

Ahmedabad Mill Owners' Association Etc.

Vs

The Textile Labour Association

Civil Appeals Nos. 167 to 173, 537 and 538 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, V. Ramaswami – I JJ)

10.08.1965

JUDGEMENT

GAJENDRAGADKAR, C.J.

This is a group of seven appeals which arise from an industrial dispute between the appellants, the Ahmedabad Millowners' Association, and 67 employers on the one hand, and the respondent, the Textile Labour Association, Ahmedabad on the other. This dispute was referred by the Government of Gujarat to the industrial court, Gujarat, under Section 73 of the Bombay Industrial Relations Act, 1946 (No. XI of 1947) (hereinafter called the Act). In making the order of reference, the Government stated that it was satisfied that the industrial dispute in question was not likely to be settled by other means. The dispute itself consisted of three questions. These questions have been thus stated in the reference :

"(1) Whether under the award of the Industrial Court, Bombay, dated 2 March 1950, in Reference (IC) No. 189 of 1949 (as subsequently modified), read with award of the industrial court, dated 27 April, 1948, in Revision Petition No. Misc. 1 of 1947, the Ahmedabad Millowners' Association and the employers mentioned in the annexure are bound to pay dearness allowance to their employees on the consumer price index numbers for working class for Ahmedabad published by the State Government since February 1964, by using the index numbers in the series for Ahmedabad compiled by the Labour Bureau, Simla, and the linking factor of 3.17 adopted for linking that series to the State series with the old base.

(2) If not, whether the said Ahmedabad Millowners' Association and the employers mentioned in the annexure should pay dearness allowance to their employees for March 1964 and subsequent months in terms of the aforesaid awards, by treating the index numbers for working class for Ahmedabad published by the State Government since February 1964, as the index numbers in the State series compiled on the basis of the family budget survey made in 1926-27;

(3) If not, how the dearness allowance to the aforesaid employees for March 1964 and onwards should be paid on the index numbers for Ahmedabad published by the State Government since February 1964."

The Industrial Court has answered the first question in favour of the appellants, whereas the two remaining questions have been answered in favour of the respondent. In the result, the appellants have been directed to pay dearness allowance to their employees for the month of March, 1964 and

for subsequent months on the consumer price index numbers for working class for Ahmedabad published by the State Government since February 1964 (by using the index numbers in the series for Ahmedabad compiled by the Labour Bureau, Simla, and the linking factor of 3.17 adopted for linking that series to the State series with the old base) at the rate of 2.84 pies per day for rise of each point in the cost of living index number over the pre-war figure 73. The industrial court has further directed that as per the award in Miscellaneous Application (IC-G) No. 1 of 1960, 75 per cent of the average dearness allowance of the first six months of 1959, i.e., Rs. 63-15-9 per month of 26 working days, shall be consolidated with th

Before dealing with the points raised by the appellants in these appeals, it is necessary to set out somewhat elaborately the previous history of the present dispute. The story about the payment of dearness allowance to textile industrial employees at Ahmedabad takes us back to the time when the Second World War broke out in September 1939. As is well-known, as a result of the said war the cost of living shot up; and in consequence, the industrial employees at Ahmedabad who had organized themselves as the Textile Labour Association, Ahmedabad, raised a demand for payment of dearness allowance. This demand became the subject-matter of arbitration by the industrial court at Bombay (Case No. 1 of 1940). The industrial court had to consider, inter alia, two major questions; the first was as to what was the extent of the rise in the cost of living consequent upon the Second World War; and the second was as to the extent and manner in which the said rise in the cost of living should be neutralized by the payment o

Having reached this conclusion on the first question the industrial court examined the problem as to the extent and method by which the rise in the cost of living should be neutralized. On this question, its conclusion was that for 11 points rise (which is equivalent to a rise of 15 per cent) in the cost of living for the month of December, a cash relief to the extent of 10 per cent of the average wage, i.e. Rs. 3-8-0 per employee, should be awarded for the month of December and a similar relief proportionately determined should be awarded for other months. It was urged before the industrial court that relief could be granted to the employees in kind rather than in cash; but this contention was negatived by the Court, though it expressed a hope that the employers should start cost price grain shops at convenient centres for the benefit of the employees. That, in substance, is the result of the proceedings in Case No. 1 of 1940. It is with the decision of this dispute that the story about the payment of dearn -2/3 per cent neutralisation was allowed.

This award continued to be in operation till September 1941. On 12 August 1941, an agreement was entered into between the appellants and the respondent by which it was resolved that the dearness allowance to be paid to the employees in the member Mills of the appellant Association be raised by 45 per cent from the month of July 1941, and, in accordance with this agreement, an award was made by the industrial court on 15 September 1941. As a result of this award, neutralisation came to be effected to the extent of 96 per cent on the average wage over the pre-war cost of living index of 73 in August 1939, and to that extent the respondent gained. We have already noticed that the neutralisation which was effected by the earlier award was 66-2/3 per cent.

Two years thereafter. the appellant association filed a petition (No. 1 of 1943) for a substantial reduction in the quantum of dearness allowance. It urged that in the year 1943 the textile industry at Ahmedabad had suffered considerable loss in its profits, and so, it was necessary that the dearness allowance fixed by the consent award should be reduced. When the matter was considered by the industrial court, it was discovered that the claim made by the appellant association was not substantiated by sufficient or satisfactory data in the form of published balance sheets for the year 1943. The industrial court, therefore refused to interfere with the award, but permitted the appellant

Association to raise the same dispute in April 1944 if it thought necessary to do so. No such application was, however, made by the appellant Association in 1944, with the result that the consent award passed on 15 September 1941 continued to be in operation.

The said consent award had provided that the member mills were to pay the dearness allowance prescribed by it till the termination of the Second World War; and so, as soon as the war came to an end, the member mills stopped the payment of dearness allowance with effect from 8 May 1945. The respondent then filed Petition No. 1 of 1945 before the industrial court asking for a direction against the appellant Association for payment of the dearness allowance on the same scale as was then prevailing for three months after 8 May 1945. This prayer was granted by the industrial court. That is how matters stood as a result of the order passed on Petition No. 1 of 1945.

Meanwhile, the respondent gave a notice of change on 20 May 1945 and demanded continuance of the payment dearness allowance until the working class cost of living index for Ahmedabad stood above 73. It suggested that the quantum of dearness allowance should be related to the cost of living index as awarded by the industrial court award dated 26 April 1940, and revised by the subsequent award dated 15 September 1941. While making this demand, the respondent made it clear that this demand was made without prejudice to the claim of the employees for a revision in the entire wage structure. It appears that, during the course of these proceedings, it was urged before the industrial court that the rise in the cost of living should be computed not with reference to the index figure of 73 in August 1939, but with reference to the figure of 100 in 1926-27. This contention was, however, rejected by the industrial court. By its award, the industrial court directed that neutralisation should be effected to the extent of

In 1946, the respondent moved for the revision of the said award (Revision Petition No. 1 of 1946). By this revision petition, the respondent claimed that the rise in the cost of living should be neutralized fully instead of 76 per cent, and this claim was based on the allegation that the profits of the textile industry had maintained a high level and the reduction in the extent of neutralisation from 96 per cent to 76 per cent in the award of the previous year had adversely affected the employees and they had in fact begun to leave the industry. It may be pointed out that on all these occasions, the appellant association urged before the industrial court that the average monthly income and expenditure of the textile employees in Ahmedabad left surplus with them and the need for neutralizing the rise in the cost of living was not as much as was sought to be made out by the respondent. This contention, however, been consistently rejected by the industrial court. Even so, the claim made by the respondent for i

