the employees.'

9. Referring to the scope and limitations of the Full Bench formula the Labour Appellate Tribunal in the case in [1952 - II L.L.J. 624] observed thus :

'Our Full Bench was moved by a desire to give a fair deal to labour and the resultant formula was the best that we could devise in the circumstances to do justice between the parties.'

In another case reported in [1952 - I L.L.J. 518] the same Tribunal expressed the following view :

'The formula of our Full Bench is the nearest approach to an equitable solution of the problem of bonus. It is however inevitably based on a number of factors quite a few of which are open to challenge.'

Again the said tribunal in the case in [1951 - II L.L.J. 314] remarked as follows :-

'It was also pointed out in that case (the Full Bench case) that no precise and general formula for determining the amount of bonus can be laid down, which would apply to all industries or a particular type of industry.'

10. Notwithstanding the difficulties in the way of uniform application of the formula to all cases, there is no doubt that its basic principles and considerations have remained substantially the same and are being followed in all awards and decisions of the tribunals and courts in India. In support of this position I would only like to refer to some of the important decisions of the Supreme Court on the subject of bonus :

(1) In the case of Muir Mills Company, Ltd. v. Suti Mill Mazdoor Union [1955 - I L.L.J. 1] the observations of the Supreme Court as summarized in the headnote of that case are as follows :-

'Even though the payment of bonus may not be strictly due to the employee nor legally enforceable by him, a claim to the same may be had by the employees under certain conditions and if each claim is entertained either by an agreement with the employer or by adjudication before a properly constituted tribunal as on an industrial dispute arising, the same would ripen into a legally enforceable claim.

There are, however, two conditions which have to be satisfied before a demand for bonus can be Justified and they are (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied.

It is therefore clear that claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss, there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage.'

(2) In the next case in *Meenakshi Mills, Ltd., and another v. their workmen* [1958 - I L.L.J. 239] the Supreme Court referred to the Full Bench formula and set its seal of approval on it as stated in the headnote of that case quoted below :-

'The true nature and character of the workmen's claim for bonus against their employers is now well settled. Bonus is not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages. It has been held by this Court in *Muir Mills Company, Ltd. v. Suti Mills Mazdoor Union, Kanpur* [1955 - I L.L.J. 1] that the term 'bonus' is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained. This decision is based on the view that both labour and capital contribute to the earnings of the industrial concern and so it is but fair that labour should derive some benefit if there is surplus available for that purpose. Even so, the claim for bonus cannot be effectively made unless two conditions are satisfied; the wages paid to workmen fall short of what can be properly described as living wages and the industry must be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production.

In determining the question as to whether the industry has made profits, and, if so, how much is the net surplus in a given year, provision has first to be made in respect of prior charges. This principle has been recognized by what is often described as the Full Bench formula as laid down in the matter of the *Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay* [1950 L.L.J. 1247]. According to this formula, distributable surplus has to be ascertained after providing from the gross profits for

(1) depreciation,

- (2) rehabilitation,
- (3) return at 6 per cent on the paid-up capital,
- (4) return on the working capital at a lesser but reasonable rate, and
- (5) an estimated amount in respect of the payment of incometax.'

(3) Dealing with question of bonus in tea industry, the Supreme Court in the case of Workmen of Assam Company, Ltd. v. Assam Company Ltd. [1958 - I L.L.J. 770], expressed its opinion in the following words :

'The principles on which the ascertainment of the surplus on the basis of which bonus becomes determinable and distributable has been laid down by the Supreme Court in Meenakshi Mills v. Their workmen [1958 - I L.L.J. 239]. The formula there laid down is as follows :-

Distributable surplus has to be ascertained after providing from the gross profits for -

- (1) depreciation,
- (2) rehabilitation,
- (3) return at 6 per cent on the paid-up capital,
- (4) return on the working capital at a lesser reasonable rate, and
- (5) for an estimated amount in respect of the payment of incometax.

An industry connected with agricultural like the tea industry has to face additional risks such as weather, pests in the plants and general deterioration of the soil over which no man has any control. Hence a higher rate of return, viz., 7 per cent on the capital, for the purpose of ascertaining the available surplus in such case must be held justified. For the same reasons a higher rate of return, viz., 5 per cent on the reserves used as working capital, must also be held justified.'

(4) The latest decision of the Supreme Court on the subject of bonus is in *Mathurdas Kanji and others v. Labour Appellate Tribunal and others* [1958 - II L.L.J. 265], the headnote of which made thus :-

'The concept of the word 'bonus' has been succinctly defined and the circumstances under which it is to be paid to the workmen has been clearly laid down by the Supreme Court in *Muir Mills case* [1955 - I L.L.J. 1]. Various definitions of the word 'bonus' were culled out from authoritative textbooks and quoted in the judgment with approval. They accepted the definition of 'bonus' as cash payment made in addition to wages as a stimulus to extra work and efficiency by the labour. But to enable the labour to earn the bonus, the following conditions are laid down in the case cited above :

(1) when wages fall short of the living standard, and

(2) the industry makes huge profits part of which is due to contribution which the workmen make in increasing production.'

Thus, the Full Bench formula has had a continuous recognition and application whenever the question of bonus was the subject-matter of adjudication between the parties. Therefore, the view urged by the I party in its claim statement as well as in the course of its arguments to the effect that the Full Bench formula should not be taken to govern strictly the quantum of bonus to be paid on the ground that the Labour Appellate Tribunal has ceased to exist on account of the repeal of the Industrial Disputes (Appellate Tribunal) Act, 1950, has no substance whatsoever and has to be rejected in toto.

11. Bearing the principles and factors referred to above in our mind, let us proceed to consider the question of the surplus profits available with the II party for the year 1954-55. In this connexion what is called the calculation sheet filed by the workmen on 20 November, 1957 and marked as Ex. W. 3 and that of the management said to be made according to the Labour Appellate Tribunal formula and filed on 25 September, 1957 and marked as Ex. M. 8 will form the basis for examining the claims and contentions of the two parties regarding the available surplus. The various items and figures contained in these two calculation sheets

are set out side by side below under the two heads of (a) gross profits and (b) prior charges :

(a) Gross profits Items Calculation				Calculation sheet Ex. W. 3. sheet Ex. M. 3.Rs.			
Rs.(in lakhs)				Rs.(in lakhs)			
1	Net profits ...	1.55	1,55,051	2	Depreciation ...	4.30	4,30,189
3	Taxation ...	2.10	2,10,000	4	Gratuity and bonus ...	1.50	1,50,000
	5	Excess of managing agency commission and allowance ...	0.69	...	6	Bad debts written off ...	0.08
	7	Donations ...	0.01	...	8	Bonus for 1953-54 paid in February 1955 ...	0.55
	...	-----			9,45,240	-----	
	-----	Gross profits ...	10.78			-----	
				(b) Prior charges			
Items Calculation				Calculationsheet, Ex. W. 3. sheet, Ex. M. 8.Rs.			
Rs.(in lakhs)				Rs.(in lakhs)			
9	Statutory depreciation.	2.67	4,98,626	10	Taxation ...	1.72	1,67,466
11	Return on paid-up capital at 6 per cent ...	1.33	1,33,288	12	One month's bonus for 1954-55 already paid ...	0.63	63,836
13	Return on reserves including depreciation employed as working capital ...	...	1,75,403	14	Gratuity ...	...	64,783
15	Rehabilitation reserve.	...	...	...	...	...	...
	-----				-----		
	-----	Surplus ...	6.35		11,03,402	Deficit ...	+ 4.43 - 1,58,162
	-----				-----		
	-----	10.78	9,45,240		-----		

If the figures under the head of gross profits as given in Exs. W. 3 and M. 8 are compared, it will be seen that the parties have agreed to add the Burns shown against Items 2, 3 and 4 to the net profits. But as they have differed from each other in regard to the addition of the amounts coming under the four items of 5, 6, 7 and 8 we have to consider them on their merits and come to proper conclusions. With regard to the prior charges, the parties have no dispute in respect of the provisions made under Items 10, 11 and 12. But as they are at variance concerning the sums to be set apart under, the remaining items, viz.. 9, 13 and 14, they have also to be examined in the light of the law and evidence bearing on them. In the paragraphs that follow, each of these controversial items will be dealt with.

