The Associated Cement Companies Ltd. Dwarka Cement Works, Dwarka

Vs

Its Workmen & Another

Civil Appeals Nos. 459 and 460 of 1957

(CJI S. R. Dass, N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo JJ)

05.05.1959

JUDGMENT

GAJENDRAGADKAR J. -

These two appeals arise out of a demand for bonus made against the appellants by their workmen for the year 1953-54. The Associated Cement Companies Ltd., Bombay, the Cement Marketing Company of India Ltd., Bombay and the Concrete Association of India, Bombay, were faced with a demand of their workmen employed in their offices at Bombay for bonus equivalent to seven months' basic wages with dearness allowance. The industrial dispute arising out of this demand was referred by the Government of Bombay for adjudication before the Industrial Tribunal, Bombay, under section 10 of the Industrial Disputes Act and it was numbered I.T. No. 10 of 1956. The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka, was similarly faced with a demand of its workmen for bonus equivalent to 50% of total earnings or six months' total earnings. This dispute was referred to the same tribunal and was numbered I.T. No. 13 of 1956. By consent of parties both the references were heard together and evidence was recorded and documents tendered in the first reference. By its award delivered on November 30, 1956, the tribunal directed the companies to pay their workmen drawing a basic pay or wages up to Rs. 500 per month bonus equivalent to 1/3 of their basic wages or pay (less bonus already paid for the year 1953-54) subject to the conditions specified in the award. It is against this award that the respective companies have preferred the two appeals by special leave. In this judgment the said companies will hereafter be described as the appellant and their workmen as respondents.

The A.C.C. is the principal company concerned in the dispute. The Cement Marketing Company of India Ltd., (hereafter called the C.M.I.) has been separately registered under the Indian Companies Act as a Joint Stock Company; but it is a hundred per cent. subsidiary of the A.C.C. The C.M.I. are the Sales Managers of the A.C.C. while the Concrete Association of India (hereafter called the C.A.I.) is merely a department of the C.M.I. As a result of the agreement which came into operation from August 1, 1953, all financial transactions of the C.M.I. in relation to sales now find a place in the accounts of the A.C.C. Similarly all of its fixed assets have been taken over and appear in the balance-sheets of the A.C.C. All the three concerns have a common staff in Bombay. The A.C.C. had already paid to its employees bonus equivalent to three months' basic wages for the year 1953-54 and so had the C.M.I. to its workmen. It appears that the C.M.I., including the C.A.I., undertakes to pay to its employees the same amount of bonus as has been paid or awarded to the employees of the A.C.C.

There is no dispute that the A.C.C. is the biggest amongst the companies in India which manufacture cement. It owns 15 cement factories at different places in India and 2 in Pakistan. Out

of the total quantity of cement despatched by all the cement factories in India in 1953-54 the A.C.C. despatched 55.46%. The A.C.C. came into existence in 1936 as a result of the merger of four important groups of companies engaged in the manufacture of cement. These were F. E. Dinshaw, Tatas, Killick Nixon and Khatau, groups. It appears that 11 companies in all merged with the A.C.C.

Before the tribunal the case for the respondents was that the appellant held a position of monopoly in the cement industry and was easily in a position to pay the bonus claimed by them. Their allegation was that the appellant had inflated the capital invested by the merging companies while taking them over in 1936; it had set up new factories out of the profits earned by it without raising fresh capital and thereby had used profits for the purpose of expansion. In the year 1953-54 the appellant had capitalised the full amount standing to the credit of the premium-on-shares account and had transferred a part of the reserves for taxation to the capital account thus increasing the aggregate capital. The emoluments of the workers were inadequate and so they were entitled to the bonus claimed by them in order to fill up the gap between the actual wage paid to them and the living wage due to them. The respondents also contended that the claim made by the appellant for rehabilitation and replacement in the dispute for the year 1951-52 included not only the amount required for rehabilitation and replacement but also expansion; and so, according to them, the appellant was not entitled to any amount for rehabilitation purposes in the year in dispute. They also alleged that the appellant was not entitled to claim interest at more than 4% on paid-up capital and 2% on working capital. Thus the respondents urged that if all the relevant facts are taken into account it would be found that the claim for bonus made by them in the two respective references was just and proper. In support of their case the respondents filed several statements which, they claimed, had been prepared in accordance with the Full Bench Formula, and they also cross-examined Mr. Tongaonkar who gave evidence on behalf of the appellant.

This claim was resisted by the appellant. It was urged on its behalf that the points raised by the respondents in the present references had been heard and finally decided in the previous adjudication (Ref. I.T. No. 115 of 1953) which dealt with their claim for bonus for the preceding year; and it was alleged that the respondents were barred from raising the same questions over again in the present adjudication. The cement machinery, though heavy, is subject to rigours of extremely tough and heavy duties and the machinery has to run ceaselessly day and night throughout the year. The appellant contended that, having regard to the special features of the cement industry, the machinery had to be kept on the highest standards of maintenance and needed frequent replacement and rehabilitation. A cement factory is a very expensive industrial proposition. The appellant denied that it was in a monopolistic position and pleaded that its object was to deliver cement as cheaply as possible to the consumers. The respondents' allegation that there was "puffing up of block capital at the time of the merger in 1936" was denied by the appellant and it was not admitted that ever since its inception it had steadily made huge profits. The appellant also denied the allegation of the respondents that the profits coming out of the business had been used in expanding its factories. It had used all available resources including premium on issue of shares and depreciation fund for replacement, rehabilitation and modernisation. It was not true that the appellant had built huge reserves and that the wages paid by the appellant to its employees were inadequate; on the contrary they compared very favourably with those in other comparable industries. The appellant denied the statement of the respondents that no plant reinstatement reserve over and above the depreciation allowance was necessary in the current year and it urged that the calculations made by the respondents alleged to be in terms of the Labour Appellate Tribunal formula were inaccurate. In its turn the appellant claimed more than 6% interest on paid-up capital and more than 4% interest on working capital. The appellant also emphasised that it had already paid to the respondents bonus for three months though the strict working out of the formula would show that there was no available

surplus for the relevant year and so the respondents would not be entitled to any bonus at all.

In support of its case the appellant examined Mr. G. R. Tongaonkar, its controller of planning and development, and produced a statement (Ex. C-2) showing the original cost of the blocks to be replaced and the approximate replacement cost. It also produced amongst other documents a statement (Ex. C-10) showing the cost of the assets of the merging companies on July 31, 1936, as taken over by the appellant and the statement (Ex. C-29) showing the capital expenditure from 1936-37 to 1953-54 on expansion, modernisation, rehabilitation, replacement, sundry capital jobs, etc. In addition a statement was filed by the appellant (Ex. C-23) showing that the calculations made under the Full Bench formula would show a substantial deficit and that would support its case that there was no available surplus for the relevant year from which any bonus could be claimed by the respondents.

Ex. C-2 is a statement prepared by Mr. Tongaonkar showing the original cost of the block to be replaced and the approximate replacement cost. This statement has been prepared on the basis that the approximate cost to the merging companies of their assets as on 31-7-1936 was 5.73 crores. It is admitted that this statement has lumped together all the properties of the appellant including plant and machinery, as well as buildings, roads, bridges and railway-sidings and has classified them into four categories. The statement contains 9 columns. The first column gives the year or years of purchase of machinery. This column classifies the four categories of the blocks according to their respective years of purchase. The first category consists of blocks purchased up to 1939, the second purchased between 1940-44, the third purchased between 1945-47 and the last purchased between 1949-54. Column 2 gives the original cost of the said categories as on 31-7-1954. Column 3 gives particulars of such portions of the blocks as have been discarded, scrapped or sold. In this column the years in which the blocks were discarded, scrapped or sold are indicated and their original cost is mentioned. Columns 4 and 5 give the present approximate cost of rehabilitation according as the machinery in question is either purchased or made by the appellant itself. The cost of machinery which may have to be purchased is shown in col. 4, while the cost of machinery which may be produced by the appellant is shown in col. 5. The figures in col. 4 have been arrived at by multiplying the corresponding figures in col. 2 by a ratio, which, according to Mr. Tongaonkar, supplies an appropriate multiplier. Regarding the replacement cost of 1939 block, the witness has applied the multiplier 4.28, whereas in regard to the subsequent block of 1940-44 he has utilised the multiplier of 2.8. The figures mentioned in col. 5 for 1939 and 1940-44 blocks have been arrived at by reducing the corresponding figures given in col. 4 by 20%. Column 6 gives the approximate present life of the machinery and plant mentioned in col. 4; col. 7 sets out the breakdown value of the machinery referred to in col. 4, whilst col. 8 gives the approximate cost of rehabilitation of machinery as shown in col. 5 less breakdown value as shown in col. 7. The last column works out the annual requirements of the appellant in respect of the rehabilitation of the four categories of blocks. The figures in this column are arrived at by dividing the amounts mentioned in col. 8 by the respective divisors mentioned in col. 6. The total annual requirement of the appellant in respect of rehabilitation is shown as of the order of Rs. 3,29,61,752.

Ex. C-23 is a statement prepared by Mr. Tongaonkar to show the deficiency in profits in relation to payment of additional bonus claimed by the respondents for the accounting year 1953-54. This statement has been prepared alternatively on the basis of statutory depreciation allowable by income-tax authorities and also on the basis of straight computation at ordinary rates. The first method results in a deficit of Rs. 107.20 lakhs, while the second in a deficit of Rs. 97.86 lakhs. In working out the provision for rehabilitation, this statement first takes the replacement cost of block up to 1939 as per Ex. C-2 to be Rs. 1601.19 lakhs. From this amount the available reserves as on 1-

8-1953 which are of the order of Rs. 311 lakhs are deducted, leaving a balance of Rs. 1290.19 lakhs. Then the replacement costs of the three remaining categories of blocks are taken into account and all the said amounts are divided by the appropriate divisors mentioned in col. 6 of Ex. C-2. The result is the sum of Rs. 284.48 lakhs, and that is claimed by the appellant as the provision for rehabilitation under the formula.

In his evidence Mr. Tongaonkar has given reasons in support of the respective multipliers and divisors adopted by him in making his calculations in Ex. C-2. He has also given several details on all the relevant and material points in support of the appellant's case. Naturally the respondents have cross-examined him at length. One of the questions in controversy between the parties in the present appeals centres round the appreciation of Mr. Tongaonkar's evidence and the value to be attached to the statements prepared by him.

On the contentions raised by the parties before it the tribunal framed ten issues for determination and it has made its findings on them in the light of the evidence adduced before it. It has held that the appellant had not inflated the capital invested by the merging companies while taking them over in 1936. It has allowed 6% interest on the entire paid-up capital of Rs. 1267.59 lakhs, and 4% interest on the working capital. In regard to the claim for depreciation the tribunal has held that it was normal depreciation calculated according to the straightline method which should be allowed. On the question of income-tax, the tribunal has allowed the same at 83.4 pies in a rupee as claimed by the appellant on its net profits. It has, however, rejected the appellant's case that the income from investments in shares and securities received by it should be excluded for the purpose of bonus; while it has allowed the sum of Rs. 10 lakhs provided by the appellant as annual contribution to the reserve for gratuity, as also the expenditure on the cost of dismantling buildings, prospecting expenses, etc. It did not accept the respondents' case that the bonus paid by the appellant to its officers should be reduced or wholly disallowed for the purpose of calculations under the formula; and, on the question as to whether overtime payment should be included in the payment of bonus, it has upheld the respondents' contention and allowed the inclusion of the said payment.

Having disposed of these minor issues, the tribunal examined at length the claim made by the appellant in regard to the provision for rehabilitation, replacement and modernisation. Indeed this was the most controversial and the most important issue raised before it. The tribunal examined the evidence of Mr. Tongaonkar as well as Ex. C-2 and other documents produced by him, and came to the conclusion that "Ex. C-2 presents an incorrect and exaggerated picture of the A.C.C.'s requirements of rehabilitation and replacement" and so it cannot be relied upon. According to the tribunal the multiplier 4.28 adopted by Mr. Tongaonkar was itself an inflationary figure; and it thought that "the consequence of applying it not to the original price but to its increased price paid by the A.C.C. would be to obtain an inflationary result. It appears that the tribunal was inclined to hold that 2.7 was a fair multiplier representing the price increase over the pre-war base. The tribunal was also not satisfied with Mr. Tongaonkar's evidence in regard to the life of plant and machinery; and so it held that the period of life given in col. 6 of Ex. C-2 cannot be accepted as correct. While dealing with the question about the rise in prices, the tribunal has held that it was usual to take the average level of prices prevailing in a period of about five years in preference to the prices prevailing in a particular year as was done by Mr. Tongaonkar. The tribunal subjected Mr. Tongaonkar's evidence on the question of replacement, rehabilitation and modernisation to a close examination and held that the method adopted by Mr. Tongaonkar in distinguishing between modernisation and expansion was of a purely subjective estimate "which does not bear the scrutiny of an objective test". On the whole the tribunal was not prepared to accept Mr. Tongaonkar's evidence at its face value and it was not prepared to treat Ex. C-2 and consequently Ex. C-23 as

reliable. It is relevant to point out at this stage that the tribunal has not made any finding about the life of the machinery nor has it recorded any conclusion as to a proper divisor. In fact it has completely left out of consideration Exs. C-2 and C-23 while determining the amount which should be allowed for the appellant's claim for rehabilitation for the relevant year.

