Standard Vacuum Refining Co. of India

Vs

Its Workmen and Another

Civil Appeals Nos. 416 of 1958 and 19 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

20.01.1961

JUDGMENT

GAJENDRAGADKAR, J. -

These two cross-appeals arise from an industrial dispute between the Standard Vacuum Refining Co. of India Ltd. (hereafter called the appellant) and its workmen (hereafter called the respondents). This dispute related to a claim for bonus made by the respondents against the appellant for the year commencing on January 1, 1956, and ending with December 31, 1956. The respondents claimed that for the relevant year they were entitled to receive by way of bonus their nine months' total earnings inclusive of all allowances and overtime and extra-time earnings. After this demand was made the conciliation officer attempted conciliation between the parties but his efforts failed, and so he submitted a failure report under s. 12(4) of the Industrial Disputes Act, 1947 (XIV of 1947). The Government of Bombay then considered the said report and was satisfied that there was a case for reference of the said dispute to the Tribunal. That is how the present reference came to be made under s. 12(5) of the Act.

The respondents who have made the present claim include 648 employees; amongst them 524 are operatives and 124 belong to the clerical cadre. Before the Tribunal the respondents' case was that during the conciliation proceedings the appellant had admitted its capacity to pay and to meet the entire claim of bonus made by them; and so it was urged that it was unnecessary to screen the respondents' claim through the Full Bench formula. They further alleged that the appellant was not paying a living wage to the respondents and there still remained a large gap between the wage actually received by them and the living wage to which they would be ultimately entitled. According to the respondents their claim for bonus should be examined solely by reference to the gap which had to be filled up between the two wages; and in determining the amount of bonus all the legitimate requirements of the respondents should be carefully considered.

This claim was denied by the appellant. It denied the respondents' allegation that during conciliation proceedings it had admitted its capacity to pay the entire amount of bonus claimed by the respondents. It then specifically averred that in law the respondents were not entitled to any bonus because the appellant was paying them a living wage and so one of the essential conditions for the payment of bonus, namely, the need to fill the gap between the actual wage and the living wage was absent in the present case. The appellant then set out its calculations in regard to the average wages paid to the different categories of respondents and supported its plea that they were not entitled to any bonus at all. It may be added that the appellant had already voluntarily paid three months' basic wages to the respondents by way of bonus, but since the respondents were making a much larger claim the appellant thought it necessary to raise this general issue of law and to contend that the

respondents were not entitled to any bonus at all.

On these pleadings the Tribunal had to consider the said question of law, but it appears that the material produced before it was so limited and meagre that it thought it would not be possible to arrive at any definite opinion on the question of what is the living wage in Bombay; apparently the tribunal also thought that was unnecessary to do so, because it has observed that the present dispute did not relate to wage scales and that the living wage was an illusive concept. Even so, having broadly considered the contentions raised by the appellant it held that "the wages are fair but there is still in a large number of cases a gap between the actual wage and the living wage." On this finding the Tribunal proceeded to examine the other contentions raised by the parties in regard to the quantum of bonus which should be awarded and it reached the conclusion that the respondents were entitled to receive five months' basic earnings "excluding dearness and other allowances and overtime" as bonus for the relevant year. Accordingly it has made an award to that effect and has issued appropriate directions in that behalf. This award is challenged by the appellant in its Civil Appeal No. 416 of 1958, and it is urged by the learned Attorney-General on its behalf that the tribunal should have held that the appellant was paying a living wage to the respondents and that there was no case for awarding any bonus to the respondents at all during the relevant year. On the other hand the respondents challenge the award by their Civil Appeal No. 19 of 1959, and it is urged by Mr. Gokhale on their behalf that the tribunal was in error in not awarding the respondents a higher bonus than five months' basic wages. That is how the two cross-appeals arise from the award under appeal.

The learned Attorney-General has criticised the approach adopted by the tribunal in dealing with the question of living wage. He contends that it was necessary that the tribunal should have carefully examined the material produced before it and should have made a definite finding one way or the other. He commented on the fact that the finding is vague and indefinite, and he has contended that the tribunal should have made it clear as to what it exactly meant when it observed that in a large number of cases a gap between the actual wage and the living wage subsisted. This criticism is partly justified. We think it would have been better if the tribunal had addressed itself to the question raised before it by the appellant and made a more definite and precise finding. In this connection, it must, however, be added that the oil companies have been raising this plea for some years past and the plea has been consistently rejected by tribunals during all these years. The present tribunal itself has had occasion to deal with this plea raised by the oil distributing companies, and since the plea had never succeeded in the past and no material change had been proved in regard to the relevant year the tribunal was probably disinclined to treat the plea very seriously and that may explain the approach adopted by it in dealing with the said plea in the present proceedings.

