National Engineering Industries Ltd.

Vs

Its Workmen

Civil Appeals Nos. 356 and 357 of 1966

(J. M. Shelat, V. Bhargava JJ)

16.10.1967

JUDGMENT

SHELAT, J. -

These two appeals by special leave, one by the appellant company and the other by its workmen are directed against the award dated May 4, 1964 of the Industrial Tribunal, Rajasthan to which reference was made under section 10(1)(d) of the Industrial Disputes Act, 1947. The disputes referred to the Tribunal related to the workmen's demand for bonus for the years 1956-57 to 1959-60. By the said award the Tribunal disallowed the claim for 1956-57 on the ground that it was belated and allowed the demand for the rest of the years 1957-58 to 1959-60.

In working out the available surplus for distribution as bonus the Tribunal in general followed the Full Bench formula evolved by the Labour Appellate Tribunal in Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay ([1950] L.L.J. 1247) and approved by this Court in the Associated Cement Co. Ltd. v. Its Workmen. ([1959] S.C.R. 925) The Tribunal worked out first the gross profits for the said years and the prior charges deductible therefrom and arrived at the available surplus. For the year 1957-58 gross profits found were Rs. 28.29 lacs, Rs. 25.36 lacs for 1958-59 and Rs. 34.92 lacs for 1959-60. There is no dispute about these figures. The Tribunal then ascertained the prior charges deductible from the gross profits. There is no dispute with regard to the figures for depreciation, income-tax and wealth-tax. As regards interest allowable on paid up capital, the Tribunal allowed 6% per annum tax free interest for 1957-58 and 1958-59. For 1959-60 the Company demanded interest at the rate of 8.57% by reason of a change in the Income-tax law having been made during the year. The Union, on the other hand, claimed that only 6% interest should be allowed. The Tribunal allowed a mean between the two, viz., 7 1/4%. There was no question of interest on working capital as it was not the Company's case that any reserve was utilised as working capital, similarly, there is no dispute with regard to the rehabilitation charge for buildings allowed by the Tribunal. Apart from the question as to interest allowable on paid up capital for the year 1959-60, the main dispute in these appeals is with regard to the rehabilitation allowances in respect of plant and machinery for the three years in question and the method followed by the Tribunal in calculating them.

The Company ever since its commencement has been purchasing new and also old reconditioned machinery. As regards new machinery the Company furnished, (a) cost to the Company, (b) the current price during the year 1963-64 and (c) percentage in the rise in prices. The Company also furnished in respect of reconditioned machinery (a) cost to the Company and (b) estimated cost which its vendors would have paid if they had purchased it as new in the years in which the Company installed the old machinery. In respect of the old machinery the cost to the Company and

the estimated cost to the sellers according to the Company were as follows :-

#----------Year Cost to the Estimated cost to Company the sellers---------- (In lacs) (In lacs)Upto 1952-53 . . . . . 13.37 20.051953-54 to 1955-56 . . . . 3.49 5.231956-57 . . . . . 1.40 2.101957-58 . . . . . 1.77 2.65 ---------- Total . 20.03 30.03----------##

The difference between the cost to the Company and the estimated cost to the sellers thus come to 150%. No old machinery was purchased during 1958-59 and 1959-60. The Company also produced quotations of prices for equivalent machinery current in year 1963-64. The Union did not dispute (a) the figures of cost to the Company of the new machinery as given in its statement Ex. M2, (b) the figures of cost of old machinery to the Company and its estimated cost to the sellers as given in Ex. M3 and (c) the quotations of prices received by the Company in 1963-64 from manufacturers of these machines, both old and new, "except in the case of machinery installed during the bonus years."

The Tribunal worked out the rehabilitation requirements for the years 1957-58 to 1959-60 in a Chart which is Annexure A to the award. Since the controversy in these appeals mainly centers round the figures of rehabilitation requirements allowed by the Tribunal it is expedient to set out that Annexure :

Chart ANNEXURE A dated 31-3-1964----------Period Cost Cost as Multi Total Less Balance Minus depreciation Balance Divisor Annual shown by plier break

Require- Co. in down

ment Ex.M. value 5% 1 2 3 4 5 6 7 8 9 10 11----------

(Rupees in lakhs)1950-51-New 16.30 16.30 3.36 54.77 0.81 53.96 Total cost as new & old Machy 30.03 24.35 7 3.48Old 13.37 20.05 67.37 Nil 67.37 Depre. written off upto 31-3-571951-52-New 1.43 1.43 1.87 2.67 0.07 2.60 48.83 2.60 8 0.321952-53New 2.18 2.18 1.47 3.21 0.11 3.10 3.10 9 0.341953-54New 1.12 1.12 2.28 2.55 0.06 2.49 Investment as on 31-3-57 2.49 10 0.25Old 1.24 1.86 2.28 4.24 .. 4.24 18-22 4.24 7 0.611954-55New 3.71 3.71 1.86 6.90 0.19 6.71 Total 96.98 6.71 11 0.61Old 1.95 2.93 1.86 5.45 Nil 5.45 5.45 7 0.781955-56New 6.93 6.93 2.18 15.11 0.35 14.76 14.76 12 1.23Old 0.30 0.45 2.18 0.98 Nil 0.98 0.98 7 0.141956-57New 13.11 13.11 2.35 30.80 0.66 30.14 30.14 13 2.32Old 1.40 2.10 2.35 4.93 Nil 4.93 4.93 7 0.701957-58New 3.39 3.39 1 3.39 0.17 3.22 3.22 14 0.23Old 1.77 2.65 1 2.65 Nil 2.65 2.65 7 0.38 11.391958-59New 12.95 12.95 1 12.95 0.65 12.30 12.30 14 0.88 12.271959-60New 30.76 30.76 1 30.76 1.54 29.22 29.22 14 2.08 14.35##

It will be observed from Annexure A that the Tribunal accepted as regards new machinery the Company's figures of cost and quotations as cost of replacement and dividing the cost of replacement by the original cost to the Company worked out multipliers for each year. This dispute, however, is with regard to the multipliers arrived at by the Tribunal in respect of old machinery.

