Delhi Cloth & General Mills Co. Ltd.

Vs

The Workmen & Ors.

Civil Appeals Nos. 2100 to 2102 of 1964

(K. N. Wanchoo, G. K. Mitter JJ)

14.10.1966

JUDGMENT

MITTER, J.

On March 4, 1966 an order under s. 10(1) and s. 12(5) of the Industrial Disputes Act (hereinafter referred to as the Act) was passed over the signature of Secretary (Industries and Labour), Delhi Administration, Delhi referring to the Special Industrial Tribunal certain matters setforth in the Schedule annexed thereto for adjudication. According to the recitals in the order, it appeared to the Delhi Administration from a report submitted by the Conciliation Officer under s. 12(4) of the Act that an industrial dispute existed between the managements of Delhi Cloth Mills and Swatantra Bharat Mills and their workmen represented by four different Unions and the Chief Commissioner, Delhi, was satisfied on a consideration of the said report that the said dispute should be referred to an Industrial Tribunal. The terms of reference specified in the Schedule are reproduced below :

> "1. Whether in calculating the bonus table for the accounting year ending 30-6-1965 the allocations separately made by the Delhi Cloth & General Mills Co., Ltd. towards the Capital and Reserves of the Delhi Cloth Mills and Swatantra Bharat Mills, the two units of the Company is fair and reasonable ? If not, what directions are necessary in this regard ?
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> 2. Whether the workmen of these Mills are entitled to bonus at a rate higher than 6 per cent of the wages for the accounting year ending 30-6-1965 ? If so, what directions are necessary in this regard ?
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> 3. Whether the strike at the Delhi Cloth Mills and the lock-out declared by the management on the 24-2-1966 are justified and legal and whether the workmen are entitled to wages for the period of the lock-out ?
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> 4. Whether the 'sit-down' strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike ?"

The report of the Conciliation Officer shows that trouble had arisen over the claim of bonus of the Delhi Cloth and General Mills and Swatantra Bharat Mills, two units of the same company. The report also shows that at a meeting convened at 2-30 p.m. on February 23, 1966, the Works Committee recommended that the payment of bonus should be suspended pending examination of the entire issue in conciliation or otherwise. But before this could be announced, workers started

demonstration outside the mill premises of the first named unit and became violent. To quote from the report :

> "As the situation became tense inside the mill premises and the workers left work, the management closed down the turbine at about 4 p.m. on 23-2-1966. Later on, at about 11.00 p.m. the management put up a notice that in view of the prevailing circumstances in the Mills, it was not possible to work the mills until conditions become normal.... As there was no improvement in the situation and as workers who were inside the mills were reported to have caused further damage to the mill property, the management declared a lock-out at about 6 p.m. on 24th February, 1966. .... The workers, however, are very much restive over the management's declaration of lock-out."

With regard to Swatantra Bharat Mills, the report runs :

> "........the situation is peaceful although the workers resorted to the stay-in-strike from 7.30 p.m. on the 23rd February 1966 and the strike still continues. It appears that their attitude is that whatever is decided at the D.C.M. level will automatically be applicable to them as well. The workers do not seem to be in a mood to start the work unless the workers of the Delhi Cloth Mills also start work."

The recommendation in the report was that the dispute should be immediately referred to a Tribunal for adjudication along with the issue of prohibitory orders under s. 10(3) of the Act. The report notes that the Unions' leaders had pressed that the question of workers' claim for wages for the strike period in the Swatantra Bharat Mills and lock-out period in the Delhi Cloth Mills should also be included and the Tribunal to be constituted should proceed immediately in the matter.

The Management filed a statement of case before the Special Tribunal on April 9, 1966 and the Unions filed separate statements of case between April 10, 1966 and April 13, 1966. There were Replications and Rejoinders up to May 21, 1966.