Besides, the tribunal took the view, and we think rightly, that the material produced by the appellant in support of its plea is wholly insufficient and meagre. The point raised is one of general importance and any positive finding on the content of the concept of a living wage in the context of today would naturally affect industrial adjudication in regard to claims of bonus in all industries. That is why, if the appellant was serious about its contention that the living wage standard had been reached in its wage structure it should have produced more satisfactory evidence which would have enabled the tribunal to attempt the task of concretely defining what the concept of living wage means in the context of today. Absence of sufficient and satisfactory material may also explain the approach adopted by the tribunal in dealing with this issue.

At the hearing before us the learned Attorney-General suggested that we should remand the case to enable his client to lead further and more satisfactory evidence. We have rejected this request. The

appellant knew fully well the implications of the plea raised by it and the very large issue which the tribunal would have to consider in dealing with the merits of the said plea. If the appellant was content to support its plea on certain material and did not attempt to lead more satisfactory evidence it cannot blame the tribunal for dealing with the matter on the material such as it was. In such a case it would be futile for the appellant to ask for indulgence from this Court at this late stage. It is admitted that the appellant has paid three months' basic wages as bonus to the respondents voluntarily for the relevant year, and we were told that an agreement has been reached between the parties in respect of bonus for subsequent years until 1963. They have agreed that for the two succeeding years the decision of this Court will apply and for five years thereafter a specific agreement has been reached for raising the wage-structure and providing for the payment of bonus at the agreed rate. The learned Attorney-General faintly suggested that the appellant has agreed to pay bonus voluntarily in this manner but the payment is gratuitous and should not affect the main plea raised by it in the present proceedings. Even so, the question raised by the appellant sounds academic and unrealistic, and that is another reason why it is not entitled to the indulgence for which the learned Attorney-General has pressed before us. We would, therefore, deal with the point seriously urged before us on behalf of the appellant on the material produced before the tribunal and such additional material as was brought to our notice.

At the outset it is necessary to state that the plea raised by the appellant assumes that as soon as a living wage standard has been reached by any employer it would be unnecessary for him to pay any bonus to his employees. The learned Attorney-General has naturally relied on the decisions of this Court as well as the decisions of industrial tribunals in support of his argument that the Full Bench formula which governs the decision of bonus disputes postulates that a claim for bonus can be entertained if two conditions are satisfied; the employer must have made profit in the relevant year, which after the deduction of prior charges leaves sufficient available surplus; and there must be a gap between the wages actually paid to the employees and the living wage standard which they hope to reach in due course. In dealing with bonus claims mndustrial adjudication has so far proceeded on the assumption that in the making of profits labour makes its contribution, and that since it is not receiving a living wage it is entitled to claim that the gap between the actual and the living wages should be filled by the payment of bonus for each relevant year; that no doubt appears to be the result of the relevant decisions on the point (Vide : Muir Mills Co. Ltd. v. Suit Mills Mazdoor Union, Kanpur [[1955] 1 S.C.R. 991]; The Sree Meenakshi Mills Ltd. v. Their Workmen [[1958] S.C.R. 878, 884]. We will revert to this point later. Meanwhile let us proceed to examine the merits of the contention that the appellant is paying the respondents a living wage.

It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves on the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a welfare State is based on notions of progressive social philosophy which have rendered the old doctrine of laissez-faire obsolete. In the nineteenth century the relation between employers and employees were usually governed by the economic principle of supply and demand, and the employers thought that they were entitled to hire on labour on their terms and to dismiss the same at their choice subject to the specific terms of contract between them, if any. The theory of "hire and fire" as well as the theory of "supply and demand" which were allowed free scope under the doctrine of laissez-faire no longer hold the field. In constructing a wage structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage

structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilized and progressive society also come to be recognised. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage structure. As Mrs. Barbara Wootton has pointed out, the social and ethical implications of the arithmetic and the economics of wages cannot be ignored in the present age ["The Social Foundations of Wage Policy" by Barbara Wotton - Allen & Unwin, 1955].

It is because of this socio-economic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage, he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even under-developed countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised.