In Annexure A, the Tribunal adopted 3.36 multiplier in respect of old machinery installed in 1950-51, i.e., the same multiplier which it worked out in respect of new machinery installed during that year. For the years 1953-54 to 1957-58 the Tribunal accepted the Company's figures which were agreed to by the Union, viz., of cost to the Company and the estimated cost to their vendors if the latter had purchased that machinery as new in the respective years of installation. The Company also produced quotations from manufacturers of machinery itemwise in its Confi-Annex. 1 and 2. These quotations were for some machines for 1959-60, for some for 1960-61 and the rest for 1961-62. It would be safe to say that the average cost of these machines was the cost prevalent in 1960-61. Though the average cost of the machinery was thus available, the Tribunal in the case of old machinery worked out multiplier for each of these years and then arrived at the figure of Rs. 85.62 lacs as the total replacement cost of old machinery by multiplying the estimated cost to the seller with the multiplier. The Company's contention was that since the Company had furnished quotations for all machinery including the old machinery, the Tribunal ought to have accepted those quotations as equivalent to replacement cost as it did in the case of new machinery instead of adopting the notional method of working out multipliers and then arriving at replacement cost by multiplying that multiplier with the estimated cost to the sellers.

A multiplier is the ratio between the original cost and the cost of replacement. It is one of the methods of arriving at the hypothetical cost of replacement at a future date. But where the cost of replacement is available through quotations and these quotations are not disputed by the Union it would not be necessary to resort to a hypothetical multiplier or if the multiplier must be ascertained it must be the ratio of the cost to the employer and the estimated cost of replacement actually proved through the quotations. According to the Company in the case of old machinery the multiplier so calculated would be -

#1950-51 ... 3.981953-54 ... 7.831954-55 ... 3.491955-56 ... 2.471956-57 ... 4.751957-58 ... 2.29##

The total cost of replacement of old machinery on the basis of these multipliers or in the alternative on the basis of the quotations would then come to Rs. 121.70 lacs instead Rs. 85.62 lacs, the difference being of Rs. 36.08 lacs. Therefore, even if the divisor of 7 uniformly applied by the Tribunal in Annex.

A were to be accepted as correct Rs. 36.08/7 = Rs. 5.16 lacs would have to be added for rehabilitation requirement for each of the bonus years. If that is done the entire available surplus found by the Tribunal would be wiped out.

It will be seen from the Tribunal's Annex A that so far as new machinery is concerned the Tribunal accepted the figures of original cost and the quotations furnished by the Company and worked out multipliers for all the years from 1950-51 to 1959-60 by simply dividing the quotations by the original cost. The question is, should not the Tribunal have also followed the same method in the case of old machinery when it had before it the estimated cost to the seller, i.e., the cost of old machinery if purchased as new in the year of installation and the quotations for that machinery. If that were done would be no necessity of finding out a notional multiplier. In that event as seen above there would be a difference of Rs. 36.08 lacs which would have to be added to the figure of Rs. 85.62 lacs worked out by the Tribunal as total rehabilitation cost in respect of old machinery.

Mr. Ramamurti however argued that though the Union had not disputed the quotations those quotations were for the year 1963-64 when the Tribunal was adjudication the dispute, that it is

always necessary to first find out the multiplier and then work out the rehabilitation cost and that the cost of machinery in the bonus year or years must be reflected while working out the rehabilitation cost even if the year of replacement worked out from the average life of machinery is later. It is now well established that in the case of old machinery the employees cannot insist that such machinery should be replaced by old machinery. For working out rehabilitation cost of such machinery it is the cost of new machinery that is to replace the old which has to be taken into consideration. The Company as aforesaid produced two kinds of figures both accepted by the Union and the Tribunal : (1) the estimated cost to the seller if he had purchased the old machinery as news in the respective years of its installation and (2) quotations of prices of machinery which would replace it. The Tribunal had before it thus the cost of the machinery if it were new in the year of installation and the cost of its replacement by new machinery. There was therefore no particular reason in distinguishing the old from the new machinery for the figures of costs and replacements in both the cases were on the footing that the old machinery was new machinery. Therefore since the Tribunal accepted the quotations and worked out the multiplier in the case of new machinery by dividing the quotation by the original cost it ought to have followed the same method in the case of old machinery as it had before it the cost of the old machinery as new and the cost or replacement, both unchallenged by the union.

The question still is whether the quotations can be the sole criterion for working out rehabilitation cost. The principle accepted in the Full Bench formula and approved by this Court in the case of Associated Cement Co. Ltd., ([1959] S.C.R. 925) was that payment of bonus is in recognition of the contribution of labour in the profits earned by the industry and to assist labour to overcome as far as possible the difference between the actual wage and the living wage. The Formula at same time accepted the point of view of the industry that investment made by it must imply a legitimate expectation of securing returns and that could only be ensured by machinery being continuously kept in good working order. Such maintenance would necessarily be to the advantage of the labour, for, the better the machinery the larger the earnings and the brighter the chance of earning bonus. It is on this twin consideration that the amount necessary for rehabilitation is recognised as a prior charge on the gross profits when surplus profit for distribution as bonus is being worked out. It is true that depreciation is allowed by the tax laws but that is only to the extent of a percentage on the written down value. The depreciation fund set apart on that basis would obviously be insufficient for rehabilitation and therefore an extra amount would have to be annually set apart nationally to make up the deficiency. That is the reason for the Full Bench formula having accepted the industry's claim to rehabilitation in addition to the admissible depreciation. While ascertaining the claim of rehabilitation the Tribunal has first to ascertain the cost of the machinery to the employer and then to estimate its probable future life. It then becomes possible to anticipate approximately the year when the machinery would need replacement and it is the probable price of such replacement at such future date ultimately decides the amount to which the industry is entitled by way of replacement cost. The question is how to estimate the probable price of machinery at such future date ? As observed in the Associated Cement Company's case ([1959] S.C.R. 925) such probable price can be considered itemwise where the industry does not own too many factories and an itemwise study of machinery is reasonably possible. It is when the industry owns several factories and the number of plant and machinery is so large that it becomes difficult to make an estimate of replacement cost item wise that the estimate has to be block-wise. In either case the Tribunal has to estimate the probable cost of replacement at the time when such replacement would become due. Such an estimate depends obviously on several uncertain factors. The estimate of the probable life of machinery is itself a matter of anticipation and the estimate of the probable trend of price during the intervening period is also to a degree a matter of conjecture. However, the entire process of

