M/s. Bareilly Electricity Supply Co. Ltd.

Vs

The Workmen and Others

Civil Appeal No. 1254 of 1966

(G.K. Mitter, P. Jagmohan Reddy JJ)

16.08.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant is an Electricity Supply Co., and in this appeal by special leave challenges the Award made against it, by the Industrial Tribunal (III) at Allahabad on November 15, 1965. The dispute between the appellant and its workmen is one relating to the bonus payable for the year 1960-61. As an amicable settlement could not be arrived at, the State of U.P., by its order, dated January 24, 1962, referred the following dispute for adjudication to the Tribunal :

> "Should the employers be required to pay bonus to their workmen for the year 1960-61 ? If so, at what rate and with what details ?"

The case of the appellant was that after allowing for prior charges no available surplus was left for the payment of bonus to workmen. According to the Company a gross profit of Rs. 6,06,684/- was earned for the year ending March 31, 1961, but the Tribunal added to it a sum of Rs. 9,949/- as representing extraneous income and consequently computed the gross profit at Rs. 6,15,633/-. The following prior charges were claimed by the appellant and we have indicated as against each one of these in the apposite columns what the Tribunal has awarded and disallowed :

#----------Amount claimed by Amount allowedthe Appellant by the Tribunal----------
-Expenses as per profitand loss account Rs. 1,32,156/- Rs. 1,32,156/-Depreciation :Normal Rs. 2,02,814/- Notional normal .. 2,02,814/-Doubleshift Rs. 28,413/- Double shift .. Nil.----------
Rs. 2,31,227/- Rs. 2,31,227/-Income-tax .. Rs. 1,09,485/- 1,04,415/-Contingency Reserve .. Rs. 32,900/- NilDevelopment Reserve .. Rs. 22,333/- NilReturn on sharecapital .. Rs. 48,000/- 48,000/-Return on workingcapital .. Rs. 60,540/- NilRehabilitationrequirement .. Rs. 15,66,497/- Nil----------
------- ----------Total Rs. 22,03,138/- Rs. 4,87,385/---------- ----------
----------##

After making the necessary allowance as aforesaid towards deductions claimed as prior charges from the gross profit (Rs. 6,16,633/- minus Rs. 4,87,385/-) The Tribunal computed the available surplus at Rs. 1,29,248/-. Out of this amount of available surplus three months bonus which amounts to Rs. 73,000/- was awarded as bonus leaving sufficient funds for the Company to run its undertaking.

2. On behalf of the appellant it is contended that the Tribunal was in error in disallowing

depreciation on account of, (a) double shift, (b) income-tax, (c) return on working capital, (d) amounts required for rehabilitation, (e) contingency reserve and (f) development reserve, the latter two of which were statutory reserves which the undertaking had to provide for, under the schedule to the Electricity (Supply) Act.

3. The reasons given by the Tribunal for disallowing the double shift depreciation was that the Company did not produce any document to show the total running hours of each boiler or turbine, that in any case the evidence relating to the running of each of the boilers and turbines does not justify the claim for depreciation for the double shift on the entire plant and machinery; that the Company could only claim double shift allowance with regard to certain specified machinery and that in the previous years it had not claimed double shift allowance nor did it claim any deductions before the income-tax authorities for the year in question. For these reasons it held that the appellant was not entitled to claim the double shift depreciation during the year in dispute. The contingency reserve and the development reserve were disallowed as in the view of the Tribunal they were not a charge on the profits. The rehabilitation requirements were rejected on the ground that the Company had failed to prove the original cost of the plant and machinery; that it had failed to show the actual amount spent on rehabilitation of plant and machinery either in the year in dispute or in any subsequent year; that no rehabilitation allowance was claimed in the previous year; that the cost of the assets of the Company had not been only proved as engineers were not called and that the quotations produced by the Company could not be relied upon. The return on working capital was disallowed on two grounds, namely, that the calculation of the working capital has been made on the basis of the assets and rehabilitation as they stood on the closing day of the year 1960-61 namely on March 31, 1961, which is a mistake because whatever may have been the assets and liabilities at the end of the year they would not be the same at the beginning of the year nor could they be applied as the working capital. The second ground is that on the evidence it cannot be established that any reserves were utilised as working capital, nor was there any necessity to do so.

