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think, with due respect, that the High Court should have, on a correct appraisal of the legal situation, ordered this relief, and we accordingly, after explaining the law applicable to the case, order the appropriate Income-tax Officer to hear and determine this matter in the light of our observations.

We may set down here that the two partners of the firm to whom relief has been given by way of refund after the Appellate Assistant Commissioner's order undertook unconditionally to refund the amounts, before the matter is considered by the Income-tax Officer. We order that the two partners shall return the amounts in the manner to be ordered by the Income-tax Officer, before action is taken to determine the matter.

In the result, the appeal is allowed with costs throughout to be paid by respondents 2 and 3. The Union of India shall, however, bear its own costs. It may be noted that no separate costs were incurred by it either in this Court or in the Court below. It joined respondents 2 and 3 in the statement of the case filed in this Court and also appeared through the same counsel in both the Courts.

Appeal allowed.

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May 5.

THE INDIAN OXYGEN & ACETYLENE CO., PRIVATE LTD., BOMBAY

v.

ITS WORKMEN & ANOTHER

(S. R. DAS, C. J., N. H. BHAGWATI, S. K. DAS, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Bonus—Full Bench formula, if can be disregarded—Rehabilitation, claim for—Average life, calculation of —Method of Weighted Average—Exhausted Assets—Whether can be taken into account.

The workmen claimed bonus for the years 1952-53 and 1953-54. The employers contended that on a proper working

out of the Full Bench formula there was no available surplus and so no bonus was payable. The Tribunal held that the formula was not binding on it and on genuine considerations of social justice it rejected the claim of the employers for rehabilitation and awarded bonus at the rate of ¼ and 1/3 annual basic wages for 1952-53 and 1953-54 respectively. Alternatively, the Tribunal found that in case the claim for rehabilitation had to be allowed there would be no available surplus in either of the relevant years.

Held that, the Tribunal was bound to give effect to the Full Bench formula and to allow the employer's claim for rehabilitation.

A.C.C. Ltd., Bombay v. *Their Workmen*, [1959] S.C.R. 925, followed.

In the calculations made by the Tribunal on its alternative finding it had acted on correct principles. It had rightly taken into account the price level prevailing in 1956 and not merely that prevailing in the two bonus years. The amount of rehabilitation allowed in previous years had to be brought into account if it had not been used up but it was not shown that had not been in the present case.

In calculating the average life of the buildings, machinery, etc., the method of weighted average was scientifically more accurate and gave a more accurate and realistic result. The rehabilitation costs of those assets which had spent their lives and were exhausted was also admissible in making calculations under the weightage method if in the relevant year such assets were in existence and use.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 753 of 1957.

Appeal by Special Leave from the Judgment and Order dated the 6th October, 1956, of the Industrial Tribunal, Bombay, in Reference (I. T.) Nos. 40 & 44 of 1956.

C. K. Daphtary, Solicitor-General of India, N. A. Palkhivala, J. B. Dadachanji and *S. N. Andley*, for the appellant.

D. H. Buch and *I. N. Shroff*, for respondent No. 1.

C. L. Dudhia and *I. N. Shroff*, for respondent No. 2.

Janardhan Sharma and *B. P. Maheshwari*, for the Intervener.

1959. May 5. The Judgment of the Court was delivered by

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GAJENDRAGADKAR, J.—This appeal by special leave arises from a bonus dispute between the Indian Oxygen & Acetylene Co., Private Ltd., (hereafter called the appellant) and its workmen, the relevant years for the bonus claim being 1952-53 and 1953-54. This claim was made separately by the workmen excluding the members of the clerical staff as well as by the clerical staff and the two claims thus made were referred by the Bombay Government to the Industrial Tribunal for its adjudication. The claim raised by the workmen excluding clerical staff was numbered as Ref. (I. T.) No. 40 of 1956, while that made by the clerical staff was numbered as Ref. (I. T.) No. 44 of 1956. Both categories of workmen will hereafter be described as the respondents in this judgment.