In dealing with wage structure it is usual to divide wages into three broad categories : the minimum wage is the bare subsistence wage; above it is the fair wage, and beyond the fair wage is the living wage. It would be obvious that the concepts of these three wages cannot be described in definite words because their contents are elastic and they are bound to vary from time to time and from country to country. Sometimes the said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult and also inexpedient to attempt the task of giving an adequate precision to these concepts. What is a subsistence wage in one country may appear to be much below the subsistence level in another; the same is true about a fair wage and a living wage; what is a fair wage in one country may be treated as a living wage in another, whereas what may be regarded as a living wage in one country may be no more than a fair wage in another. Several attempts have nevertheless been made to describe generally the contents of these respective concepts from time to time. The most celebrated of these attempts was made by Mr. Justice Higgins in his judgment in 1907 in a proceeding usually referred to as the Harvester Case. Sitting as President of the Commonwealth Court of Conciliation and Arbitration, the learned Judge posed the question as to what is the model or criterion by which fairness or reasonableness is to be determined, and he answered it by saying that "a fair and reasonable wage in the case of an unskilled labourer must be an amount adequate to cover the normal needs of the average employee regarded as a human being living in a civilized community." [Cited by Foender in "Better Employment Relations", 1954, pp. 177, 178]

In their work "Industrial Democracy" published in 1920 Sidney and Beatrice Webb observed that "there is a growing feeling not confined to trade unionists that the best interests in the community can only be attained by deliberately securing to each section of the workers those conditions which are necessary for the continuous and efficient fulfilment of its particular function in the social machine" (p. 590).

In 1919 the Commissioner of the Bureau of Labour Statistics conducted a tentative budget enquiry in the United States of America, and analysed the objects with reference to three concepts, namely, the pauper and poverty level, the minimum of subsistence level and the minimum of health and comfort level; the last was taken for determining the standard of a living wage. This classification

was approved by the Royal Commission on the Basic Wage for the Commonwealth of Australia, and it proceeded through norms and budget enquiries to ascertain what the minimum of comfort level should be. The Commission quoted with approval the description of minimum health and comfort level in the following terms :

> "This represents a slightly higher level than that the subsistence, providing not only for the material needs of food, shelter and body covering, but also for certain comforts such as clothing sufficient for bodily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes - death, disability and fire - good education for the children, some amusement, and some expenditure for self-development" [Cited in the Report of the Committee on Fair Wages published by the Government of India, Ministry of Labour - pp. 5 and 6].

According to the United Provinces Labour Enquiry Committee wages were classified into four categories, poverty level, minimum subsistence level, the subsistence plus level, and the comfort level [Ibid. p. 6]. The third category would approximate to the fair wage, and the fourth to the living wage. According to the South Australian Act of 1912 the living wage means "a sum sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done". On the other hand, the Queensland Industrial Conciliation and Arbitration Act provides that the basic wage pad to an adult male employee shall not be less than is "sufficient to maintain a well-conducted employee of average health, strength and competence, and his wife and a family of three children in a fair and average standard of comfort, having regard to the condition of living prevailing among employees in the calling in respect of which such basic wage is fixed, and provided that in fixing such basic wage and earnings of the children or wife of such employee shall not be taken into account" [Cited in the Report of the Committee on Fair Wages published by the Government of India, Ministry of Labour - p. 5].

The Fair Wages Committee which made its Report in 1949 broadly accepted the view expressed by the Royal Commission on the basic wage for the Common-wealth of Australia which we have already cited. According to the Committee, "the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age [Ibid. p. 7]." The Committee emphasised that "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities" [Cited in the Report of the Committee on Fair Wages published by the Government of India, Ministry of Labour - p. 8].

In this connection it would be useful to refer to the observations made by Philip Snowden in regard to the concept of living wage. These observations are generally cited with approval by industrial tribunals. Said Snowden, "it may be possible to give a precise or satisfactory definition of a living wage, but it expresses an idea, a belief, a conviction, a demand. The idea of a living wage seems to come from the fountain of justice which no man has ever seen, which no man has ever explained, but which we all know is an instinct divinely implanted in the human heart. A living wage is something far greater than the figures of a wage schedule. It is at the same time a condemnation of unmerited and unnecessary poverty and a demand for some measure of justice [Philip Snowden "The Living Wage", p. 1]." On the problem of converting the concept of living wage into monetary

terms this is what Snowden has said : "The amount of the living wage in money terms will vary as between trade and trade, between locality and locality. But the idea is that every workman shall have a wage which will maintain him in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a cetacean" [Ibid. p. 6]. It is in this broad and idealistic sense that Art. 43 of the Constitution has referred to the living wage when it enunciates the Directive Principle that the State shall endeavour, inter alia, to secure by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This Court has recognised this idealistic position of the concept of living wage in the case of Express Newspapers (Private) Ltd. v. The Union of India [[1959] S.C.R. 12, 79-82].