As soon as seven months expired, the respondent filed a Revision Petition (No. 1 of 1947) before the industrial court on 8 March 1947. By this petition, the respondent renewed its claim for an increase in the dearness allowance. Meanwhile, the minimum wage for textile employees in Bombay had been fixed at Rs. 30 and dearness allowance was awarded to them with the object of neutralizing the rise in the cost of living to the extent of 90 per cent on the minimum wage of Rs. 30. Taking advantage of the fact that the minimum wage for textile employees in Bombay had been fixed at Rs. 30, the appellant association urged that there was no occasion to increase the rate of dearness allowance because the wages of the employees had already been increased under the standardization scheme which had been adopted in Ahmedabad. Alternatively, the appellant Association contended that if the Court was inclined to revise the dearness allowance, it should follow the same formula as in Bombay and provide for neutralisation at the

The appellant Association issued a notice on 31 October 1949, purporting to terminate this award

with effect from 1 January 1950. The ground for terminating the award set out by the appellant Association in its notice was that the textile industry in Ahmedabad was passing through a crisis and that certain mills were completely closed down while others were partially closing down. It appears that about that time, the Central Government, acting in pursuance of the recommendations made by the Tariff Board, directed a 4 per cent cut in ex-mill cloth prices; and that, according to the appellant Association, led to a crisis in the financial affairs of the textile industry at Ahmedabad. It was also alleged in the notice that though the prices fixed were uniform, the dearness allowance paid was not uniform and the member mills of the appellant Association were paying Rs. 15-4-0 more per month per employee in dearness allowance at Ahmedabad as compared to that paid to the textile employees in Bombay. Arithmetical cal

Before the notice thus issued by the appellant Association came into force, the respondent gave a notice of change to the mills to continue to pay the dearness allowance according to the existing award; and since no settlement could be reached between the parties, a reference was made to the industrial court. As a result of these proceedings, however, neither party scored a victory, and the award directed that payment of the dearness allowance should be made in accordance with the orders passed in Revision Petition No. 1 of 1947. Since the date when this order was made, the terms of the award in Revision Petition No. 1 of 1947 have been in operation between the parties.

Mean while, the Central Wage Board for the Cotton Textile Industry was constituted. One of the points which the wage board had to consider was the demand by the employees for consolidating a part of the dearness allowance in the basic wage. The wage board recommended that 75 per cent of the dearness allowance should be consolidated in the basic wage, and the remaining 25 per cent should bear a flexible character. The board also made other recommendations which are not relevant for our purpose. In consequence of the recommendation made by the board as to the consolidation of the dearness allowance, an agreement was reached between the appellant-association and the respondent, as a result of which a joint application (No. 1 of 1960) was made by both the parties under Section 116A of the Act, and on this joint application an award by consent was passed directing that 75 per cent of the average dearness allowance of the first six months of 1959 which is Rs. 63-15-9 per month of twenty-six working days should be

It appears the about this time there was a growing feeling amongst both the employers and the employees that the different series of consumer price index compiled and published in India were not very satisfactory and some of them had become obsolete. In the Second Five- Year Plan, it was therefore, recommended that it was desirable that steps should be taken simultaneously with the undertaking of wage census to institute enquiries for the revision of the present series of cost of living indices at different centres. According to the recommendation made by the Planning Commission Report, the Labour Bureau, Simla, and the Central Statistical Organization of the Government of India took steps to conduct fresh family living surveys among working class and middle-class population respectively with a view to construct the new series of consumer price index numbers. The working class surveys were conducted at fifty selected centres and the middle class surveys at forty-five centres, eighteen centres being common to

It then appeared clear that there were several anomalies in regard to the collection of prices in the State series. Some of the items which were specified in such series had ceased to exist, whereas quotation for one major item, viz, house rent allowance, had been frozen for many years. After the Government of India began to publish its new series, it advised the Government of Gujarat to stop publishing its old series and publish the converted index in its place. The Government of India thought the it would be unjust to the employees if the conversion were allowed to take place without

removing anomalies of the State series.

Faced with this problem, the Government of Gujarat set up an expert committee under the chairmanship of Dr. M. B. Desai. The terms of reference of this committee were thus formulated :

"(1) to examine the validity of the submissions and representations made to Government and to make recommendations as to whether any readjustment is necessary in the existing series for Ahmedabad published by the State Government, and if so, what readjustment should be made;

(2) to consider how the new series of consumer price index numbers for Ahmedabad should be linked with the existing series, so readjusted if found necessary; and in so to take into consideration the factor that the period of family budget enquiry on which the new series for Ahmedabad is based is different from the base period for the said new series."

The said Committee made fairly exhaustive investigation, and made two main recommendations. The first recommendation involved an addition of 19 points in the overall price index in the State series and the same was fixed at 317 instead of 298 as it stood when the new series and its base period were decided upon. The other recommendation which it made was that the conversion or the linking factor should be 3.17 as against 2.98 per point in the new series.

The Government of Gujarat accepted the first recommendation and revised the index number for the month of November 1963, by adding 19 points to the figure originally released by it and stated that its existing series would be adjusted month to month by the addition of 19 points for adjusting the index for clothing and house rent groups as recommended by the expert committee. In regard to the second recommendation, the Government took the view that it was necessary to continue publication of the current series to permit industry and labour time to have necessary modifications in the existing agreements, settlements and awards made to link up the dearness allowance with the new series published by the Labour Bureau Simla. This decision was announced by the Government by a press note on 31 January 1964.

When this decision of the Government of Gujarat was announced, the appellant association found that it entailed considerable additional burden on the textile industry; even so, it advised its member mills to pay the dearness allowance according to the adjusted consumer price index number by adding 19 points for the month of January 1964, under protest. This protest was expressed by the president of the appellant Association by issuing a press communique criticizing the Government for its unilateral and hasty decision in the matter.

On 29 February 1964, the Government of Gujarat issued another press note by which it accepted the second recommendation made by the expert committee to take the linking factor at 317 instead of 298. The press note shows that this decision was reached by the Government of Gujarat in accordance with the advice received from the Government of India. In consequence of this decision, the Government of Gujarat discontinued publication of the cost of living index number of its 1926-27 numbers from January 1964. This decision of the Government raised a storm of protest from the appellant Association. A general meeting of the members of the appellant Association was held on 30 March 1964, and it passed a resolution to the effect that the discontinues of the publication of the cost of living index by the Government of Gujarat made it impossible for the appellant-association to comply with the terms of the existing award in respect of the payment of dearness allowance in

the manner prescribed by the award and so, the a was not prepared to accept that decision.