The tribunal then examined the principle underlying the Full Bench formula and held that it was not intended to be worked out as a rigid mathematical formula. "We must make it", says the tribunal, "as flexible as possible so as to do justice to everybody concerned in the earning of profits". The general question, which it has considered in this connection, is how far and to what extent profits of a concern should contribute to the satisfaction of the claims of industry for replacement, rehabilitation and modernisation. It was impressed by the argument that, where the requirements under these items are so huge as to be, out of tune with the profits, it would be open to an industrial adjudicator to allow only a reasonable provision to be made out of the profits for the said items and leave the industry concerned to tap other resources to make up the balance. In support of this conclusion it has referred to the observations made by F. R. M. De Paula in his "Principles of Auditing", the report of the Taxation Enquiry Commission and of the working party for the Cotton Textile Industry. It has also relied on a part of the speech delivered by Mr. J. R. D. Tata in addressing the annual general meeting of the shareholders of the Tata Iron and Steel Company in August 1950.

In this connection the tribunal has expressed its apprehension that if all the money required for a continuous process of modernisation and expansion is to come out of the profits made by the concern, labour will rarely see a day when they will enjoy bonus granted to them out of profits; though it has hastened to add that it was far from its mind that a progressive concern like the A.C.C. should not keep pace with time and modernise its machinery; but it only wished that it should give a fair deal to the workers in the distribution of the profits. Having held that, if the claims for rehabilitation turn out to be huge and out of tune with the profits made by the industry, it would be open to the tribunal to grant the claim of the industry in that behalf only to the extent that it deems to be reasonable and fair, it proceeded to consider how far and to what extent the appellant's claim should be allowed in the present proceedings.

It is necessary to mention that in dealing with this question the tribunal was considerably influenced by the past conduct of the appellant. It thought that for rehabilitation the appellant had claimed no more than Rs. 192 or 193 lakhs in the previous adjudication proceedings where the dispute for bonus had reference to the year 1951-52. If the claim then made by the appellant was no more than Rs. 192 or 193 lakhs, the present claim for Rs. 284 lakhs, the tribunal thought, was obviously inflated and unreal. Similarly the tribunal emphasised the fact that the programme earlier submitted by the appellant to the Tariff Commission was in turn more modest than the claim made in the said adjudication proceedings. It appears that in the said programme the appellant had made out a case for the estimated expenditure of Rs. 18.36 crores to be spread over a period of ten years from 1-8-1952 to 31-7-1962 and that works out approximately at the figure of Rs. 184 lakhs per year. It was on these facts that the tribunal held that "if the A.C.C. estimated its annual requirements of rehabilitation, replacement and modernisation at Rs. 192 lakhs per year during the period of ten years commencing from 1-8-1952, I do not think that it should be allowed to depart from it now". In substance, according to the tribunal, the present claim for rehabilitation was very much inflated, it had no relation to realities, and so the appellant should not be allowed to make such a claim. That is why it did not think it necessary to record any finding as to the proper divisor, and to determine, in the light of Mr. Tongaonkar's evidence, what approximately would be a fair or reasonable amount for rehabilitation under the formula.

It is thus clear that in making its final calculations the tribunal has assumed that the claim made by the appellant for rehabilitation, replacement and modernisation must be taken to be no more than Rs. 192 or 193 lakhs, and on that assumption it has considered to what extent the claim should be allowed. Ultimately the tribunal came to the conclusion that in the circumstances of the case it would be fair to allow the appellant about Rs. 165 to 170 lakhs as annual provision for the said items. In support of this conclusion the tribunal has relied on the fact that for the two years 1952-53 and 1953-54 the appellant had spent about Rs. 339.76 lakhs for the purpose of rehabilitation, replacement and modernisation and that works at the average of Rs. 170 lakhs per year. The tribunal has then taken into account the fact that the appellant had a plant reinstatement reserve of Rs. 235 lakhs and a general reserve of Rs. 76 lakhs in the beginning of the year 1953-54. If these amounts which would be available for rehabilitation are spread over the ten year period of the tentative programme planned by the appellant, the annual figure would come to Rs. 31 lakhs; and this amount would have to be deducted from Rs. 165 lakhs which the tribunal was inclined to grant in respect of the relevant item. That is how the tribunal has made the appropriate calculations under the formula, and has shown that, even after the payment of one month's additional bonus as directed by it, the appellant would still be left with a surplus of Rs. 23.48 lakhs. That in brief is the nature and effect of the findings made by the tribunal.

Before dealing with the merits of the points raised in these appeals it would be convenient to refer to the genesis and the terms of the formula which has been evolved by the Full Bench of the Labour Appellate Tribunal in the case of The Mill Owners Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay ([1950] L.L.J. 1247) in 1950. It appears that from 1940 A.D. onwards the claims for bonus made by the employees against their employers in different industries were dealt with on an ad-hoc basis from case to case. Sometimes the employers voluntarily paid bonus to their workmen; and where disputes arose they were decided by the tribunals in the light of the circumstances of each case without relying on any broad consideration of policy or without attempting to lay down any general principles. In 1948 a bonus dispute arose between the Mill Owners Association, Bombay and its employees, and it was referred for adjudication to the Industrial Court. In considering this dispute the Industrial Court went elaborately into the matter, laid down certain principles and awarded to the workmen bonus equivalent in amount to 3/8 of the total basic earnings of each workman subject to certain conditions.

In the subsequent year a similar dispute arose between the same parties; and it was again referred to the Industrial Court for adjudication. The Court made its award on July 7, 1950, directing 55 mills of the Association to pay to their workmen, whether permanent or temporary, 1/6 of the basic earnings of each of them as bonus. This award was challenged by the Association before the Labour Appellate Tribunal. It was urged on behalf of the Association that the wage structure in the textile industry had been settled by standardisation and so bonus must be regarded as a gratuitous payment; and it was argued that at any rate grant of bonus cannot be made for the purpose of making up the deficiency between the actual and living wages. These contentions were rejected by the Labour Appellate Tribunal and the question about the grant of bonus was considered on general principles on the basis of which a formula, often described as the First Full Bench Formula, was ultimately evolved. "As both capital and labour contribute to the earnings of the industrial concern", observed the appellate tribunal, "it is fair that labour should derive some benefit if there is a surplus after meeting prior or necessary charges". The appellate tribunal was also of the view that where the goal of living wages had been attained, bonus, like profit sharing, would represent more as the cash incentive to better efficiency and production; but where the industry had not the capacity to pay a living wage bonus must be looked upon as the temporary satisfaction wholly or in part of the needs of the employee. In other words, according to this decision, the award of bonus is based on a two-

fold consideration. It is made in recognition of the fact that labour has made some contribution to the profit earned by the industry, and so it is entitled to claim a share in it; and it is also intended to help labour to bridge or narrow down the gap, as far as may be reasonably possible, between the living wage to which labour is entitled and the actual wage received by it.

Dealing with the problem from this point of view the appellate tribunal conceded that investment necessarily implies the legitimate expectation of the investor to secure recurring returns on the money invested by him in the industrial undertaking, and so it held that it was essential that the plant and machinery should be kept continuously in good working order for the purpose of ensuring that return. Such maintenance of the plant and machinery would necessarily be to the advantage of labour because the better the machinery the larger the earnings and the brighter the chance of securing a good bonus. On this consideration it was held that the amount of money that would be necessary for rehabilitation, replacement and modernisation of the machinery would be a prior charge on the gross profits of the year. Since the depreciation allowed by the income-tax authorities is only a percentage on the written-down value the depreciation fund set apart on that basis would not be sufficient for the purpose of rehabilitation and an extra amount would have to be annually set apart notionally under the heading of 'reserves' to make up the deficit. This position was apparently not disputed by the employees.

The claim made by the industry that a fair return on the paid-up capital must be secured and that ordinarily it should be paid at the rate of 6% per annum was also not disputed. The employees, however, challenged the claim of the industry that reserves employed as working capital should carry any interest; but their objection was overruled and it was held that working capital also would be entitled to interest though at a much lower rate than that on the paid-up capital. Then the question of taxes was considered and it was agreed that a provision had to be made for taxes which would be payable on the amount determined after deducting depreciation from the gross profits less any bonus which may be awarded. In the result the appellate tribunal laid down the manner and method in which the available surplus should be determined. The notional accounting for this purpose starts with the figure of the gross profits which are arrived at after payment of wages and dearness allowance to the employees and other relevant items of expenditure. Then a deduction for depreciation is made, and on the notional balance thus derived a provision for taxes payable is allowed. Then follow the provisions for reserves for rehabilitation, return on paid-up capital and return on reserves employed as working capital. That gives the amount of surplus if any. Whenever the working of this formula leaves an amount of available surplus, labour was held entitled to claim a reasonable share in this amount by way of bonus for the current year. This formula is based on considerations of social justice and is intended to satisfy the legitimate claims of both capital and labour in respect of the profits made by the industry in a particular year. It takes the particular year as a unit and makes all its notional calculations on the basis of the gross profits usually taken from the profit and loss account; in this particular case the available surplus determined by the application of the formula was found to be 2.61 crores; and out of this surplus 0.30 crores were awarded as bonus to clerks and other staff and 1.86 crores was awarded as bonus to the employees leaving a net notional balance of 0.45 crores.

This Court had occasion to consider the said formula in Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur ([1955] 1 S.C.R. 991). The judgment in that case indicates that without committing itself to the acceptance of the formula in its entirety, this Court in general accepted as sound the view that since labour and capital both contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit if there is a surplus after meeting the four prior or necessary charges specified in the formula. It is relevant to add that in dealing with the concept of bonus this

Court ruled that bonus is neither a gratuitous payment made by the employer to his workmen nor can it be regarded as a deferred wage. According to this decision, where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus can be legitimately made. However, neither the propriety nor the order of priority as between the four prior charges and their relative importance nor their content was examined by this Court in that case; and though the formula has subsequently been generally accepted by this Court in several reported decisions (Baroda Borough Municipality v. Its Workmen ([1957] S.C.R. 33, 39), Sree Meenakshi Mills, Ltd. v. Their Workmen ([1958] S.C.R. 878, 884) and The State of Mysore v. The Workers of Kolar Gold Mines ([1959] S.C.R. 895), the question about the adequacy, propriety, or validity of its provisions has not been examined not has the general problem as to whether the formula needs any variation, change or addition been argued and considered. It is for the first time since 1950 that, in the present appeals, we are called upon to examine the formula carefully and express our decision on the merits of its specific provisions. As we have already indicated, in dealing with the present dispute the tribunal has held that, in working out the formula, it could relax its provisions even though the proposed relaxation may mean a material variation of the formula itself. On behalf of the appellant Mr. Kolah has taken strong exception to this approach. He has argued that, in the last eight years and more, on the whole the formula has worked fairly well in the interest of both capital and labour, and so the tribunal was not justified in departing from it in the present case. This argument undoubtedly raises a question of considerable importance.

Before examining this argument, however, it is necessary to consider one preliminary point : Was the tribunal justified in holding that the appellant could not be allowed to add to its previous claim for rehabilitation ? The decision of the tribunal on this point seems to indicate that the tribunal thought that the appellant was estopped from making any such claim; and the correctness of this conclusion is challenged by the appellant.

It is true that, in the report submitted by the appellant before the Tariff Commission in April 1953, it had set out the details of its ten year programme which included, besides replacement, rehabilitation, modernisation and expansion, mechanisation of quarries as well as construction and improvement of houses for its labour staff. The report of the Tariff Commission (p. 30) shows that the cost of the programme was estimated at Rs. 18.36 crores, excluding the cost of a new plant at Sindri, or about Rs. 184 lakhs per annum. Subsequently in January 1954, when Mr. Tongaonkar gave evidence in the previous adjudication proceedings, he produced a statement (Ex. U-8) according to which the appellant's annual requirements for rehabilitation would be of the order of Rs. 192 or 193 lakhs, whereas in the present proceedings the said claim is made at Rs. 284 lakhs. A bare statement of these facts prima facie suggests that the appellant's present claim for rehabilitation has been growing from stage to stage, and in its present form it is very much inflated; and that is what the tribunal has also assumed. In our opinion this assumption is not wholly correct. Mr. Tongaonkar's evidence shows that in the report of the jobs submitted to the Tariff Commission the appellant had not included all relevant items of rehabilitation, replacement and modernisation. The report merely gave a list of the jobs which the appellant had proposed to undertake during the ten year period ending July 31, 1962. It was in no sense an exhaustive statement about the appellant's requirements in regard to the rehabilitation of all its blocks. In fact, having regard to the nature and scope of the enquiry before the Tariff Commission, the report made by the appellant had to be restricted to the urgent jobs which it wanted to undertake during the execution of its ten year programme; and so it would not be reasonable to hold that the figure of annual rehabilitation expenses which can be deduced from the said report has any relation to the claim for rehabilitation made by the appellant in terms of the working of the formula.