The appellant is a private limited company incorporated in 1935 and it has its head office at Calcutta. Its business is to manufacture and sell oxygen and acetylene. It is a subsidiary of the British Oxygen Co. Ltd. It sells its products to the hospitals and nursing homes and in large quantities to industrial concerns for welding, cutting and blasting operations. It voluntarily paid bonus equal to two months' basic wages for both the years in dispute; but the respondents were not satisfied with the said payment and they made a claim for 1/3 of their total earnings for the two respective years. That is how the dispute arose between the parties.

It appears in evidence that all the shares of the appellant (excepting two or three held by nominee share-holders) are held by the British Oxygen Co. Ltd. Evidence also shows that the appellant has been prospering and has been expanding at a rapid rate. In has capitalised its reserves in 1940, 1941, 1942, 1945, 1946, 1947 and 1949 with the result that the major portion of its capital is made up of bonus shares. It has made good profits for the year ending September 30, 1953, as well as for the year ending September 30, 1954. There is also no doubt that a large gap exists between the actual wages paid by it to its workmen and the living wage. It is on these allegations that the respondents made a claim for bonus of 1/3 of their total earnings.

The appellant pleaded that it was paying good wages to the respondents and that under the formula the respondents were not entitled to claim any additional bonus for the relevant years. In fact, according to the appellant, if the formula was properly worked the bonus already voluntarily paid by it to the respondents could not have been claimed by them.

The tribunal has, however, rejected the appellant's case and has directed it to pay to the respondents bonus at the rate of 1/4 of the annual basic wages for 1952-53 and 1/3 of the said wages for 1953-54 (less the bonus already paid for these years). It has also directed that in calculating the amount of bonus overtime and dearness and other allowances should be excluded. This award has been made subject to the two conditions specified by it. It is the correctness of this award that is challenged by the appellant before us.

The first point which the appellant has urged is against the finding of the tribunal that it was not bound to give effect to the Full Bench formula. In determining the available surplus the Tribunal has taken the view that the formula was not binding on it and that on considerations of social justice to which it has referred it was open to it to reject the claim of the appellant for rehabilitation. This question has been considered by us at length in the case of *A. C. C. Ltd., Bombay* v. *Their Workmen* (1) and we have held that in dealing with claims for bonus industrial tribunals must give effect to the formula. We have also indicated how the calculations under the formula should be made in such disputes. In view of the said decision we must hold that the Tribunal was in error is not granting to the appellant its claim for rehabilitation.

According to the calculations made by the Tribunal, without providing for any rehabilitation (Ex. TA) it has reached the conclusion that the available surplus for the years 1952-53 and 1953-54 respectively would be Rs. 6,14,830/- and Rs. 12,16,120/-. It is on the basis of this available surplus that the Tribunal has made its award. However, the Tribunal has found

(1) [1959] S.C.R. 925.

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alternatively that in case the claim for rehabilitation made by the appellant has to be awarded, then there would be no available surplus for both the relevant years. This is shown by the calculations made by it under Ex. TB. Thus it would be clear that on the alternative finding made by the Tribunal the appellant would be entitled to succeed and the award under appeal would have to be set aside.

It is, however, urged before us by the respondents that the calculations made by the Tribunal on its alternative finding are not correct. In other words, the respondents seek to support the final award passed by the Tribunal on the ground that some of the conclusions reached by the Tribunal in making its calculations on the alternative basis are erroneous. The first point which has been urged by the respondents in this behalf is that the Tribunal was wrong in taking into account the price level prevailing in 1956. The argument is that the price level prevailing in the two bonus years alone should have been taken into account. We have considered this point in *A. C. C.'s case* (1) and we have held that it is inexpedient to confine the relevant decision of the Tribunal solely to the price level prevailing in the bonus years. Therefore the objection that the Tribunal has committed an error in this matter must be rejected.