When the appellant Association adopted this attitude, the secretary of the respondent Association expressed his profound sorrow at the decision of the appellant association, and by his letter addressed to the appellant Association on 3 April, 1964, he requested the members of the appellant association to pay dearness allowance to their employees according to the converted number published by the Government of Gujarat. This letter was accompanied by a resolution passed by the respondent association in which it set forth its version of the financial position of the members of the appellant Association and the justice of the claim made by the employees for the payment of dearness allowance in accordance with the decision of the Government of Gujarat. The appeal thus made by the secretary of the respondent association did not, however, receive any sympathetic response from the appellant Association; and that made it necessary for the Government of Gujarat to refer the present dispute to the industrial court at G

At the hearing of the present reference before the Industrial Court, the appellants had urged a preliminary objection against the competence of the present reference. They contended that the reference under Section 73 of the Act was invalid, because, before making the reference, the requirements of Section 42 of the Act had not been complied with. The argument was that, in substance, the reference relates to a change in the terms of the award binding between the parties, and for effecting such a change, the procedure prescribed by Section 42 and the other sections in Chap. VIII of the Act has to be complied with. It is common ground that the said procedure has not been followed and the Government of Gujarat has made the present reference in exercise of the power conferred on it by Section 73. The industrial court has rejected the appellants' contention and has held that the reference is valid. Sri Setalvad for the appellants has urged before us that the view taken by the industrial court is not justified by

The Act was passed by the Bombay Legislature in 1947. It purports to regulate the relations of employers and employees, to make provision for settlement of industrial disputes, and to provide for certain other purposes. It is a comprehensive piece of legislation and it makes elaborate provisions for the regulation of relations between employers and employees and for the settlement of disputes between them. Section 42 of the Act provides for a notice of change. It is unnecessary to cite the provisions of the said section, because for the purpose of dealing with the point raised by Sri Setalvad, it would be enough if we state the sum and substance of Ss. 42(1) and 42(2). Section 42(1) provides that if an employer intends to effect any change in respect of an industrial matter specified in Sch. II, he will have to give notice of such intention in the prescribed form to the representative of employees. Similarly, Section 42(2) provides that if an employee desires a change in respect of an industrial matter not sp

Let us then read Section 73; it reads thus :-

"Notwithstanding anything contained in this Act, the state Government may, at any time, refer an industrial dispute to the arbitration of the industrial court, if on a report made by the labour officer or otherwise it is satisfied that -

(1) by reason of the continuance of the dispute -

(a) a serious outbreak of disorder or a breach of the public peace is likely to occur :

(b) serious or prolonged hardship to a large section of the community is likely to be

caused : or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or

(2) the dispute is not likely to be settled by other means; or

(3) it is necessary in the public interest to do so."

On a fair reading of s. 73 it is plain that it deals with the powers of the state Government to make a reference and as such, it is difficult to assume that the said powers of the State Government are intended to be controlled by the provisions of s. 42. Section 42 prescribes the procedure which has to be followed by the employer and the employee respectively if either of them wants a change to be effected as contemplated by it. The scheme of Section 42 read along with the other provisions in chap. VIII clearly shows that the said chapter can have no application to cases where the State Government itself wants to make a reference. That is the first consideration which militates against the construction which Mr. Setalvad suggests.

The opening clause in s. 73 also unambiguously indicates that the power of the State Government to make a reference will not be controlled by any other provision contained in the Act. This clause plainly repels the argument that the provisions of Section 42 should be read as controlling the provisions of Section 73. The meaning of the non-obstante clause is clear and it would be idle to urge that the requirements of Section 42 must be satisfied before the power under Section 73 can be invoked by the State Government.

It is, however, urged that the power conferred on the State Government by s. 73 is the power to refer an industrial dispute to the arbitration of the industrial court and there can be no industrial dispute unless a notice of change has been given either by the employer or the employee. In other words, the argument is the unless a notice of change is given as required by Section 42, no industrial dispute can be said to arise between the employer and his employee, and that is how Section 42 governs Section 73. If it was the true legal position that there can be no industrial dispute between an employer and his employee unless a notice of change is given by either of them, there would have been some force in this contention; but the definition of the words "industrial dispute" does not justify the assumption that it is only a notice of change that brings into existence an industrial dispute. Section 3(17) of the Act defines an "industrial dispute" as meaning any dispute or difference between an employer and emp

It is true that the power conferred on the State Government to make a reference is not absolute or unqualified. It can be exercised only if one or the other of the conditions specified by Sub-sec. (1), (2) or (3) of Section 73 is satisfied. But once the State Government comes to the conclusion that one or the other of the said conditions is satisfied, its power to make a reference is not limited to cases where notice of change has been given by the parties as required by Section 42. It is an overriding power which is intended to be exercised to avoid anomalies or other serious consequences which would flow in case the Government does not make an immediate reference. The requirements prescribed by Sub-sec. (1), (2) and (3) of Section 73 indicate the types of cases which are intended to be referred without requiring the parties to take recourse to Section 42. In the present case, the Government of Gujarat was satisfied that the dispute was not likely to be settled by other means, and so, it made the present re

On principle, the conferment of this power seems to be fully justified. If, as a result of a dispute between the employer and his employees, a serious outbreak of disorder or a breach of the public peace is likely to occur, or a serious or prolonged hardship to a large section of the community is likely to be caused, or the industry concerned is likely to be affected adversely, it would be idle to require that even in the face of such a serious danger, the procedure prescribed by Section 42 must be followed before reference can be made under Section 73. The very nature of the conditions prescribed by Sub-sec. (1), (2) and (3) of Section 73 emphasizes the fact that the said conditions refer to categories of cases or types of occasions on which reference has to be made promptly and immediately, and that explains the conferment of the wide powers on the State Government as prescribed by Section 73. We are, therefore, satisfied that the industrial court was right in coming to the conclusion that the preliminary

That takes us to the merits of the controversy between the parties in the present appeals. Let us begin by briefly indicating the broad contentions raised by the appellants before the industrial court and its findings on them which are relevant for the purpose of the present appeals. The first contention which was urged before the industrial court was that the family living survey which was conducted by the Labour Bureau, Simla, in 1958-59 was unreliable, because the sample survey on which it was based was inadequate, and the interview method which was adopted in conducting it was unsatisfactory. It was also contended that the linking factor at 3.17 which had been adopted by the Government of Gujarat was unscientific and irrational and that the scientific and rational way to deal with the problem presented by the new consumer price index recently adopted by the Government of Gujarat would be to devise a scheme of dearness allowance afresh, taking the present basic salary as a base, and relating it to the cha

The validity of these contentions was strenuously disputed by the respondent. It urged that the sample survey was conducted on rational and scientific lines and it did not suffer from any infirmity at all. It further argued that the attempt to construct a new wage structure by making the basic salary with 75 per cent of the consolidated dearness allowance as the basis with 1960 = 100 as the base year, would be beyond the terms of reference, and it would, besides, create many problems and complications. According to the respondent, the basic salary still continues to be what it was before, though for practical purposes 75 percent of the dearness allowance has been consolidated with it. The respondent seriously challenged the appellants' case that the operation of the linking factor was either unscientific, unreasonable or unjust; and the appellants' theory that the average rise in prices should be determined after watching the behaviour of prices for two or three years, was characterized by the respondent as

During the course of hearing before the Industrial Court, the appellants examined two experts, Sri Gokhale and Sri Chokshi. They also led voluminous documentary evidence. The respondent filed detailed statements disputing the correctness of the pleas taken by the appellants, and in support of them, they filed several charts which were prepared from the balance sheets of the appellants themselves. Both parties referred to the opinions expressed several writers on the subject of the preparation of consumer price index and on other matters which became relevant for the decision of the present dispute. Broadly stated, the industrial court has rejected all the contention raised by the appellants. It has found that the recent survey was conducted under the advice and guidance of a technical advisory committee of a high order and that the work of carrying on the survey had scrupulously followed the relevant recommendations made by the International Labour Office and the United Nations. The industrial court did not

In regard to the question of the linking factor on which both parties addressed the industrial court

elaborately, the Court considered the matter in the light of expert opinion cited before it and held that the Government of India was justified in recommending a simple arithmetical method of linking; it found that the said method had been accepted by the expert committee appointed by the Government of Gujarat and had been recommended by the expert committee appointed by the Government of Maharashtra as well. It, therefore, reached the conclusion that the said method based on the application of the linking factor at 3.17 was the most suitable to adopt. In this connexion, it rejected the appellants' suggestion that the dearness allowance should be paid at a flat rate and held that flexible dearness allowance alone would meet the ends of justice and would lead to industrial peace. It noticed the fact that now there was only one cost of living index existing in Ahmedabad and that is based on the new series. The