4. Before us the learned Advocate of the appellant has urged that the Tribunal was not justified in rejecting the material placed before it, from which the several deductions claimed by it ought to have been allowed in computing the available surplus. It will be convenient to deal with each of the items separately but before doing so we wish to set out several factors and certain essential feature which have to be taken into consideration in claims made by workmen for bonus. The basis assumption which has been accepted by this Court approving the first and second Full Benches of the Labour Appellate Tribunal is that the award of bonus is not by way of an ex-gratia payment but in furtherence of social justice the claim of capital and labour which contribute to the earnings of the industrial concern, make it equitable to grant labour the benefit of their efforts if there is a surplus. The first Full Bench in the Mill Owners Association, Bombay v. The Rashtriya Mazdoor Sangh, Bombay and Another, (1950 LLJ 1247) had laid down a general formula applicable for determining the available surplus of an Industrial undertaking for the proposes of awarding bonus to its workmen. The first step in this regard is the ascertainment of the gross profits of a concern, which are arrived at after payment of wages and dearness allowances to the employees and other items of expenditure. The next step is to ascertain what are the prior charges which have to be deducted from the gross profits in order to arrive at the available surplus.

5. The Full Bench formula concerns the claim of capital to prior charges which have to be taken into account to give a fair return to the investor and also to keep the industry working efficiently which in the long run will enure to the benefit of labour. The items considered as prior charges are : (1) Fair return on (a) paid-up capital; (b) working capital; (c) reserves utilised as working capital which obviates the necessity to borrow at higher rates of interest. (2) Amount of money required for

replacements rehabilitation and modernization of machinery. (3) Depreciation allowed by the Income-tax authorities being only a percentage of the written down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for those purposes, so an extra amount would have to be annually set apart under the heading reserves to make up the deficit. The question what is the ratio of the available surplus which could be awarded as a bonus was also considered. The Full Bench felt that the answer was not an easy one, but essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review which is reflected in the amount of surplus; the needs of labour at existing wages is also a consideration of importance. It observed in para. 37 :

> "..... but we should make it plain that these are not necessarily the only considerations; for instance no scheme of allocation of bonus could be completed if the amount of which bonus is to be paid is unrelated to the employees' efforts; and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject."

6. This Court in Muir Mills Co. Ltd. v. Suti Mill Mazdoor Union, Kanpur, ((1955) 1 SCR 991 : AIR 1955 SC 170 : (1954-55) 7 FJR 483) generally accepted as sound the view of the Full Bench, that since labour and capital both contribute to earnings they should derive benefit, if there is a surplus after meeting the four prior or necessary charges specified in the formula. However, neither the priority as between the four prior charges and their relative acceptance nor the conditions upon which they were allowed was examined by this Court, but it was nevertheless held that bonus is neither a gratuity nor gift nor can it be regarded as deferred payment. The principles enunciated by the first Full bench had been approved in U. P. Electricity Supply Co. Ltd. v. Their Workmen, ((1952) 2 LLJ 431) as being also applicable to Electricity Undertakings. It was pointed out that in determining the available surplus it is not the profits that have to be determined as required under the Electricity (Supply) Act 54 of 1948, which had to be considered but the gross profits as computed from the balance-sheet and profit and loss account to be prepared under the Companies Act, subject to scrutiny if challenged. The reason for non-applicability of the Electric (Supply) Act, according to this Full Bench was that the object of the Act being to reduce the price of electricity which was effected by fixing a maximum above which the profits of the concern shall not rise, the formula of the first Full Bench which was intended to do social justice was at variance with the purpose which the Electricity (Supply) Act was intended to subserve. The Tribunal said at page 438 :

> "There is therefore no basis between the two for any convergence on the point of bonus as now understood; it is not permissible to inject the Full Bench items into the Electricity (Supply) Act and on the other hand the accounting under the Electricity (Supply) Act is at variance with normal commercial practice under the Companies Act and with the basis of our Full Bench decision. In the result we have come to the conclusion that our Full Bench decision must be applied as a whole for the ascertainment of bonus of these concerns. This, however, does not preclude consideration of the suggestions for clarification and modifications."