It would thus be obvious that the concept of a living wage is not a static concept; it is expanding and the number of its constituents and their respective contents are bound to expand and widen with the development and growth of national economy. That is why it would be impossible to attempt the task of determining the extent of the requirement of the said concept in the context of today in terms of rupees, annas and pies on the scanty material placed before us in the present proceedings. We apprehend that it would be inexpedient and unwise to make an effort to concretise the said concept in monetary terms with any degree of definiteness or precision even if a fuller enquiry is held. Indeed, it may be true to say that in an under-developed country it would be idle to describe any wage structure as containing the ideal of the living wage, though in some cases wages paid by certain employers may appear to be higher than those paid by others. As observed in its Report by the Commission of Enquiry on "Emoluments and Conditions of service of Central Government Employees, 1957-59", "taking a standard family as consisting of four members of whom only one is an earner, the average income of a family at the highest figure during the nine years ending in 1957-58 would work out at Rs. 1,166 per annum or about Rs. 97/- per mensem. The minimum wage cannot be of the order of Rs. 125/- when on the basis of the national income the average for a family works out only to Rs. 97/- per mensem." Therefore, looking at the problem of industrial wages as a whole it would not be possible to predicate that our wage structure has reached even the level of a fair wage. It is possible that even so some employers may be paying a very high wage to their workmen, and in such a case it would be necessary to examine whether the wages paid approximate to the standard of the living wage; but in deciding this question the proper approach to adopt would be to consider whether the wage structure in question even approximately meets the legitimate requirements of the components constituting the concept of a living wage. For that purpose it may not be essential, and on the material produced before us it is not even possible, first to determine what in terms of money those constituents would denote in the context of today. The learned Attorney-General's argument that we should first determine independently what amount in terms of rupees, annas and pies would be treated as living wage today obviously ignores the complexity of the problem and the poverty of the material adduced by the appellant in the present proceedings.

There is another aspect of this question to which we must incidentally refer. We are dealing with the contents of the living wage in the present appeal not for the purpose of fixing a wage structure; the contention raised by the appellant is that since the wages paid to the respondents have reached the stage of a living wage there is no gap between the actual wage and the living wage, and so there is no occasion to make a claim for bonus. While dealing with this contention there would be no justification for ignoring the idealistic character of the living wage as specified in Art. 43 of the Constitution; and so, it would be necessary to enquire whether the wage in question satisfies the tests laid down by the Royal Commission on the basic Wage for the Commonwealth of Australia

which has been endorsed by the Fair Wages Committee's Report and broadly approved by this Court in the Express Newspapers' case [[1959] S.C.R. 12]. The question which we must now consider is whether the appellant has succeeded in showing that its wage structure has reached the standard of the living wage which has been specified as one of the ultimate objectives by Art. 43 and which is the ideal that the working population of the country hopefully looks forward to achieve. It is no doubt a bold and tall claim but the learned Attorney-General contends that the appellant has succeeded in substantiating the said claim.

Before the tribunal the Union filed statements to show that the wage structure prevailing amongst the respondents is no more than the need-based minimum wage. In support of this plea they referred to the resolution which has been unanimously passed at the 15th Session of the Indian Labour Conference held in New Delhi on July 11 and 12, 1957. This resolution makes a declaration about the wage policy which should be followed during the Second Five Year Plan. The Tripartite Committee which passed the resolution considered the relevant notes placed before it, and held that they would be useful as background material for wage fixation. It then took note of the difficulties in assessing quantitatively the individual importance of various factors affecting wage fixation such as productivity, cost of living, the relation of wages to notional income and so on, and proceeded to discuss the wage policy with specific reference to minimum wages and fair wages. With regard to the minimum wage fixation it was agreed that the minimum wage was need-based to ensure the minimum human needs of the industrial worker irrespective of any other consideration. To calculate the minimum wage the Committee accepted the following norms and recommended that they should guide all wage fixing authorities including Minimum Wage Committees, Wage Boards, adjudicators, etc. The five norms accepted by the Committee were stated by it in these terms :

> "(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
>
> (ii) Minimum food requirement should be calculated on the bass of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
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> (iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total or 72 yards.
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> (iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.
>
> (v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20% of the total minimum wage."

Having set fourth these norms the Committee recognised the existence of instances where difficulties may be experienced in implementing its recommendations, and so it added that wherever the minimum wage fixed went below it recommendations it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the norms prescribed by the Committee. Having thus unanimously agreed on the content of the need-based minimum wage the Committee proceeded to observe that as regards fair wages it was agreed that

the Wage Board should go into the details in respect of each industry on the basis of the recommendations contained in the Report of the Committee on Fair Wages. It also placed on record its opinion that the said recommendations should be made applicable to employees in the public sector (Ex. U-3).

The respondents treated this unanimous resolution as the basis for their claim that the wages paid to them by the appellant were no better than the need-based minimum contemplated by the said resolution. Accordingly they set out the diet requirements extracted from Health Bulletin No. 23, and converted the said requirements into monetary terms at Rs. 123.75 nP. Having thus arrived at the calculation of the value of the diet requirements of workmen (Exs. U-4 and U-5) they proceeded to make calculations about the money content of the need-based minimum wage at Rs. 209.70 (Ex. U-6). This conclusion has been reached on the basis that the minimum diet requirements would be Rs. 123.75 nP., clothing requirements would be Rs. 9/-, rent would be Rs. 42/- and miscellaneous expenditure at 20% of the total of the three preceding items would be Rs. 34.95 nP. Their case was that in view of the fact that Rs. 209.70 nP. approximates to the standard of the need-based minimum wage the claim that the wage structure of the appellant has reached the living wage standard cannot be sustained.