On June 3, 1966, the Company prayed before the Industrial Tribunal that issues 1, 3 and 4 (set out in the terms of reference) may be decided before the parties were called upon to lead their evidence. As regards issues 3 and 4, the contention of the management was that the fundamental basis of these two matters was that there was a strike at the Delhi Cloth Mills and a sit-down strike at the Swatantra Bharat Mills and the only question referred to the Tribunal for decision related to the legality and justification of the said strikes. All the four Unions contended before the Tribunal that there was no strike at the Delhi Cloth Mills. Two of the Union's case was that the strike at Swatantra Bharat Mills was in sympathy with the workmen of the Delhi Cloth Mills; while the other two Unions' case was that there was a lock-out in the Swatantra Bharat Mills. As regard the first issue, the case of the Management was that there was a settlement on December 13, 1965 relating to the computation of bonus for the year 1963-64 between the Company and the two major Unions. It was stated further that the settlement referred to the computation of bonus in accordance with the provisions of the Payment of Bonus Act, 1965 and in arriving at the settlement, all the available and relevant financial statements had been shown to the Unions which accepted the accounts based on allocation of share capital and reserves during the years previous to and including 1963-64. Further, according to the Management, one of the Unions had entered into another settlement with the Management of the D.C.M. Silk Mills with regard to that Union for the year 1964-65, and in view of these settlements, it was not open to the workmen of the Delhi Cloth Mills and Swatantra Bharat

Mills to question the correctness and reasonableness of the allocations made by the Management towards share capital and reserves of these two units.

The Tribunal considered the pleas put forward before it and several decisions cited in support and came to the conclusion that as the strike covered by issue No. 3 and sit-down strike covered by issue No. 4 were disputed by the Unions, or at any rate not admitted by all of them "it would be the duty of the Tribunal to decide whether there was a strike at D.C.M. as covered by issue No. 3 and whether there was a sit-down strike by S.B.M. as covered by issue No. 4." According to the Tribunal, it would not be exceeding its jurisdiction at all and would not be going beyond the scope and ambit of the reference to examine issues 3 and 4 in the above light and accordingly, the Tribunal held that the parties would be at liberty to adduce such evidence as they liked in confirmation or denial of the fact of a strike and sit-down strike regarding issues 3 and 4.

As regards issue No. 1 also, the Tribunal over-ruled the plea of the Management and held that it would be open to the parties to adduce evidence regarding this issue and if in course thereof it was found that as a result of the settlements referred to by the Management, the claim was barred, the same would not be allowed. This decision of the Tribunal was announced on June 16, 1966.

The Management moved a Writ Petition before the Punjab High Court on June 30, 1966 for quashing the order of 16th June by a writ of certiorari. By an order dated July 13, 1966, the petition was summarily dismissed. By an application under Art. 133 (1) of the Constitution, the Management moved the Punjab High Court for leave to appeal to the Supreme Court. This was also dismissed in limine on August 12, 1966. The Management then moved three Special Leave Petitions Nos. 1068 of 1070 of 1966 before this Court, one from the order of the Tribunal, the second from the order of the High Court dated July 13, 1966 and the third also from the order of the High Court dated August 12, 1966. By an order made on September 12, 1966 special leave was granted in all these three petitions. All these have now come up for hearing before us.

Proceeding in the order in which the arguments were addressed, we propose to deal with issues 3 and 4 first. Under s. 10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring "the dispute or any matter appearing to be connected with, or relevant to, the dispute,..... to a Tribunal for adjudication." Under s. 10(4) "where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word 'incidental' means according to Webster's New World Dictionary :

> "happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated :"

> "Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lock-out and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lock-out and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lock-out. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lock-out was improper. The third issue has also a sub-issue, namely, if the lock-out was not legal, whether the workmen were entitled to wages for the period of the lock-out. Similarly, the fourth issue proceeds on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23-2-1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike.

Apart from the consideration of the various decisions cited at the Bar, the above is the view which we would take with regard to issues 3 and 4. We have now to examine the decisions cited and the arguments raised and see whether it was competent to the Tribunal to go into the question as to whether there was a strike at all at the Delhi Cloth Mills or a sit-down strike at the Swatantra Bharat Mills or a lock-out declared by the Management on 24-2-1966.

The decisions on the point to which our attention was drawn are as follows. In Burma-Shell Oil Storage & Distributing Co., of India Ltd. & Ors. v. Their Workmen & Others ([1961] 2 L.L.J. 124.) one of the disputes referred to the fifth industrial tribunal by one Government of West Bengal under s. 10 of the Industrial Disputes Act was a claim for bonus for 1955 payable in 1956 for the Calcutta Industrial area. The Industrial Tribunal heard both the parties and awarded 4 1/2 months basic salary as bonus for the year 1955 to the clerical staff and the operatives of the companies. This Court referred to the recital in the order of the Government of West Bengal and observed that the reference was between the four appellants and their workmen represented by the named Workers' union on the other. According to this Court, it appeared from the record that the said union represented only the workmen in the categories of labour, service and security employees in the Calcutta industrial area and so prima facie the two demands made by the union would cover the claims of the operatives alone. This Court also relied on the fact that the appellants had dealt with the two categories of employees distinctly and separately. According to Gajendragadkar, J. (as he then was) who delivered the judgment of the Court :

> "If the reference does not include the clerical staff and their grievances, it would not be open to the members of the clerical staff to bring their grievances before the tribunal by their individual applications or for the tribunal to widen the scope of the enquiry beyond the terms of reference by entertaining such individual applications."