Managing agency commission and allowance

12. It is the contention of the I party that as per S. 348 of the new Companies Act which came into force from 1 April, 1956, the remuneration of the managing agents of the company should not ordinarily exceed 10 per cent of the net profits for the financial year concerned and on that basis the managing agents'

remuneration for the year should be cut down by Rs. 69,000 and added on to the not profits. The II party has resisted this view mainly on the ground that that section is not retrospective in its operation and that contractual obligations entered into in the past should not be interfered with. I agree with this plea. Firstly, as stated in S. 348 itself, it applies only to 'the financial year beginning at or after the commencement of this Act' and therefore the year 1954-55 will not come within the purview of that section. It is S. 87(3) of the old Companies Act that should be taken to govern the extent of the remuneration to be paid to the managing agents. Secondly the case-law on the point quoted by the parties goes more to justify the stand taken by the II party than that of the other party. In the case of Textile Mills, Ahmedabad v. Textile Labour Association, Ahmedabad [1951 - II L.L.J. 354 and 356], the Labour Appellate Tribunal, referring to the contractual commission of Rs. 5,30,206-2-0 paid to the managing agents, observed that 'the commission must continue to be governed by the laws in force for the time being ...' In the case of Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh [1952 - I L.L.J. 518] the Labour Appellate Tribunal reiterated its previous decision by pointing to the fact that the managing agents of these mills came into existence at their inception and that there was no evidence that in recent years they had secured advantages which they did not previously have. In the appeal case between the Management and workers of Model Mills, etc., Textile Mills, Nagpur [1955 - I L.L.J. 534 at 540], the Labour Appellate Tribunal ruled :

'this Tribunal has held in previous cases that the managing agency commission is an item of expenditure fixed by contract, therefore the full amount must be regarded as part of the expenditure of the year so long as the amount of the managing agency commission does not exceed outer limits allowed by law.'

In the next case of Beardsell & Co., Ltd. v. Their workers [1956 - I L.L.J. 58 at 63], the Labour Appellate Tribunal expressed the view

'that the commission paid by the company to its directors must be treated as a contractual obligation which a tribunal should not lightly act aside unless the commission so paid is unduly high and unconscionably large.'

In this particular case company had paid Rs. 14,971 to its directors. The last case on the subject refers to the remuneration of Rs. 2,42,198 on account of salary, rent-free quarters, entertainment allowance and commission paid to five directors who were each managing an independent department of Gordon Woodroffe & Co., Madras (Private), Ltd. In this case in 1957 - II L.L.J. 604, the industrial tribunal, Madras, took the view that excepting the commission of Rs. 28,977 which in the absence of evidence was regarded as bonus, the balance of this remuneration paid on other items was not unduly high or unconscionably excessive. These cases clearly point to the conclusion that the remuneration of Rs. 91,243 [(Ex. M. 14 at p. 10)] paid to the managing agents of this company as per the terms of a subsisting contract is quite in order and there is no reason to reduce the same. Hence, the contention of the I party in this behalf is rejected.

Provision of bad debts

13. It may be noted that the amount written off is not Rs. 8,000 as mentioned in Ex. W. 3 but only Rs. 841 (Ex. M. 14, p. 10). Sri V. G. Rao quoted the case of William Jacks Company, Ltd. and their workmen [1955 - II L.L.J. 634] in which the Industrial Tribunal, Bombay, had disallowed the provision made for bad and doubtful debts in view of a large amount of reserve set apart for that specific purpose. But this view has been overruled by the Labour Appellate Tribunal in its decision in 1956 - II L.L.J. 262, observing that

'the reserve for bad debts is small and an appropriate sum as bad debts in the year is almost an inevitable feature and must be allowed.'

In the case of Gordon Woodroffe & Co., Madras (Private), Ltd. [1957 - II L.L.J. 604], the Industrial Tribunal, Madras remarked that the provision for reserve for bad and doubtful debts was not one of the prior charges according to the Full Bench formula and that it was not permissible for the management to keep it outside the profits for the purpose of assessing the bonus and came to the conclusion that these debts written off during the year could not be adjusted to these reserves. In view of the trend of these decisions, I overrule the objection raised for writing off the sum of Rs. 841 during the year 1954-55.

Donations

14. It is stated that the sum of Rs. 1,000 was paid as donation to the Indian Standards Association. Both the parties have put forward the same case-law in support of their viewpoints. In the case of *Bombay Enamel Works, Ltd. v. Their workmen* [1952 - I L.L.J. 30] the Labour Appellate Tribunal observed thus :

'In our opinion the company not being a charitable institution, it was not entitled to take out of the profits Rs. 850 for charity.'

The same Tribunal opined in the case of *Textile Mills, Madhya Pradesh* [1952 - II L.L.J. 624 at 628] that the sum of Rs. 1,42,453 paid as donation to the Mahatma Gandhi Memorial Fund should be added back to the gross profits of the company. In the *Meenakshi Mills* case [1953 - II L.L.J. 520 at 521] the Labour Appellate Tribunal added the sum Re. 40,000 donated to a college in computing the gross profits of the company. In the light of these rulings I hold that the donation of Rs. 1,000 has to be added back to the gross profits.

Bonus for 1953-54 paid in February 1955

15. The case-law on this point has uniformly laid down that the bonus of one year should not be debited to the accounts of another year. In the *Meenakshi Mills* case referred to above, the Labour Appellate Tribunal added back the bonus of Rs. 1,49,920 for the year 1949-50 said to be wrongly debited to 1950-51 (p. 524). Referring to this point the said tribunal in the case of *Millowners' Association, Bombay and Rashtriya Mill Mazdoor Sangh and others* [1955 - I L.L.J. 430] observed that the bonus for the previous year though paid during the year in question (1952) could not be regarded as an item of expenditure in the trading account of that year. Similarly in the case of *Greaves Cotton & Crompton Parkinson, Ltd.* [1956 - I L.L.J. 486] decided by the Labour Appellate Tribunal, the bonus for the previous year paid in 1952 was added back in calculating the gross profits. In the present case W.W. 2 has deposed that the bonus for the year 1953-54 was paid in February 1955 and on the basis of this statement, the I party argued that the bonus amounting to Rs. 55,233-3-0 as per Ex. M. 3 should be taken to have been paid out of the accounts of the year covered by Ex. M. 14 and

pointed to the sum of Rs. 1,50,000 in Ex. M. 9 provided for gratuity, bonus, etc., as including this amount. This contention was repelled by the other party by inviting attention firstly to the fact that there was no definite entry any-where in the accounts of the year 1954-55 to that effect. In fact W.W. 2 has in his cross-examination admitted that he did not know to what account the bonus for 1953-54 has been debited. Normally the bonus of any particular year is adjusted in the accounts of that year and accordingly the bonus for 1953-54 had been paid out of the provision made for it in that year. Secondly, if the sum of Rs. 55,233-3-0 was really included in the provision of Rs. 1,50,000 as urged, then it could not have been adequate to meet the commitments of the year 1954-55 itself. The last argument of the II party was that there was no need to add Rs. 55,233-3-0 to the gross Profit for a second time, as the II party had already added the entire sum of Rs. 1,50,000 (which was supposed to include the bonus for 1953-54) in the calculation of the bonus formula (Ex. M. 8). Accepting these facts I hold that the I party has not made out any case for adding the bonus for 1953-54 to the gross profits of 1954-55.