On the other hand the appellant sought to justify its claim principally on the calculations made by the Textile Labour Committee which had made its report in 1940. It may be pointed out that in its statement (Ex. C-6) the appellant has used the expressions "fair wage" and "living wage" somewhat indiscriminately, and seems to have assumed that the norms prescribed by the Tripartite resolution had relation to a fair wage and not the need-based minimum wage. That, however, does not appear to be accurate. According to the Textile Committee's report the money-content of the living wage in 1940 was Rs. 50/- to Rs. 55/- per month. This total was reached on treating Rs. 23/- as food requirements, Rs. 12/- as house-rent requirements and Rs. 20/- as miscellaneous requirements. This total is taken as the basis by the appellant in making its relevant calculations. The appellant has then referred to the norms prescribed by the Tripartite resolution and has assumed that the total of the need-based minimum wage would be Rs. 40-14-0, and since there had been a rise in the cost of living after 1940 the appellant has multiplied Rs. 41/- by 3.5 which gave the amount of Rs. 143.50 nP. Thus according to the appellant the need-based minimum would not be the said amount of Rs. 209/- as calculated by the respondents. Then the appellant added that even if Rs. 55/- was taken as the equivalent of the living wage in 1940 and the same is multiplied by 3.5 one gets Rs. 192.50 nP. and that should represent the living wage in the relevant year.

Having thus reached the figure of Rs. 192.50 nP. as the monetary value of the living wage in the relevant year, the appellant purported to support its plea that its wage-structure had reached the status of a living wage by relying on the average wages paid by it to the respective categories of its employees. Taking the class of operatives which comprises 524 workmen the average wage packet consisting of the basic salary, the dearness allowance and the value of the amenities supplied by the appellant to them equals Rs. 273.65 nP. The average wages in regard to the 124 clerks reach the figure of Rs. 370.11 nP., and the average wages for the total employees taken together reach the figure of Rs. 301.16 nP. According to the appellant whichever figure is taken it is much above Rs. 192.50 nP., and that must lead to the inference that the living wage standard has been reached by the appellant. That is how both the parties presented their respective contentions before the tribunal and before us.

We have already indicated that the appellant's calculations are made on the assumption that the figure of Rs. 50/- to Rs. 55/- per month can be taken to be the monetary content of the living wage

in 1940. In support of this assumption the appellant strongly relies on the Textile Committee's report. This Committee was appointed in 1940 and was charged with the duty of conducting an investigation into the question of adequacy of wages in cotton textile industry of the Province or Bombay and to kindred matters relating to the industry. It was asked to enquire, inter alia, into the adequacy or inadequacy of wages earned in relation to a living wage standard, and if it found that in any occupation, centre or unit of the industry wages were inadequate it was asked to enquire into and report upon the reasons therefor. The committee realised that the data supplied before it was insufficient but nevertheless it thought that it would be possible to consider the broad constituents of the concept of the living wage and use the said measure "not for the determination of a dispute or the grant of an award but only for ascertaining in a general manner whether the present level of earnings is or is not adequate in relation to it." The Committee then examined the material which was available to it; it took the view that the living wage standard should be determined in respect of the family unit, and for its calculation it converted the total number of members in the family into standard conception units according to the formula evolved by Dr. Aykroyd in his Health Bulletin No. 23. According to this formula each family was assumed to consist of a workman, his wife and two dependents or children and their consumption units were treated respectively as 1.8 and 0.6 each respectively, the total consumption units thus being 3.0. Working on this basis the Committee came to the conclusion that Rs. 22/8/- per month would meet the dietary requirements of the workman's family. Then the Committee considered the problem of housing and the expenditure on rent and other items of expenditure such as clothing, fuel and lighting and miscellaneous. In regard to the housing the Committee thought that for a family of four 180 sq. ft. may be held as the minimum in Bombay though according to it the floor area may be put a little higher in less overcrowded places. For this area the Committee thought Rs. 12 would be adequate rent, and for the miscellaneous items of expenditure Rs. 20 was treated as adequate. It is on these calculations that the amount of Rs. 55 was held by the Committee to be the monetary value of the living wage standard. Naturally enough the appellant treats this conclusion as the foundation for its claim that it is paying a living wage to the respondents.