Accordingly, it was held that the appellants were right in contending that the tribunal had no authority to include within its award members of the clerical staff employed by the appellants.

In Express Newspapers v. Their Workers & Staff ([1962] 2 L.L.J. 227.) the two items of dispute specified in the order of reference were :

> (1) Whether the transfer of the publication of Andhra Prabha and Andhra Prabha Illustrated Weekly to Andhra Prabha (Private) Ltd., in Vijayawada is justified and to what relief the workers and the working journalists are entitled ?
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> (2) Whether the strike of the workers and working journalists from 27th April 1959, and the consequent lock-out by the management of the Express Newspapers (Private) Ltd., are justified and to what relief the workers and the working journalists are entitled ?

On the same day as the Government of Madras made the order of reference, it issued another order under s. 10(3) of the Act prohibiting the continuance of the strike and the lock-out in the appellant concern. Against this latter order, the appellant filed a writ petition in the Madras High Court and the workers also filed another writ petition against the order by which the dispute was referred to the industrial tribunal for adjudication. In regard to the second petition, the learned single Judge of the Madras High Court held on the merits that what the appellant had done did not amount to a lock-out but a closure and so the substantial part of the dispute between the parties did not amount to an industrial dispute at all. In the result, he allowed the application of the company in part and directed the tribunal to deal only with the second part of the two questions framed by the impugned reference. There was some modification in the order by a Division Bench of the Madras High Court. The matter then came up to this Court. It was held by this Court that the High Court could entertain the appellant's petition ever at the initial stage of the proceedings being the industrial tribunal and observed :

> "If the action taken by the appellant is not a lock-out but is a closure, bona fide and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lock-out, but the said action has adopted the disguise of a closure and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with.... There is no doubt that in law the appellant is entitled to move the High Court even at the initial stage and seek to satisfy it that the dispute is not an industrial dispute and so the industrial tribunal has no jurisdiction to embark upon the proposed enquiry."

It was further observed :

> "If the industrial tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ, and the power of the High Court to issue an appropriate writ in that behalf cannot be questioned.
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> It is also true that even if the dispute is tried by the industrial tribunal, at the very commencement, the industrial tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the industrial tribunal may take as to whether the action taken by the appellant is a closure or a lock-out. The finding which the industrial tribunal may record on this

> preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not."

The Court then proceeded to consider the facts of the case and the contentions raised before the tribunal. It referred to a settlement which had been reached between the parties and embodied in a memorandum drawn up on 6th November 1958 under s. 12(3) of the Act. This settlement was to operate for two and half years. The case of the respondents was that during the negotiations between the appellant and the union in the presence of the acting Labour Minister and the Labour Commissioner, the appellant had tried to insert a clause in the agreement in respect of the decision that the paper Andhra Prabha would not be shifted for publication to Vijayawada during the period of the settlement and that the workmen would be continued to be employed as before at Madras and this was objected to by the respondent whereupon a verbal assurance was given that the business of the appellant would be carried on at Madras for two and half years. The respondents contended that the said assurance was one of the terms of the conditions of the respondents' service and the transfer effected by the appellant contravened and materially modified the said condition of service. In regard to issue 2, the argument was that in effect the Government had determined this issue and nothing was left for the tribunal to consider. The Court observed that the wording of this issue was in-artistic and unfortunate and held :

> "Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Thus construed, even the inelegant phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the tribunal will have to consider is whether the strike of the respondents on 27th April 1959 was justified and whether the action of the appellant which followed the said strike is a lock-out or amounts to a closure... Thus, having regard to the content of the dispute covered by issue 2, it would not be right to suggest that the reference precludes the tribunal from entertaining the appellant's plea that what it did on 29th April is in fact not a lock-out but a closure. The fact that the relevant action of the appellant is called a lock-out does not mean that the tribunal must hold it to be a lock-out."