Statutory depreciation

16. The meaning and purpose of depreciation have been explained by Paula on pp. 136-138 of his book on the Principles of Auditing and his views are summarized thus :- The depreciation is the amortization of the cost of wasting assets and it has to be provided for in the case of all wasting assets, that is, assets that are used up or exhausted in the course of seeking to earn income, examples being buildings, plant, machinery, furniture and fixtures. In order to keep the original capital of a business intact if any part thereof is invested in the purchase of wasting assets, revenues must be held back by means of depreciation charges against profit and loss account so that they may replace the capital that is being lost by reason of the fact that it is represented by assets that are being consumed or exhausted in the course of trading or seeking to earn income. In calculating the profit and loss upon the goods manufactured against the sales, the total cost of production has to be charged and in this the cost of machine is just as much part of the cost of producing finished goods as the materials and wages. If the machinery and plant last over a period of years, then their original cost will have to

be spread over such period in order that 'the capital invested in this wasting assets will be replaced, such capital being available for the replacement of worn-out assets or for the general purpose of the business.' Dealing with this subject, Philip Tovey has in his book on 'Balance Sheets.' remarked (p. 23) that the items 'depreciation amount' or 'depreciation fund' suggests to the ordinary mind the existence of cash reserve or an equivalent, but this is not correct. In his view the annual sums transferred (on paper) from profit to a depreciation fund are found 'in the business' as part of the total of tangible and intangible assets shown in the balance sheets. Again referring to the distinction between the reserve and depreciation, he has stated as follows (pp. 38-40) :

'Let the reader at this point clearly distinguish between a 'reserve' and what has already been referred to as 'depreciation.' Depreciation should be written off before arriving at the year's profits; the reserve is built up by setting aside portions of the profit itself. Depreciation represents the estimated wear and tear which will ultimately reduce the property and plant to scrap values; reserve represents the amount set aside to provide the business with additional working capital.'

17. The deprecation charges are usually calculated in accordance with the provision of the incometax law which subject, to certain conditions, allows different kinds of depreciation viz.,

- (1) initial depreciation,
- (2) additional depreciation,
- (3) normal depreciation,
- (4) shift depreciation and
- (5) rebate in order to help and encourage the business.

The same method was also in vogue whenever the surplus profits had to be determined for the purpose of the Full Bench formula. But in the case of U.P. Electric Supply Company, Ltd., etc., Electric Supply Undertakings and their workmen [1955 - II L.L.J. 431 at 432], the Labour Appellate Tribunal held as

summarized in the headnote of that case, as follows :-

'Further annual depreciation allowable under the provisions of the Income-tax Act including the multiple shift depreciation must be provided for as a prior charge and not initial or additional depreciation. As the initial depreciation and additional depreciation are an abnormal addition to the income-tax depreciation designed to meet particular contingencies and for a limited period, it would not be fair to the workmen, that these two depreciations should be rated as prior charges before the available surplus is ascertained, for in many cases, if so allowed, there would be no available surplus left, even though the workmen might have laboured during the year to the best of their ability.'

This ruling began to be applied to cases of bonus claims that came up for adjudication. But when the case of Surat Electricity Company's Staff Union and Surat Electricity Company, Ltd., and others [1957 - II L.L.J. 648] came up for consideration on 24 July, 1956, the same Tribunal without departing from the principle adopted in its previous case, observed that if the actual normal depreciation as provided by the present-day income-tax law were to be allowed, the concern in the end will get less than the total amount of depreciation to which it is entitled and ruled that

'by providing a notional amount of normal depreciation every year for the purpose of available surplus formula (and not the normal statutory depreciation), the employer must be allowed to get the full depreciation over a stated number of years.'

Relying on the decision in the U.P. Electric Supply Company case, Sri V. G. Rao urged that the II party was entitled to normal and shift depreciation amounting to Rs. 2,66,957 as shown in Ex. M. 7 and quoted some decisions in support of his contention. The decisions of the Labour Appellate Tribunal in the cases of Peirce Leslie & Co., Ltd., and Greaves Cotton and Crompton Parkinson, Ltd. [both 1956 - I L.L.J. 458 and 418 respectively], the award of the Industrial Tribunal, Bombay [1957 - II L.L.J. 1127], and the decision of the Supreme Court in the case of Meenakshi Mills, Ltd., and another [1958 - I L.L.J. 239], no doubt support the viewpoint of the I party. But as the first two cases were decided earlier than Surat

Electricity Company case, and as in all these cases the point as to how the notional depreciation has to be calculated had not arisen for consideration at all, they cannot be taken as relevant for our present purpose. So far as the II party is concerned, it contends that either the full depreciation of Rs. 4,98,626 (Ex. M. 7) as per the incometax law or at least the notional depreciation to the extent of Rs. 3,32,431 (Ex. M. 19) as per the decision of the Labour Appellate Tribunal in Surat Electricity Company case has to be allowed. It is also urged that in the course of conciliation, Sri Narasimhan had even accepted full statutory depreciation as per Ex. M. 2. The cases quoted by the II party as justifying its stand are quoted below :

- (1) Bennett Coleman & Co., Ltd., and their workers [1955 - II L.L.J. 60].
- (2) Jeevanmal & Co., Kanpur, and their workers [1955 - II L.L.J. 689].
- (3) Webbing and Belting Factory, Ltd., and their workmen [1956 - I L.L.J. 313].
- (4) Associated Cement Companies and others v. Their workmen [Bombay Government Gazette, dated 27 December 1956, Part I-L, p. 5138, Para. 22].
- (5) Kirloskar Oil Engines, Ltd., Kirkee, and their workers [Bombay Government Gazette, dated 17 January 1957, Part I-L, p. 365 - 1957 I.C.R. (Bom.) 731].
- (6) Indian Hume Pipe Company, Ltd., Bombay, and their workmen [Bombay Government Gazette, dated 31 January 1957, Part I-L, p. 531, Para. 11].
- (7) Imperial Chemical Industries (India) (Private), Ltd., Bombay v. Their workmen 1957 - II L.L.J. 331, Para. 11].
- (8) Goodlass, Wall (Private), Ltd., Bombay, and their workmen [Bombay Government Gazette, dated 29 August 1957, Part I-L, p. 3697, Para. 5].
- (9) Tata Oil Mills, Ltd., Bombay, and their workmen [Bombay Government Gazette, dated 7 November 1957, Part I-L, p. 4935, Para. 6].

In the first three cases referred to above, the Labour Appellate Tribunal approved of the full statutory depreciation as per the Incometax law being written off. But those cases stood disposed of long before the same Tribunal took a decision in

the Surat Electricity Company case [1957 - II L.L.J. 648] and besides there was no controversy between the parties then about the point at issue. The cases numbering from (4) to (9) above refer to the awards passed by the Industrial Tribunal, Bombay. In case of (4) the tribunal said :

'Bearing in mind that the primary subject of the Labour Appellate Tribunal in evolving the Bonus formula was to do social justice to all the parties concerned, I have deducted in my calculations normal depreciation according to the straight-line method accepted in Surat Electricity Company case.'