Then again the appellant's claim for rehabilitation in the earlier proceedings has also been satisfactorily explained by Mr. Tongaonkar. The respondents have placed considerable reliance on the statement filed by Mr. Tongaonkar in the said proceedings (Ex. U-8). This document has been produced by the respondents in support of their contention that it purports to make a claim for Rs. 192 lakhs per year for rehabilitation. That no doubt is true; but in terms the document purports to show the estimated expenditure required during the ten year period there specified; and as Mr. Tongaonkar has stated, it does not include a full statement of the claim in regard to the rehabilitation of all the blocks belonging to the appellant. In considering the respondents' argument on this point, it is necessary to bear in mind that in the earlier proceedings the appellant had filed a separate statement showing the amount to which it was entitled by way of rehabilitation under the formula; this statement was Ex. C-3 and it has been produced in the present case and exhibited as U-5. It appears that in the earlier proceedings the tribunal did not attach any importance to the said document and virtually ignored it because, like the present tribunal, it held that "it does not appear to be necessary to plan further ahead than ten years and it is desirable to base calculations of rehabilitation on realities" ([1955] 1 L.L.J. 588, 592). Even so the Labour Appellate Tribunal found that the appellant's contention that its workmen were not entitled to any additional bonus was not well-founded even if its claim for rehabilitation was confined to Rs. 192 or Rs. 193 lakhs. Besides, Mr. Tongaonkar has stated on oath that Ex. U-8 was not among the documents originally submitted by the appellant to the tribunal in 1954. It was in fact prepared and submitted at a later stage at the instance of the tribunal itself. It is, therefore, clear that Ex. U-8 was not intended to, and did not supply, the basis of the appellant's claim in the earlier proceedings in accordance with the formula.

A study of the items contained in Ex. U-8 also supports the same conclusion. Mr. Tongaonkar has stated that the total amount of the estimated expenditure shown in this document included only a small portion of the expenditure required for rehabilitation of the post-1944 block. It is true that Mr. Tongaonkar's statement that in the said total amount nearly Rs. 50 lakhs represent the amount for replacement or rehabilitation of post-1944 block is inaccurate. The Chaibasa Cement Factory and the Sevalia Cement Factory for the rehabilitation of which Rs. 64.98 and 85.15 lakhs have been claimed in Ex. U-8 are undoubtedly parts of the post-1944 block and the amounts claimed for them are very much more than Rs. 50 lakhs. It is nevertheless clear that the items in Ex. U-8 do not include a claim for rehabilitation for all the blocks of the appellant, and it is not surprising either, because a claim for the rehabilitation of all the blocks had been separately made by the appellant in the earlier proceedings under Ex. C-3. Thus there can be no doubt that neither the report submitted by the appellant before the Tariff Commission nor the estimate given by Ex. U-8 was prepared under the formula; and so any disparity in the amounts claimed in the two earlier documents cannot be seriously pressed into service against the appellant when it seeks to make a claim for rehabilitation strictly in accordance with the formula. We must, therefore, hold that the tribunal was in error in coming to the conclusion that by reason of its previous conduct the appellant could not be allowed to place its claim for rehabilitation at a figure higher than Rs. 192 lakhs in the relevant year. In this connection it would be pertinent to remember that in dealing with the employer's claim for rehabilitation the tribunal is called upon to assess respective values of the relevant factors on hypothetical and empirical considerations, and so it may generally not be useful or wise to take recourse to strict legalistic principles like estoppel in deciding this question and indeed all material questions in industrial adjudications.

Does the formula need to be revised, and should it be revised and reconstructed ? That is the question which we must now consider. It appears that some tribunals have taken the view that the rigid working of the formula may defeat its object of recognising the social justice of labour's claim for bonus and so they have made suitable adjustments in its operation. It is this approach which has

raised the larger issue of principle in the group of appeals which have been placed for disposal before the Constitution Bench. So we must examine this question in its broad aspects and if we decide not to change the formula we must state what, in our opinion is the content of the different items mentioned in the formula and how they should be calculated and mutually adjusted.

Let us first set out the case as it has been made for changing the formula. It is urged that though the formula purports to recognise the principle of social justice on which labour's claim for bonus is based, it does not accord to the said claim the high priority it deserves. Social justice has been given a place of pride in the preamble to the Constitution and it has been enshrined in the Directive Principles under Arts. 38 and 43. Since 1950, ideas about social and economic justice have made an appreciable progress and they require the readjustment of priorities prescribed by the formula in favour of the claim for bonus.

It is also contended that experience in industrial adjudication during the last eight years and more shows that employers are becoming increasingly more rehabilitation-conscious and their appetite for the provision of rehabilitation is fast growing from year to year. In the present case, for instance, though the appellant occupies a dominant position in its line of trade and though it makes large profits, it has made such a tall claim for rehabilitation that if the said claim is allowed the working of the formula leaves no available surplus from which bonus can be granted to labour. The appellant has no doubt paid bonus for three months and it is unlikely that the appellant would depart from its practice of paying the said bonus even in future; but that does not affect the position that in the light of the appellant's claim for rehabilitation the working of the formula would not justify the grant of any bonus to labour. This shows that the notional claim for rehabilitation which an employer can make under the formula tends to be completely divorced from the reality or actuality of the need of rehabilitation; and that needs to be corrected.

Besides, it is said, that the theory that the trading profits of the industry must provide for the whole of the rehabilitation expenses is not universally accepted by enlightened and progressive businessmen and economists. In this connection reliance is placed on the observations of F. R. M. de Paula in his "Principles of Auditing" that "the object of depreciation is the replacement of original investment capital and that an increase in replacement cost is an important matter and means that additional capital is required in order to maintain the original earning capacity". It is also pointed out that the Institute of Chartered Accountants in England and Wales, in its recommendations made in 1949 under the heading "Rising price levels in relation to accounts" has pointed out that "the gap between historical and replacement costs might be too big to be bridged by a provision made for replacement spread over a period of years either by way of supplementing the depreciation charges or by setting up in lieu of depreciation a provision for renewals based on estimated replacement costs." It is therefore suggested that in revising the formula the claims for rehabilitation should be fixed at a reasonable amount and industry should be required to find the balance from other sources and if necessary from its share in the available surplus.

In this connection it is pointed out that when the Labour Appellate Tribunal evolved the formula it was dealing directly with the needs of the textile industry and there was no dispute that the plant and machinery of the textile industry had become old and obsolescent and needed immediate replacement, rehabilitation and modernisation. It is doubtful whether, in giving priority to the claim for rehabilitation in the context of the needs of the textile industry with which the appellate tribunal was concerned, it really intended that rehabilitation should be claimed by every industry on theoretical considerations whether or not the said claim was justified by its actual or practical need for rehabilitation.

In substance the argument is that the Full Bench of the Labour Appellate Tribunal evolved its formula in order that labour may get a reasonable share in the available surplus and may thereby receive assistance in filling up the gap between its actual wage and the living wage which it looks forward to receive in due course; and if it is found that, in working out the items which are treated as prior charges, in a majority of cases the formula leaves no available surplus, then its main object is frustrated and that is the justification for revising it and readjusting its priorities.

In support of this view reliance has also been placed on the recommendations of the Committee on 'Profit-sharing'. This Committee had been appointed in 1948 to advise the Government of India "on the principles to be followed for the determination of (a) fair wages to labour, (b) fair return to capital employed in the industry, (c) reasonable reserves for the maintenance and expansion of the undertaking, and (d) labour's share of the surplus profits, calculated on a sliding scale normally varying with production, after provision has been made for (b) and (c) above". The Committee viewed its problem from three important angles, viz., "profit-sharing as an incentive to production, profit-sharing as a method of securing industrial peace, and profit-sharing as a step in the participation of labour in management". The Committee recognised that putting back profits into the industry is one of the most useful forms of capital investment and this should be encouraged and it recommended that a figure of 20% for reserves should be generally aimed at, though it considered that, as a first charge, 10% of the net profits should be compulsorily set aside for reserves, leaving it to the good sense of the management to allocate the balance or more out of their own share of surplus profits. In regard to the labour's share in the surplus profits, the Committee stated that, having due regard to the conditions prevailing in the industry selected for an experiment in profit-sharing, it had come to the conclusion that labour's share should be 50% of the surplus profits of the undertakings. It is a matter of common knowledge that so far Government have not thought it desirable, expedient or possible to legislate in this matter in the light of the recommendations made by this Committee; but it is suggested that these recommendations afford a rational basis for reconstructing the formula.

It may be conceded that there is some force in some of the arguments urged in support of the plea that the formula should be revised and its priorities should be readjusted and redefined; but, on the other hand, we cannot ignore the fact that on the whole the formula has worked satisfactorily in a large number of industries all over the country. Except for a few cases, particularly in Bombay, where some of the tribunals have taken the view that, in its rigid form, the formula has become unworkable from the point of view of labour, in a majority of cases industrial disputes arising between employers and their workmen in regard to bonus have been settled by tribunals on the basis of this formula; and it would not be unreasonable or inaccurate to say that by and large labour's claim for bonus has been fairly and satisfactorily dealt with. The main source of contest in the working of the formula centres round the industry's claim for rehabilitation; but, as we shall presently point out, if this claim is carefully scrutinised and examined in the light of evidence which the employer has to produce in support of his claim, even the settlement of this item would, as it is intended to, invest the tribunal with sufficient discretion to make the working of the formula elastic enough to meet its two-fold object of doing justice both to industry and labour.

It is true that in the working of the formula employers sometimes make an attempt to add items to the list of prior claims. In The State of Mysore v. The Workers of Kolar Gold Mines ([1959] S.C.R. 895), it was urged before this Court by the industry that it was a wasting industry and as such it needed special consideration. The contention was that for the prosperity and longevity of the industry a special provision for the prospecting of new ore has to be made and that should be added as an additional item in the list of prior charges. This argument was, however, rejected and it was

held that the special features of the industry would be taken into account in determining the amount which could be reasonably claimed under rehabilitation. This decision shows the reluctance of this court to vary or add to the formula which on the whole has so far worked fairly satisfactorily.

The theory that the whole of the rehabilitation charges need not come out of the trading profits of the industry does not appear to be generally accepted. As has been observed by Paula himself : "In the past the accepted principle has been that the main object of providing for the depreciation of wasting assets is to recoup the original capital invested in the purchase of such assets. As part of the capital of the concern has been invested in the purchase of these assets, therefore, when their working life comes to an end, the earning capacity of these assets cases. Thus they will become valueless for the purposes of the business, and the original capital sunk in their acquisition, less any scrap value, will have been lost. Hence, in order to keep the original capital of a business intact, if any part thereof is invested in the purchase of wasting assets, revenue must be held back by means of depreciation charges to profit and loss account, in order to 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" (F. R. M. de Paula's Principles of Auditing', 1957, p. 136). It is also stated by the same author that "in all cases where one of the direct causes of earning revenue is gradually to consume fixed assets of wasting nature, the depreciation of such assets should be provided for out of revenue" (Ibid, p. 138). It is true that the author recognises that "owing to the very considerable increase in the price level since the termination of the 1939-45 war, industry is finding its original money capital insufficient for its needs. Thus the cost of replacement of fixed assets has greatly increased and in addition, further working capital is required to finance a given volume of production. Many economists, industrialists, and accountants contend that provision should be made, in arriving at profits, for this increased capital requirement". Having noticed this view the author adds that "at the time of writing this matter is still being debated and final decisions have not yet been reached", and he concludes that "until a final solution of this complex problem is reached it would be inadvisable for the auditor to act on any principle other than that recommended by the Institute" ((F. R. M. de Paula's Principles of Auditing', 1957, p. 80); and that principle appears to be that depreciation should be provided for out of revenue. Besides, it must be borne in mind that, in adjusting the claims of industry and labour to share in the profits on a notional basis, it would be difficult to repel the claim of the industry that a provision should be made for the rehabilitation of its plant and machinery from the trading profits. On principle the guaranteed continuance of the industry is as much for the benefit of the employer as for that of labour; and so reasonable provision made in that behalf must be regarded as justified.

The recommendations made by the Committee on 'Profit-sharing' cannot be of much assistance because they raise questions of policy and principle which Legislature can more appropriately consider. If the Legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis it can step in and legislate in that behalf. It may also be possible to have the question comprehensively considered by a high-powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and all bodies of workmen. The plea for the revision of the formula raises an issue which affects all industries; and before any change is made in it, all industries and their workmen would have to be heard and their pleas carefully considered. It is obvious that while dealing with the present group of appeals it would be difficult, unreasonable and inexpedient to attempt such a task. That is why we think that labour's claim for bonus should be decided by tribunals on the basis of the formula without attempting to revise it.