ascertaining replacement cost is hypothetical depending largely on expert evidence It would appear therefore that whenever it is possible to estimate itemwise the probable cost of machinery in the year of replacement, such a method is not only permissible but is more desirable. The block-wise estimate has to be resorts to when item-wise estimate is not possible. Where therefor there is clear evidence of the probable price of each piece of machinery itemwise when replacement is to become due, it would be more accurate to proceed on the basis of such price and it would not be necessary to find out multipliers, such multipliers being after all the ratio between the cost and the probable cost of replacement ascertained from the trend of prices during the intervening years. The multiplier thus is at best an approximation arrived at from the trend of price level during the intervening period. But where the cost of replacement is ascertained from quotations of prices for the year of replacement such cost is more accurate than a notional one worked out from the multiplier. It is therefore not always necessary to arrive at a multiplier for estimating the probable cost of replacement.

In the instant case the Tribunal estimated the life for old machinery at 10 years and that for new machinery at 15 years after taking into consideration the fact that the machinery was worked at least since 1955-56 on three shifts a day and the fact that it is being used for manufacturing precision machines. On this basis the old machinery installed in 1950-51 became due for replacement in 1960-61 and the rest of it installed in succeeding years would become due after 10 years from the respective years of its installation. It is in evidence that though the average life of the old machinery was exhausted it was still being worked though uneconomically. It was agreed that the entire machinery needed immediate replacement and this fact was accepted by the Tribunal. It is well established that an employer cannot be allowed to postpone the date of replacement on the footing that he has operated the machinery in fact beyond its average life and thus boost the cost of replacement taking advantage of the rise in price every year. In the instant case however that cannot be said to be the position. As stated earlier, the quotations produced by the Company represented an average price as near as possible prevailing during the period for replacement. Since they were not disputed by the Union they were the best available data. There was therefore all the more reason for the Tribunal to have worked out the cost of replacement from these undisputed quotations instead of working out the multipliers and then arriving at the total replacement cost. On the basis of these quotations even if the multipliers were to be worked out the multipliers and the cost of replacement of old machinery would be as follows :-

#----------Year Old machinery
Replacement cost Multiplier estimated cost to proved by quotations the seller if he
disputed by the Union had purchased as new in the year of its installation not
disputed by the Union---------- (Rs. in
lacs.) (Rs. in lacs.)1950-51 20.05 79.72 3.981953-54 1.86 14.57 7.831954-55 2.93
10.25 3.491955-56 0.45 1.11 2.471956-57 2.10 9.97 4.751957-58 2.65 6.08 2.29 -----
- -------- 30.04 121.70----------##

The replacement cost thus arrived at would be Rs. 121.70 lacs as against Rs. 85.62 lacs as worked by the Tribunal. Indeed, where the cost of replacement is proved itemwise from price quotations and they are undisputed it becomes difficult to appreciate how the total cost of replacement can be less than the cost proved through quotations.

Counsel for the Union, however, urged that while working out the replacement cost it is the cost during the bonus year which is relevant and therefore though the Union had accepted the quotations they world not be the proper criterion and the price prevalent during each of the bonus years would

be the relevant price. He also argued that even if the quotations were to be accepted as cost of replacement the prices of only those machines which are required for replacement and not for expansion which can be the basis of estimation. As regards the first argument, a similar contention was raised in Associated Cement Co's case ([1959] S.C.R. 925) and was rejected. At p. 967 of the report the Court said :

> "What the Tribunal has to do in determining such cost (i.e., probable cost of replacement) is to project the price level into the future and this can be more satisfactorily done if the price level which has to be projected in future is determined not only in the light of the price prevalent during the bonus year but also in the light of subsequent price levels."

The submission that it is the level during the bonus year which is the criterion therefore is not correct. The test is the probable cost of replacement when rehabilitation becomes due. If the bonus year and the year of rehabilitation coincide the price level during the bonus year would no doubt be the relevant basis. But where they do not coincide and the due year of rehabilitation is the year beyond the bonus year that which is relevant is the probable cost of replacement during that year and the Tribunal therefore would have to consider all relevant evidence necessary to estimate the cost during that future year. Where there is tangible evidence through quotations of prices for that year and such quotations are not in dispute the Tribunal does not have to conjecture what the trend of price level would be by taking into consideration the price level during the intervening period which would include the bonus year.