In our opinion it would be unreasonable and unsafe to treat the conclusions of this Committee as to the monetary value of the living wage in 1940 as sound and to make it the basis of our calculations today. Incidentally the method of multiplying the figure deduced by the Committee by 3.5 is materially defective. The proper approach to adopt would be to evaluate each constituent of the concept of the living wage in the light of the prices prevailing today and thus reach a proper conclusion; but apart from it, the main objection against adopting the figure reached by the Committee is that even in 1940 the said figure could not be properly regarded as representing anything like a living wage standard. The object with which the Committee proceeded to hold its enquiry was in a sense negative; it was to determine the question as to how far the prevailing wages were deficient having regard to some reasonable concept of a living wage standard. The material before it was insufficient to determine satisfactorily the money-content of the said concept and the Committee itself was conscious that its calculations were bound to be broad and general and conditioned by the data available to it, and what is more important conditioned by the notions of social justice then prevailing. Since 1940 the concept of social justice has made very great progress and the Constitution of the country has now put a seal of approval on the ideal of a welfare State. Besides, it may seem entirely unrealistic to talk of a living wage in the light of our national economy in 1940 and to evaluate it content at Rs. 50 to Rs. 55 per month. It is obvious that the Committee was really thinking of what is today described as the minimum need-based wage, and it found that judged by the said standard the current wages were deficient. In its report the Committee has used the word "minimum" in regard to some of the constituents of the concept of living wage,

and its calculations show that it did not proceed beyond the minimum level in respect of any of the said constituents. Therefore, though the expression "living wage standard" has been used by the Committee in its report we are satisfied that Rs. 50 to Rs. 55 cannot be regarded as anything higher than the need-based minimum wage at that time. If that be the true position the whole basis adopted by the appellant in making its calculations turns out to be illusory. All that the calculations made by the appellant would show is that the wages paid to the respondents are somewhat higher than what would be required by the concept of the need-bases wage. It is obvious that between the need-based wage and the living wage there is a very long distance.

This conclusion is strengthened by some of the observations made by the Commission of Enquiry on "the Emoluments and Conditions of Service of Central Government Employees". In its report the Commission has referred to the Tripartite resolution on the need-based minimum wage, and in the light of the exhaustive material produced before it, and after consulting experts and specialists whose advice was available to it, it has reached the conclusion that (a) the minimum remuneration worked out according to the recommended formula may be of the order of Rs. 125/- as compared to Rs. 52.50 which with some exceptions is the upper limit of minimum wages fixed under the law, (b) that it would be about 70 to 80% higher than the rates generally prevailing in the organised sectors of industry where wages are fixed either by collective bargaining or through conciliation and adjudication proceedings, and (c) that it would be well above the highest wages, i.e., Rs. 112/- (in cotton textiles industry in Bombay - average for 1958) which any considerable number of unskilled workers are at present getting in the country (p. 65). It would thus be seen that the figures thus worked out by the Commission in the light of the Tripartite resolution support the inference that the corresponding figure specified by the Textile Report in 1940 approximates to the concept of the need-based minimum wage and no more. We may incidentally add that having regard to its terms of reference the Commission did not feel it advisable to recommend the increase of the Central employees' wages to the level of the need-based minimum for reasons set out by it in its report. That is why it thought it reasonable to recommend that "the minimum remuneration payable to a Central employee which at present is Rs. 75 per mensem should be increased to Rs. 80 per mensem (p. 74).

Reverting to the components of the concept of the living wage once again it may be relevant to observe that the principal component of the dietary requirements of a workman's family is generally examined in the light of Dr. Aykroyd's formula [Health Bulletin No. 23 - The Nutritive Value of Indian Foods and the Planning of satisfactory Diets - By Dr. Aykroyd and revised by Dr. V. N. Patwardhan - Published by the Nutrition Research Laboratories, Indian Council of Medical Research, Coonoor]. According to Dr. Aykroyd "in dealing with diet it is well to remember the distinction between an optimum and an adequate diet. An optimum diet is one which ensures for the functioning of the various life processes at their very best, whereas an adequate diet maintains these processes but not at their peak levels. While it is desirable to work up to standards laid down for an optimum diet, it is essential to know whether enough food is being provided; every effort should be made to ensure at least the standards fixed for an adequate diet." Then the requirements of an adequate diet are examined. Dr. Aykroyd, however, took the view that having regard to our national economy even an adequate or balanced diet may not be within the reach of every one, and so he observed that "it would be wise to effect a compromise by temporarily sacrificing the ideal to the necessity of making the improvement economically possible." With this object he has tabulated the requirements of the improved diet which contains the essential nutrients but which would not be as costly as the balanced diet. Now there can be no doubt that in dealing with the monetary value of the content of the concept of the living wage it would not be enough to evaluate the diet requirement with reference to the improved or even the balanced diet. The improved vegetarian diet which has generally been taken into account in making the relevant calculations would be wholly inappropriate