The Industrial Court then considered the question about the paying capacity of the appellants. As a matter of law, it rejected the respondent's argument that a wage structure once constructed by industrial adjudication can never be revised to the detriment of workmen, and it held that if it was shown that the financial position of the employer had substantially deteriorated and such deterioration was likely to persist for some time, it would be open to industrial adjudication to make a suitable revision of the wage structure, provided, of course, the wage structure does not represent the wages at their basic minimum level. Considering the problem presented by the appellants' plea of incapacity to bear the burden in the light of this legal position, the industrial court has found that, in its opinion, the textile industry of Ahmedabad is in a sound financial position. It has also added that "in any event, there has been no substantial deterioration in its condition so as to justify any wage cut or abandonment

The first point which we must now consider is whether the appellants are justified in contending that the industrial court erred in overruling their contention that the new survey suffered from two major infirmities - inadequacy of the sample size, and impropriety of the method of interview adopted by the investigators. In support of this plea the appellants examined Sri Gokhale as an expert witness. Sri Gokhale who served in the Labour Office at Bombay from 1926 to 1937, was directly associated with the family budget inquiries, compilation of cost of living index numbers, and with the first general wage census conducted by the Labour Office in Bombay. He also worked as assistant secretary of the Bombay Textile Labour Enquiry Committee. Later, he joined the Millowners' Association, Bombay, as their labour officer on 1 January 1938 and served in that capacity until he retired on 1 November, 1962. He was deputed on a study tour to Lancashire in 1951 and attended the International Labour Conference at Geneva. H

Mr. Gokhale was cross-examined by the respondent. It was put to him that this experience in the matter of sample survey was somewhat limited and that the said experience had now become antiquated in view of the great strides of progress which had been made in the science of sample survey after 1926. He agreed that sampling technique involves knowledge of statistics and statistics involves mathematics, and he did not make any claim to be an expert either in statistics or in mathematics. In his examination-in-chief, Sri Gokhale appeared to criticize the extent of imputation which was evident in the preparation of the new series; but in his cross-examination, he fairly conceded that imputations have always got to be done in compiling consumer price index. It had been done in the past, he said as also in the case of the present series. When he was asked whether he knew what the percentage of imputation was in the compilation of the consumer price index of 1926-27, he admitted that he did not know. He was, howeve

The statements made by Mr. Gokhale in his affidavit were disputed by the respondent and the accuracy and the validity of the views expressed by him were seriously challenged by Sri Vasavada

who filed a reply on behalf of the respondent (item 19). In his reply, Sri Vasavada referred to Cl. 14 of the resolution as reported at p. 403 of the International Labour Code - 1951, Vol. II; and emphasized the fact that the main distinguishing feature of the new survey was that it was carried out under the technical guidance of professional statisticians not only with adequate knowledge of sampling theory but also with actual experience in sampling practice, and with the help of a properly trained field and computing staff. This was the requirement laid down by the publications issued by the I. L. O. and the United Nations as a very important test, and the impugned survey fully satisfies the said test. Sri Vasavada also referred to the opinion expressed by Dr. Basu who is at present the I. L. O. expert on the subject, t

Mr. Vasavada then questioned the accuracy of Sri Gokhale's statement that such a small percentage of the universe had never been adopted before in any other inquiry. He urged that the present techniques have advanced so far that a small sample size can achieve the best results; and he cited the example of a survey carried out in the United Kingdom where the proportion of 13,000 households surveyed to the total households which constituted the universe came to 1 per cent. The industrial court has considered the evidence given by Sri Gokhale and has taken into account the arguments urged on behalf of the respondent, and it has held that the size of the sample selected for the impugned survey cannot be said to introduce any infirmity in the survey. The question which we have to decide is whether the Industrial Court was right in coming to this conclusion.

In dealing with this question, it is necessary to refer briefly to the genesis and growth of the science of social survey. "In its broadest sense" says the Encyclopedia of the Social Sciences, "a social survey is a first hand investigation, analysis and coordination of economic, sociological, and other related aspects of a selected community or group. Such a survey may be undertaken primarily in order to provide material scientifically gathered, upon which social theorists may base their conclusions, or its chief purpose may be to formulate a programme of amelioration of the conditions of life and work of a particular group or community." Wells defines a social survey as a "fact-finding study dealing chiefly with working-class poverty and with the nature and problems of the community." As Moser has, however, pointed out, "this definition might have covered the classical community and poverty studies but would hardly be adequate, the first part at any rate, to the modern forms of survey."

The history of social survey in England can be said to have begun with the publication of Mayhew's book "London Life and the London Poor," published in 1851; and Booth made a very significant contribution to the scientific development of social survey by publishing his book "Labour and Life of the People of London" (1889-1902). Rowntree followed with his book "Poverty : A Study of Town Life." Thereafter, a number of studies have been made by social scientists, and the subject of the theory and practice of social surveys has been the subject-matter of valuable and extensive literature all over the civilized world. During the First World War and thereafter, social scientists devoted their attention to the problem of family living studies mainly from the point of view of the impact of price changes on consumers economic situation. The development of reliable consumer price indices naturally involved the use of weights that would properly reflect the consumption expenditure of the population. This led to further

The Second World War and the conditions that flowed from it made it necessary to carry on investigations on a wide range of inquiry relating to all aspects of living conditions e.g. nutrition, health, education and employment. The whole question of family living survey came up for consideration in the Seventh International Conference of Labour Statisticians in 1949. The conference adopted a resolution defining the objectives of family living studies and setting new

international standards as regards the organization of enquiries and the analyses and presentation of the results that flowed from it.

In India, a standardised statistical type of family living study was first initiated in Bombay in 1921. Such enquiries were also conducted in Sholapur in 1925, in Ahmedabad in 1926 and in some centres in Bihar in 1923. While reviewing the position of social surveys in India, the Royal Commission on Labour pointed out the great paucity of statistical material in this country for judging the standard of living of the workers and recommended conduct of socio-economic enquiries of the type of family living surveys. This report naturally gave an impetus to the conduct of family budget enquiries. In all the surveys that followed, sampling and interviewing techniques were adopted, though, of course, not of a much advanced nature. A statistical analysis of the data collected was also attempted.

The Second World War saw the appointment of the Rau Court of Enquiry constituted under the trade Disputes Act, 1929. One of the recommendations made by the said Court was that the Central Government should take up responsibility for maintaining up-to-date cost of living index numbers for important areas and centres. The Government of India accepted this recommendation and set up a special organization called 'the Directorate of Cost of Living Index Numbers' and family budget enquiries among industrial workers were conducted at 28 centres during 1944-45 in the course of which 2,700 budgets were collected. A remarkable feature of these enquiries was that for the first time in this country, an attempt was made to conduct such enquiries simultaneously at a large number of centres under more or less uniform techniques. During the same period, the Labour Bureau of the Government of India and some of the organizations of state Governments continued to conduct family budget enquiries from time to time at specific ar

It was in the background of these events that the Second Five Year Plan made a significant recommendation. The plan said that :-

"The existing wage structure in the country comprise, in the main, a basic wage and a dearness allowance. The later component in a majority of cases has relation to cost of living indices at different industrial centres. These indices have not been built up on a uniform basis; some of them are worked out on primary data collected about 20 to 25 years ago and are, therefore, not a true reflection on the present spending habits of workers. Since one of the question which the Wage Commission will have to take into account is the demand made by the workers' organizations for merging a part of dearness allowance with the basic wage, evolving recommendations for such a merger will not be sufficiently scientific if cost of living indices at different centres do not have a uniform basis. Steps will therefore have to be taken simultaneously with the undertaking of a wage census, to institute enquiries for the revision of the present series of cost of living indices at different centres."