However this does not mean that the Tribunal must mechanically accept the quotations. The rehabilitation cost allowed under the Full Bench formula is the probable cost of rehabilitation which while including modernisation does not include expansion. But the distinction between modernisation and expansion may in some cases be subtle and not capable of clear distinction. The question therefore would always be whether replacement of one machine by a new one is the introduction of modern machinery or one which is an item of expansion. If it is an item of expansion its cost naturally has to be excluded. The test is whether by the introduction of the new machinery the production capacity is likely to be significantly augmented. If that is found the Tribunal would have to apportion the cost on the basis that replacement is partly modernisation and partly expansion. On the other hand, if the increased production is not significantly on the higher side it would be a case of modernisation incidental to replacement. The question is on whom is the burden of proving whether a given replacement amounts to expansion or modernisation. It seems to us that since it is the employer who seeks replacement cost, it is for him to satisfy the Tribunal as to what will be the overall cost of replacement and in doing so it is the who must satisfy that the cost is of replacement only and does not include any expansion of machinery. Counsel for the Union was therefore right in saying that the Tribunal has to satisfy itself that no cost of expansion is injected in the rehabilitation cost. In the present case, however, it does not appear from the record that any question of expansion arose as the Union accepted the quotation as equivalent to the replacement cost. Consequently, the Tribunal proceeded on the footing that the entire machinery had become due for replacement and the prices proved by quotations were of machines to be replaced in the process of replacement and modernisation and not expansion. According to Rajendra Mill Ltd. ([1960] I L.L.J. 53) the employer has to discharge this burden by adducing proper evidence and giving the other party an opportunity to test the correctness of that evidence by cross-examination and merely bringing on record balance-sheets, for instance, would not be enough. (see also the Workmen v. The National Tobacco Co. ([1966] II L.L.J. 200).

But in the present case there is no question of the Company not having properly discharged the burden, for, it not only produced balance-sheets but also produced statements, quotations and examined two expert witnesses, Jones and Desai. These witnesses were cross-examined on the statements relied on by the Company in regard to the cost to the Company, the estimated cost of replacement, the average life of machinery etc. The Union also inspected the Confidential Annexs. 1 and 2 which showed itemwise the cost of replacement as proposed by the Company and quotations of prices therefor. These Annexs. also indicated that where a machine was to be replaced not by the same kind but by a modern one it was to be substituted for two or more of the old machines. This was presumably done to avoid expansion. It is true that in respect of the old machinery installed in 1953-54 and 1956-57 the multiplier calculated on the basis of the quotations comes to 7.83 and 4.75 respectively while it ranges from 2.29 to 3.98 for the rest of the years. At first sight the multiplier might suggest that there might be an element of expansion in the case of those machines. But it was pointed out that the prices of those particular machines had gone unusually high and furthermore that in the process of replacement the modern machines which were to replace the old ones were in the approximate proportion of one for two. It cannot therefore be validly said that the Company had not placed sufficient materials to enable the Union to check up by cross-examination whether this was a case of expansion or not.

Mr. Ramamurti's contention next was that even though the quotations were not disputed by the Union, taking them as the sole basis for estimating the replacement cost was not satisfactory as the Union had qualified its acceptance by a reservation that it did so except for machinery installed in the bonus years. This argument does not appear to be tenable. Exhibit M2 shows that so far as the bonus years are concerned old machinery was installed in 1956-57 and 1957-58 only. The cost of such machinery for 1956-57 was Rs. 1,39,871 and that for 1957-58 was Rs. 1,76,730. On the basis of the Union's reservation the Tribunal did not accept the quotations for machinery installed in those years and fixed the replacement cost on the basis of multipliers calculated by it de hors the quotations. It is difficult to comprehend such an approach by the Tribunal accepted the quotations in regard to the rest of the machinery and worked out the multiplier on the basis of those quotations. The Union did not challenge those quotations and the multiplier calculated therefore. If the quotations for the new machinery for all the years and for old machinery for the years, except the bonus years, were accepted by the Union and the Tribunal also, there is no reason why the quotations for the bonus years could be said to be unacceptable. No objection to the replacement cost of the new machinery was taken even in regard to the bonus years. As regards the old machinery the Union accepted the Company's figures both as to cost to the Company and the estimated cost to the seller if he had purchased it as new. Even if a multiplier has to be calculated it would be the ratio between the estimated sellers cost and the probable cost of replacement. So calculated both the old and new machinery stand on the same footing because it is the seller's estimated price if he had purchase it new in the year of its installation that was taken by the Tribunal for arriving at the multiplier. That being so, the multiplier in both the cases would be the ratio between the cost to the case of new machinery and the the estimated cost to the seller in the case of old machinery and the cost of replacement proved by the Company through quotations. If the quotations were acceptable to the Union in regard to new machinery and the old machinery installed in the years except the bonus years it is difficult to understand how quotations for the old machinery installed in bonus years could be questioned especially as the Union did not produce any data to prove them incorrect. In these circumstances, we are of the view that the multipliers arrived at by Tribunal in the case of old machinery were not correct. The Tribunal should have either calculated the replacement cost from the quotations proved by the Company itemwise or if it had to work out the multiplier it should have done so by finding out the ratio between the estimated cost to the seller

accepted by the Union and the quotations proved by the Company. The deficiency in following this method comes to Rs. 36 lacs and odd as stated earlier.

Regarding the new machinery purchased during the bonus years the Tribunal held that the price rise for such machinery cannot be taken to be more than zero. In Ex. M2 the company has given the quotation for this machinery and has worked out therefrom the multiplier for each of the bonus years, viz., 2.35 for 1956-57, 3.37 for 1957-58, 1.48 for 1958-59 and 1.66 for 1959-60. Presumably the Tribunal thought that though the price for his machinery in 1963-64 were available, considering that its life was 15 years it was too early to find out with any precision the trend of prices during the intervening years. With the gradual growth of indigenous production and corresponding availability of these machinery it would be difficult to say whether the same trend would continue or not by the time the year for its replacement was reached. It is not possible to say therefore that the Tribunal's view that the price rise of such machinery should be taken as zero was unreasonable. In the case of machinery purchased in 1950-51 and onwards its period of replacement would commence from 1965 and onwards. It was possible from the quotation produced by the Company to predicate for such machinery the trend of price but not so in the case of machinery purchased in very recent years. In their case the quotations may not be take for granted as showing any definite trend in price level.