in making calculations with regard to a living wage. Under the living wage a workman would be entitled to claim an optimum diet as prescribed by Dr. Aykroyd. Similarly, the requirements as to clothing and residence which have been recognised in the Tripartite resolution, though appropriate in reference to a need-based minimum wage, would have to be widened in relation to a living wage. Besides, in determining the money value of the living wage it would be necessary to take into account the requirements of "good education for children, some amusement, and some expenditure for self-development", and it is hardly necessary to emphasise that the content of these requirement cannot be easily converted into terms of money and they would obviously vary from time to time and would show an expansive tendency with the growth of national economy and with the advent of increasing prosperity for the nation as a whole and for any given industry in particular. Therefore, in our opinion, on the material available in the present proceedings it is impossible to resist the conclusion that even the highest average of Rs. 370.11 nP. shown by the appellant by calculating wages paid to the clerical staff is much below the standard of the living wage. In this connection it may be pertinent to observe that in deciding the question as to whether the living wage has been introduced by any employer normally it would be necessary to examine the wage structure paid to the relevant working class as a whole. It is well-established that the claim for bonus is recognised on the basis of the contribution made by the working class as a whole to the profits of the employer, and we think it would be invidious, and on principle unreasonable, to isolate a few cases where higher wages may be paid and to claim immunity from the payment of bonus in respect of such cases. In the absence of special circumstances prima facie the most expedient method to adopt would be to take the average of the wages paid to the relevant working class as a whole. It is, however, unnecessary to pursue this matter further and to pronounce a definite decision on it because, as we have just indicated, even taking the clerical category where the average works highest at Rs. 370.11 nP. we feel no hesitation in holding that the said average is much below the standard living wage. The said average is much above the need-based minimum and may fall in the medium level of a fair wage; but that itself would show that it is much below the standard of the living wage. Similarly, Rs. 273.65 nP. which is the average of the operatives as well as Rs. 301.16 nP. which is the average of the operatives and the clerical staff taken together may be regarded as constituting wage-structure which is above the need-based minimum structure and may be treated as approximating to the lower level of the fair wage. One has merely to take into account the various constituent elements of the living wage to realise that these averages fall far short of the standard of the living wage. In reaching such a conclusion it is hardly necessary first to arrive at a concrete determination as to the money value of the living wage. In our opinion, taking the broad aspect of the concept of the living wage into consideration, and bearing in mind its idealistic and expanding character, it would be possible, and not very difficult either, to say about a given wage such as the one with which we are concerned in the present appeal that it does not reach the standard of a living wage. We must accordingly hold that the claim made by the appellant that it is paying a living wage to its employees cannot be sustained.

It still remains to consider some of the decisions to which our attention was invited. In Standard Vacuum Oil Company v. Their Workmen [[1952] 1 L.L.J. 839] the tribunal had to consider the claim for bonus made by the employees, and in determining the quantum of bonus it addressed itself to the question as to the extent of the gap between the actual wage and the living wage which should be filled by the award of bonus. In that connection the tribunal referred to the Textile Committee's report and assumed that Rs. 50/- to Rs. 55/-, that so to say, on an average Rs. 52-8-0 represented the money value of a living wage in 1940. On that assumption the tribunal made certain calculations and held that its award may be regarded as the first approximation towards attaining the living wage standard. The learned Attorney-General has relied on this decision in support of his argument that

the basis supplied by the Textile Committee's report was treated as valid for the purpose of determining the money value of the living wage. For the reasons which we have already indicated we must hold that the tribunal was in error in treating Rs. 52-8-0 as the money value of the living wage even in 1940. The same comment falls to be made about the calculations made by the Labour Appellate Tribunal in Burmah-Shell, etc., Oil Companies in Madras v. Their Employees [[1954] 1 L.L.J. 782]. In that case the Appellate Tribunal thought that if 50% be added to the minimum wage of the employees that may assist them to attain the goal of the living wage, and this conclusion was based on the Textile Committee's report. Similarly, the calculations made by the Industrial Tribunal, Madras, in Workers of S.V.O.C. Ltd. (Standard Vacuum Employees' Union) v. Standard Vacuum Oil Co. Ltd. [[1957] 1 L.L.J. 165], suffers from the same infirmity. Therefore, the three industrial decisions on which the appellant relied cannot assist it in establishing its contention that a living wage is paid to the respondents.

In Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., Bombay v. Their Workmen [[1953] 2 L.L.J. 246] the Labour Appellate Tribunal had occasion to consider the content of the living wage. In that connection it referred to the Report of the Fair Wages Committee, and observed that the level of national income in India is so low that the country is unable to afford to prescribe by law a minimum wage which would correspond of the concept of a living wage. "The rudder is set in the direction of a living wage", observed the Appellate Tribunal, "but the destination is not yet within sight; the gradual emergence of a welfare State will naturally held but even here progress is necessarily slow". In our opinion, this statement shows the correct approach to the problem of determining the content of the concept of the living wage.