It is in pursuance of this recommendation that the impugned survey was made.

Let us now see on what principles and methods the impugned survey was made. It is necessary to begin the discussion of this question with the observation "that the consumer price index number measures nothing but changes in prices, as they affect a particular population group; and so it is really a price index number as distinct from a cost of living index number. In fact, these indices used to be termed as cost of living index numbers in the past, but in order to make their meaning clear, it was decided by Government to change the name to consumer price index numbers in accordance

with international recommendations and growing practice in other countries. Most of the State Governments compiling such index numbers have also adopted this usage." This index number is intended to show over a period of time the average percentage change in the prices paid by the consumers belonging to the population group proposed to be covered by the index for a fixed list of goods and services consumed by them. The average per

The index does not purport to measure the absolute level of prices but only the average percentage change in the price of a fixed basket of goods and services at different periods of time. There are certain preliminary considerations which are relevant in the construction of consumer price index numbers. The first consideration is the purpose which the index is intended to serve, and that necessarily involves the definition of the group of consumer to which the index is intended to relate. Then it is necessary to determine the consumption level and pattern of the population group at a period of time which generally becomes the base-period of the index numbers. For that purpose, a list of commodities and services has to be made. Usually, this list would contain items of food fuel and light, clothing, and others; items of service such as barber charges, bus fare, doctor's fee, etc., have also to be selected. It is the combined total of the items of commodities and services that constitute the basket. Then foll

Having determined the consumption level and the pattern of the population group, the next task to attempt is to arrange for the regular collection of price data for the various qualities of commodities and services which enter the basket. With this material, the consumer price index has to be compiled from month to month subsequent to the base-period. That, shortly stated, is the nature of the preliminary considerations which have to be borne in mind while constructing the consumer price index numbers.

We have just noticed the theory of weights on which weighing diagrams are prepared. Weights are intended to indicate the importance attached to the percentage changes in the prices paid by consumers for different items (commodities and services) of consumption. Accordingly, each item in the index is given, what is called in technical language, a "weight" to represent the relative importance of the price changes recorded for that item. This weight means nothing more than the percentages of expenditure on each item of goods and services in relation to the total expenditure. It will thus be seen that the main basis for determining the weights of respective commodities and services is the investigation of the family budget; and that emphasizes the importance and significance of a proper investigation. During the course of investigation, data are collected on all items on which money has been defrayed by families; but only such items as involve consumption expenditure are included in the average budget. Even so,

Having thus briefly reviewed the theoretical aspects of the factors that govern the construction of consumer price index numbers, let us now proceed to see how the impugned inquiry was in fact held. The material evidence which will assist us in this part of our inquiry is furnished by the Report on Family Living Survey among Industrial Workers at Ahmedabad, 1958-59. From this report it appears that the organization of the survey was based on the co-operation of several institutions. The survey was sponsored by the Labour Bureau, Ministry of Labour and Employment, Government of India; and its technical details were worked out under the guidance of a technical advisory committee on cost of living index numbers consisting of the representatives of the Ministries of Labour and Employment, Food and Agriculture, Finance, Planning Commission, the National Sample Survey Directorate, the Department of Statistics (C.S.O.) the Indian Statistical Institute and the Reserve Bank of India. The field work was entrusted to t

The first thing that the organization did was to define a "working class family," because this definition determined the size of the universe. A working class family which was the basic unit of the survey, was defined in terms of sociological and economic considerations as consisting of persons :

- (i) generally related by blood and marriage or adoption;
- (ii) usually living together and/or served from the same kitchen; and
- (iii) pooling a major part of their income and/or depending on a common pool of income for a major part of their expenditure.

Then followed the delimitation of area. The geographical area to be covered during the survey was decided in consultation with local organizations both official and non-official. At the Ahmedabad centre 46 localities were selected for the purpose of the survey; they consisted of 16 Chawls, 21 Labour Colonies (Housing Societies) and 9 Villages. Before settling the ultimate units of the family living survey, viz., the families two types of sampling methods were adopted; they were the tenement sampling and pay-roll sampling. The sample size for a centre was determined on the basis of the number of industrial workers, the type of sampling followed, the workload manageable by an investigator and the required precision of weights to be derived from Sch. A for consumer price index numbers. The sample size for Ahmedabad was 720 families to be canvassed for Sch. A. The number of schedules finally collected and tabulated was 722 for Sch. A. The two samples drawn for Schs. A and B were however, mutually exclusive, beca

The second stage unit for selection was a working class family. Each month, the investigator listed all the families in the cluster allotted to that month by house-to-house visit and classified them as working class families and others. While listing, information was also collected on the family size, the expenditure class to which it belonged and the State of origin of the head of the family. This information was utilized to arrange the working class families in the cluster, first by family size and within these classes by expenditure class and within these by the State of origin. A simple systematic sample of 20 working class families was drawn from this arranged list. Every fourth family in this sample was contacted for filling Sch. B (on Level of Living) and the remaining three were for Sch. A (on Family Budget). That is the nature of the procedure adopted in selecting the families for sample survey and determining the size of the sample. The sample survey was designed to cover a period of twelve months

The population of Ahmedabad is about 11.5 lakhs. The working class population in Ahmedabad was reported to be concentrated in thirteen localities. The markets predominantly patronised by the working class population in Ahmedabad were six and it is these markets that were selected for the collection of retail prices for the new series of consumer price index number for Ahmedabad centre.

This summary of the report gives us a broad idea as to the manner in which and the method by which the investigation was made which ultimately led to the construction of the consumer price index number.

Reverting then to the objections raised by the appellants that the size of the sample was inadequate and the method of investigation was inappropriate, can it be said that the industrial court was in error in holding that these objections were not valid ? In dealing with this question. it is necessary to bear in mind that the size of the sample has to be determined in the light of the permissible margin

of error in the resulting series of consumer price index numbers. As Dr. Basu has observed : "In our country, this permissible margin of error in the index has been broadly set at 2 per cent". and that is not contradicted by the opinion of any other expert. The sample of consuming units has to be selected by the application of scientific sampling techniques; and there is no doubt whatever that during the last forty years, this branch of human knowledge has made remarkable progress. The optimum sample design is now worked out by competent statisticians in the light of the available material and requirements in

On the question about the adequacy of the sample size selected for investigation on the present occasion, it would be material to refer to the opinion expressed by Moser on this subject. Says Moser :-

"Most people who are unfamiliar with sampling probably overrate the importance of sample size as such, taking the view that "as long as the sample is big enough, or a large enough proportion of the population is included, all will be well." The fallacy in this is clear as soon as one looks at any standard error formula, say (5.1) on p. 61 above. If the population is large, the finite population correction $N-n/N-1$ practically vanishes and the precision of the sample result is seen to depend on n , the size of the sample, not on n/N , the proportion of the population included in the sample. Only if the sample represents a relatively high proportion of the population (say, 10 per cent or more) need the population size enter into the estimate of the standard error."

Mr. Kolah for the appellants not cited before us the opinion of any expert to the contrary.

Considering the question from a common sense point of view, it seems to us reasonable to hold that if the quality of investigation has improved and the method of working out sample survey has made very great progress, then it would not be correct to say that because the size of the sample in the present case was smaller as compared to the size of the sample taken in 1926-27, the inadequacy of the size on the subsequent occasion introduces an infirmity in the investigation itself. That is the view which the Industrial Court has taken, and we see no reason to differ from it.