This decision has been referred to by the Tribunal as giving it jurisdiction to examine the question as to whether there was a strike at all. Both sides have referred to this decision in support of their respective contentions. According to the respondents, the fact that the Tribunal could go into the question as to whether there was a lock-out or a closure went to show that the Tribunal's jurisdiction was not limited because of the use of the word 'lock-out' in the second issue so that the Tribunal was precluded from examining the question as to whether there was a lock-out at all while according to the appellants it was because the Tribunal had always to consider whether the issue referred was an industrial dispute that the Tribunal had to scrutinise whether the cessation of business of the company was due to a lock-out which it was competent to adjudicate upon or whether it was due to a closure which was not an industrial dispute at all.

In our opinion, there was enough material on the record in that case to show that the company had been trying for some time past to transfer its business elsewhere and the action of the appellant which followed the strike on April 27, 1959 was in fact a closure and not a lock-out. The facts of that case were very special and the decision must be limited to those special facts.

In Syndicate Bank v. Its Workmen ([1966] 2 L.L.J. 194.) there was a dispute between the appellant

bank and its employees with respect to C rank officers which was referred by the Central Government to an Industrial Tribunal in the following terms :-

> (1) Whether the Canara Industrial and Banking Syndicate, Ltd., Udipi, is justified in imposing the condition that only such of those workmen would be considered for appointment as officer-trainee and promotion to probationary C rank officers who agree to be governed by the rules of the bank applicable to such officers in respect of the scale of pay and other conditions of service ? If not, to what relief are such workmen entitled ?
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> (2) Whether the bank is justified in imposing the condition of twelve months training as officer-trainee before appointment as C rank officer in addition to the probation prescribed after the appointment as C rank officer ? If not, to what relief are the workmen entitled ?

Before the tribunal it was contended on behalf of the appellant that the first term of reference proceeded on the assumption that C rank officers were officers of the bank while the workmen urged that the question whether C rank officers were workmen was implicit in the first term of reference. The Tribunal accepted the plea of the respondents and proceeded to consider that question. It came to the conclusion that C rank officers were workmen. On the question whether the imposition of the condition that workmen would only be promoted as C rank officers if they accepted the condition that they would be governed by the rules of the bank, it found against the appellant. Before this Court it was argued on behalf of the appellant that there was no reference on the question of the status of C rank officers and the tribunal went beyond the terms of reference when it decided that C rank officers were workmen. It was held by this Court :

> "that the first term of reference had implicit in it the question whether C rank officers were workmen or not. If that were not so, there would be no sense in the reference, for if C rank officers were assumed to be non-workmen, the bank would be justified in prescribing conditions of service with respect to its officers and there would be no reference under the Act with respect to conditions imposed by the bank on its officers who were not workmen."

In the last mentioned case, the question whether C rank officers were workmen had to be examined by the tribunal, for, if they were not, there could be no reference under the Industrial Disputes Act. In the case before us, there is no such difficulty. The third and the fourth terms of reference in the instant case are founded on the basis that there was a strike at the Delhi Cloth Mills and a sit-down strike at the Swatantra Bharat Mills and that there was a lock-out declared by the management of the Delhi Cloth Mills on 24-2-1966. On the order of reference, it was not competent to the workmen to contend before the Tribunal that there was no strike at all; equally, it was not open to the management to argue that there was no lock-out declared by it. The parties would be allowed by their respective statement of cases to place before the Tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the Tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.

On behalf of the respondents, Mr. Chari put before us four propositions which according to him the Tribunal had to consider before coming to a decision on these two issues. They were : (i) The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute; (ii) The order of reference only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute; (iii) Not every recital of fact mentioned in the order of Government was irrebuttable; and (iv) In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.

So far as the fourth proposition is concerned, Mr. Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in order of reference was non-existent and that the true dispute was something else. Under s. 10(4) of the Act it is not competent to the Tribunal to entertain such a question.

In our opinion, therefore, the Tribunal had to examine issues 3 and 4 on the basis that there was a strike at the D. C.M. unit and a sit-down strike at Swatantra Bharat Mills and that there was a lock-out declared with regard to the former as stated in the third term of reference. It was for the Tribunal to examine the evidence only on the question as to whether the strikes were justified and legal. It then had to come to its decision as to whether the workmen were entitled to the wages for the period of the lock-out in the Delhi Cloth Mills and for the period of the sit-down strike at the Swatantra Bharat Mills.