In the case (5) the depreciation allowed by the incometax authority was without any reference to the Surat Electricity Company case. In case (6) the tribunal observed that as the parties had interpreted differently the mode of calculation laid down in the Surat Electricity Company case it was not possible to say whether 'the notional amount of normal depreciation' had been correctly calculated by the company or the union without detailed examination and that it was unnecessary to go farther into the matter. While agreeing with the committee on profit-sharing that the rates of depreciation allowed for incometax purposes were insufficient to finance replacement on account of the spiral of rising prices of machinery, etc., during the post-war period, it concludes thus :

'By allowing the whole of the statutory depreciation in the present case not only is the available surplus not wiped off but there is left a fair surplus after provision for a reasonable bonus. I would therefore allow in the calculations the whole of the statutory depreciation claimed as a prior charge.'

Following this reasoning the tribunal allowed statutory depreciation either in full or to the extent claimed in the cases (7), (8) and (9). It seems to me that in the light of the latest decision of the Supreme Court reported in 1958 - I L.L.J. 239, the above rulings of the Industrial Tribunal, Bombay, can no longer be regarded as good law in the matter of depreciation to be provided for.

18. Thus, the only depreciation which the II party could claim is that calculated in the manner suggested in the Surat Electricity Company case [1957 - II L.L.J. 648]. A statement based on such calculations is produced and marked as Ex. M. 19 in

this case. A chartered accountant of 25 years' standing and the auditor of the company over since its inception has prepared Ex. M. 19 and he has also been examined in the case as M.W. 2. There is nothing to show that his testimony is not creditworthy. In the result I order that depreciation amounting to Rs. 3,32,431 should be allowed as a prior charge.

Return on reserves including depreciation employed on working capital

19. The next important question to consider is what should be the return to be allowed on the reserves which were said to be available at the beginning of the relevant year and to have been employed as working capital. In this connexion the II party has filed a statement marked as Ex. M. 11 (later replaced by a revised one) showing what it considers as the total reserves to the extent of Rs. 36 70 lakhs employed as working capital in the course of its business during the year ended 30 June, 1955 and claiming a return at 4 per cent on it which amounts to Rs. 1,46,800. As it is proposed to take the revised Ex. M. 11 as the basis of our consideration, it is set down below :-

(As on 30 June 1954), Particulars of reserves Rs.(in lakhs)

1. Paid-up capital ...	22.07
2. Funds ...	5.14
3. Depreciation ...	36.25
4. Loan and deposits ...	14.56
5. Provision for taxation	3.37
6. Tax paid in advance	2.44
7. Allocation to reserves ...	0.25
8. Unpaid dividends ...	0.03
9. Less amount of gross block ...	80.74
10. Balance of reserves used as working capital...	36.70

20. On the question of reserves used as working capital, the I party has not adduced any direct evidence, but appears to have relied upon what is elicited in the course of the cross-examination of the secretary of the company who is examined in the case as M.W. 1 and has mainly deposed to the following effect :- In Ex. M. 11 the reserves employed in the business have been noted. They were partly used for working capital and wholly for business. The phrase 'working capital' is understood to mean liquid or floating assets of the company. The reserves are made use of not only for the expansion of and addition to the fixed assets such as buildings, machinery and plant but also for other purposes. He does not think that any amount has been spent in 1954-55 out of the reserves towards the expansion of or addition to the fixed assets. The amounts referred to

in Ex. M. 11 (revised) have been used as working capital during the entire year. The figures of the reserves are taken from, the balance sheet (Ex. M. 14) which is itself pre prepared from the account books. Each reserve has a separate account of its own. Though the funds in the reserves are being utilized for company's purposes, they will not be debited to any particular reserve until any amount thereof is spent out and becomes irrecoverable. The reserves utilized are found in the form of fixed and floating assets and it is only when any part of such assets is lost or destroyed or becomes irrecoverable and has to be written off against any reserve, it is brought down and reduced. Some reserves exist even before and some after appropriation of profits is made. Provision for gratuity fund, bad debts, taxation, depreciation, etc., are made before the distributable profits are ascertained. Information regarding the amounts utilized from the reserves as working capital on any particular day cannot be given without looking into the accounts. But it can be furnished at the beginning or end of any year as seen in the balance sheets. The company has not given loans to Kirloskar Electric Company, Ltd., out of its reserves. The sum of Re. 8,81,069 which is a trade credit given to the company's sole distributors may have come from reserves and also from the loans and deposits. The reserves may take the form of cash balances, but the cash balances are not necessarily the reserves. The cash and bank balances (Rs. 79,464, as on p. 9 of Ex. M. 14) vary throughout the year. The provision for taxation shown in Ex. M. 11 is an item fluctuating throughout the year because of payments made out of it from time to time. Outside investments made from the reserves have not been deducted as the interest earned therefrom is added to the profits of the year. The amount of unpaid dividends can also be used as working capital. The provision for depreciation is shown on the liability side keeping the original value of the fixed assets intact in Ex. M. 14, whereas in the next balance sheet for the year 1955-66 [Ex. M. 14 (a)], the value of the fixed assets is shown less by the amount of depreciation provided up to the end of the year in question. The amount spent out of particular reserves for providing welfare amenities to the workers cannot be given. Contingency reserve provides for various purposes including the writing off of bad debts when necessary, but no money has been spent out of it in 1954-55. 25. While opposing the claim for return on the reserve alleged to be used as working capital, the learned counsel for the I

party has in his arguments urged that not all the items referred to in Ex. M. 11 (revised) can really be called reserves for our purposes and for those items that may be accepted as reserves there is no proper proof as to their actual utilization as working capital. Referring particularly to the accumulated depreciation amount of Rs. 36,24,819, as at 30 June 1954, he has argued that as explained by Philip Tovey in his book on 'Balance Sheets' this amount is not a fund or a cash reserve and therefore it should be deleted from the list of reserves. The question whether the amount of depreciation should be included or not among the reserves employed as working capital has been dealt with in various decisions of the industrial tribunals and Courts in India and it is worthwhile to refer to some of them. In the award of the Industrial Court, Bombay, in Millowners' Association v. Rashtriya Mill Mazdoor Sangh and another [1950 - II L.L.J. 973] no reference is made to the working capital or to any return on it. It observed thus : 'But in our opinion shareholders cannot be allotted all the return on the employed capital, which expression includes both fixed capital, which is almost wholly sunk in lands and buildings and plant and machinery, and working capital, which is employed in buying raw materials and stores, providing power and fuel, paying wages and salaries and meeting other overhead charges. If all the return from the employed capital were to go to shareholders by way of dividend. From where is return to be obtained for the provision for depreciation, taxation and reserves Evidently, shareholders can be allocated a reasonable return as dividend and only on their Paid up capital. We are prepared to allow it at 6 per cent as was done by us in our award for bonus in the year 1947.'