Whilst we are not prepared to accede to the argument that the formula should be revised, we wish to

emphasise that the formula is elastic enough to meet reasonably the claims of the industry and labour for fairplay and justice. In its broad features it recognises the claims of the industry and tabulates them under different items as prior charges, and then provides for the distribution of available surplus between the labour, the industry and the shareholders. The items specified in the formula have to be worked out notionally on theoretical grounds; in determining the content of each one of the items it is therefore essential to scrutinise and weigh carefully all the relevant and material facts. If the content of each item is determination objectively in the light of all relevant and material facts, the tribunals would generally find it possible to make reasonable adjustments between the rival claims and provide for a fair distribution of the available surplus. In this sense it is necessary to treat the formula as elastic and not rigid in working out detailed calculations under it.

We have no doubt that if the industry and labour genuinely desire to settle the disputes as to bonus without the intervention of the conciliator or the adjudicator, the formula would help them to arrive at a reasonable settlement. If the employer does not make an unduly inflated claim under the items which safeguard industry's interests, and if workmen do not make an exaggerated demand for bonus, it would normally not be beyond the co-operative effort of the parties to arrive at a reasonable figure which should be paid to labour by way of bonus from year to year. It is unnecessary to emphasise that industrial disputes settled amicably are in the interest of both capital and labour. Amicable settlements of such disputes lead to peace, harmony and co-operation between capital and labour and that invariably helps more production which is a matter of great national importance at present.

But unfortunately, in many cases, both the industry and labour do not appear to be too keen on settling these disputes amicably, with the result that claims for bonus give rise to disputes year after year and inevitably the machinery under the Industrial Disputes Act is set in motion. Conciliation efforts are made but they do not succeed; then reference is made under section 10 of the Act and the dispute is taken before the tribunal; since both the parties are not in a mood to co-operate with each other, over-statements are made on both sides, allegations are met by counter-allegations and they are sought to be supported by evidence. In such a case the tribunals must examine the rival contentions and scrutinise the evidence adduced by the parties objectively and in a judicial manner. If proper evidence is led and it is judicially weighed, the tribunals would be able to work the formula in a reasonable manner and arrive at a result which would be substantially in conformity with the object underlying the formula. It is obvious that, in making the relevant calculations under the items of prior charges specified in the formula, the tribunals should have a clear idea as to the content of each one of the said prior charges; and so it is necessary to examine carefully this aspect of the matter.

We have already noticed that the formula for awarding bonus to workmen is based on two considerations; first that labour is entitled to claim a share in the trading profits of the industry because it has partially contributed to the same; and second that labour is entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up. The concept of labour's contribution to the profits of the industry has reference to the contribution made by the employer and the workmen taken together as a class; and so it would not be relevant to inquire which section of labour has contributed to what share of the profits. The broad idea underlying this concept is that the capital invested by the employer and labour contributed by workmen jointly produce the profits of an industry. This does not necessarily mean that, in the industry in question, labour must actually manufacture or produce goods, though, in the case of manufacture or production of goods contribution of labour is patent and obvious. In the Burma-Shell Oil Storage and Distributing Co. of India, Ltd. v. Their Workmen ([1953] II L.L.J. 246) the Labour Appellate Tribunal rejected the employers' claim that, since workmen employed by them did

not manufacture or produce any goods but merely assisted them in the distribution of oil, they were not entitled to claim any bonus under the formula. "It is wrong to say", observed the Labour Appellate Tribunal, "that because the employees of these oil companies merely market the oil they have not earned the right to any bonus". It was also pointed out that "the workmen had to perform duties of various intensity for marketing an article of public utility, and in that sense they contribute to production according to the concept of economists". So were the clerks held entitled to bonus for their duties in the general business of the concern though they had nothing to do with the physical act of marketing the commodity. It was also emphasised that the other object of granting the bonus was to help the workmen to fill up the gap between their actual wages and the living wage. Thus in dealing with the claim for bonus made by workmen the two-fold basis of the formula must always be kept in mind.

The working of the formula begins with the figure of gross profits taken from the profit and loss account which are arrived at after payment of wages and dearness allowance to the employees and other items of expenditure. As a general rule the amount of gross profits thus ascertained is accepted without submitting the statement of the profit and loss account to a close scrutiny. If, however, it appears that entries have been made on the debit side deliberately and mala fide to reduce the amount of gross profits, it would be open to the tribunal to examine the question and if it is satisfied that the impugned entries have been made mala fide it may disallow them. This principle has been recognised by the Labour Appellate Tribunal when it observed, for instance, in M/s. J. K. Cotton Manufacturers Ltd., Kanpur v. Their Workmen ([1954] L.A.C. 716, 745 (Also vide [1952] L.A.C. 420, 421) that "if managing agents deliberately divert profits to the selling agents with a view to deprive labour of their bonus and pay commission to the selling agents at high rates then certainly the matter must be taken into consideration in the determination of available surplus balance". It would likewise be open to the parties to claim the exclusion of items either on the credit or on the debit side on the ground that the impugned items are wholly extraneous and entirely unrelated to the trading profits of the year. In considering such a plea the tribunal must resist the temptation of dissecting the balance-sheet too minutely or of attempting to reconstruct it in any manner. It is only glaring cases where the impugned item may be patently and obviously extraneous that a plea for its exclusion should be entertained. Where the employer makes profits in the course of carrying on his trade or business, it would be unreasonable to inquire whether each one of the items of the said profit is related to the contribution made by labour. In such matters the tribunal must take an overall, practical and commonsense view. Thus it may be stated that as a rule the gross profits appearing at the foot of the statement of the profit and loss account should be taken as the basic figure while working out the formula.

In working out the formula the other important fact which should not be ignored is that the formula proceeds to deal with the labour's claim for bonus on the basis that the relevant year for which bonus is claimed is a self-sufficient unit and the appropriate accounts have to be made on the notional basis in respect of the said year. It is substantially because of this basic assumption that if an employer receives during the bonus year a refund with respect to the excess profits tax paid by him in a previous year the amount of refund is not included on the credit side. In Model Mills etc. Textile Mills, Nagpur v. The Rashtriya Mill Mazdoor Sangh ([1955] 1 L.L.J. 534, 540) the Labour Appellate Tribunal observed that according to the formula, the income-tax is to be deducted as a prior charge on trading results of the year just as much as the bonus is to be ascertained upon the trading results of the year. The concession made by the income-tax authorities in making a refund of the excess profits tax already paid by the employer is intended to aid a concern on account of past losses and so it has nothing to do with the formula. The same principle governs cases where owing to a loss incurred in the previous year or years the employer is entitled to claim allowance for

adjustment under section 24(2) of the Income-tax Act during the bonus year; and so it is held that the allowance for adjustment which the employer claims cannot be taken into account in determining the amount of income-tax payable on the profits of the bonus year under the formula. In Bennett Coleman and Co., Ltd. v. Their Workmen ([1955] II L.L.J. 60) the Labour Appellate Tribunal rejected the contention raised by labour that since under section 24(2) the employer would not be liable to pay tax during the bonus year no provision for payment of tax should be made in working out the formula. The Labour Appellate Tribunal pointed out that the fact that the employer was not required to pay tax during the bonus year was the result of the adjustment of the previous year's unabsorbed depreciation and losses against current year's profit, and that had no relevance in determining the available surplus from the trading profits of the bonus year. The same view has been taken in several other decisions to which the Labour Appellate Tribunal has referred. In our opinion, once it is realised that in working out the formula the bonus year is taken as a unit self-sufficient by itself, the decisions of the Labour Appellate Tribunal in regard to the refund of excess profits tax and the adjustment of the previous year's depreciation and losses against the bonus year's profits must be treated as logical and sound.

Having ascertained the amount of gross profits, the first item of deduction relates to depreciation. The propriety of this deduction was not questioned before the Labour Appellate Tribunal which evolved the formula; but the content of the item of depreciation became a matter of controversy subsequent to 1950. After 1948, section 10(2)(vi) of the Income-tax Act has provided for initial and additional depreciation besides the statutory depreciation which was already admissible. In other words, depreciation allowed under the Income-tax Act now consists of what may be called the statutory normal depreciation calculated under r. 8 as well as initial depreciation and additional depreciation. The allowance of these depreciations is an exception to the general rule that the income has to be taxed without reference to the diminution in the value of the capital. Under the amended provision of section 10(2)(vi) of the Income-tax Act the employers began to claim that from the gross profits all the depreciations admissible under the Income-tax Act should be debited; and this claim was upheld by some tribunals and rejected by others. This conflict of decisions led to confusion; and so a Full Bench of the Labour Appellate Tribunal was constituted to decide this and other points in the case of the U.P. Electric Supply Co., Ltd., etc. Electricity Supply Undertakings v. Their Workmen ([1955] II L.L.J. 431). The Full Bench held that "the depreciation which should be deducted from the gross profits in working the formula is annual depreciation allowable under the provisions of the Income-tax Act including the multiple shift depreciation; it also held that the initial depreciation and additional depreciation which were also allowed under the Income-tax Act are abnormal additions to the income-tax depreciation designed to meet particular contingencies and for a limited period; and so it would not be fair to the workmen that these two depreciation should be rated as prior charges before the available surplus is ascertained." Apparently some doubt arose as to what exactly was allowed to be deducted under this Full Bench decision; and two of the members of the Full Bench took occasion to clarify the position in Surat Electricity Co.'s Staff Union v. Surat Electricity Co., Ltd. ([1957] II L.L.J. 648). This decision shows that what the Full Bench intended to treat as depreciation for the purpose of the formula was a notional amount of normal depreciation; in order to avoid any future doubt or confusion, the judgment in the case has set out the manner in which this notional normal depreciation has to be worked out. Since this decision was pronounced it is the notional normal depreciation that is deducted from the gross profits in working the formula. It seems to us that the view taken by the Full Bench is wholly consistent with the basic idea of social justice on which the original formula is founded. The relevant provisions of the Income-tax Act allowing further depreciation are based on considerations which have no relevance to the original formula; indeed, as the Full Bench has pointed out, if the said two items of

depreciations are allowed to be deducted from the gross profits it would in a majority of cases defeat the object of the formula itself. We would accordingly hold that the depreciation which has to be deducted from the gross profits should be the notional normal depreciation as explained in the case of Surat Electric Co., Ltd. ([1957] II L.L.J. 648).

The balance obtained after deducting depreciation from the gross profits is then taken as the amount on which calculations have to be made about the income-tax payable for the bonus year. This item gives rise to a controversy between the parties. It is urged for the employers that in determining the amount payable by way of income-tax on this balance the tribunal should not take into consideration allowances which are made under the relevant provisions of the Income-tax Act. There is no doubt that in taxing the employer for the bonus year the Income-tax Act would make allowance not only for the normal depreciation but also for the initial and additional depreciations; but the argument is that the income-tax should be determined notionally without reference to the said allowances. In support of this argument it is further urged that though the employer may obtain credit for the two further depreciations for some years, later on the said allowances will not be made and his liability to pay tax would be correspondingly increased. It is but fair, so the argument runs, that the employer should be allowed to create a fund of income-tax reserve from which he would be able to bear his tax liability in future as and when it is bound to increase.

On the other hand it is contended on behalf of workmen that while determining the amount of tax payable for the bonus year the tribunal cannot ignore the concession given to the employer by the Income-tax Act by making the allowance of two further depreciations. What the employer claims is not the amount of tax payable during the bonus year but much more in addition in order to build up a reserve and this notion of building up a tax reserve for meeting future, though certain, increased tax liability is foreign to the basic idea of the formula. For making calculations under the formula the bonus year is taken as a unit and all items specified in the formula should be worked out on that basis. That is why the refund of the excess profits tax received in the bonus year is excluded from consideration and the right of the employer to adjust his previous year's losses and depreciation against the trading profits of the bonus year is likewise ignored. So too the fact that the employer may have to pay increased taxes in future years must be treated as irrelevant. That in brief is the case for workmen.

In our opinion, having regard to the basis of the formula and the manner in which the other items of the formula are required to be worked out, it would not be reasonable to allow the employer to claim under the item of income-tax an additional amount is respect of the two further depreciations which are expressly allowed to him under section 10(2)(vi) of the Income-tax Act. It is clear that the amount determined under this item would not represent the actual tax which the income-tax department will recover from the employer. In that sense it would always be a notional amount; but in calculating even this notional amount it would be unfair and unjust to ignore the concessions allowed to the employer by section 10(2)(vi). The creation of a fund of income-tax reserve may conceivably lead to unnecessary complications. Besides, if on principle the further depreciations allowed by the Income-tax Act are treated as inadmissible under the formula and so are excluded from consideration, it would be substantially inconsistent with the object of such exclusion to allow the employer to claim tax in respect of the said amounts of the two depreciations. It is clear that even if the amount of income-tax is determined after taking into account the concession given to the employer by section 10(2)(vi) it would work no hardship to the employer, for the simple reason that in future years when these concessions cease to be operative and his liability to pay the tax correspondingly increases, he would be entitled to claim the amount of income-tax which would then be payable by him. This method of calculating income-tax is thus fair to both the parties and it

has besides the merit of being consistent with the basic character of the formula. It would be relevant in this connection to remember that, though in most of the industries workmen continue to be employed from year to year, notionally and on principle, the claim for bonus for a particular year is made on behalf of workmen employed during the said year; and in that sense, the relevant calculations have to be made with the bonus year as a unit. That is why considerations of future tax liability of the employer are foreign to the calculation under the formula. We would, therefore, hold that in calculating the amount of tax payable for the bonus year the tribunals should not take into account the concessions given by the Income-tax Act to the employers under the two more depreciations allowed under section 10(2)(vi) of the Income-tax Act.