With regard to the first issue, Mr. Setalvad contended that there was a binding agreement between the parties which had not been terminated or which had not come to an end and consequently, the Tribunal had to go into the question and if it came to the conclusion that there was such a binding agreement, it was precluded from examining the matter any further. Mr. Chari for the respondents did not dispute this proposition, but, according to him, there was no agreement between the parties as contended for by the Management. We have therefore to refer to the documents to which our attention was drawn to see whether there was such an agreement. The first issue relates to the allocation of capital and reserves of the company to the two units, viz., Delhi Cloth Mills and Swatantra Bharat Mills, for calculating the bonus table for the accounting year ending 30-6-1965. According to Mr. Setalvad, such allocation had been accepted by the workers in respect of the previous year and the settlement between the parties was not limited to that year. This was not accepted by Mr. Chari. Mr. Chari referred us to the statement of the case of the Management before the Tribunal dated April 9, 1966. In sub-paragraph (d) of paragraph 1, it was stated by the Management :

> "The method and basis of allocation had been consistently adopted every year for the last many years and has been accepted, expressly or impliedly, by the workers every year. It has been expressly accepted in a settlement made in respect of the payment of bonus for the year 1963-64 during Conciliation. A copy of the settlement dated 13-

12-1965 along with its enclosure is annexed; (Annexure 'B')."

In sub-para (e) it was stated :

> "The allocation has been uniformly made on the same method and on the same basis for the purpose of determination of available surplus for payment of bonus to the workers of other textile units of the company (viz., Hissar Textile Mills, Hissar, & D.C.M. Silk Mills, Delhi). The workers of these units have accepted this allocation in respect of the payment of bonus for the year 1964-65 under agreements entered into with respective unions representing workmen of these units."

The company has several units and the two units mentioned in sub-paragraph (e) above are different from the units with which we have to deal in this case. Consequently, any agreement between the Management and the workers with respect to these two units cannot be binding so far as the dispute in this case is concerned. We then have to consider the nature of the settlement mentioned in sub-para (d). The first document in this connection is dated October 27, 1964 executed on behalf of the Delhi Cloth Mills and Swatantra Bharat Mills on the one hand and Kapra Mazdoor Ekta Union and Textile Mazdoor Sangh, Delhi, two of the respondents before us, on the other. The relevant portion of the first clause of the terms of settlement reads :

> "According to the Bonus Commission's Formula as accepted and modified by the Government vide Resolution No..... dated 2-9-1964 the rate of bonus payable to the workmen of the two textile units of the Company viz., Delhi Cloth Mills and Swatantra Bharat Mills works out to 7.33% of the total earnings viz., basic wage plus Dearness Allowance, including High Cost Allowance."

According to the second clause :

> "The company has however agreed to pay bonus for the year ending 30-6-1964 at the rate of 8 1/3% of the total average wage earnings as defined above, as a gesture of goodwill and to promote cordial relations in consideration of the unions having agreed to withdraw all pending bonus disputes unconditionally."

Clause 3 runs as follows :

> "The company agrees that in case any further alteration or modification in Bonus Commission's Formula is made by the Government hereafter, the application of which results in any addition to the total amount to be distributed as bonus for the year ending 30-6-64 only, the workers will be entitled to receive benefit of the same. It is agreed that the audited figures of the balance-sheet, profit and loss account and the basis of any allocation including capital and reserves etc. for the year 1963-64 will not be challenged by the unions."

According to cl. 4 :

> "The Unions agree to withdraw their disputes regarding payment of additional bonus for the years 1960-61, 1961-62 and 1962-63 unconditionally. Any further modification or change in the Bonus Commission Formula will not affect these years."

Clauses 5, 6 and 7 are not relevant.

It is clear from the above that the agreement related entirely to the years 1960-61, 1961-62 and 1962-63 and 1963-64. There is no statement anywhere about the workers being bound to accept any figure of allocation with regard to the year 1964-65.