7. This decision was approved by this Court in Shree Meenakshi Mills Ltd. v. Their Workmen, (1958 SCR 878 : AIR 1958 SC 153 : (1958) 1 LLJ 239) but that was not a case dealing with an Electricity Undertaking. The case which dealt directly with an Electricity Undertaking was Tinavelly-Tuticorn Electric Supply Co. Ltd. (also referred to as T.T.E. Supply Co.) v. Their Workmen. ((1960) 3 SCR 68 : AIR 1960 SC 782 : (1960) 1 FLR 354) In this case also this Court

held that the Full Bench formula was applicable to electrical undertakings and to the formula relating to the statutory depreciation except for additional and initial depreciation though there was nothing in it which would indicate whether the depreciation deductible was according to the Electricity (Supply) Act or the Income-tax Act. There is however, no doubt that in the U.P. Electricity case (supra) the Full Bench did in fact apply the Income-tax Rules for ascertaining depreciation. In Ahmedabad Miscellaneous Industrial Workers Union v. Ahmedabad Electricity Co. Ltd. ((1962) 2 SCR 934 : AIR 1962 SC 1255 : (1961) 3 FJR 228), the Full Bench formula applying the Income-tax Act rules to ascertain depreciation as a prior charge was approved. It was also observed that it was not open to the appellant to raise the question that the provisions of the seventh schedule to the Electricity (Supply) Act should be applied for purposes of calculating depreciation in preference to the Income-tax rules in working out the Full Bench formula. Even on the assumption that the question was still open, because as Wanchoo, J., observed "it was never directly raised in this Court and specifically decided" they were of opinion that the Income-tax Rules should be applied in preference to the provisions of the Seventh Schedule to the Electricity (Supply) Act. The reasons for arriving at that conclusion are given at pages 939-941. In Associated Cement Companies Ltd. v. Its Workmen, (1959 SCR 925 : AIR 1959 SC 967 : (1959) 1 LLJ 644) Gajendragadkar, J. (as he then was) said at page 944 with reference to Muir Mills Company case (supra) that :

> "neither the propriety nor the order of the priority as between the four prior charges and their relative importance nor their content was examined by this Court in that case; and though the formula has subsequently been generally accepted by this Court in several reported decisions ..... the question about the adequacy, propriety or validity of its provisions has not been examined nor had the general problem as a whether the formula needs any variation, change or addition been argued and considered. It is for the first time since 1950 that in the present appeals, we are called upon to examine the formula carefully and express our decision on the merits of its specific provisions."

Having examined the several aspects of the formula in great detail and if we may say so with respect with some thoroughness the various matters dealt with by the two Tribunals in respect of the prior charges relating to depreciation, Income-tax; fair return on capital, fair return on reserves utilized as working capital any amount required in excess of the depreciation for the purpose of rehabilitation, replacement and modernization of machinery, the formula evolved therein has been approved. In the application of the formula for determining the available surplus, the balance-sheet and profit and loss account of an undertaking are important documents. At any rate the proof of the various prior charges has to be given, after affording an opportunity to the workmen, if need be, by the cross-examination to contest it.

8. The formula of the Full Bench both in the Textile case and its application to the Electricity Undertakings as held in the U.P. Electricity case (supra) has now been accepted by this Court in several cases with further clarification and elucidation. We can therefore deduce the following principles for ascertainment of the available surplus in respect of an Industrial undertaking and/or an Electricity Undertaking :

(1) First gross profits have to be ascertained and for that purpose the balance-sheet and the profit and loss account as required under the Companies Act has to be looked into. If the entries are contested then they have to be proved like any other contested fact.