This point has been considered by this Court in Sree Meenakshi Mills, Ltd. v. Their Workmen ([1958] S.C.R. 878) where it has upheld that view taken by the Full Bench of the Labour Appellate Tribunal in the case of the U.P. Electric Co., Ltd., etc., Electricity Supply Undertakings ([1955] II L.L.J. 431) and has directed that in determining the amount of income-tax payable during the bonus year, the further depreciations permissible under the Income-tax Act should be taken into account. We would only like to add that in that case this Court had no occasion to say what exactly the normal depreciation meant; but it is clear that the normal depreciation mentioned in the judgment was not intended to mean anything other than the notional normal depreciation as explained by the Labour Appellate Tribunal in the case of the Surat Electric Co., Ltd. ([1957] II L.L.J. 648). The amount of income-tax thus determined has then to be deducted as a prior charge.

The next step in the working of the formula relates to the deduction of an appropriate amount in respect of the return on paid-up capital as well as working capital. We have already noticed that the formula provides generally for the payment of interest at 6% per annum on the paid-up capital and at 2% on working capital. Subsequent decisions show that the tribunals do not regard the said rates as inflexible and they have suitably modified them in the light of the relevant circumstances in each case. We think that this is a correct approach and that it is necessary to fix the rates of interest on the two items of paid-up capital and working capital according to the circumstances of each case. In this connection it may be added that ordinarily industrial tribunals award interest at the rate of 6% per annum on paid-up capital.

In Workmen of Assam Co., Ltd. v. Assam Co., Ltd. ([1959] S.C.R. 327) this Court held that interest allowed by the tribunal at 7% on paid-up capital and confirmed by the Labour Appellate Tribunal was justified because "an industry connected with agriculture like the tea industry is exposed to greater risks than any other industry such as weather, pests in the plants and gradual deterioration of the soil". On the other hand, in Ruston and Hornsby (India) Ltd. v. Their Workmen ([1955] 1 L.L.J. 73) the Labour Appellate Tribunal allowed only 4% return on the part of paid-up capital represented by bonus shares for the year in which such shares were issued and observed that "for subsequent years no distinction between it and other paid-up capital represented by paid-up shares should be made". Similarly, in regard to reserves or depreciation used as working capital interest has been allowed either at 4% or at 3% or even at 2% according Association, Bombay v. The Rashtriya Mill Mazdoor Sangh ([1952] 1 L.L.J. 518, 522) the Labour Appellate Tribunal has observed that "as we have said before, there is no fixed rule as to the rates of such return (on capital) and each case must depend on its individual facts. We have in appropriate cases given as high as 4% but in case of the mills the Full Bench has considered that the equivalent of 2% would be reasonable and we propose to retain it at that level for the present". In Tea and Coffee Workers Union v. Brooke Bond (India) (Private) Ltd. ([1958] 1 L.L.J. 645). The Industrial Tribunal has considered the previous decisions on the question of the return on working capital and held that, in the case before it, it would be an adequate return on the working capital if 3% interest is allowed because there were no special

reasons existing for allowing a higher rate.

In dealing with this aspect of the matter it is relevant to point out that no distinction has been made by tribunals between reserves used as working capital and depreciation fund similarly used. In the Mill Owners Association Bombay v. The Rashtriya Mill Mazdoor Sangh ([1952] 1 L.L.J. 518, 522) (page 523) when labour objected to the depreciation fund earning any return even if it was utilised in or about the business of the year, the Labour Appellate Tribunal overruled the objection and observed that "no essential difference could be made between the depreciation fund any other fund belonging to the company which could be invested so as to earn a return". It is thus clear that what is material is not the origin of the fund. It is the fact that the fund in the hands of the concern has been used as working capital that justifies the claim for an adequate return on it. We think it is commonsense that if the concern utilises liquid funds available in its hands for the purpose of meeting its working expenses rather than borrow the necessary amounts it is entitled to claim some reasonable return on the funds thus used. It is of course necessary that the employer must show that the amount under the depreciation fund was in fact available and that it has actually been used as working capital during the relevant year. What return should be allowed on such funds must inevitably be a question of fact to be decided by the tribunal in its discretion in each case in the light of the relevant circumstances. It would thus be noticed that in working out these two items under the formula there is no fixed or rigid rule about the rate of interest which can be claimed and awarded. It is also clear that if any fund is used by the employer for the purpose of expanding his business he is not entitled to claim any return on such fund under those items. In the case of the U.P. Electric Supply Co., Ltd. etc. Electricity Supply Undertakings ([1955] II L.L.J. 431) the Full Bench of the Labour Appellate Tribunal held that "considering all the factors presented to them they did not think that a case had been made out for giving a special prior charge in the shape of return on the reserves utilised for expansion". When the amounts awardable to the employer under these two items are determined they have to be treated as prior charges in the calculation of available surplus under the formula.

The original formula referred to replacement, rehabilitation and modernisation of the plant and machinery. Soon after the formula was evolved a dispute arose as to whether the industry was entitled to claim rehabilitation for its buildings as well and it was held that "a claim for rehabilitation for buildings had to be treated as a prior charge just like the claim for the rehabilitation of plant and machinery" ([1952] 1 L.L.J. 518, 522). This position is not disputed before us, and we think rightly.

That takes us to the item of rehabilitation and it is this item which poses a very difficult problem. We have already noticed that the object of providing depreciation of wasting assets in commercial accounting is to recoup the original capital invested in the purchase of such assets; but the amount of depreciation which is allowed under the formula can hardly cover the probable cost of replacement. That is why the formula has recognised the industry's claim for rehabilitation in addition to the admissible depreciation. Since the Second World War prices of industrial plant and machinery have registered a continuous upward rise and its inevitable consequence has been a proportionate rise in the claim for rehabilitation. In considering the claim for rehabilitation it is first necessary to divide the blocks into plant and machinery on the one hand and other assets like buildings, roads, railway-sidings, etc., on the other. Then the cost of these separate blocks has to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the plant or machinery would need replacement; and it is the probable price of such replacement on a future date that ultimately decides the amount to which the employer is entitled by way of replacement cost. This problem can be considered

itemwise where the industry does not own too many factories and itemwise study of the plant and machinery is reasonably possible; but if the industry owns several factories and the number of plants and machines is very large it would be difficult to make a study of the replacement costs itemwise, and in such a case the study has to be blockwise. In either case what the tribunal has to estimate is the probable cost of replacement of plant and machinery at the time when such replacement would become due. It would be clear that the decision of this question would inevitably depend upon several uncertain factors. The estimate about the probable life of the plant and machinery is itself to some extent a matter of guess work and any anticipation, however intelligently made, about the probable trend of prices during the intervening period would be nothing but a guess. That is how, in the determination of this problem, several imponderables face the tribunals.

One of the points which raises a controversy in this connection is : What level of prices should be tribunal consider in making its calculations about the probable cost of replacement ? Would it be the price level prevailing during the bonus year or that prevailing at the time when the tribunal holds its enquiry ? Prima facie it may appear that it is the price level prevailing in the bonus year that should be treated as relevant; but if the relevance of the evidence about the price level is limited only to the bonus year, it may hinder rather than help the process of a satisfactory determination of the probable cost of replacement. What the tribunal has to do in determining such cost is to project the price level into the future and this can be more satisfactorily done if the price level which has to be projected into the future is determined not only in the light of the prices prevailing during the bonus year but also in the light of subsequent price levels. It seems to us that in order to enable the tribunal to make an estimate in this matter as near actualities or realities as possible it is necessary that the tribunal should be given full discretion to admit all relevant evidence about the trend in price levels. The price level during the bonus year would no doubt be admissible; but that alone should not be taken as the basis for decision. That is the view which the tribunals have taken in a majority of cases in dealing with the question of rehabilitation and we do not think that there is any justification for disturbing the usual practice in that behalf.

The problem of determining the probable cost of replacement itself is very difficult; but the difficulty is immeasurably increased when it is remembered that the claim for rehabilitation covers not only cases of replacement pure and simple but of rehabilitation and modernisation. In the context rehabilitation is distinguished from ordinary repairs which go into the working expenses of the industry. It is also distinguished from replacement. It is quite conceivable that certain parts of machines which constitute a block may need rehabilitation though the block itself can carry on for a number of years; and this process of rehabilitation is in a sense a continual process. Unlike replacement, its date cannot always be fixed or anticipated. So with modernisation; and all these three items are included in the claim for rehabilitation. That is why we think it is necessary that the tribunals should exercise their discretion in admitting all relevant evidence which would enable them to determine this vexed question satisfactorily.

At this stage it is relevant to remember that the claim under this item is confined to rehabilitation, replacement and modernisation. It is common ground that expansion of the plant and machinery is not included in this item; but in several cases it is not easy to distinguish between modernisation of the plant and machinery and its expansion. It is urged that an expert can, if he so chooses, make an attempt to include expansion within what he may describe as modernisation by clever use of technical words and details, and that it is precisely this aspect of the matter which has to be carefully examined by the tribunal. The industry sometimes claims that a plant may become obsolescent because it has become out of date and has to be substituted by a new modern plant. Is the introduction of the new modern plant in such circumstances an item of expansion or mere

modernisation ? It is difficult to lay down any general tests which would govern the decision of this question. If it appears fairly on the evidence that the introduction of the modern plant or machine is in substance an item of expansion of the industry, expenses incurred in that behalf have to be excluded. On the other hand, if the employer had to introduce the new plant essentially because the use of the old plant - though capable to giving service - was uneconomic and otherwise wholly inexpedient, it may be a case of modernisation. Similarly, if by the introduction of a modern plant or machine the production capacity of the industry has appreciably increased, it would be relevant for the tribunal to consider in an appropriate case whether it would be possible to apportion expenses on the basis that it is a case of partial modernisation and partial expansion. If, however, the increased production is not of a significant order it may be regarded as incidental to replacement or modernisation and the question of apportionment may not arise. We have set out these considerations in order to emphasise the fact that in dealing with the problem of rehabilitation the tribunal must carefully examine the evidence and consider the employer's claim in all its aspects before determining the amount which should be allowed by way of rehabilitation as a prior charge in the relevant year.

The decision on the question of the probable cost of rehabilitation is always reached by adopting a suitable multiplier. This multiplier is based on the ratio between the cost price of the plant and machinery and the probable price which may have to be paid for its rehabilitation, replacement or modernisation. Since there has been a continuous rise in the prices of industrial plant and machinery the older the plant which needs rehabilitation the higher is the multiplier. That is why there is always a competition between industry and workmen on this point. Industry is sometimes tempted to keep its old pre-1939 block alive with a view to claim a higher multiplier which gives it a larger amount of rehabilitation expenditure; whereas workmen urge that the old pre-1939 block has been nominally kept alive as a device and so press for a lower multiplier which would reduce the claim for rehabilitation. Once a proper multiplier is adopted in respect of each one of the blocks the first step in determining the probable cost of rehabilitation can be easily taken. It then becomes a matter of mere arithmetical calculation.

At this stage the divisor steps in. The total amount required for rehabilitation which is determined by the application of a suitable multiplier in respect of each block has to be divided by a suitable divisor in respect of each block in order to ascertain the annual requirement of the employer in that behalf year by year. In the case of the divisor the employer seeks for a lower divisor whereas workmen claim a higher divisor and this contest has to be decided by the tribunal by reaching a fair conclusion on the evidence before it about the probable future life of the block in question. It would thus be noticed that the adoption of a suitable multiplier and divisor plays a very important part in the decision of the vexed question about the employer's rehabilitation claim.

Before actually awarding an appropriate amount in respect of rehabilitation for the bonus year certain deductions have to be made. The first deduction is made on account of the breakdown value of the plant and machinery which is usually calculated at the rate of 5% of the cost price of the block in question. Then the depreciation and general liquid reserves available to the employer are deducted. The reserves which have already been reasonably earmarked for specific purposes of the industry are, however, not taken into account in this connection. Last of all the rehabilitation amount which may have been allowed to the employer in previous years would also have to be deducted if it appears that the amount was available at the time when it was awarded in the past and that it had not been used for rehabilitation purposes in the meanwhile. These are the broad features of the steps which have to be taken in deciding the employer's claim for rehabilitation under the working of the formula.

It would thus be clear that the decision of this major item in the working of the formula presents many difficulties; and in the last analysis its decision depends upon several hypothetical and empirical considerations. It is, therefore, not surprising that in the case of Metal Box Co. of India, Ltd. v. Its Workmen ([1952] L.A.C. 315, 321) the Labour Appellate Tribunal has observed that "It is unfortunately too true that all our calculations as to rehabilitation may be disproved by subsequent events; it is impossible to say what the trend of world prices would be in the next fifteen years or which circumstances will intervene before that period to upset such calculations one way or the other, and no calculations of this kind are capable of mathematical accuracy. We have to take a commonsense view of these matters and make an allowance for rehabilitation to the best of our ability and in accordance with our formula". It has also been observed by the Labour Appellate Tribunal that if an appropriate multiplier and divisor are determined "they are generally used because the tribunals take the view that the reconsideration of the said multiplier and divisor should not be hastily undertaken and could be justified only on the basis of a substantial change of a stable character extending or likely to extend over a sufficient number of years so as to make a definite and appreciable difference in the cost of replacement". (Vide : The Mill Owners Association Bombay v. The Rashtriya Mill Mazdoor Sangh ([1952] 1 L.L.J. 518)).