This award was reviewed by the Full Bench of the Labour Appellate Tribunal and while enunciating the principles and provisions of its celebrated formula, it allowed a return of 2 per cent on 23 crores and odd of reserves said to have been employed as working capital. But nothing is known as to whether these reserves included the depreciation [vide 1950 L.L.J. 1247]. When the Industrial Court, Bombay, considered the case of the Textile Labour Association and the Millowners' Association, Ahmedabad [1955 - I L.L.J. 515], the list of reserves filed before it by the Millowners' Association made no reference to the depreciation at all. It was only after excluding cash and bank balances and investment, a return of 2 per cent was allowed on the rest of the reserves amounting to 13.45 crores. In

the appeal against that award in 1951 - II L.L.J. 354, the question of including depreciation for a return has not been even suggested and the plea for taking cash and bank balances as part of the reserves has been negated. Referring to the next important case of *Rashtriya Mill Mazdoor Sangh v. Millowners' Association, Bombay* [1951 - II L.L.J. 665], decided by the Industrial Court, Bombay, the following observations made therein are worthy of note :-

Reserves employed in the working capital The Millowners' Association has asked that the total amount employed in the working capital should be allowed p, return and has given the following figures constituting the total of Rs. 61,95,76,695 :-

Cash	4,28,90,171	Stores	6,25,41,967	Book debts ...	4,71,93,643
Advance payments ...	6,09,55,073				

It is clear that this demand is not in accordance with the Labour Appellate Tribunal's decision which allowed a return of 2 per cent on only a reserve of 23 crores employed as part of the working capital. These items represent the assets of the mill apart from the block, but this Court as well as the Labour Appellate Tribunal has proceeded on the footing that the paid-up capital and a part of the reserve (neither shown on the assets side in the balance sheets) deserve certain returns. In this Court's award regarding bonus for 1948 it was pointed out that the claim for an adequate return on reserves was legitimate

'at least to that part of the reserves which is utilized in acquiring stock-in-trade, stores, etc.

It was further pointed out in that award that no return could be claimed on the amount of depreciation or on the debenture and loan charges. These conclusions were not disturbed by the Labour Appellate Tribunal.

Accordingly the said industrial court deducted the depreciation fund of Rs. 31.35 crores, cash, bank and excess profits tax, deposits of Rs. 6.63 crores and investments of Rs. 5.54 crores from the total reserves said to have been employed in the working capital of the Cotton Textile Mills in Bombay in the year 1950-51. When this case came up before the Labour Appellate Tribunal [1952 - I L.L.J. 518], it confirmed the findings of industrial court in respect of the cash and excess

profits tax, but so far as depreciation was concerned, it expressed thus : 'Mr. Shantilal Shah objects to the depreciation fund earning any return even if it is utilized in or about the business of the year. We however see no essential difference between the depreciation fund or any other fund belonging to the company which could be invested so as to earn a return. The origin of the fund is immaterial; what is material and relevant is the fact that this is a fund in the hands of the concern which could be invested for a return. In the Full Bench decision we have indicated as a general proposition that reserves utilized in the business are entitled to a return, and it is futile to argue that a fund like the depreciation fund does not fall within the category of such reserves. But while we are willing to admit the claim of the depreciation fund to a return if it had been utilized in the year's business, we have to consider, in view of Mr. Shantilal Shah's general objection, whether it has been satisfactorily established that the depreciation fund was in fact utilized during the year and to what extent . . . if the mills make a claim for return on utilized reserves they must establish how much of such reserves were actually utilized, and for what periods of time, for it is evident in respect of almost all the items shown in Para. 16 that there must have been considerable fluctuations from time to time. On the materials before us we are not prepared to allow anything more by way of return on reserves employed as working capital than what has been given by the industrial court below. We may however add that even if we did allow a return on half the depreciation fund claimed, it would amount to 10 lakhs or so, which would not, in the view that we take, materially affect the question of bonus.'

But notwithstanding this loaning in favour of the depreciation being taken as a reserve, the award of the industrial court was not interfered with. Dealing with the subject of reserves in the case of Alcock Ashdown & Co., Ltd., and their workmen [1952 - 1 L.L.J. 819] the Labour Appellate Tribunal emphasized its opinion in the following words :- 'To begin with, in order to earn a flat rate of interest during the whole year, it must be shown that the fund was wholly employed for that purpose, and if employed for a period, the return must necessarily be restricted to that period. As we had occasion to point out in a recent decision of ours in the case of the Bombay Textile Mills, there must be sufficient evidence before a tribunal as to the utilization of a fund, and the period thereof, if a claim for a return is to succeed.

A fund like the equalization of dividend fund or the taxation reserve or the reserve for bad debts must from their very nature fluctuate during the course of a year, and it is not sufficient for a company to come before a tribunal and say that these were the reserves they had at the commencement of a year and therefore they must be deemed to have continued as such throughout the period. From this aspect, it is doubtful if the amount allowed by the adjudicator as a return on utilized reserves is correct. We do not propose to interfere with the decision of the adjudicator granting the additional bonus, and the company's appeal on the point fails.

It is significant to note that the depreciation is not one of the items among the reserves amounting Rs. 84,59,574 said to be employed as working capital in this case. Coming to the next case Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh and others [1955 - I L.L.J. 430 at 433] the Labour Appellate Tribunal reiterated its previous decision [1952 - I L.L.J. 819] as follows :- 'It is the workmen's case before us that the depreciation fund if utilized for the year, should not be treated as working capital and should not be given a return. The depreciation fund is gradually built up for the purpose of rehabilitation for a variety of reasons it may not be possible to immediately utilize the depreciation fund for the purpose of purchasing, rehabilitating or modernizing machinery The money being in the hands of the concern is therefore utilized in the course of business. If not so utilized, it could be invested and could have earned a return, and we have no hesitation in coming to the conclusion that when employed as working capital it should earn the same return as other reserves utilized as working capital. The depreciation fund does not differ in any material respects from any other reserve.' But it is rather doubtful whether the depreciation fund was actually taken as a reserve for purposes of the working capital in this case especially as the bonus was raised from 15 per cent to 20 per cent in the appeal. In the case of the Gold Mines at Kolar Gold Fields and their workmen [1955 - I L.L.J. 511 at 528] the Central Industrial Tribunal considered the question of allowing interest on reserves and concluded as follows :- 'So far as providing of interest on reserves is concerned, it was for the management to have shown as to how much of such reserves were actually used and for what period of time. Merely because the companies had got reserve funds it does not follow that the reserves were actually used in the working of the company in that year.'

When the Labour Appellate Tribunal decided the case of the General Electric Company of India, Ltd., and their workers [1956 - II L.L.J. 113] it clarified the position of depreciation reserve entitled to a return as distinct from ordinary depreciation not entitled to return. On the lines of Philip Tovey's view to which attention has already been drawn, the depreciation reserve appears to indicate the reserve built out of profits earned for purposes of rehabilitation and replacement of fixed assets at inflated prices, while the ordinary depreciation charged against the gross earnings of the business is intended as a provision against the wear and tear of the said assets. The observations of the Labour Appellate Tribunal in this behalf are quoted below :

'So also the so-called items of depreciation reserves do not stand for reserves as such, and to use the term 'reserves' in respect of the same is a misnomer. These items occur on the side of 'property and assets' in the balance sheet as against 'capital and liabilities' and are indicative of depreciation up to 31 March 1953 together with depreciation for the year, with a view to show the depreciation. If against this depreciation, any sum is set apart by way of depreciation reserve, then only it becomes a reserve as such and the item for depreciation reserve does occur in the balance sheet on the side of capital and liabilities' which we have taken into account in arriving at the reserves used for working capital.'

In this case the depreciation of Rs. 12,74,851, the investments and the cash balance of the relevant year were excluded from the working capitals of the company, among other items. That depreciation written off is not really a fund on which any return should be allowed has been strenuously argued by the Industrial Tribunal, Bombay, in the case of Kirloskar Oil Engines, Ltd., Kirkee, Bombay v. Their workmen [1957 I.C.R. Bom. 731] on the following grounds among others :- Depreciation therefore stands on an entirely different footing from reserve funds. In the case of reserve funds the company instead of distributing all the profits as dividends transfers a portion of the profits to a reserve fund. It is like additional capital and a return at the usual rate of 4 per cent, is rightly given in making calculations for the purposes of bonus formula; but depreciation is written off before the profits are ascertained. The amount shown as depreciation whether on the assets side of the balance sheet or the liabilities side is meant to be utilized for

the purposes of replacement of assets. Until it is so used, it is available for use as working capital as it is not prudent merely to keep the amount in current account without interest. Whether the amount is utilized as working capital or spent for replacement of block, the company is benefited.'