The only other document to which our attention was drawn bears the date 13-12-1965 and this also was executed by and between the same parties. The document is divided into two portions, the first being a short recital of the case and the second being the terms of settlement divided into eight paragraphs. The recitals of the case show that the bonus for the year ending 30-6-1964 was paid to the workmen of the two Textile Mills in accordance with the agreement dated 27-10-1964 between the Management and the Kapra Mazdoor Ekta Union representing the workmen and that the payment was made according to the Bonus Commission Formula as accepted and modified by the Government. Under the aforesaid agreement, it was agreed that in case any further alteration or modification in the Bonus Formula were made by the Government, the workers would be entitled to receive benefit of the same. The workers had accordingly raised a demand for additional bonus in terms of Para 3 of the Agreement dated 27-10-1964. The Kapra Mazdoor Ekta Union and the Textile Mazdoor Sangh representing an overwhelming majority of the workmen of Delhi Cloth Mills and Swatantra Bharat Mills had moved the Conciliation Officer for settlement of this demand for additional bonus. After mutual negotiations with the help and assistance of the Conciliation Officer, the parties had agreed to settle the matter on the following terms and conditions. Then follow the terms of settlement. The first is to the effect that the workers reiterate and re-affirm the agreement dated 27-10-1964. The second clause is to the effect that the parties agree to calculate the quantum of bonus payable for the year ending 30-6-1964 on the basis of the Formula laid down under sections 6 and 7 of the Payment of Bonus Act, 1965, taking together the pooled profits of Delhi Cloth Mills and Swatantra Bharat Mills calculated on that basis. According to this, the total amount of bonus payable worked out of Rs. 30.25 lacs and the rate of bonus payable worked out to 10.43% of the total earnings which was not based on any base year. According to cl. 3, the company agreed to pay the additional balance amount of bonus due to the workmen at the rate of 3.10 of the total earnings for the year ending 30-6-1964 within a period of three days. Cl. 4 is not material. According to cl. 5, as regards the amount of Rs. 2.90 lacs paid by the company in consideration of withdrawal of disputes for the years 1960-61, 1961-62 and 1962-63, it was agreed that the company would be entitled to adjust that amount of Rs. 2.90 lacs against the total amount of bonus payable to the workers for the year, in which the actual disbursement of such arrears, if any, might have to be made, subsequent to the year 1964-65, as a result of any award of the Court. Clause 6 runs as follows :-

> "It is, further, agreed between the parties that the calculation of rate of bonus payable for the year 1964-65 will be made on the basis of formula laid down under sections 6 and 7 of the Payment of Bonus Act. This will however be done soon after the General Meeting of the shareholders of the Company in which the accounts for the aforesaid year will be passed by the shareholders. The actual disbursement of the bonus for this year will commence after 15 days of the holding of the Annual General Meeting. In case a settlement in regard to rate of bonus is arrived at, the negotiations for it will start immediately."

It will be noticed from the above that the entire settlement was with regard to the additional bonus for the year ending June 30, 1964 and only cl. 6 had some relation to the bonus payable for the year 1964-65. With regard to that there really was no agreement excepting that the rate of bonus would

be on the basis of the Formula laid down in ss. 6 and 7 of the Payment of Bonus Act. S. 6 of the Payment of Bonus Act shows what sums are to be deducted from the gross profits as prior charges for the computation of the available surplus under s. 5 of the Act. s. 7 lays down that for the purpose of cl. (c) of s. 6 any direct tax payable by the employer for any accounting year shall, subject to the provisions mentioned, be calculated at the rates applicable to the income of the employer for that year. Cl. 6 therefore only prescribes that the parties could proceed on the basis of the formula laid down in ss. 6 and 7 of the Payment of Bonus Act. The last portion of cl. 6 shows that the parties contemplated that they would be able to arrive at a settlement with regard to the rate of bonus for which negotiations were to start immediately. From this, it is impossible to spell out any agreement between the parties with respect to the bonus for the year 1964-65 or the allocation of capital and reserves of the company to the two units in calculating the bonus statement.

In our view, therefore, the parties were not bound by any agreement with regard to issue No. 1 and the Tribunal will have to take evidence to come to a finding on that issue.

In the result, the preliminary objection of the Management with regard to issues 3 and 4 succeeds while it fails on issue No. 1.

Appeals Nos. 2101 and 2102 of 1966 which are from the orders of the High Court are dismissed without any order as to costs. So far as Appeal No. 2100/1966 is concerned, the matter will go back to the Tribunal for decision in the light of the observations made above. In view of the divided success in this Court, there will be no order as to costs of this appeal.

V.P.S.

Appeal No. 2100/66 remanded

Other Appeals dismissed.

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