In dealing with the employer's claim for rehabilitation tribunals have always placed the onus of proof on the employer. He has to prove the price of the plant and machinery, its age, the period during which it requires replacement, the cost of replacement, the amount standing in the depreciation and reserve fund, and to what extent the funds at his disposal would meet the cost of replacement. If the employer fails to lead satisfactory evidence on these points tribunals have on occasions totally rejected his claim for rehabilitation. (Vide : Ganesh Flour Mills Co. Ltd., Kanpur v. Ganesh Flour Mills Staff Union, Kanpur ([1952] L.C. 172); Bombay Gas Co. Ltd. v. Their Workmen ([1955] II L.L.J. 152); Dharangadhra Chemical Works Ltd. v. Its Workmen ([1956] 1 L.L.J. 475)). If the tribunals are satisfied that the employer is deliberately and without a sufficient cause not taking any steps to rehabilitate, replace or modernise his machinery even though an appropriate allowance is made in that behalf from year to year, they may take into account this conduct in determining the extent of such allowance in the bonus year in question. Similarly if it appears that the employer has deliberately or mala fide refrained from rehabilitating or replacing his old machinery with a view to claim a higher multiplier in calculating the rehabilitating amount, the tribunals may take his conduct into account in determining the actual allowance of rehabilitation to him.

The main difficulty in deciding questions about rehabilitation arises from the fact that satisfactory evidence is not always placed before the tribunals and it is urged that the evidence given by the employers' experts is interested and the workmen with their limited resources are not able to test the said evidence by adequate or effective cross-examination. In such a case the tribunal may, if it so desires and if it is possible, secure the assistance of assessors (vide section 38 of the Industrial Disputes Act). It is therefore necessary that the tribunal should require the employer to give clear and satisfactory evidence about all the relevant facts on which it can make the requisite estimate. The questions which the tribunal has to consider under this item are essentially questions of fact and its final decision on them is bound to be hypothetical, since it would be based on a fair evaluation of several circumstances which are by no means certain and which cannot be predicated with any amount of precision or even definiteness. That is why it is of the utmost importance that all relevant and material evidence should be adduced by the employer and it should be properly tested by cross-examination. When that is done the tribunal must do its best to consider the said evidence objectively and reach its final decision in a judicial manner.

Once the amount of rehabilitation is thus determined the available surplus for the bonus year is ascertained and the final stage is reached when the tribunal has to give directions for the distribution of the said available surplus. It is not seriously disputed that three parties are entitled to claim a share in this available surplus; labour claims bonus from it, the industry claims a share for the purpose of its expansion and other needs, and share-holders claim a share by way of additional return on the capital invested by them. In the case of the Mill Owners Association, Bombay ([1952] 1 L.L.J. 518) where the formula was evolved, out of the available surplus of Rs. 2.61 crores 2.16 crores was distributed by way of bonus leaving a balance of 0.45 crores with the industry. In the Trichinopoly Mills Ltd. v. National Cotton Mills Workers' Union ([1953] II L.L.J. 361) the available surplus was found to be Rs. 34,660 and out of it Rs. 30,000 was ordered to be distributed as bonus to the workmen. These two and other similar instances, however, cannot be pressed into service for the purpose of evolving any general rule as to the ratio or proportion in which the available surplus should be distributed. The ratio of distribution would obviously depend upon several facts : What are the wages paid to the workmen and what is the extent of the gap between the same and a living wage ? Has the employer set apart any gratuity fund ? If yes, what is the amount that should be allowed for the bonus year ? What is the extent of the available surplus ? What are the dividends actually paid by the employer and what are the probabilities of the industry entering upon an immediate programme of expansion ? What dividends are usually paid by comparable concerns ? What is the general financial position of the employer ? Has the employer to meet any urgent liability such as redemption of debenture bonds ? These and similar considerations will naturally determine the actual mode of distribution of the available surplus. In this connection labour's claim to fill up the gap between the wage actually paid to it and the living wage has an important bearing on the decision of this point. Industry's claim for paying additional return on capital and for making additional provision for expansion would also have to be considered. The fact that the employer would be entitled to a rebate of income-tax on the amount of bonus paid to his workmen has to be taken into account and in many cases it plays a significant part in the final distribution. Therefore, in our opinion, once the available surplus is determined, the tribunal should, in the light of all relevant circumstances, proceed to make an award directing the payment of a fair and just amount to labour byway of bonus. If the formula is thus worked reasonably it would in a large majority of cases succeed in achieving its principal object of doing justice both to labour and industry.

Before we part with the question of working the formula it is necessary to observe that the practice adopted by some tribunals in giving the amount of bonus a priority in the calculations is not justified. Logically it is only after all the prior charges have been determined and deducted from the gross profits that available surplus can be ascertained; and it is only after the available surplus is ascertained that the question of awarding bonus can be considered. Some tribunals seem to work out notionally the amount of bonus which they think can be awarded and place that amount higher up in the process of making calculations before the income-tax payable is determined. The inevitable consequence of this procedure is to make the amount of tax proportionately less. We wish to make it clear that this procedure should not be followed. As we have already pointed out, in directing the distribution of the available surplus the tribunal has to take into account the rebate of income-tax to which the employer is entitled on the amount of bonus paid to his workmen but that on principle is different from placing the amount of bonus immediately after depreciation in the working of the formula.

It has been urged before us by the respondents that the amount of rehabilitation as well as the amount of depreciation should be deducted from the gross profits before income-tax payable is ascertained. In this connection reliance is placed on the fact that in its judgment which evolved the formula the Labour Appellate Tribunal has at one place described rehabilitation as the first charge in

priorities. Having regard to the context in which the said statement is made it is clear that all that the Labour Appellate Tribunal wanted to emphasise was that the textile industry with which it was directly concerned in the said case needed rehabilitation very urgently. The final calculations made in the judgment give a clear indication as to how the formula has to be worked out. We are, therefore, satisfied that rehabilitation cannot be given the high priority claimed for it by the respondents.

We must now consider whether the tribunal was right in directing that overtime payment should be included in the calculation of the bonus which it has directed the appellant to pay. Mr. Kolah contends that the direction to include overtime wages is contrary to the usual practice followed by industrial tribunals and it is also unsound on principle. This dispute arises between the employer and the workmen in this acute form because the total amount of bonus is not determined logically after ascertaining the available surplus. If the said amount is logically determined as indicated by us, then the question as to whether overtime wages should be included or not would really be a matter of dispute between workmen inter se; because once the amount of bonus is determined, how it should be distributed between workmen inter se would cease to be a matter of direct concern to the employer. Therefore we think that there would be no occasion for such a dispute between the employer and his workmen if the tribunals follow the logical method of determining the amount of bonus in the manner indicated by us.

On principle we do not think it would be fair to the workmen as a whole that overtime should be included in calculating the bonus which each workman should receive. Workmen who do overtime get additional payment for such overwork. If in addition to such payment they are allowed to include the said payment in their wages in calculating bonus to which they are entitled, obviously the gap between their actual wage and the living wage would be filled up to a larger extent than in the case of other workmen who do not receive such additional overtime payment. Besides, if the payment of bonus proceeds on the broad consideration that it is due to the workmen for their contribution to the profits it would be unreasonable to make a distinction between workmen and workmen on the ground that some have contributed more to the profit than others; and that is exactly what would follow if overtime workers are allowed to claim a larger amount of bonus than their other colleagues. That is why we think that the tribunal was not justified in directing that the calculations of bonus should be made on the basis that overtime payments constituted a part of the basic wages of the employees.

The next point to consider relates to the return on paid-up capital to which the appellant is entitled. The tribunal has awarded to the appellant return at the rate of 6% on paid-up capital and at 4% on the working capital. The appellant claims a return at a higher rate on paid-up capital whereas the respondents contend that the return should be paid on the paid-up capital at a lower rate. In support of its claim for a higher return the appellant has relied on the fact that it has consistently paid dividends at a reasonably low rate and it did not seek to make undue profits even during the years of war. In this connection Mr. Kolah has invited our attention to a statement, Ex. C-1, showing the percentage of dividend to paid-up capital and invested capital for the eighteen financial years 1936-37 to 1953-54 and he has asked us to contrast the low rates of dividend evidenced by it with dividends paid by other companies as shown by another document Ex. C-12. He has also asked us to take into account the highest and the lowest quotation for the company's shares in the Bombay Stock Exchange during the period 1949-55. On the other hand Mr. Dudhia has urged that during the relevant year the appellant has capitalised Rs. 35.85 lakhs from the reserve fund and 175.45 lakhs from Premium-on-Shares Account by issuing one bonus share for every five shares held by the shareholders; and he argues that the tribunal was in error in allowing 6% on the paid-up capital

during the bonus year. Incidentally Mr. Dudhia also relied, though half-heartedly, on the finding of the tribunal that the appellant had paid an inflated price for the pre-1939 block. It is true that in one place the tribunal has made an observation to this effect; but it is clear that the said observation is inconsistent with its definite finding recorded earlier in the course of its judgment that it was not prepared to hold that the A.C.C. had inflated the capital invested by the merging companies by taking them over in 1936. Therefore this part of Mr. Dudhia's argument is invalid. In our opinion, the question as to what return should be allowed to paid-up capital in a given case must be left to be determined by the tribunal in its discretion having regard to all the relevant facts; and if the tribunal has in its discretion awarded 6% interest on the paid-up capital we see no reason to interfere with its decision. It is clear that no question of principle or law is involved in the matter.

There is one more point which we must consider before we proceed to deal with the facts in the present case. This point relates to the employer's claim to treat the amount in the gratuity fund as a prior charge; and this claim has been allowed by the tribunal. It appears hat in M/s. Metro Motors v. Their Workmen ([1952] II L.L.J. 205) the Labour Appellate Tribunal observed that it was desirable in all cases to create a separate reserve fund for the payment of gratuity and it directed that the modest fund claimed by the employer for the year in question was a proper deduction from its profits. The question which we have to decide is whether the allowance on this account should be treated as a prior charge in making the calculations under the formula. There can be no doubt that, in a sense, the gratuity fund is created for the benefit of workmen and there should be no difficulty in recognising the appellant's claim for the deduction of an appropriate amount on this account; but we think on principle it is desirable that no addition should be made to the list of prior charges recognised by the formula. Even so when the available surplus is determined the tribunal ought to take into account the employer's claim on account of the gratuity fund created for the benefit of his workmen and the amount which the tribunal may regard as a reasonable allowance in that behalf should be definitely borne in mind in finally deciding the amount which should be paid to the workmen by way of bonus. This method will meet the employer's claim adequately without making any addition to the list of priorities specified in the formula. Mr. Dudhia contended that the tribunal should not have allowed Rs. 10 lakhs under this item but we do not think there is any substance in this contention.

Incidentally Mr. Dudhia has pointed out that in dealing with the appellant's claim for a return on working capital the tribunal has made a mistake by including a further sum of 0.66 lakhs as return on investments. Mr. Kolah has conceded that this is a mistake and so the return on the working capital would stand at 26.10 lakhs only.

It is now necessary to consider the evidence of Mr. Tongaonkar and decide the most controversial point of fact in dispute between the parties about the appellant's requirements for rehabilitation. Mr. Tongaonkar holds the Degree of Bachelor of Science of the London University, and he is also a Member of the Institution of Electrical Engineers, London. He joined the appellant in November 1934, but before that he had nearly three years' practical experience in England in various engineering firms; and on his return to India, he had joined the Dinshaw group of cement factories. He continued to work with the said group until its merger with the appellant in 1936, when he was appointed by the appellant. Mr. Tongaonkar is in charge of the department which deals with the construction of new cement factories, modernisation and extension of the existing cement factories, design and manufacture of cement machinery for A.C.C., and major engineering problems of the A.C.C. Since April 1956 he has been appointed the Controller of Planning and Development of the A.C.C. He visits the A.C.C. factories very frequently and claims to be acquainted with the condition of the plant and machinery at all the A.C.C. factories. There is no doubt that Mr. Tongaonkar is

qualified to give evidence on the technical points which are relevant in dealing with the question of rehabilitation. Even so, in appreciating his evidence, it would not be unreasonable to bear in mind the fact that he is an officer employed by the appellant, and as such he is likely to be interested in supporting the claim for rehabilitation which the appellant has decided to make.