This subject has also been elaborately discussed by the Industrial Tribunal, Madras, in the case of Deccan Sugar and Abkari Company, Ltd., and their workmen [1958 - II L.L.J. 653] and its conclusions as stated in the headnote thereof are as follows :-

'When the depreciated value of the fixed assets of a company is higher than its share capital and where the company has borrowed large amounts, it is quite possible that the excess value of the fixed assets might well be covered by the loans. The depreciation amount is intended to replenish the depreciated fixed assets into which the share capital had gone; and unless the depreciation amount is kept in the accounts, the real value of the share capital would go down, though the nominal value might still remain the same for purposes of accounts. In order to retain the share capital at its real worth, the depreciation amount has to be kept in the accounts side by side with the depreciated value of the fixed assets. Instead of doing so, if the depreciation amount is taken away from the accounts of the company, to that extent the share capital would suffer diminution. So long as the return is allowed on the amounts on the left hand side of the balance sheet, namely, the share capital and the reserve, no further return could be allowed on the depreciation amount on the right hand side of the balance sheet which it is necessary to keep in the accounts to balance both sides.'

So far as the II party is concerned, it relies mainly on the decision of the Supreme Court in the Meenakshi Mills case [1958 - I L.L.J. 239] in support of its plea. But whether the accumulated depreciation was included or not among the reserves employed as working capital cannot be made out either from this case or from the decision of the Labour Appellate Tribunal [1953 - II L.L.J. 520] or from the award of the Industrial Tribunal, Madras [1952 - I L.L.J. 720], in respect of this case.

21. From the above discussion I am led to conclude that the accumulated depreciation amounting to Rs. 36,24,819 cannot strictly be called a reserve in the

sense in which that word is usually understood. As already stated, the depreciation is a charge on the gross profits, while a reserve is formed out of the ascertained profits of the year. The depreciation set apart every year has no doubt to be retained in the business and for its benefit. But that by itself will not convert it into a reserve or entitle it to claim a return. Though some decisions have vaguely termed it as a reserve, there is no definite information as to whether the same found a place among the reserves used as working capital. Even the reference made to the Income-tax Allowance (Current Deposits Deposit) Rules, 1957, published in Mysore Gazette of 22 May 1958 has not convinced me as to the correctness of the view advanced by the II party. For these reasons I feel inclined to exclude the accumulated depreciation of 36.225 lakhs altogether from the list of reserves mentioned in the revised Ex. M. 11.

22. In the revised list of reserves said to be used as working capital, there are two new items which were not mentioned in Ex. M. 11 and they are (1) loans and deposits amounting to Rs. 14.56 lakhs and (ii) allocation of Rs. 25,000 to reserves. So far as the item 2 is concerned, there can be no objection to include the same in the reserves for working capital. But loans and deposits can neither be taken as reserves as such nor be given any return thereon even if they form part of the working capital. They come under the description of liabilities for which interest is already charged to be revenue account of the year and therefore they cannot be put forward for a return for a second time. The decisions of the Labour Appellate Tribunal in the cases of Singh Plates Mill, Ltd., and their workmen [1954 - II L.L.J. 461] and of Rashtriya Mill Mazdoor Sangh v. Millowners' Association, Bombay [1951 - II L.L.J. 665], support this view. In the result, among the reserves entitled to a return, only the sum of Rs. 25,000 will be included but not the loan and deposit amounts. 28. In the light of my findings regarding certain items of reserves referred to in the revised Ex. M. 11, the only reserves which may be taken to have been employed as working capital are mentioned below :

Rs. (1) Funds ... 5,14,228 (2) Provision for tax ... 2,43,165 (3) Allocation to reserves ... 25,000 (4) Unpaid dividends ... 3,000-----7,85,393-----

It may be noted that the learned counsel for the I party expressed his willingness to accept this figure in the course of his arguments. But in this connexion there are two questions for consideration, viz., (i) what is the evidence regarding the use of these reserves as working capital and (ii) what to the rate of return to be allowed on them. Referring to the first, the decisions of higher tribunals have clearly laid down that it is not sufficient for a company to say that there were reserves at the commencement of the year and they must be deemed to have continued as such throughout the year, but that it must show by proper evidence as to (1) how the reserves are utilized, (2) to what extent, and (3) for what period and if this is not done, no interest should be allowed. This is the view up-held in the decisions reported in 1952 - I L.L.J. 518, 1952 - I L.L.J. 819 and 1955 - I L.L.J. 511 to which reference has been made in the foregoing paragraphs. In the present case it cannot be said that the II party has furnished information on the lines and to the extent suggested in the case law. But at the same time the balance sheet for 1954-55 and other statements exhibited in the case as well as the sworn testimony of M.W. 1 have clearly pointed to the conclusion that the reserves to the extent of Rs. 7,85,393 were available at the beginning of the relevant year and were made use of throughout that year. As has often been stated, the bonus formula is itself a notional scheme intended to do social justice to the parties concerned and therefore a meticulous adherence to every detail may not be quite possible in all cases. Thus, viewed, I opine that the sum of Rs. 7,85,393 was employed as working capital of the company.

23. The next point to consider is, what should be the rate of interest to be charged on the aforesaid sum. With regard to this topic. While the I party has insisted on the rate being not more than 2 per cent, the II party has claimed 4 per cent. From the authorities quoted by the two parties, it is seen that the rate allowed has generally ranged between 2 per cent and 4 per cent. In the case of Nizam Sugar Factory, Ltd., Hyderabad, and their workmen [1952 - I L.L.J. 386], the Labour Appellate Tribunal expressed the view that the Full Bench did not lay down an invariable rule that working capital should be allowed only 2 per cent interest and not more and that each case depended on its facts and allowed 4 per cent in that case. This subject has been discussed in great detail by the Industrial Tribunal, Madras, in the case of Tea and Coffee Workers' Union and others v. Brooke Bond

(India) (Private), Ltd. [1958 - I L.L.J. 645], and the tribunal has allowed 3 per cent in that case. In the instant case Ex. M. 14 makes it obvious that the II party could not have depended entirely on its resources but had to borrow from outside. As at 30 June 1954 its liabilities on this account amounted to Rs. 14,55,738 and remained at Rs. 11,78,570 at the end of the year, thereby showing its dependence on outside capital. Again there is evidence to show that in connexion with the development plans of the factory, the II party had applied for a loan as per Ex. M. 15 to the Industrial Credit and Investment Corporation of India, Ltd., Bombay, but the same was not sanctioned as per Exs. M. 16, m. 16(a), on the ground that the margin of profit as disclosed by the balance sheet for 1954-55 was not adequate for repayment of a loan. Though the opinion of the Industrial Credit and Investment Corporation was expressed from the point of view of the easy recovery of the loan to be sanctioned later, yet the company cannot lose sight of the wholesome advice given to it. Lastly there are definite indications to show that the company has been taking steps to better the conditions of living of the workers so far as possible. A gratuity scheme for the benefit of the employees has been introduced and a regular fund formed for the purpose in the year 1954-55. To provide welfare amenities to the workers, a sum of Rs. 5,000 is set apart in the same year. It is also stated that the management has agreed to enhance the basic wages of the workmen from 10 annas to 14 annas per day with effect from 1 January 1956. Taking all factors into consideration and in the interest of the industry, I think that it would be fair to allow a rate of 3 per cent on the reserves employed as working capital and this works out to Rs. 23,567.