At this stage, it would be interesting to consider the comparative contents of the basket as it was devised in the two respective enquiries, one held in 1926-27, and the other in 1958-59. The former enquiry reflects the consumption pattern of the working class as it existed in 1926. The index number then devised was composed of five groups, viz., (1) Food, (2) Fuel and Lighting, (3) Clothing, (4) House rent and (5) Miscellaneous. The food group in its turn consisted of sixteen items, the fuel and lighting group of four items the clothing group of seven items the house rent group of the item of house rent, and the miscellaneous group of two items, viz., bidis and soap. Thus, in all, 30 items were included. These items represent 82.32 per cent of the average monthly expenditure and they were respectively assigned 58, 7, 10, 12 and 4 weights which together aggregate to 91. At the time of this enquiry, the items included in the investigation totalled 49; out of them, 30 were priced and 19 were unpriced; and in

The new series is based on the enquiry into 722 working class families conducted in 1958-59 when the total population of the city was about 11 lakhs. The total working class families at this time were estimated to be 51.5 thousand; and so, the percentage of the sample size in relation to the universe of the working class families would come to about 1.4 and not less than 5 as appears to have been assumed by Sri Gokhale. The weighting diagram for the new series is based on 110 articles divided into the main groups of food, fuel and lighting, housing, clothing, and miscellaneous. The important

groups in this enquiry carried respectively the weights of 64.41, 6.22, 5.05, 9.08, and 15.24 which aggregate to 100. The total number of items included in the basket was 239. Of these, 89 were priced items and 150 unpriced, and in respect of the latter, the method of imputation was adopted. It is true that in the new series, the unpriced items are considerably more than in the earlier one; but it must be remembered that as to total expenditure was 10.2 per cent. In the latter enquiry of 1958-59, the total expenditure on all items was Rs. 139.06. Of this Rs. 124.91 was the expenditure on priced items and Rs. 14.15 was the expenditure on non-priced items. In terms of percentage, the first expenditure was 89.8 per cent and the second is 10.2 per cent. Thus, it is clear that the expenditure on unpriced items in the present enquiry is not larger than in the former enquiry at all. The fact that the components of the basket have considerably increased, cannot be a matter of surprise, because with the growth of Indian economy and the change in the standard of living of all citizens, the requirements of the working class have also increased and the components of the basket which was devised in 1926-27 have now become completely obsolete. It is in the light of this position that we have to consider whether the appellants are justified in contending that the inadequacy of the size of the sample vitiates the enquiry. In our opinion, the a

The next question to consider is whether the interview method is unscientific and its adoption makes the enquiry itself defective and unreliable. In dealing with this question again, it is necessary to remember that the interview method itself has made very great progress since 1926. The task of investigation is in no sense merely mechanical; it is a constructive task the efficient discharge of which requires a well-trained investigator. As Moser observes, the Investigators are expected to ask all the applicable questions; to ask them in the order given and with no more elucidation and probing than is explicitly allowed; and to make no unauthorised variations in the working (p. 188). Interviewers, according to Moser, are not machines. Their voices, manner, pronunciations and inflections differ as much as their looks, and no amount of instructions will bring about complete uniformity in technique; and so interviewers have to be properly educated in the task of putting questions to the families interviewed. Wh

It is true that in England the method of supplying account books to the families is adopted. Under this method, the families are expected to fill in every detail in the account book, and the cost of living is compiled from exact and correct information given by the persons who keep regular accounts according to the directions issued. But, on the other hand, in countries like Canada and the United States, the method of interview is preferred to that of the account books. It seems that, according to Moser, the method of mail questionnaire, which corresponds in a sense with the method of account-books, suffers from several infirmities; and so, he seems to prefer the method of interview, provided, of course, this method is scientifically and efficiently adopted.

In our country where a majority of working class population still suffers from illiteracy, the method of interview is obviously indicated. It would be impracticable to suggest that a written questionnaire should be supplied to the members of the working class or account books should be given to them in the expectation that they would furnish answers in return. Having regard to this special feature of the life of the working class as it obtains in our country today, the method of interview is the only method which can be adopted. Besides, as we have just indicated, even on the merits, expert opinion seems to suggest that if the interview method is properly adopted, it gives better results than the alternative method of account-books. Therefore, we are satisfied that the industrial court was right in rejecting the appellants' contention that the impugned survey and the index constructed as a result of it, suffer from the infirmity that investigation was conducted in this survey by the interview method.

That takes us to the question about the propriety of the linking factor which has been upheld by the industrial court. We have already noticed that the Government of Gujarat has adopted the linking factor at 3.17, and the industrial court has taken the view that no case has been made out by the appellants to interfere with the said decision of the Government of Gujarat. Sri Kolah contended that if a linking factor has to be adopted, it would be more rational and scientific to watch the behaviour of prices for two or three years and then devise a factor on the average rise in prices during the period in question.

Mr. Vasavada, on the other hand, seriously disputed the correctness of Sri Kolah's contention. As this case was being argued on 24 March 1965, the parties suggested that the question about the proper procedure to be followed in determining the linking factor in such cases was a very important question and that it would be better if we hear the views of associations or bodies which would be interested in a proper solution of this problem. That is why on the said date we adjourned the hearing of the appeals to enable such interested parties to appear before us. The parties furnished a list of sixteen institutions or bodies which, according to them, would be interested in assisting us with arguments on this issue. On 12 April 1965, a letter of request was accordingly sent to these bodies indicating to them the nature of the question on which we wanted their assistance. In response to the said letter, only four bodies have appeared, they are : The All-India Organization of Industrial Employers; The All-Ind

The appeals were then set down for hearing before us on 2 August 1965, and we indicated to the parties that having regard to the unsatisfactory response which our letter of request had received, we did not think it would be appropriate that we should proceed to decide the larger issue raised by Sri Kolah as to what would be a rational and satisfactory method evolving a linking factor. The Indian National Trade Union Congress in its affidavit has urged that the method of linking of the new series with the old by the simple arithmetical ratio at the base period is universally accepted. It appears that the employers and the employees are not able to take a consistent stand on this issue and their approach apparently differs from region to region and industry to industry, because consideration of expediency and self-interest do not seem to dictate a uniform common approach to be adopted in the present case. Besides, the issue is of a very technical character and any decision of this Court on such an issue of pri

Reverting then to the narrow question as to whether the appellants are justified in attacking the finding of the industrial court on this issue, let us mention a few relevant facts and considerations. We have already noticed that at the request of the Government of India, the Government of Gujarat discontinued the publication of the State series of the consumers price index; and so it became necessary for the said Government to secure the advice of an expert committee as to how the new series of consumer price index for Ahmedabad should be linked with State series after making such adjustments therein as may be found necessary. The expert committee dealt with this problem of arriving at the linking factor, so that when the new series is adopted and the State series is discontinued the dearness allowance on the present scale can be computed even on the basis of the new series. The Government of India had, in this connexion, indicated that 2.98 would be an appropriate linking factor. This figure had been reach

A similar question was referred by the Government of Maharashtra to the Lakdawala Expert Committee, and the said committee was inclined to take the same view. It no doubt observed that "in spite of the fact a linking on the basis of a simple ratio corrects a series only in respect of one of its dimensions, we recommend this course because we are of opinion that such a correction is adequate for the requirements of our terms of reference and in any case, the only correction that we can

meaningfully carry our." It would thus be seen that in accepting the linking factor at 3.17, the Government of Gujarat has adopted the conclusion of the Desai Expert Committee.