As stated earlier, the Tribunal has given in Annex. A, a uniform remainder life of 7 years to old machinery irrespective of the year of its installation. This, in our view, is not correct. Taking the life of old machinery to be 10 years, the old machinery purchased in 1950-51 would require replacement in 1960-61 and so on. In that case the remainder life in the bonus year 1957-58 of old machinery installed in 1950-51 would clearly be 3 years, of old machinery installed in 1953-54, 6 years, of old machinery installed in 1955-56 8 years, of machinery installed in 1956-57 9 years and that installed in 1957-58 10 years. The divisor therefore could not be the uniform 7 for all these years but a graduated one on the basis that the estimated life of old machinery was 10 years. In estimating the rehabilitation requirement of each year the graduated divisor should have been used.

The question which raised a serious controversy is with regard to figure of Rs. 24.35 lacs found by the Tribunal as the total cost of rehabilitation in respect of machinery both old and new installed in 1950-51. Dividing the figure by 7 as the remainder for both the types of machinery the Tribunal allowed Rs. 3.48 lacs as the rehabilitation requirement for that year. Counsel for the Company objected to the Tribunal's calculations on various grounds. It will be seen from column 7 of Annex. A that whereas the Tribunal, accepted the Company's quotations for new machinery it did not do so in the case of old machinery and calculated instead the replacement cost by means of a multiplier. It is difficult to say on what principle the multiplier 3.36 for old machinery was adopted except that the Tribunal adopted the same multiplier which it calculated in the case of new machinery by working out the ratio between the cost to the Company and the price of replacements appearing from the quotations. Since the Tribunal adopted that principle for new machinery it would be logical that it should similarly do so in the case of old machinery also as the basic cost adopted was the cost price to the seller if he had bought that machinery as new in 1950-51. The total cost of machinery old and new would in that case be Rs. 54.77 lacs plus Rs. 75 lacs, i.e. Rs. 133.77 lacs instead of Rs. 54.77 lacs less 5% break down i.e., Rs. 53.96 lacs for new and Rs. 67.37 lacs for old machinery as calculated by the Tribunal. The figure of Rs. 67.37 lacs was arrived at by multiplying Rs. 20.05, the estimated cost to the seller by the multiplier 3.36. According to the Tribunal the gross replacement cost would be Rs. 121.33 lacs instead of Rs. 133.77 lacs. The figure of Rs. 121.33 lacs arrived at by the Tribunal cannot be sustained as it was not justified in calculating replacement for the new machinery in one way and that for the old machinery in another way.

The next miscalculation said to have been committed by the Tribunal was in deducting the depreciation for the entire old machinery installed during 1950-51 to 1957-58, i.e., Rs. 30 lacs from the total replacement cost for 1950-51. The Tribunal took the whole of the cost of old machinery to the seller, i.e., Rs. 30 lacs, as depreciation. For that the Tribunal derived support from the decision in South India Millowners' Association and Ors. v. Coimbatore District Textile Workers' Union and Ors. ([1962] I L.L.J. 223) where while dealing with the old machinery this Court has said that where purchase price is determined but it is difficult to ascertained the depreciation amount thereafter then at the highest the whole of the purchase money would be taken as depreciation amount.

Assuming that the Tribunal was entitled to treat the price of the old machinery, viz., Rs. 30 lacs as depreciation it was not correct on its part to deduct it from the replacement cost. The reason is that it also deducted Rs. 48.83 lacs (to which we shall presently refer to) which amount includes depreciation of Rs. 30 lacs. The Tribunal thus deducted Rs. 30 lacs as depreciation twice over. The deduction of Rs. 30 lacs was thus clearly an error.

Counsel for the Company next objected to the sum of Rs. 48.83 lacs having been deducted from rehabilitation cost in respect of machinery, old and new, installed in 1850-51. The objection was two-fold : (1) That the Tribunal erred in deducting the whole of this amount from the rehabilitation cost in respect of 1950-51 machinery, and (2) that the said amount represents total depreciation, i.e. the notional written down value of all machinery up to the year 1956-57 and is shown as such in the balance-sheet for 1956-57. It was a urged that, since this amount represents depreciation on various kinds of assets, viz., bungalows, plants and machinery, cars and trucks, furniture and tools and implements, the whole of this amount should not be deducted when calculating the rehabilitation provision for the machinery of 1950-51 and should be deducted only when calculating the rehabilitation provision for each item in respect of which the depreciation has been included in the accounts. We do not think that this submission can be accepted. No doubt, the sum of Rs. 48.83 lacs represents depreciation up to 31-3-1957 in respect of plant, machinery, buildings, as well as other items of the property, but there is no principle which require that depreciation fund in respect of a particular item must only be utilised in rehabilitating the same item. The Tribunal held that the entire depreciation fund must be utilised for rehabilitation of those item of the property which require rehabilitation at the earliest point of time, that is the machinery of 1950-51 which needed replacement earlier than the other item of property. We do not think that this decision of the Tribunal was in any way unreasonable as justify interference.

As regards the second objection the principle is that while arriving at the rehabilitation cost deduction should be made of all available funds. It was argued that an amount which is a notional depreciation mentioned in the account for the purpose only for showing the true value of fixed assets would not be a reserve which in point of fact can be said to be available for replacement, and that it is on account of this that the decisions mention reserves including depreciation reserve which, if available, are liable to be deducted from rehabilitation cost. The contention is that this amount being merely a notional depreciation is a mere paper entry and does not represent any available reserve. Reliance was placed on G. F. Mills v. Its Workmen (A.I.R. 1958 S.C. 382) where the Court set aside deduction of Rs. 30 lacs; the Company had raised a debenture loan of Rs. 50 lacs on credits on the ground that that amount was locked up in Pakistan and could not be brought to India for the Company's use. It was argued that the principle thus is that the amount to be deducted must in reality be available to the employer for replacement.