Gratuity

24. I now propose to take up the question of gratuity and consider whether the provision made for it to the extent of Rs. 64,783 in Ex. M. 8 should be allowed as a prior charge. The scheme of gratuity as approved by the directors on 29 December 1954 and 22 October 1955 has been produced by the I party and marked as Ex. W. 2 in the case. From Ex. M. 10 produced by the II party, it is seen that the accrued liability which comes to Rs. 3,04,052 up to 30 June 1954 is proposed to be spread over 10 years thus calling for an yearly allocation of Rs. 30,405. To this a sum of Rs. 34,378 is proposed to be added for the current

liability during the year ended 30 June 1955, thus bringing the total amount to be provided for in 1954-55 to Rs. 64,783. But as the actual provision made in 1954-55 is a sum of Rs. 50,000 we may confine our attention only to it. Sri V. G. Rao objects to any sum being set apart for the purpose of gratuity on various grounds among which the most important ones are

(i) this is not one of the items of prior charges as provided in the Full Bench formula, (ii) it is intended to replace the statutory liability already in force under S. 25F of the Industrial Disputes Act as can be inferred by Clause (d) of Ex. W. 2, (iii) there are no cases of actual payment of gratuity in 1954-55, and

(iv) the benefit of the scheme should not be extended to the general manager who gets a remuneration of Rs. 36,000 per year and was to retire only in the year 1955-56.

I think that these objections may be effectively met by referring to some well-known decisions on the point. In the case of Allibhoy Sharfally (Private), Ltd., and others and their workmen [1957 - II L.L.J. 301] the Labour Appellate Tribunal has stated to the following effect :- 'The fact that the statutory retrenchment compensation is available is no sufficient reason for depriving the, retrenched workmen of the benefit of gratuity on termination of service by the company. The object behind the gratuity scheme is to reward the worker for past meritorious service. On the other hand, retrenchment compensation is meant to mitigate the hardships of a worker who has the misfortune to lose his job and the prospects of a lifetime work. There is therefore nothing wrong if a worker is entitled to two benefits on termination of service by the company.'

The same Tribunal in the case of Metro Motors and their workmen [1952 - II L.L.J. 205], expressed thus :

'It is desirable in all cases, where practicable, to create a separate reserve for payment of gratuity, and the modest amount claimed for the year in question is just about sufficient to pay the gratuity which may fall due at any time in respect of a single employee of the concern who is on the eve of retirement. We consider that the employer's claim to keep aside Rs. 10,000 as a prior charge as a reserve for

gratuity is justified.'

In dealing with this point in the case of Swastic Oil Mills, Ltd., and their workmen, the Labour Appellate Tribunal in 1953 - I L.L.J. 468 at 471 reiterated its view in the following words :-

'There can be no doubt that in terms of proper accounting the constitution of a gratuity fund like the provident fund is necessary, but the question bow much out of the profits of a year should be allowed as a prior charge for such a gratuity fund in terms of our formula is quite another matter. In our view, however, the question does not arise for consideration because in this case the company has allocated no moneys to the formation of such a fund; and it if; therefore idle to say that they could claim a prior deduction on account of such a fund, when in fact such a fund does not exist. At the most we would be justified in allowing them for the year in question a prior charge of 10 per cent of the total accounting requirements as shown to us and that will be certainly less than what the adjudicator has allowed (Rs. 51,907) :'

This view was followed by the Industrial Tribunal, Bombay, in the case of Associated Cement Companies, Ltd., and two others and their workmen [1955 - I L.L.J. 588] by stating that a prior charge of 10 lakhs as against the total liability of 84,00,000 upto 31 July 1952 was not excessive but reasonable. In the case in William Jacks Co., Ltd., and their workmen [1955 - II L.L.J. 366] the Labour Appellate Tribunal referred to the previous decisions on the subject and allowed the full provision made by the company for gratuity. These rulings are sufficient to prove that though the provision for gratuity was not one of the components of the original bonus formula, it is being taken as prior charge in the calculations of available surplus. In my opinion, the provision of Rs. 50,000 made in the case on hand as against the accrued liability of Rs. 3,04,052 and the current liability of Rs. 30,405 as per Ex. M. 10 cannot be said to be excessive and I would therefore like to allow the same as a prior charge.

Rehabilitation

25. The last topic on the subject of prior charge refers to the highly controversial one of reserve for rehabilitation, replacement and modernization of machinery. The object and importance of making provision in this behalf was authoritatively explained by the Full Bench of the Labour Appellate Tribunal [in the case in 1950 - II L.L.J. 1247] in the following words : 'As investment necessarily implies the legitimate expectation of the investor to secure recurring returns on the money invested by him in the industrial undertaking, it is essential that the plant and machinery should be kept continuously in good working order for the purpose of ensuring that return, and such maintenance of plant and machinery would also be to the advantage of labour, for the better the machinery the larger the earnings, and the better the chance of scoring a good bonus. The first charge on the gross profits should, therefore, be the amount of money that would be necessary for rehabilitation, replacement and modernization of the machinery. As depreciation allowed by the incometax authorities is only a percentage of the written-down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for these purposes. An extra amount would have to be annually set apart under the heading of 'reserves' to make up that deficit.'

In working out this principle in respect of the textile industry involved in that case, there were already ample materials on record. When the Industrial Court, Bombay, was considering the cases of bonus for the years 1948 and 1949, the Tariff Board on Textile Industry, 1948, had reported that the cost of replacement of machinery in that industry had gone up from 2 1/4 to 2 1/2 times the pre-war cost and that the full amount necessary to replace the same should be collected within 12-15 years. Even the parties placed ample materials before the industrial court and fought out their cases. All the facts and figures of these cases came to the notice of the Full Bench of the Labour Appellate Tribunal in the appeal filed against the award of the industrial court regarding the bonus for 1946. It was then that the said tribunal accepted the conclusions that had already been reached by the lower court in respect of the total cost of rehabilitation etc., 'the liquid assets' available for set-off and the remaining amount to be recovered, but extended the period of recovery to fifteen years from 1947 or thirteen years from 1949, having regard to the outer limit as estimated by the Tariff Board. Accordingly, taking the total cost of rehabilitation, etc., at Rs. 72 crores and deducting therefrom 'the liquid assets' of Rs. 30.46

crores available at the end of 1947, the remaining sum of Rs. 41.54 crores was proposed to be distributed over thirteen years. In the result the amount to be provided for 1949 and kept in reserve came to Rs. 1.31 crores (3.39 - 1.88) apart from the depreciation charged to the annual profit and loss account. 32. It is evident from the above that the Full Bench took its stand on definite material and reliable records and laid down its formula for ascertaining a particular year's allocation for depreciation and rehabilitation of machinery etc. This formula may be represented as follows [vide Bonus and Profit-sharing by Sri Kothari] : Rehabilitation of machinery, etc., minus funds already available with the company/divided by the number of years remaining. As has already been pointed out before, even this part of the formula is being modified to suit the facts and circumstances of each case, though its basic considerations have remained the same all through. For Instance, with a view to avoid the varying interpretations given to the phrase 'liquid assets,' the Industrial Court, Bombay, in Reference (I.C.) No. 47 of 1950 adopted the following rule :

'When the cost of replacement of machinery is estimated to be in excess of the original cost, the amounts shown as depreciation may be regarded as sufficient for such replacement, to the extent of the original cost, minus the scrap value, and as regards the excess cost of replacement (i.e., over and above the original cost), it would appear to be legitimate to see (rather than looking at the liquid assets) what part of the reserves, apart from those earmarked for specific purposes other than and having a priority over replacement, is available for such purposes. No doubt a good part of the reserves form part of the working capital but so long as it is not shown that any part of it is not available for rehabilitation. It would be proper to assume that they are so available.'