The question which arises is whether in upholding this view, the industrial court has committed any error. As the industrial court has observed, two possibilities presented themselves in attacking this problem. One was to work out an entirely new scale of basic wages founded not on the pre-war level of 1939, but on the cost of living of 1960 as the base year of the new series and to award dearness allowance thereafter. The industrial court thought that to adopt this course may conceivably create a large number of problems which do not exist at present and in fact, it may tend to destroy industrial peace. The industrial court thought that such a course might even be outside its terms of reference. Even so, in its opinion, the result which would be achieved by adopting this course may not in the end be very different. The other course is to link the State series with the new series to maintain continuity. It is this latter alternative which has been adopted by the Government of Gujarat, and the industrial

As we have just indicated, the problem is a technical problem and it can be decided only in the light of the opinion which experts may form on examining all the aspects pertaining to the problem and after taking into account all the pros and cons which may be put before them by the respective interested parties. The stand which the parties may take in regard to this controversy would differ according as the change in the cost of living index in the respective States may help their interest one way or the other. That explains why there is no unanimity in the approach adopted by the different parties. This is made clear by the contentions raised by the respective parties before the Lakdawala Expert Committee.

There is no doubt that on the material as it stands, it would be unreasonable, in expedient and in fact impossible for this Court to attempt to resolve this controversy on the basis of the larger issue of law raised by Sri Kolah before us. The decision of that question must, therefore, be left to a committee of experts if and when it is appointed. Meanwhile, this question will have to be dealt with on an ad hoc basis in each industry, taking into account the particular facts and circumstances of each case.

Looking at the question from this narrow point of view, we do not think the appellants have placed before the industrial court any material to justify their contention that for determining a linking factor, the behaviour of prices for two or three years during the relevant period should and can be studied. In fact, Sri Vasavada's contention is that a study of the behaviour of prices for such a period and deducing the average therefrom would be inconsistent with the notion of evolving a linking factor. He contends that we have to take one year by reference to which this problem must be resolved. We express no opinion on this part of the controversy between the parties. In fact, the award under appeal shows that the argument which Sri Kolah has urged before us was not placed in this form, and in any case does not appear to have been pressed, before the industrial court. Even assuming that it would have been open to the industrial court to consider this larger issue under the terms of its reference, we do not s

The last question to consider is whether the Industrial Court was right in coming to the conclusion that the additional burden which its award would impose upon the appellants would not be beyond their financial capacity. In dealing with this question, there are two general considerations, which cannot be ignored. The first consideration is that the task of constructing a wage structure of industrial employees is a very responsible task and it presents several difficult and delicate problems. The claim of the employees for a fair and higher wage is undoubtedly based on the concept of social justice, and it inevitably plays a major part in the construction of a wage structure.

There can be little doubt that if the employees are paid a better wage which would enable them to live in fair comfort and discharge their obligations to the members of their families in a reasonable way, they would be encouraged to work whole-heartedly and their work would show appreciable increase in efficiency.

On the other hand, in trying to recognize and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation against the everincreasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. The problem of constructing a wage structure must be tackled on the basis that such wage structure should not be changed from time to time. It is a long- range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future has the industry been making profits; and if yes what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden

The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication, and in course of time experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should, revise the wage structure, though such revision may result in the reduction of the wages paid to the employees. It is true that normally, once a wage structure is fixed, employees are reluctant to face a reduction in the content of their wage packet; but like all major problems associated with industrial adjudication, the decision of this problem must also be based on the major consideration that the conflicting claims of labour and capital must be harmonized on a reasonable basis; and so, if it appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfie

This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity. Industrial adjudication has consistently recognized and enforced the principle that social justice requires that an industrial employer must be able to pay his employees a wage structure which can be reasonably regarded as basic minimum wage. No employer can be allowed to pay his employees wages which are below the basic minimum or the subsistence wage. It is well-known that, in certain industries, minimum wages are fixed by the statute. Even where minimum wages are not fixed by statute, industrial adjudication can easily determine whether, in a given case, the wage paid is basic minimum or not. In either case. where the wage answers the description of the basic minimum or subsistence wage, it has t

We have thought it necessary to refer to these two theoretical considerations at this stage, because if they are borne in mind, we get a proper perspective of the problem raised by the appellants' contention as to their financial capacity. In the present proceedings, the industrial court is not constructing any wage structure for the first time, nor is it dealing with the question of determining the quantum or the sliding scale of the dearness allowance to be paid to the textile employees at Ahmedabad. These matters have been considered in the past on several occasions and they are governed by consent awards passed between the parties. It is because of the new survey made in 1958-59 and the consequent change in the construction of the consumer price index made by the

series published by the Government of Gujarat that the present dispute has arisen; and so, while dealing with the appellants' contention, it would be pertinent to enquire whether the appellants show that a case has been made out for reduction of

In support of their contention that the textile industry at Ahmedabad cannot bear the burden which would be imposed by the award, the appellants examined Sri Chokshi. Sri Chokshi is a chartered accountant and a senior partner in the firm of C. C. Chokshi & Co. He has been practising as a chartered accountant for about 24 years. He was a member of the Council of the Institute of Chartered Accountants for eight years and its president for one year. It appears that the appellant Association sent to him five statements and asked for his opinion on the financial position of the textile industry at Ahmedabad. Sri Chokshi first filed an affidavit in which he set out his opinions and then gave oral evidence. In his affidavit, Sri Chokshi referred to the respective statements on which his opinion was based and he stated that the financial position of the textile industry at Ahmedabad was, on the whole, not very satisfactory.

In appreciating the evidence given by Mr. Chokshi, it would, therefore, be material to indicate the nature of the statements on which his opinion was based. The first statement shows the depreciation, development rebate, and increase in gross block per year of the Ahmedabad cotton textile mill industry for the years 1945 to 1963. The statement indicates that all these items have increased from year to year; depreciation was Rs. 0.83 crore in 1945 and it rose to Rs. 6.68 crores in 1963; development rebate was Rs. 0.05 crore in 1954 and it became Rs. 1.26 crores in 1963; gross block rose from Rs. 20.25 crores in 1945 to Rs. 101.98 crores in 1963; and increase in gross block per year for the same years was Rs. 1.31 and Rs. 9.77 crores.

The second statement shows the net worth and borrowings of the said industry during the same period. The emphasis in this statement was on the ever-increasing borrowings. In 1945, the borrowings, consisting of secured and unsecured loans and other deposits, were of the order of Rs. 9.58 crores, whereas in 1963, they rose to Rs. 47.76 crores. The third statement shows the working capital and borrowings for the period in question. The fourth statement shows profits after tax as percentage of net worth of the said industry for the same period. This statement refers to profits before tax, loss, tax provisions, profits after tax, net worth, and the last column gives profits after tax and indicates percentage of net worth. It is the last column on which Sri Chokshi relied when he gave his opinion that the financial position of the Ahmedabad textile industry was not very satisfactory. Whereas in 1945 the percentage of profits to net worth was 13.4 per cent, in 1963 it was 3.3 per cent. The last statement shows divi

On the other hand, the respondent has filed several statements showing that the financial position of the appellants has been consistently good, and the fear that the appellants would not be able to bear the burden is entirely unjustified. Annexure II filed by the respondent along with its statement shows the percentage of wages to total income in Ahmedabad cotton textile industry from 1939 to 1962. This percentage was 26 in 1939 and is 24 both in 1961 and 1962; for the intervening period, it has risen to 28 in 1949 and fallen to 20 in 1943. Annexure III gives the statement showing the growth of paid up capital by cash in the said industry for the same period. In 1939, the paid up capital by cash was 407 lakhs, whereas in 1962 it was 770 lakhs. Annexure IV shows the growth of total paid up capital including bonus shares for the same period. This statement shows a remarkable growth of total paid up capital in this manner : In 1939, the total paid up capital was 442 lakhs, whereas in 1962 it has reached the ma