As found by the Tribunal the Company's fixed assets were of the value of about Rs. 110 lacs. The Union's contention was that as against this amount the Company's subscribed capital was Rs. 60

lacs; the Company had raised a debenture loan of Rs. 50 lacs on the security of its fixed assets and thus the subscribed capital and the debenture loan were sufficient to meet the whole cost of the fixed assets. On this basis the Tribunal upheld the Union's contention that Rs. 48.83 lacs shown as depreciation were available towards replacement cost as no part of it could have gone in the investment of fixed assets. Counsel for the Company however, pointed on that the debenture loan was raised in 1958-59 and therefore the amount cannot to be available at any rate during the year 1956-57. But this fact taken in isolation does not furnish a correct picture of the fund available to the Company during the bonus years The balance-sheets show that besides the said loan of Rs. 50 lacs the Company had obtained a secured loan of Rs. 6.50 lacs in 1956-57 and another loan of Rs. 24.68 lacs in 1957-58. Except producing the balance-sheets the Company led no evidence to show as to how these loans had been utilised, whether as working capital, or in acquiring fixed assets. Apart from this fact, we do not see how the fact that the debenture loan was raised in 1958-59 makes any difference. Though the life of a large part of the machinery had run out the Company had not replaced any of it and was carrying on its work with the worn out machinery even though its working was uneconomical. The Tribunal had found and the parties also were agreed that the entire machinery required immediate replacement. Therefore, the question was how much rehabilitation cost the Company would require. In calculating such cost the Tribunal was entitled to take note of the fact of Rs. 50 lacs having been raised as debenture loan on the security of its fixed assets presumably because that loan was required for rehabilitating the fixed assets. Even so, Counsel argued, the question would still be whether Rs. 48.83 lacs represented an available fund for rehabilitation or whether they represented a mere paper entry for showing the true value of machinery in 1956-57. In our view, it is not necessary for us to go into the question whether a sum shown as notional depreciation without its being shown as reserve can be treated or not as a fund available for rehabilitation nor whether such depreciation is or is not deductible even if it is not available as a fund. The Company produced Ex. M-4 showing the amount which according to it was required for rehabilitation for the bonus years. According to that statement the Company would require Rs. 110-20 lacs, Rs. 127.06 lacs, Rs. 149.87 lacs and Rs. 155.91 lacs for the four bonus years respectively. In working out these amounts the Company itself deducted Rs. 48.25 lacs from the rehabilitation requirement for the year 1956-57 and pointed out in a footnote that that amount was comprised of an investment of Rs. 18.22 lacs in stocks and shares and Rs. 30.03 lacs as depreciation, taking the entire estimated cost to the seller of old machinery if such seller had purchased it as new. In face of this admission it is difficult to appreciate how the Tribunal can be said to have erred in treating Rs. 48.83 lacs as available fund. We may also mention that before the Tribunal the argument was not that the amount of Rs. 30.03 lacs was merely a notional depreciation and not a fund actually available to the Company. The Company's contention on the contrary was that the whole of Rs. 48.83 lacs was utilised in fixed assets and therefore was not available for replacement. The Tribunal rejected that contention on the ground that except for the balance-sheet which did not give precise information as to how that amount was deployed by it the Company had not produced its accounts to show that that amount was utilised towards acquiring fixed assets. Counsel argued that if that was the view of the Tribunal the Company ought to have been given an opportunity of showing its sources of fixed assets. There is no merit in this contention. It was the Company who had the necessary information. The onus was on the Company to explain from its accounts and other data that the amount of Rs. 30 lacs and odd was not available. As regards Rs. 18.22 lacs the amount being an investment in liquid assets it is difficult to say why the Tribunal was not justified in treating it available for rehabilitation.

But the Company's contention was that the investment of Rs. 18.22 lacs in shares can either be treated as a trading transaction carried out in the ordinary course of business or as a capital asset. If

it was treated as a trading transaction the Tribunal ought to have allowed Rs. 1.72 lacs which was the loss in 1957-58 in these shares as trading expenditure and the Tribunal ought not have dated that amount to the gross profits for that year. In doing so, the Tribunal treated the investment as capital asset and it could not therefore deduct Rs. 18.22 lacs as a fund available for rehabilitation cost. We fail to see any contradiction on the part of the Tribunal. The balance-sheet for the year 1956-57 contains two Schedules; Schedule A shows fixed assets and Schedule B shows trade investments of the value of Rs. 18,21,571/-. The Company not being an investment Company the investment of Rs. 18.22 lacs in shares of other joint stock Companies prima facie represents extra capital not required as working capital for otherwise the Company could not have spared this amount for investment in the stocks of other companies. The Tribunal was right in treating this investment as a capital asset and in refusing to treat the loss therefrom as trading expenditure. The Tribunal at the same time could deduct this amount from the rehabilitation cost because that amount was available to meet the rehabilitation cost. The investment in shares could easily, if the Company was so minded, be converted into cash and utilised for replacement of its worn out machinery. But it was said that even if the amount of Rs. 18.22 lacs could be held deductible that figure was not correct, for the value of investment was Rs. 11.23 lacs at the close of the year 1957-58 as shown in the balance-sheet for that year. This contention is not correct. What appears to have been done in 1957-58 was that instead of showing the entire investment of Rs. 18.22 lacs as trade investments as in the previous year, the investments, were classified into investments and current assets. The value of investments at the beginning of the year is shown at Rs. 18.22 lacs but at the close of the year the shares of companies other than the National Bearing Company (Jaipur) Ltd., a subsidiary of the appellant company were regrouped and shown as current assets and their cost was shown at Rs. 6.57 lacs instead of Rs. 13.71 lacs as shown at the close of the preceding year. Except producing the balance-sheet for 1957-58 the Company gave no explanation before the Tribunal as to why these investments were re-grouped and on what footing they were revalued. Besides, the figure of Rs. 18.22 lacs does not appear to have been disputed before the Tribunal and the Tribunal was never told that the investments during that year were reduced to Rs. 11.23 lacs. It would not therefore be right to say that the Tribunal erred in taking Rs. 18.22 lacs as a fund available for rehabilitation.