The other changes that were made now and then in individual cases need not be referred to for our present purpose. 33. But ever since the announcement of the formula, there has been a noticeable desire on the part of the managements and the workers concerned to take advantage of it to the fullest extent possible. The managements which maintain the accounts and run the concerns have been particularly anxious to press their claims for adequate reserve for rehabilitation, etc. It was in this context that the Labour Appellate Tribunal in the case of Alcock

Ashdown & Co., Ltd. v. Their workmen [1952 - I L.L.J. 819] rejected the claim of employers for Rs. 12,96,700 and remarked thus : 'Concerns have become rehabilitation conscious after our Full Bench decisions and claims for rehabilitation are expanding. They have to be scrutinized carefully, and the claim in this case rests on the statement of the general manager of the company. There was no register of machines prior to 1949 and the original cost is estimated on the present condition of the machines. This is not satisfactory.'

In the case of Gold Mines at Kolar Gold Fields and their workmen [1955 - I L.L.J. 55] the Central Government Industrial Tribunal held that in the absence of any evidence to support the claim for development and rehabilitation at the rate of 15 per cent or the working expenses of the year in question, the companies were entitled to deduct as a prior charge only normal amount of depreciation as allowed by the incometax authorities. Referring to the provision for rehabilitation, the Labour Appellate Tribunal in the case of Ganesh Flour Mills, Ltd., and their workmen [1952 - I L.L.J. 524] again observed thus : 'For the purpose of sustaining a claim to this item there must be evidence to show the age of the machinery, the period during which it requires replacement, the cost of replacement, the amounts standing in the depreciation and reserve funds and to what extent the funds at the disposal of the company would meet the cost of replacement. For determining these questions there are no materials on the record.' The same opinion was emphasized by the Labour Appellate Tribunal in the case of Bombay Gas Company, Ltd. v. Their workmen [1955 - II L.L.J. 151] as quoted below from the headnote thereof :- 'The question as to how much should be allowed in terms of available surplus formula for rehabilitation, replacement and modernization of machinery and plant is a question of fact depending upon the evidence which is produced. The claim of the concern to such prior charge has to be established by appropriate evidence. Reasonable particulars of the plant to be renewed, its expected future life and the cost of replacements are questions of fact which must be proved to the satisfaction of the tribunal.'

In the absence of details of particulars of the items of machinery or plant to be replaced, their future useful life, and the amount required to rehabilitate them, the claim for, ouch reserve must be rejected as not having been established.'

The principles to be followed, the materials to be produced and the viewpoints to be brought to bear upon the question of determining the claim for rehabilitation, have been clearly summarized by the Supreme Court in the recent case of the state of Mysore v. Workers of gold mines [1958 - II L.L.J. 479]. 34. From the case-law quoted above, it is obvious that in order to sustain a claim for rehabilitation reserve, detailed information and evidence regarding the life and other allied aspects of the machinery and building are absolutely necessary. Though the onus of making out a case for bonus lies upon the workmen as hold by the Labour Appellate Tribunal in the case of Textile Workers' Union v. Sri Vikram Cotton Mills, Ltd., Lucknow [vide 1953 - I L.L.J. 858], and by the High Court of Calcutta in the case of National Carbon Company (India). Ltd. v. Labour Appellate Tribunal and others [vide 1958 - I L.L.J. 472] it cannot be denied that the management has to prove the claim and quantum of deductions. Adverting to the case under reference, it will be seen that the counter-statement, apart from rejecting the claim for bonus, makes no reference to any deduction sought for on account of rehabilltaion. In the course of the evidence M.W. 1 produced what is known as 'Statement showing the calculation of rehabilitation reserve on the basis adopted by the Labour Appellate Tribunal' marked as Ex. M. 12, the main figures of which are reproduced below :-

The amount of original cost of - (1) Buildings, Rs. Rs.(2) machinery,(3) electrical installation and (4) metallurgical laboratory ason 30 June 1955
 46,98,341----- Replacement cost Rs. 46,98,341 x 2.7 1,26,85,520 Deduct
 breakdown value at 5 per cent.... 2,34,917----- Amount required. ... 1,24,50,603
 Less (i) Depreciation. 34,60,130 (ii) General reserves 4,05,011-----38,65,141
 38,65,141-----Provision for 15 years ... 85,85,462Provision for 1 year ...
 5,72,364-----

A glance at the above method of determining the rehabilitation cost would show how mechanically it has been worked out so as to defeat the very purpose the scheme intended to serve. Though a register of plant and machinery is said to have been maintained, the same has not been produced. M.W. 1 admits that the register does not indicate the life of the plant and machinery purchased and feels unable to furnish information as to the basis on which depreciation has been noted

in respect of them. There is actually no evidence to support how a particular multiple is proposed to be adopted to ascertain the probable cost of replacement. The same multiple cannot be applied uniformly for all varieties of fixed assets. In the absence of information as to the periods at the end of which the buildings, machinery, plants, etc., would require replacement, it would be too unrealistic to assume that these assets would all come to be replaced at the end of fifteen years from now. In the face of these assumptions and artificialities, I am not in a position to accept the cost of rehabilitation as presented in Ex. M 12. I should not however be understood to mean that no extra money would be required at all whenever replacement and rehabilitation have to be effected. But unless the calculations are based on correct and reliable data, it will not be possible to make any definite provision for rehabilitation reserve. Therefore, I wish to assign whatever sum is left over out of the profits of the year after the necessary deductions are made towards the rehabilitation reserve for the year 1954-55.

26. In the light of the conclusions and findings to which I have come in the foregoing paragraphs I set out below a table showing how the formula is worked out to determine the available surplus :-

Rs. Net profits	1,55,051	Add depreciation	4,30,189	Add taxation	
2,10,000	Add gratuity and bonus ...	1,50,000	Add donations	1,000	-----
Gross profits	9,46,240	Less depreciation	3,32,431	-----	6,13,809
Less taxation	1,67,466	-----	4,46,343	-----	4,46,343
Less return on paid-up capital at 6 per cent...	1,33,288	-----	3,13,055	Less return on reserves employed as working capital at 3 per cent	23,567
-----	2,39,488	Less provisions for gratuity ...	50,000	-----	1,75,652
Additional bonus for 1954-55 proposed ...	63,836	-----			
Balance ...	1,11,816	-----			

From the above calculations it has been possible to secure a balance of Rs. 1,11,816 after providing for all necessary and prior charges and also to grant additional bonus to the employees for the year in question. I therefore hold on the III issue that the II party has earned adequate surplus profits in 1954-55 to meet the demand of the employees for additional bonus. So far as the I issue is

concerned, my finding is that the employees are entitled to the additional bonus equivalent to 1/12 of their basic earnings in the year 1954-55. This bonus shall be paid subject to the conditions now governing the payment of bonus in this company within a period of four months from the date of publication of this award in the Mysore Gazette in such instalments as the directors deem fit. The balance of Rs. 1,11,816 will be allotted to the reserve for rehabilitation for the year in question.

27. I now pass this award in terms of the conclusions and conditions set forth above and I also order that in the circumstances of the case each party will bear its own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com