The main comment which falls to be made on the opinion expressed by Mr. Chokshi is that he has

looked at the problem merely from the investor's point of view. In fact, he fairly stated that he had made his analysis from the point of view of an investor. That explains why Sri Chokshi took the view that absolute figures of mere gross profit or net profit from year to year would be misleading. He did not agree that most of the textile mills in Ahmedabad are at present under-capitalized. He conceded that in dealing with the problem of expanding business and increasing the wage bill, one of two methods can be adopted by the industry; the industry can increase the capital or borrow money. Very often, said Sri Chokshi, borrowing is preferred to the increase of capital in certain market conditions. He was not certain whether borrowings had been resorted to by the textile industry for the purpose of expansion. In dealing with the problem of the financial capacity of the appellants to bear the burden, it would be inap

Mr. Kolah for the appellants has strongly relied upon certain statements made in the Reserve Bank of India Bulletin issued in July 1964, in support of his argument that the financial position of the appellants was not satisfactory. Dealing with the position of the cotton textile industry during the period under review, the bulletin says that cotton textiles recorded a steep fall of Rs. 17.0 crores in net profits as against a rise of Rs. 2.1 crores in the previous year. Applying the profitability ratio, the bulletin goes on to say that cotton textiles, amongst others, showed declines in profitability. This test is evolved by the ratio of gross profits to sales, and the return on capital, as measured by the ratio of gross profits to total capital employed. According to the bulletin, the decline in the return on shareholders' equity (ratio of profits after tax to net worth) was substantial in the case of cotton textiles along with other named industries. Table 4 in the bulletin gives a comparative statement of

We do not think in considering the financial position of the appellants in the context of the dispute before us, it would be appropriate to rely unduly on the profitability ratio which has been adopted by the said bulletin. Indeed, in appreciating the effect of the several statements produced before the industrial court by the parties in the present proceedings, it would be relevant to remember that some of these single-purpose statements are likely to create confusion and should not ordinarily be regarded as decisive. As Paton has observed : "Different groups for whom financial statements are prepared are interested in varying degree in particular types of information; and so, it has been held in some quarters that no one form of statement will satisfactorily serve all these purposes, that separate single purpose statement should be prepared for each need or that the statements usually prepared for general distribution should be expanded so as to include all the detail desired". Paton cites the comment of W the tests evolved from such statements, whilst it is attempting the task of deciding the financial capacity of the employer in the context of the wage problem. While we must no doubt examine the position in detail, ultimately we must base our decision on a broad view which emerges from a consideration of all the relevant factors.

What then is the broad picture which emerges from the evidence on the record in respect of the financial position of the textile industry at Ahmedabad? The cotton textile industry at Ahmedabad can legitimately claim to be the oldest organized industry in the country. It recently celebrated its centenary in 1961. The story about the growth of this industry during this century is very heartening. In its early stages, it no doubt made a small and modest beginning; but at the time when the centenary celebrations were held, it had an installed capacity of about two million spindles and 42,000 looms and it employed 1,30,000 workmen. Statistics show that textile mills at Ahmedabad account roughly for one-third of the total mill production in the country, and it would be no exaggeration to say that some of the best varieties of cloth produced in the country are manufactured at Ahmedabad.

The paid up capital by cash of the industry in 1939 was 4.07 crores and it became 7.70 crores in

1962. The total paid up capital including bonus shares was 4.42 crores in 1939 and in 1962 it rose to 21.29 crores. It would thus be seen that out of the total paid-up capital of 21.29 crores in 1962, the capital collected by cash is 7.70 crores, whereas the balance of 13.59 crores is by way of bonus shares. In other words, the cash capital is increased by 175 per cent because of capitalization of the reserves. Similarly, the gross block in 1939 was 19.15 crores and in 1962 it rose to 93.41 crores. Almost the same rate of progress is evidenced by the reserves. The reserves excluding depreciation fund and other liability funds at the end of 1939 was 3.60 crores and they have gone to 25.18 crores in 1962. The gross profits have registered a similar rise. In 1939, the gross profit including Managing Agents' Commission and depreciation was 1.59 crores, whereas in 1962 it has reached the magnitude of 12.96 crores. In

It is true that the textile industry at Ahmedabad has been leaning very heavily on borrowing; but that may partly be due to the fact that the said industry has for several decades been under-capitalized. Besides, the tendency to rely upon borrowing for expanding the business is noticeable throughout this period of the life of textile industry at Ahmedabad and has been the subject-matter of comment by several persons. In fact, sometimes it is treated as a peculiar feature of the development of the textile industry at Ahmedabad; and so, the extent of borrowings cannot be pressed into service for the purpose of showing that the financial position of the industry is unsatisfactory.

One remarkable feature of the textile industry at Ahmedabad is the harmonious relation which have consistently subsisted between the employers and the employees. The employers, on the whole, are enlightened and progressive in their outlook, and the trade union leadership of the employees is also enlightened and progressive. Both the employers and employees realize that the progress of the industry depends primarily on the co-operation between capital and labour; and the large number of consent awards and agreements to which they have been parties over a period of several years, is a standing tribute to the spirit of co-operation which inspires the textile industrial life in Ahmedabad. As one looks back over the last hundred years of the life of the textile industry at Ahmedabad, one is struck by the fact that the industrial life in that area has rarely been disturbed by bitterness, feuds or general strikes. This spirit of co-operation, based on the willingness to give and take, alone can ensure the economic

It is significant that as a result of the spirit of co-operation between capital and labour, the textile industry at Ahmedabad has been able to enter into several agreements for rationalizing the industry itself. It is well-known that an attempt to rationalizing textile industry inevitably involves retrenchment of a large number of employees, but the appellants and the respondent have entered into agreements of rationalization after both of them agreed to three basic principles in that behalf. These principles are :-

- (a) Rationalisation to be effected without creating unemployment of the existing workers;
- (b) Gains of rationalization should be adequately shared between the management and the workers; and
- (c) The workload should not be increased in a manner which may jeopardize the health of the workers.

The fact that a large number of agreements have been made between the parties by consent concerning the vexed subject of rationalization also shows that the future of the textile industry at

Ahmedabad is bound to be as bright as it has been in the past. In this connexion, we may refer to the tribute paid by the Central Wage Board to the cotton textile industry at Ahmedabad. Says the Board :-

"The industry, however, is conscious of the need for rationalization and modernization as the sine qua non of survival, the pace of which had been checked in the past by the fear of unemployment; that fear has been allayed, and labour now recognizes that its own welfare depends on rationalization and modernization; and it has agreed upon the broad lines for their introduction. Some mills even today have very modern and up-to-date machinery, and all mills which can manage to do so will have to rationalise and modernise; for the nation is on the march, and this industry must clothe the nation."

Let us then consider the question about the prospects of the demand for textile products in future and increasing productivity of the industry. On this point again, it is difficult to share the pessimism disclosed by the attitude adopted by the appellants. There is little doubt that the productivity of the industry is increasing and that the demand for textile products will never be on the decrease in future. Therefore, we do not see how we can differ from the conclusion of the industrial court that the appellants have failed to substantiate their contention that the additional burden would be beyond their capacity to pay. In this connexion, we ought to recall the fact that what the appellants are required to prove is that the prospects of their financial position in future justify a reduction in the wage which is being paid to the industrial employees during all these years; for that on the ultimate analysis would be the result if their contention is accepted. The industrial court has made a definite findin

It was conceded before us that our decision in civil Appeals Nos. 167- 173 of 1965 would govern the decision of Civil Appeals Nos. 537-538 of 1965. So, the result is that all the said appeals fail and are dismissed with costs. One set of hearing fee.

Appeals dismissed.

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