The next contention was as to 7 1/4% interest allowed by the Tribunal on paid up capital instead of 8.57% claimed by the company. By the Finance Act of 1959 the provision in the Income-tax Act that the Income-tax paid on dividend distributed to the share holders was deemed to have been paid on behalf of the share holders was abrogated. The contention was that though the corporation tax was reduced in that year from 51.5% to 45% the Company since 1959 had on the whole to bear a larger burden of tax and therefore the Company would not get a net tax free 6% interest unless interest at 8.75% was granted. It is true that the Full Bench formula provided for payment of net interest at 6% per annum on paid up capital, but as pointed out in the Associated Cement Co's case ([1959] S.C.R. 925) and subsequent decisions of the Tribunals the rate of 6% interest is not to be regarded as something inflexible. In awarding interest on paid up capital and also on working capital the proper approach is that the industry is entitled to a reasonable return on investments made in establishing and running concerns at its risk. At the same time the claim for bonus is no longer treated as an ex-gratia payment. It is recognised on the consideration that labour is entitled to claim a share in the trading profits of the industry as it partially contributes to the same. Since the industry and labour both contribute to the ultimate trading profits both are entitled to a reasonable share. While awarding interest if the Tribunal were to find that if it were to grant 6% interest on paid up capital, nothing or no appreciable amount would be left for bonus, it can adjust the rate of interest so as to accommodate reasonably the claim for bonus and thus meet the demands of both as reasonably as possible. If the Tribunal were to award interest at a rate lower than 6% after

considering all the relevant facts we do not think that the employer can legitimately claim that it has erred in doing so. If the Tribunal has exercised its discretion after consideration of all the relevant facts this Court would not ordinarily interfere with such exercise of its discretion.

These were all the contentions raised by Counsel for the Company in the Company's appeal. To the extent that we accept as hereinabove the Company's contentions. Annexure A to the aware will have to be modified. These modifications are shown in the charts thereto annexed and collectively "A".

We now proceed to consider the Workmen's appeal.

Counsel for the Union argued that the Tribunal ought to have fixed the life of the new machinery at 25 years as is usually done and not at 15 years. In some cases, it is true that Tribunals have fixed 25 years as the machinery's average life. There can however no rigidity in fixing the life of machinery, since it differs from industry to industry. Consequently, there can be no hard and fast rule applicable to all sorts of machinery. (of. The Millowners' Association, Bombay ([1950] L.L.J. 1247) and South India Millowners' Association.) ([1962] Supp. 2 S.C.R. 926) In the present case the Tribunal had before it evidence showing that the industry required machinery of special precision and was therefore not comparable with machinery such as that in textile mills for which 25 years' life was fixed. In suggesting the life of 25 years for this machinery Counsel for the Union did not give any specific reason except that 25 years of life has been fixed in some cases. He could not also show any instance where in a similar industry life of machinery was fixed for more than 15 years. The principle that the Tribunal has to bear in mind is that the life of machinery is the period during which it is estimated to work with reasonable efficiency and not the period during which it has actually been operated, that is, till it becomes too deteriorated for use. (Pierce Leslie & Co. v. Its Workmen.) ([1960] 3 S.C.R. 194 at 200) Since the Tribunal fixed the period of 15 years after considering the evidence and the nature of industry there is no reason why its determination need be interfered with.

Counsel's next contention was that the Tribunal ought not to have accepted the quotations which were for 1963-64 as the basis for calculating the total rehabilitation cost. But the quotations were never disputed by the Union. Even so, argued Mr. Ramamurti, they contained the cost of spares which at any rate ought to have been excluded. We confess it is difficult to appreciate this part of the argument. The machinery in question is in a large way imported machinery. It is common knowledge that when such machinery is purchased spares are generally included in such purchase and their cost must be included in the purchase price, the reason being that in case of breakdown the Company would not have to wait for an indefinite period for ordering and obtaining the spares. It was then said that the new machinery which would replace the old might well contain items of expansion which the Tribunal ought to have reckoned and excluded. While dealing with the Company's appeal we have already dealt with this aspect and for the reasons stated there this argument must be rejected. We must also reject the argument that the Tribunal had disregarded the increasing trend of indigenous manufacture of machinery. In fact Confidential Annexs. 1 and 2 produced by the Company contain quotation wherever possible of a number of machines of indigenous manufacture.

The next contention related to old machinery and the argument was that the Company had discarded machinery worth about Rs. 18 lacs in respects of which the Company ought not to get any rehabilitation cost. The argument appears at first sight attractive but loses its force when the actual position is ascertained. The balance-sheet for the year 1959-60 shows that machinery worth Rs. 17.62 lacs was discarded during that year. Similarly tools and Implements of the value of Rs. 8.57

lacs were also discarded. To that extent deduction were made in the total value of fixed assets. In showing depreciation of plant and machinery Rs. 10.91 lacs being the depreciation of these machines were also deducted from the total depreciation so far shown in the previous balance-sheet. The result was that the total depreciation including depreciation for machinery added during the year was brought down from Rs. 48.37 lacs to Rs. 44.20 lacs The evidence of Desai shows that the machines' Ledger maintained by the Company shows only the list of machines in actual operation, which means that the discarded once are not shown in that list. The machinery discarded during this year was thus taken out from the fixed assets as if it did not exist. The depreciation in respect of it was also deducted from the total depreciation and therefore no rehabilitation was in fact claimed for such machinery.

Mr. Ramamurti next urged that the Tribunal ought to have allowed only 30% of rehabilitation cost for old machinery as was done in South India Millowners' Association's Case ([1962] Supp. 2 S.C.R. 926). That case does not lay down any such rule. 30% only was allowed in that case as an ad-hoc finger because the Association there had failed to produce materials showing the original price and subsequent depreciation and this Court refused to interfere with that figure as the Tribunal had no other alternative except to adopt an ad-hoc basis. The Court however made it clear that in the case of old machinery the cost price of such machinery must be ascertained and this can be done by enquiring for how much the machinery could be originally purchased when new. There is therefore no warrant for saying that only 30% of the rehabilitation cost can be allowed in the case of old machinery.