(2) The relevant year for which bonus is claimed is a self-sufficient unit and the appropriate accounts have to be made on the notional basis in respect of the said year. 'Once the bonus year is taken as a unit self-sufficient by itself the decision of the Labour Tribunal in regard to the refund of excess profit tax and the adjustment of the previous years' depreciation and losses against the bonus year's profit must be treated as logical and sound.'

(3) The ascertainment of depreciation is according to the Income-tax Act and what is allowed as a prior charge is the annual notional normal depreciation and not the actual depreciation which is in fact allowed. The formula of the Full Bench in the U.P. Electricity case (supra) as explained and clarified in Surat Electricity Co. Ltd., Staff Union v. Surat Electricity Co. Ltd. ((1957) 2 LLJ 648), was approved in the Ahmedabad Miscellaneous Industrial Workmen Union case (supra) and in the case in Hamdard Dawakhana Wakf v. Its Workmen and Others. ((1962) 2 LLJ 772 : (1963) 6 FLR 86) Apart from the notional normal depreciation the depreciation allowable under Income-tax Act for multiple shift is also allowable.

(4) In calculating the Income-tax for deduction as prior charge it is not the notional normal depreciation alone that has to be deducted but the statutory depreciation namely the concessions given under the Income-tax Act to the employers which would include the depreciation for multiple shifts, if any, and thereafter the Income-tax will have to be calculated.

(5) Return on paid-up capital allowable for deduction from the gross profits is 6%. This is generally the formula adopted by the Full Bench for Industrial Undertakings though it has been known to have allowed a slightly higher percentage of return in risky undertakings like plantations.

(6) Return on working capital. This amount is also allowed but at a lower rate. The formula as approved by this Court is that if it is shown that the reserves were available and were actually used as working capital whether the reserves utilised were depreciation reserves or any other, a return from 2% to 4% is allowable according to the industry, taking into consideration any special circumstances which may justify a claim for a higher interest. The utilisation of the reserves obviate the necessity to borrow from outside sources and pay higher interest which will be to the detriment of labour as the available surplus is likely to be less on this account, Workmen v. Hindustan Motors Ltd. ((1968) 2 SCR 311, 340, 342, 344 : AIR 1968 SC 963 : 17 Fac LR 254)

(7) Rehabilitation reserve also has to be provided for in order to keep the original capital of the business intact because assets of an Undertaking waste and or lost by the end of a particular period depending on the nature of the undertaking and its asset. The only value of such assets at the end of the period is the scrap value. It is, therefore, necessary in the interest of labour as well as capital to provide for depreciation of such assets yearly and also to take into account and provide for the rise in prices after the war. The determination of this reserve poses problems, but it was suggested that a reasonable method would be first to divide the undertaking into blocks such as "Plant and machinery" on the one hand and other assets like Roads, Buildings, Railway sidings, etc., on the other. Then the cost of these separate blocks has to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the plant or machinery would need replacement; and it is the probable price of such replacement on a future date that ultimately decides the amount to which the employer is entitled by way of replacement cost. The claim for rehabilitation includes also the claim for replacement and modernization. It is quite conceivable that certain parts of machines, which constitute a block may need rehabilitation though the block itself can carry on for a number of years. This process of rehabilitation is a continued process and unlike replacement, its date cannot always be fixed or

anticipated. So with modernization all these three items are include in the claim for rehabilitation. It is, therefore, necessary for Tribunals to exercise their discretion in admitting all available evidence to determine this difficult question - For a further discussion see The Associated Cement Companies Case (supra), at pages 966-968. The probable cost is reached by adopting a multiplier based on the rates between the cost price of the plant and machinery and the probable price which may have to be paid for its rehabilitation, replacement or modernization. The older the plant, the higher the multiplier and hence the area of conflict between the employer and employees is larger, the former allowing the asset to become older to get a higher multiplier and the latter feeling aggrieved because of it as the provision made therefor, reduces the available surplus in the bonus year. After ascertaining the multiplier, a divisor has to be adopted in respect of each block in order to ascertain the annual requirement of the employer in that behalf year after year. As this provision constitutes a large amount which eats in the gross profits and reduces the surplus the Tribunals must call for all relevant material evidence from the employer and the employees should be allowed to properly test it by cross examination.