Then it is urged that in making its calculations the tribunal has not applied its mind to the fact that, though the appellant has been allowed substantial amounts by way of rehabilitation in previous awards, those amounts are not brought into account in considering its claims for rehabilitation. It appears that the tribunal was inclined to take the view that once an allowance is made to the employer by way of rehabilitation of plant and machinery, it is not open to the tribunal to enquire what he had done with the said amount. In the *A. C. C.'s case* (1) we have held that if an amount for rehabilitation is allowed to an employer and it appears that during the relevant year the said amount was available to him then in subsequent years the said amount will have to be taken into account unless it is shown that in the meanwhile

(1) [1959] S.C.R. 925.

it had been used for the purpose of rehabilitation. So we would accept the respondents' contention that the appellant is bound to take into consideration the amount previously allowed to it by way of rehabilitation.

There is, however, one point which must be borne in mind in considering this plea. In the previous awards to which our attention was drawn by the respondents, 20% of the net profits appear to have been awarded to the appellant on a rough and ready basis by way of provision for rehabilitation as well as expansion. It is significant that the award of the said amount expressly refers to repairs, replacement, modernisation and reasonable expansion. It is now well settled that the employer is not entitled to claim a prior charge under the formula for any item of expansion but the awards previously passed between the appellant and its workmen seem to have allowed for a claim for expansion as a prior charge, and that fact cannot be ignored in dealing with the respondents' present contention.

But apart from this aspect of the matter, it is clear that the appellant has brought into account one-half of its general reserve as on September 30, 1953, and September 30, 1954, respectively, and these amounts are Rs. 5,51,363 and Rs. 3,95,376. In view of this fact it is difficult to accept the argument that the amounts allowed to the appellant by way of rehabilitation in the previous years had not been brought into account. We would like to add that this point had not been taken before the tribunal, and may be could not be taken before it, because the tribunal has held that the employer could not be called upon to bring into account the said amount.

Then it is urged that in working out the figures of rehabilitation the tribunal was in error in accepting the appellant's claim. The award shows that the tribunal was very favourably impressed by the evidence given by Mr. Saigal and Mr. Basak on behalf of the appellant. It appears that in arriving at the average life of the buildings, machinery, etc., Mr. Basak has adopted the method of weighted average. " This method is a development of the concept of the

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ordinary arithmetic mean " (1). Under this method, "in general terms, a set of quantities 'X' is given, to each of which is attached a weight ' W ', and the *weighted arithmetic mean* is obtained as the summation of ' W ' x ' X ' divided by the summation of ' W ' ''. There is no doubt that this method is scientifically more accurate and gives a more accurate and realistic result in determining the average life of the assets. Let us illustrate this method by taking an example given by the tribunal itself:

Cost of Asset.		*Life.*		*Annual replacement cost required.*
Rs.				Rs.
5	...	1 year	...	5
8	...	2 years	...	4
300	...	10 years	...	30
313	...	13 years	...	39

The average life calculated by Mr. Basak according to the weighted average method is $\frac{3}{3}\frac{1}{9}\frac{3}{2} = 8{\cdot}02$ years, while the arithmetical average of the figures in column two is $\frac{1}{3}\frac{3}{9} = 4{\cdot}33$ years; this latter is an incorrect estimate, for the small items distort the average. Within two years the first two items will go out and though the remaining machinery is expected to last for 8 years more, the arithmetical average would give it a remaining life of 2·33 years.

The respondents do not challenge the validity of this method; but they contend that in working out the method some calculations have been made which are open to objection. Before dealing with these objections it may be stated generally that when Mr. Saigal and Mr. Basak gave evidence they were not asked any definite or precise questions on which the objections urged before us are based. It is desirable that in enquiries of this kind, when experts give evidence on behalf of the employer, workmen should cross-examine them on all points which they propose to urge against the employer's claim in regard to rehabilitation. However, we would like to deal with the merits

(1) " Statistics for Economists " by R.G.D. Allen, 1949 Ed., p. 96.

of the said contentions in the light of such evidence as is available on the record.