We cannot also agree with Mr. Ramamurti's contention that the Tribunal in calculating the rehabilitation requirement for the bonus years was wrong in taking only the notional normal depreciation did not the statutory depreciation including development rebate permissible under the Income-tax Act. In Associated Cement Co's Case ([1959] S.C.R. 925) at p. 994, in the Chart prepared by this Court only the notional normal depreciation was deducted while ascertaining the rehabilitation requirement. In was when the Court calculated the Income-tax payable by the Company that it deducted the statutory depreciation from the gross profits (see also Bengal Kagazkal Mazdoor Union & Ors. v. Titagarh Paper Mills Co. Ltd. & Ors. ([1963] II L.L.J. 358).

The last contentions was that the Tribunal should not have rejected the bonus claim for 1956-57. The balance-sheet for the year 1956-57 was published in December 1957, the Company's accounts were closed and appropriations of profits for that year were made latest by the end of 1957. The claim for bonus was raised for the first time by the Union's resolution of July 24, 1959, that is, more than 18 months after the closure of accounts. The claim for 1956-57 was thus the clearly belated and the Tribunal was right is refusing to compel the Company to reopen its accounts and to readjust appropriations made long before the demand was raised. It has to be remembered that a claim for bonus is not one for deferred wages. Its recognition in industrial adjudication is based on the desirability of a balance of adjustments of the different interests concerned in the industrial structure of a country in order to promote harmony amongst them on an ethical and economic foundation. Industrial adjudication therefore is bound to take into consideration delay and laches before its calls upon the other side to reopen its accounts closed long ago. We do not think that the Tribunal was any error in rejecting the claim on the ground of laches. The principle that laches are fatal such a claim has long been accepted in a series of decisions both by the Tribunals and by this Court.

#Calculation of annual requirement for rehabilitation of old machinery----------
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-Period Cost Cost as Multi- Total Less Balance Deductions Balance Divisor Annual

shown by plier Break require- Co. in down

ment Ex. M. Value 5% 1 2 3 4 5 6 7 8 9 10 11----------1950-51 13.37 20.05 3.97 79.72 1.00 78.72 (i) 48.83 Depreciation 11.67 3 3.89

(ii) 18.22 Available

Resources

67.05

---1953-54 1.24 1.86 7.85 14.57 0.09 14.48 14.48 6 2.411954-55 1.95 2.93 3.50 10.25 0.15 10.10 10.10 7 1.441955-56 0.30 0.45 2.47 1.11 0.02 1.09 1.09 8 0.141956-57 1.40 2.10 4.75 9.97 .11 9.86 9.86 9 1.101957-58 1.77 2.65 2.29 6.08 .13 5.95 5.95 10 0.59

Total 9.57----------Calculation of annual requirement for rehabilitation of New machinery----------Period Cost Cost as Multi- Total Less Balance Deductions Balance Divisor Annual shown by plier Break require- Co. in down

ment Ex. M. value 5% 1 2 3 4 5 6 7 8 9 10 11----------1950-51 16.30 16.30 3.36 54.77 0.81 53.96 53.96 8 6.751951-52 1.43 1.43 1.87 2.67 0.07 2.60 2.60 9 0.291952-53 2.18 2.18 1.47 3.21 0.11 3.10 3.10 10 0.311953-54 1.12 1.12 2.28 2.55 0.06 2.49 2.49 11 0.231954-55 3.71 3.71 1.86 6.90 0.19 6.71 6.71 12 0.561955-56 6.93 6.93 2.18 15.11 0.35 14.76 14.76 13 1.141956-57 13.11 13.11 2.35 30.80 0.66 30.14 30.14 14 2.151957-58 3.39 3.39 1 3.39 0.17 3.22 3.22 15 0.211958-59 12.95 12.95 1 12.95 0.65 12.30 12.30 15 0.821959-60 30.76 30.76 1 30.76 1.54 29.22 29.22 15 1.95TOTAL ANNUAL REQUIREMENT FOR OLD AND NEW MACHINERY Old New Total ----------1957-58 9.57 11.64 21.211958-59 (additional) 0.32 22.031959-60 (additional) 1.95 23.98Total yearly requirements of rehabilitation during the bonus years

(Figures in lacs)----------Years Machinery Building Total Notional Normal Depre- Balance to be provided ciation allowed during out of profit the year to be deducted.----------1957-58 21.21 0.72 21.93 9.10 12.831958-59 22.03 0.77 22.80 9.00 13.801959-60 23.98 0.82 24.80 10.83 13.97----------
Detailed calculations of available surplus for the three bonus years (Figures in lacs)----------1957-58 1958-59 1959-60 ------- ------- -------Gross Profits 28.34 25.36 34.92Less Notional Normal Depreciation 9.10 9.00 10.83 ------- ------- ------- 19.24 16.36 24.09Less Income Tax

8.18 7.48 7.31 --------- -------- ------- 11.06 8.88 16.78 11.06 8.88 16.78Less Wealth Tax 0.28 0.29 .. ------- ------- ------- 10.78 8.59 16.78Less return on paid up capital 3.60 3.60 4.35 ------- ------- ------- 7.18 4.99 12.43Less additional provision for rehabilitiation for plant, machinery andbuilding 12.83 13.80 13.97 ------- ------- ------- available Surplus Nil Nil Nil----------##

The Charts showing calculations of available surplus for the three bonus years show that in all these years no surplus remains available for distribution of bonus after making provision for rehabilitation. As a result, the appeal by the Company must be allowed and the direction made by the Tribunal for payment of bonus for these three years has to be set aside. In the circumstances of this case, the parties will bear their own costs. The appeal by the Union is dismissed. There will be no order as to costs.

G.C.

Appeal dismissed.

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