According to Mr. Tongaonkar, the average future life of the plant and machinery existing in 1939 would be approximately seven years from 1-8-1954. Similarly, the approximate future life of the three other categories of blocks would be 13, 15 and 20 years respectively. He has stated that in calculating the life of machinery, it is necessary to take into consideration, first the mechanical condition of the machinery, second whether it is efficient or has been rendered obsolete because new machinery of modern design with a considerably better efficiency has come into the market. In other words, the probable useful life of the machinery may be prematurely determined by the emergence of more efficient machinery. In support of this statement he has given some instances where the appellant's plant or machinery had to be changed mainly for the reason that a new corresponding plant or machinery was more efficient and gave more satisfactory results. However, stated generally, in the opinion of the witness, the average life of a cement plant taken as a whole would be 25 years if it is properly maintained.

Mr. Tongaonkar then gave evidence about the rise in prices of plant and machinery and he produced Ex. C-36 which is a statement showing the progressive increase in prices from pre-war days up to 1955-56 of major items of machinery, gear boxes, motors and power plant used in cement factories. He has stated that the said statement had been prepared on the basis of actual quotations which he had in his possession. His evidence shows that between 1951-54 there has been a rise of 11%, whereas between 1954-56 there has been a rise of 7% in the prices of the relevant items of machinery. He then sought to corroborate his evidence on this point by the expenditure actually incurred by the appellant while putting into commission a new cement factory at Sindri in about 1955. The calculations made by him in this behalf show that the cost of construction of a new factory is approximately 4.3 times the cost of construction of similar factory in 1939.

In regard to the life of buildings, Mr. Tongaonkar stated that first-class buildings lived approximately for 40 years provided they are properly maintained and provided they are not in earthquake zone; but he added, that for the main unit of the cement plant it is usual to take the life of buildings at 25 years. He also stated that in many cases the existing buildings have got to be either demolished or considerably modified when the main machinery whose life is 25 years has to be replaced by modern machinery which is of a different design and which would require buildings and foundations of different size and type. Thus, for this special circumstance also, he was not prepared to give the buildings of the appellant an average life longer than 25 years.

In regard to the increase in the cost of constructing buildings, he produced two statements, C-6 and C-14. Ex. C-6 shows the increase in prices of building materials since 1938-1954, whereas Ex. C-14 shows the continually increasing amount of expenditure incurred by the appellant for construction of labour quarters, etc.

It is on this evidence that Mr. Tongaonkar has adopted the respective multipliers and divisors in arriving at the figure of the amount required for rehabilitation. As we have already pointed out, for the pre-1939 block he has taken 4.28 as the multiplier, whereas for the block purchased between 1940-44 he has taken 2.8 as the multiplier. He has explained that the multiplier of 4.28 is really made up of two multipliers. Certain portion of the plant and equipment which is obtained from abroad is estimated at 60% of the total cost and the expenditure on the remaining items is estimated

at 40% of the total cost. The multipliers of these two groups are estimated at 4.8 and 3.5 respectively, and by calculations it has been noticed that the average ratio comes to 4.28. This is the genesis of, and the justification for, the adoption of 4.28 as the multiplier. He has also added that the proportion of 60% and 40% which he had mentioned was based on his experience of building a number of cement factories and of carrying out extension and modernisation of existing cement factories. The multiplier was based, said the witness, on the state of comparative quotations of plant and machinery received in 1939 and quotations received of similar machinery recently. It would thus be clear that in devising the multiplier and divisor, Mr. Tongaonkar has drawn very largely on his experience and has drawn inferences which he thought were reasonable. Besides in making the relevant calculations he has not dealt with the plant and machinery and the buildings and other assets separately, but has lumped them together under the respective blocks.

The approximate cost of the merging companies of their assets as on July 31, 1936, was 5.73 crores of rupees. Ex. C-3 which is a certificate issued by the Chartered Accountants shows that "according to the blocks, the original cost of the block of fixed assets excluding goodwill and purchase of rights and land as at 31st July, 1954, of the appellant under the groups of years of acquisition", amounted to Rs. 19,41,38,100. Similarly, Ex. C-28 which is also a certificate issued by the Chartered Accountants, shows that the original cost of such portion of fixed assets excluding goodwill and purchase of rights and lands as have been discarded, scrapped or sold as on July 31, 1954, of the appellant companies under the groups of years of acquisition noted in the certificate, amounted to Rs. 1,70,91,296. The figures supplied by these two certificates are mentioned in cols. 2 and 3 respectively in Ex. C-2. Under the method adopted by Mr. Tongaonkar the cost of discards is shown in the respective years when the portions of blocks were discarded; and the amounts spent on rehabilitation from year to year have gone with the blocks of the said respective years shown in col. 2. The amount of rehabilitation has thus been calculated by the adoption of the multiplier and divisor selected by Mr. Tongaonkar. The question which calls for our decision is whether the multipliers and divisors adopted by Mr. Tongaonkar can be said to be appropriate. As we have already mentioned, it is the multipliers and divisors that play a decisive part in the determination of the employer's claim for rehabilitation in all bonus proceedings.

Mr. Tongaonkar's evidence has been severely criticised by the respondents and in fact, the tribunal does not appear to have been favourably impressed by it. Before dealing with the criticism made against his evidence, it would be pertinent to observe that the witness has given exhaustive details on the points put to him in examination-in-chief, and his evidence, read as a whole, does made an imposing reading. But sometimes the wealth of details given by experts is apt to complicate the narrow points of dispute between the parties and to create doubt and confusion; the large number of technical details expressed in technical language may, in some cases, tend to cloud rather than clarify the points which the tribunal has to consider. We feel inclined to hold that is what has happened to some extent in the present case. But that by itself cannot obviously be said to introduce any infirmity in the evidence given by the expert or affect its credibility. It only means the tribunal has to analyse his statements, examine them carefully in the light of his cross-examination and decide how far it would be justified in acting on them.

It has been urged before us by the respondents that the claim made by Mr. Tongaonkar in regard to the rehabilitation of the pre-1939 block should be rejected. The contention is that this block must have been completely replaced before 1953 and no claim for its rehabilitation can be entertained. This argument was based substantially on the assumption that a part of Rs. 997.42 lakhs must have been utilised for the purpose of replacing the said block. Mr. Tongaonkar has stated that prior to 1-8-1954 the total amount spent on modernisation, replacement and rehabilitation and other sundry jobs,

but excluding expansion, was approximately Rs. 9.97 crores, and in support of this statement he produced Ex. C-29, which shows the said expenditure year by year. According to this statement 78 lakhs had been spent on the construction of Rohri Works and Kistna Works, and Rs. 622.13 lakhs had been spent on the expansion during the post-war period. This gives the figure of Rs. 700.13 lakhs. Deducting this amount from the total expenditure of Rs. 1697.55 lakhs, the balance of Rs. 997.42 lakhs is shown as expenditure on modernisation, rehabilitation, replacement and other sundry capital jobs. It is in respect of this amount of Rs. 997.42 lakhs that Mr. Tongaonkar was severely cross-examined. In cross-examination he stated that he was not in a position to say whether out of the total expenditure of Rs. 997.42 lakhs shown in Ex. C-29 a major portion had been spent on rehabilitation and replacement of the pre-1939 block and 1940-44 block. He admitted that the figures in Ex. C-29 had been prepared by the Accounts Department from the Financial Books so far as year to year total expenditure was concerned and he also stated that it was not possible for him to give details about the said expenditure. These answers indicated that the amount of Rs. 997.42 lakhs had been ascertained mechanically by deducting from the total expenditure of Rs. 1697.55 lakhs incurred on all jobs up to 31-7-1954 the estimated expenditure of Rs. 700.13 lakhs which was treated as expenditure for expansion during the said period. It is on these statements that the respondents placed reliance in support of their argument that the amount of Rs. 997.42 lakhs must have been utilised for completely replacing the pre-1939 block. Thus presented, the argument no doubt appeared very plausible, and so we asked Mr. Kolah to give us a satisfactory explanation about the items of this expenditure. Accordingly Mr. Kolah has filed a statement, Ex. I which gives a rough classification of the total capital expenditure of about Rs. 997 lakhs incurred up to 31-7-1954 on modernisation, replacement, rehabilitation and other sundry and miscellaneous jobs. The several items of this expenditure are broadly indicated under eight heads, the last of which covering an amount of Rs. 160 lakhs has in its turn been split up into five separate items by the statement I(a). There was some dispute before us about the admissibility of some of the said items under cl. 5 of this document I(a). But Mr. Kolah contends, and it is not disputed by the respondents either, that even if the whole of the disputed item 5 is excluded, the remaining items on Ex. I give a fairly satisfactory explanation about the work of rehabilitation, replacement and modernisation on which the bulk of Rs. 997.42 lakhs must have been spent. In view of this statement we must hold that the assumption made by the respondents that the said amount of Rs. 997.42 lakhs must have been utilised for replacing the pre-1939 block is not well-founded.

It is then contended that there is no justification for keeping the pre-1939 block still alive in view of the estimate made by Mr. Tongaonkar about the life of the cement plant and machinery. The suggestion is that the oldest block is deliberately kept alive in order to enable the appellant to claim a higher multiplier in calculating the rehabilitation amount. It cannot be said that there is no force at all in this criticism. In fact Mr. Tongaonkar himself has admitted that a given portion of this block could have been discarded earlier, but he added, that a part of it had been rehabilitated as a temporary measure in order to carry on. That is why that particular portion of the block had not been discarded so far. According to him the pre-1939 block contains a portion whose useful life is already over, but the appellant would have to carry on with it until finances could be found for modernisation or reconstruction or entire replacement of the said block. In our opinion, this explanation cannot be said to be wholly satisfactory. If the useful life of the whole block had really expired, the appellant would have easily found it possible to replace the said block in due time having regard to its general financial position.

The next criticism made against Mr. Tongaonkar's evidence is that admittedly he has not calculated the average life of the said block. He stated that he had assessed the pre-1939 block by his personal visits to the factory by observing to what extent it had been rehabilitation as a temporary measure

and by considering what its present condition was. It is possible that with his knowledge and experience Mr. Tongaonkar may be able to form a proper assessment about the life of the machinery in the manner deposed to by him. But unfortunately, effective cross-examination on this point has been stifled to some extent because we find that on some material points questions put to the witness were objected to by Mr. Kolah and the objection was upheld by the tribunal. The witness was asked whether he could tell the tribunal with his wide experience, how many years on the average 1939 block had spent prior to 1939. This question was clearly relevant and from the respondents' point of view it was important. If the witness was able to predicate about the future useful life of the machinery from his examination of the plant, it was suggested to him that it should be possible for him to give an estimate about the life already spent by it by the same process. The object of this question obviously was to show that the machinery in question had lived much longer than its estimated life as deposed to by the witness. This question having been disallowed, any further cross-examination to test the claim of the witness that from the inspection and examination of the machinery he can predicate the period of its future useful life became impossible. The witness was further asked to state whether it would be correct to assume that the said pre-1939 block had on an average spent more than 15 years of its life. This question also was disallowed, and the respondents naturally make a serious grievance that they were not given an opportunity to show that Mr. Tongaonkar's estimate about the life of the plant and machinery was a gross under-statement.

The respondents have then objected to the inclusion of several items in the approximate cost of rehabilitation mentioned in col. 8 of Ex. C-2. The new additional packing machine in regard to the factory at Banmore as well as the crane storage are, it is urged, not items of rehabilitation, but of expansion. Similar criticism is made in regard to the dust-collector plants, coal-handling plants, items in regard to the fluidification system, diesel engine shunting locomotive and similar other items. The respondents' grievance is that by including these items which are really matters of expansion, the amount of approximate cost of rehabilitation has been unduly increased. We are unable to say if the grievance is justified.

In regard to the multiplier adopted by Mr. Tongaonkar, the criticism is that it is based on hypothetical considerations determined by him in a subjective manner. It is also pointed out that the failure of the witness to take out the present day replacement cost of individual items of the pre-1939 block has introduced an additional element of uncertainly in the final calculations made by him in regard to the multiplier. No doubt, the witness has stated that he has used the multiplier of 4.8 on a comparative study of the quotations received between 1939 and the present day, but dealing with the machinery blockwise is not a very satisfactory way of determining such a multiplier. In support of this argument, reference is made to the statements made by the witness to the cost of 180-ton-per-day kiln, if manufactured by the appellant, would be lower than that of a 300-ton-a-day kiln. The witness then added that the appellant does not manufacture a 180-ton-a-day kiln, and if such a kiln is imported from abroad its cost would be somewhat higher than that of a 300-ton-a-day kiln manufactured by the appellant under present day conditions. He was then asked whether he had got a quotation of a 180-ton-a-day kiln, and he admitted that he had none, and that he had estimated it approximately at Rs. 11 1/2 lakhs. The respondents urged that this estimate about the cost of an imported 180-ton-a-day kiln is purely notional and is not based on any material at all. This part of the criticism is justified.

The next argument urged against the statements prepared by Mr. Tongaonkar is that he appears to have taken into account the prices prevailing in 1956 and has completely ignored the prices as they obtained in the previous years. We have already observed that in deciding the amount of rehabilitation by the adoption of an appropriate multiplier, the tribunal should take into account all

relevant facts and these would not be confined to the price level prevailing in any one particular year. When deciding the hypothetical question as to what would be the price in future when the plant and machinery would have to be replaced or rehabilitated, the tribunal has to take an overall picture of prices into account, and the argument is that concentration on the price level of 1956 alone has introduced an infirmity in the calculations made by the witness.