The first contention is that the assets which have spent their lives and are thus exhausted should not be continued in making calculations under the weightage method. This objection applies to such assets as leasehold buildings, cars and trucks. We are inclined to think that the method adopted by the appellant in making its calculations gives a more correct picture of the assets actually in use and the rehabilitation cost claimed in respect of them. If in the relevant year the asset is in existence and use, a claim for its rehabilitation would not become inadmissible. The same argument is put in another form and it is urged that where an asset which has come to an end is taken into account it would be wrong to take into account in the same year a new asset which has come into existence. The suggestion is that by this method a double claim for rehabilitation creeps into the calculation. We are not satisfied that even this argument is wellfounded. Let us examine this argument by reference to one item. The lease-hold buildings of the appellant include two buildings known as D. A. and Oxygen respectively at Bombay (Ex. C. 19). As on September 30, 1953, the estimated life of these buildings from October 1, 1953, is shown to be one year and the annual provision claimed for rehabilitating them is shown as Rs. 97,468 and Rs. 30,590 respectively. These claims have not been made in the subsequent year. In the same year two new buildings called D. A. and Oxygen respectively which were erected in 1952 have been included and the annual provision for rehabilitation in respect of them is made at Rs. 6,474 and 6,972 respectively. Now, if the respondents' argument is accepted and the calculations made in regard to the new buildings were excluded from the statements, the appellant would apparently be entitled to claim a somewhat higher amount. It may be mentioned that in working out the figures for rehabilitation in respect of new buildings Ex. C. 11 has included this item of Rs. 13,000 and odd in the larger

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item of Rs. 4,58,316 mentioned against uncovered requirement for rehabilitation and replacement in the year, whereas in deducting Rs. 2,31,700 by way of normal depreciation for the said year an amount of Rs. 22,000 and odd has been taken to be the normal depreciation in respect of the new buildings; that is to say, as against a claim of Rs. 13,000 and odd made for rehabilitation in respect of the said two buildings in Ex. C. 19, a deduction by way of normal depreciation has been allowed to the extent of Rs. 22,000 and odd. Therefore it does not appear on the evidence as it stands, that the method adopted by the appellant in making its calculations has introduced any serious infirmity or has given a distorted or inflated claim about the provision for rehabilitation.

In this connection it is relevant to refer to the fact that the calculations made by the appellant are based upon an item-wise study of its plant and machinery, and such a method, it is conceded, is bound to lead to more satisfactory results. Mr. Basak produced Exs. C. 1 to C. 16 which contained all the relevant calculations and he stated in cross-examination that as a matter of business practice a businessman has to think of replacing his machines even though they may have been bought in the relevant year. Of course, in considering the claim for rehabilitation in respect of such an item the multiplier would normally be 1 and the divisor would represent the total future life of the said machines. In regard to the exhausted assets the witness stated that if they are not included in the schedule the final result on Exs. C. 11 and C. 12 would be incorrect because in these statements the total depreciation provided up to the opening of the year has been deducted and this sum includes proportionate depreciation also on the assets referred to. He has also added that the total value of all fixed assets shown in Exs. C. 11 and C. 12 "have got to agree with the values shown in the balance-sheets"; and he claimed that "his method of calculating weighted average of the remaining life of assets is the most correct that can be employed". Similarly Mr. Saigal was cross-examined about the Bangalore plant which

had been installed in 1946. He stated that theoretically it should have a life till 1968 but in effect the plant had become so unreliable that they had to instal new one and to keep the old one as a standby. According to this witness actually the life of the machinery enumerated in Ex. C. 20 works out to less than 22 years but for simplicity in accounting he had taken the figure to be 22. As we have already mentioned the tribunal took the view that the evidence given by the appellant's witnesses in the present proceedings was satisfactory and we do not think that any material has been brought out in cross-examination which would justify the respondents' contention that the tribunal had not properly appreciated the said evidence. In the result we hold that the respondents have failed to show that any of the conclusions reached by the tribunal in making its calculations under its alternative finding are wrong.

The appeal accordingly succeeds and must be allowed and the award passed by the tribunal must be set aside. In view of the fact that the principal point raised by the appeal was one of some importance and it has been argued in a group of appeals before us, we think that the parties should bear their own costs.

Appeal allowed.