In Standard Vacuum Oil Company v. Their Employees [[1954] 1 L.L.J. 484] the Labour Appellate Tribunal was called upon to consider the plea that the companies were paying a living wage to their employees. In dealing with the said contention the Appellate Tribunal observed that "the measurement of the living wage standard in terms of money has not been prescribed by law of the country, nor, as far as we are aware, has been determined anywhere in any scientific basis". In its opinion, it was not possible nor necessary to fix the amount with exactitude which should form the minimum living wage after an exhaustive enquiry for considering the question of bonus, because, according to the principle laid down the whole gap between the existing wages and the living wage need not be filled up. That is why it thought that it would be sufficient for the purpose if an approximate idea can be formed by taking into account the approximate expenditure on the necessary items of requirements of the living wage standard. On these considerations the plea raised by the companies was rejected. It would thus be seen that the oil companies have been persistently making the claim before the industrial tribunals that they need not be called upon to pay bonus to their employees on the ground that they are paying them a living wage, and this plea has so far been consistently rejected. As we have already pointed out it may partly be because of this trend of industrial decisions that in the present proceedings the tribunal did not think it necessary to deal with the point elaborately or to make a definite finding.

Before we part with this appeal we ought to add that if we had upheld the appellant's claim it would have been necessary for us to consider the relevance and validity of the respondent's alternative claim that in case living wage is paid by the appellant to them they should be allowed a share in the profits made by the appellant during the relevant year on the basis of profit-sharing. It is true that industrial adjudication so far has consistently emphasised the fact that the payment of bonus is intended to fill the gap between actual wages and the living wage. Obviously no occasion has so far arisen to consider whether a claim for bonus can be made even after the standard of living wage has been attained because no employer has so far succeeded in showing that a living wage standard has

been reached. We are making these observations because we wish to make it clear that our decision in the present appeal should not be taken to mean that as soon as a living wage standard is reached no claim for bonus can be made by the workmen; that is a question which may have to be considered on its merits if and when it arises. Until the stage is reached where a plea that living wage is paid can be reasonably made and proved it is desirable that industrial adjudication in regard to the payment of bonus should not be unnecessarily complicated by raising such a plea from year to year.

That takes us to the appeal preferred by the respondents. The tribunal did not think it necessary to work out calculations because, according to the bonus formula, it was conceded that the available surplus in the hands of the appellant was very large. It, however, took into account the wage scales and salaries in the appellant's concerns and other relevant factors and concluded that awarding five months' bonus "strikes a fair balance between the conflicting standards of the workmen and the company". Mr. Gokhale contends that five months' bonus is too meagre and that the respondents were entitled to a much higher rate of bonus. On the other hand the learned Attorney-General contends that we should put a ceiling in the matter of awarding bonus so that excessive claims for bonus would be discouraged. In our opinion it would be inadvisable and inexpedient to put such a ceiling in the matter of awarding bonus. It is now well established that in awarding bonus industrial adjudication has to take into account the legitimate claims of the industry, its shareholders who are entitled to claim a return on the investment made by them and the workmen. This Court has consistently refused to lay down any rigid rule or formula which would govern the distribution of the available surplus between the three claimants. The decision of this question must inevitably depend on a proper assessment of all the relevant facts. If wages are small and the profits are high then the workmen would be entitled to have a high rate of bonus. Indeed, if an employer makes consistently high profits and the wages continue to be low it may justify the increase in the wage structure itself; in other words, the award of bonus would have some relation to the wages paid to the employees. It is also true that unreasonably high or extravagant claims for bonus cannot be entertained just because the available surplus would justify such a claim. As has been observed by the Labour Appellate Tribunal in Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Bombay v. Their Workmen [[1953] 2 L.L.J. 246] care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity that upset emoluments all-round or that it creates industrial discontent or the possible emergence of a privileged class. The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either. Having regard to the fact that the distribution of available surplus must inevitably depend in each case on its own facts this Court has generally refused to interfere with the decision of the tribunal on the ground that any decision on the question of distribution should be left to its discretion. It is only where the award passed by the tribunal appears to this Court to be wholly unreasonable and to be the result of the failure of the tribunal to take into account the necessary relevant facts that the jurisdiction of this Court under Art. 136 can be successfully invoked. In the present case the tribunal has considered all the relevant factors and has come to the conclusion that five months' bonus would meet the ends of justice. We do not see any reason to interfere with this award.

In the result both the appeals fail and are dismissed. There will be no order as to costs in both the appeals.

Appeals dismissed.

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