There is another infirmity in these calculations which has been criticised by the respondents. Mr. Tongaonkar has lumped together the plant and machinery as well as buildings and other properties belonging to the appellant in col. 2 of Ex. C-2. The more scientific and satisfactory method of dealing with the question of rehabilitation is to treat the plant and machinery separately from the buildings and other assets that need rehabilitation. In fact we asked Mr. Kolah to give us a statement showing the cost of the plant and machinery and the buildings and other assets separately in order to enable us to have a clearer picture about the extent of the rehabilitation needs of the appellant. He has accordingly filed a statement, Ex. F(a).

There is yet another point on which Mr. Tongaonkar's evidence has been criticised by the respondents. It is argued that this evidence shows that under his concept of modernisation several items of expansion can be included. Mr. Tongaonkar has stated that by 'modernisation' he meant 'a composite scheme comprising replacement of the part of the old machinery by new machinery, installation of additional machinery because the layout of the composite modernisation scheme is different from the previous layout and rehabilitation of the remaining machinery as a short term measure'. By 'rehabilitation' he meant 'alterations to a machine or machinery, installation for improving its mechanical performance, its technical efficiency or to extend its life by a further span'. This would also include what he compendiously describes as the removal of weak links. According to him expansion can be divided into two groups, viz., Group No. - 1 construction of the completely new factory solely for obtaining additional production; and Group No. 2 would cover the specific additional machines which are installed not for modernisation purposes as such, but with the primary object of obtaining additional production. He concedes that in the 'modernisation of an existing factory' expansion is only a part of the scheme. This means that in the 'modernisation scheme' there would be an element of 'expansion'. It would thus be clear that the very broad and wide description of 'modernisation' given by the witness would justifiably give rise to an apprehension in the minds of workmen that under the heading of 'modernisation' items of 'expansion' pure and simple are likely to creep in. That is why evidence given by experts in such proceedings needs to be scrutinised carefully, with a view to exclude items of 'expansion' properly so called from the relevant calculations.

Mr. Tongaonkar has stated that when plant or machinery is rehabilitated or replaced it may lead to increase in production. But such an increase is purely incidental. But what would be the position where, for instance, a 180-ton-a-day kiln is substituted by a 300-ton-a-day kiln by way of rehabilitation or replacement ? The employer is entitled to say that the first category of kilns is not available in the market or that the later category of kilns is more profitable and economically more useful. That being so, if the first kiln is discarded and is substituted by the latter, that is an item of rehabilitation or replacement and not of expansion. On the other hand, by the substitution of the latter kiln there would be such an appreciable increase in production that the workmen may be entitled to contend that some apportionment should be made and the rehabilitation part of the machinery should be separated from the expansion part which has crept into the transaction. We confess that it would be very difficult to undertake the task of making any such apportionment. Even so, tribunals may have to consider the workmen's plea if they are satisfied that the steps taken by the employer by way of rehabilitation have led to a very large increase in production. In this

connection the respondents have relied on Ex. H. O. C-2 which, according to them, shows considerable increase in production, and that, it is urged, is the result of expansion and not of rehabilitation.

Mr. Tongaonkar has suggested in his evidence that it is the intention of the employer that decides the character of the transaction. If the employer wants to install new machinery solely with the object of expanding his business, that is expansion; but if he purchases new machinery for business reasons and not for the purposes of expansion, it would be rehabilitation notwithstanding the fact that the new machinery gives rise to increased production. This approach, in our opinion, gives undue importance to the intention of the employer and we think that, on a proper occasion, the question may have to be considered by the application of some objective tests. In this connection it would be relevant to bear in mind the fact that the steps taken by the appellant for rehabilitating, replacing or modernising its machinery are a part of its plan of expanding its business so as to meet the growing demand for cement in our country.

In deciding the question as to whether the claim as disclosed by the statements prepared by Mr. Tongaonkar is inflated or not, the respondents have asked us to consider the estimate made by the appellant's Chairman in that behalf. In his speech delivered on January 24, 1951, at the Fourteenth Annual General Meeting of the appellant company, the Chairman stated that most of the company's pre-war plant would be due for replacement in the course of the next ten years and he added that "at the present price levels, replacement will cost on an average 2 1/2 times the original cost. This will involve an expenditure of about Rs. 8 crores over and above the provision already made for depreciation". The contention is that, considered in the light of this estimate, the present claim for rehabilitation is very much inflated. When Mr. Tongaonkar was asked about this estimate he stated that the Chairman had not consulted him while drafting the annual report or while drafting the portion of the speech in regard to 'rehabilitation' and he also added that he did not agree with the figures given by the Chairman regarding the replacement cost of plant and machinery in his report dated January 24, 1951. This explanation may not be very satisfactory. But we cannot ignore the fact that when the Chairman made his statement he did not purport to calculate the claim for rehabilitation in terms of the formula and so it would not be fair to test the evidence of the witness in the light of the estimate given by the Chairman in his speech.

We have so far considered the broad arguments urged against Mr. Tongaonkar's evidence. Unfortunately, the tribunal has contended itself merely with the observation that the multiplier of 2.7 would be adequate; and it has given no finding as to the suitable divisor. That is why we must now proceed to adopt a suitable multiplier and divisor for deciding the question of rehabilitation. We have already stated our conclusions in regard to some of the infirmities in the evidence of Mr. Tongaonkar and the statements prepared by him. He has lumped together all assets of the appellant that need rehabilitation. He has taken into account the prices prevailing only in 1956, and in the selection of an average multiplier he has probably been slightly generous to the appellant. His estimate about the life of the plant and machinery has not been allowed to be sufficiently tested in cross-examination and, on the whole, it appears to err a little too much on the side of a conservative estimate; and if that is so his divisor may need revision; it is also probable that in the items included by him under rehabilitation may have been included some which are more of the character of expansion than rehabilitation, replacement or modernisation. Besides, it is not unlikely that the steps taken by the appellant ostensibly for rehabilitation, replacement and modernisation of the machinery have appreciably increased its production, and that may partly be due to the fact that the general plan of expansion adopted by the appellant has been in operation for some time past. It is in the light of these facts that we have to examine the appellant's claim for rehabilitation. In doing so, we have

taken Ex. C-2, Ex. C-23 and Ex. F(a) as a basis for our calculations. It is somewhat unfortunate that in making its claim for rehabilitation Mr. Tongaonkar did not make calculations separately in respect of plant and machinery as distinct from buildings, roads, bridges and railway sidings. It is true that at our instance a statement Ex. F(a) has been filed before us; but if such a statement had been filed before the tribunal, the respondents would have had a better opportunity of testing the accuracy of the calculations made in it and the basis on which the respective multipliers and divisors are sought to be deduced from it. We would, therefore, like to make it clear that the calculations which we now propose to make in regard to the item of rehabilitation should not be taken to be binding on the parties in subsequent years. If, in the light of our decision on the principal points raised before us in the present appeals, the parties decide to settle their disputes about bonus for subsequent years there would be no occasion for the tribunal to deal with them on the merits. If, however, these disputes have to be settled by the tribunal, it would be open to the parties to lead evidence in support of their respective contentions. The tribunal also would be at liberty to consider the matter afresh and come to its own conclusion on the merits.

Let us now proceed to make the relevant calculations. The first step to take is to correct the figures in Ex. C-2 by excluding the cost of buildings, roads, bridges and railway-sidings from the total cost mentioned in it against the several blocks. This cost has been supplied to us by the appellant in Ex. F(a). This is how the corrections work out. In our calculations all figures are expressed in 'lakhs' :

Chart I.Period Original cost Less cost of Balance of block buildings etc. (1) (2) (3) (4)Up to 1939 486.89 132.98 353.91 1940-44 59.91 22.38 37.53 1945-47 208.93 68.15 140.78 1948-54 1144.81 333.47 811.34##

In Ex. F(a) the appellant has shown the respective average ratios in col. 5 in regard to items of property mentioned in col. 2. We think, in making our calculations, it would on the whole be fair to adopt 3.5 as a suitable multiplier up to 1939, 2 from 1940-47 and 1 from 1948-54 (as in C-2) for replacement by part A.C.C. machinery. We have not disturbed the divisors taken by C-2 though we feel inclined to hold that Mr. Tongaonkar has underestimated the probable life of machinery. The amount of yearly requirement for rehabilitation for the total block minus buildings, etc., would then work out at Rs. 229.39. This does not take into account the available reserves; that aspect is considered later on :

Chart II.Period Original cost of Multiplier Total Less Balance Life Yearly break- of require- down as machi- ment in Ex. C-2 nery (in Yrs.) (1) (2) (3) (4) (5) (6) (7) (8) (approx.)Up to 1939 353.91 x 3.5 1238.68 65.92 1172.76 7 167.54 1940-44 37.53 x 2 75.06 4.66 70.40 13 5.41 1945-47 140.78 x 2 281.56 11.19 270.37 15 18.02 1948-54 811.34 x 1 811.34 42.84 768.50 20 38.42 -------- Total ... 229.39 --------##

Then we would deal with the buildings, roads, bridges and railway-sidings. These may be given an average life of 30 years for all blocks in order to compensate for cases where they have to be demolished on account of modernisation. According to the previous statements of the appellant the life of factory buildings was about 35 years and residential areas 50 years. Even so we propose to take the average life of 30 years in making our calculations in respect of these blocks. The multipliers may be taken as 2.25 for pre-1939 blocks, 1.5 for 1940-47 blocks, 1 for 1948-54 blocks. The Bombay block has been taken as in Ex. C-2 :

Chart III.Period Cost Mulit- Total Less Balance Life Yearly plier breakdown require- valued at 5% ment of cost (1) (2) (3) (4) (5) (6) (7) (8)Up to 1939 132.98 x 2.25 299.20 6.65 292.55 20

14.631940-44 22.38 x 1.5 33.57 1.12 32.45 25 1.291945-47 68.15 x 1.5 102.22 3.40 98.82 25 3.951948-54 333.47 x 1 333.47 16.67 316.80 30 10.56Bombay]Office] 40.83 50.28 .73 49.55 69 .71block] ------- Total ... 31.74 -------##

Thus the total yearly requirement for rehabilitation of this block would come to 31.14 lakhs.

The appellant's claim for rehabilitation can now be calculated on the basis of Ex. C-23 as corrected in the light of the three charts prepared by us. As the calculations in the chart show, we would hold that the appellant is entitled to an allowance of 216.10 lakhs for rehabilitation in the relevant year :

Chart IV.Replacement of pre-1939 block : Cost of machinery (Chart II) 1172.76Deduct reserves 311.00 ---------- Balance 861.76 divided by 7 : 123.11Add for buildings (Chart III) ... 14.63 ------- Total ... 137.74Replacement cost of 1940-44 block Including buildings etc. (5.41 plus 1.29) ... 6.70 do for 1945-47 (18.02 plus 3.95) ... 21.97 do for 1948-54 (38.42 plus 10.56) ... 48.98 do for Bombay Office ... .71 -------- Total ... 216.10##

Having decided that the total claim for rehabilitation admissible to the appellant is 216.10 lakhs for the relevant year, we must now proceed to determine whether on the working of the formula any surplus profit is available. We have made the following calculations in the light of the principle laid down by us in this judgment :

Chart V.Total profit excluding Bhupendra factory 428.71Less notional normal depreciation (p. 428, Pt. I) ... 100.22Less income-tax payable @ 7 as. in the Rupee as per ... Note A below ... 115.16Less 6% on paid-up capital ... 76.06Less 4% on working capital ... 26.10 -------- Total ... 317.54 317.54 ------- Balance ... 111.17 Less provision for rehabilitation ... 115.88** -------- Balance (-) 4.71##

This is how we have calculated the income-tax payable for the relevant year :

#

Note A.

Gross profits ... 428.71

Less statutory depreciation ... 165.49 -------

Balance ... 263.22

Income-tax @ 7 as. in the Rupee ... 115.16 -------

**Provision for rehabilitation (vide Chart V) :

Total from Chart IV ... 216.10

Less notional normal depreciation ... 100.22 -------

Balance ... ** 115.88 -------

##

We ought to add that in our calculations we have not taken into account the Bhupendra Factory because the relevant material for working out the figures in regard to this factory is not adequate or satisfactory. However from such material as is available it appears that if the profits made by the said factory are included in the calculations and rehabilitation required by it is worked out, it would not materially affect the figure of rehabilitation amount determined by us.

The result is that there is no available surplus from which the respondents can claim any bonus for the relevant year. It is true that the appellant has already paid the respondents 20.65 lakhs as bonus for the relevant year, and it is likely that it may continue to do so in future; but that is a matter which is not governed by the formula.

In view of the fact that the working of the formula leaves no available surplus the appeal must be allowed and the award made by the tribunal set aside. Since the appellant had come to this Court for the decision of the larger and more important question about the revision of the formula, we would direct that there should be no order as to costs.

Appeal allowed.

</html