The deductions specified in items (5), (6) and (7) like those in items (3) and (4) are prior charges.

(8) In Mathura Prasad Srivastava v. Sagour Electric Supply Co., ((1966) 2 LLJ 307 : 1967 Mah LJ 131 : 1967 MPLJ 114) at page 309 the claim for contingency reserve and development reserve which have to be provided under the Electricity (Supply) Act was upheld. It was observed that though these do not constitute a prior charge they have to be taken into consideration, to arrive at the figure of bonus after ascertaining the available surplus. The Tribunal cannot fix such a high figure of bonus as to leave insufficient funds in the hands of the Company and make it difficult to provide for these two statutory reserves. After taking these into consideration the ratio of available surplus for distribution as bonus would depend on a number of factors and is not susceptible to any general formula. What these factors are were posed in the form of series of questions by Gajendragadkar, J., at page 973-974 in the Associated Cement Co's case (supra), such as what are the wages paid, what is the extent of the gap between the same and a living wage; has the employer set apart any gratuity fund, what is the extent of the available surplus, what is the general financial position of the employer, what are the dividends paid and has the employer to meet any urgent liability, etc. The fact that the employer would be entitled to a rebate of Income-tax on the amount of bonus paid to his workman has also to be taken into account and in many cases it plays a significant part in the final distribution. It was also held that overtime payment ought not to have been taken into account as part of the basic wage in calculating bonus payable. This innovation would make unreasonable distinction between workman (sic) and workmen on the basis that some have contributed more and the others less to the earning of profits.

9. We now propose to examine each of the claims of the appellants in the light of our observations as to the formula applicable in determining its validity or otherwise. At the outset it may be noted that on behalf of the appellant only a solitary witness, M. K. Ghosh a Chartered Accountant of the Company who on his own admission had joined the Company six months prior to his giving evidence was produced. Obviously this witness could not speak about the relevant matters from his personal knowledge. Apart from this infirmity the Tribunal has characterised his evidence as contradictory, evasive and not reliable. Innumerable statements, letters, balance-sheet, profit and loss account and other documents called for or otherwise were filed on behalf of the appellants. It cannot be denied that the mere filing of any of the afore-mentioned documents does not amount to proof of them and unless these are either admitted by the respondents or proved they do not become evidence in the case.

10. On this aspect it was observed in Associated Cement Companies case (supra) at page 956 :

> "As a general rule the amount of gross profits thus ascertained is accepted without submitting the statement of the profit and loss account to close scrutiny. If, however, it appears that entries have been made deliberately and mala fide to reduce the amount of gross profits, it would be open to the Tribunal to examine the question ....."

The case of the Indian Hume Pipe Co. Ltd. v. Their Workmen, ((1959) 2 LLJ 357 : AIR 1959 SC 1081 : 1959 Supp 2 SCR 948) however seems to have given scope for the contention that the balance-sheet could be relied upon for proving that certain amounts stated therein were available for use as working capital and that it showed that they were in fact so used. In fact in that case it was conceded that the reserves we in fact used as working capital. Bhagwati, J., who delivered the Judgment of the Court, presumably to met the contention that the balance-sheet had not been proved, observed at page 362 thus :

> "Moreover, no objection was urged in this behalf, nor was any finding to the contrary recorded by the Tribunal."

This case was considered in Khandesh Spinning and Wvg. Mills Co. Ltd. v. The Rashtriya Girni Kamgar Sangh, Jalgaon, ((1960) 2 SCR 841 : AIR 1960 SC 571 : (1960) 1 LLJ 541) where it was pointed out that the observations made by Bhagwati, J., were not intended to lay down the law that the balance-sheet by itself was good evidence to prove as a fact the actual utilisation of reserves as working capital. Subba Rao, J. (as he then was), in that case while dealing with the importance of rehabilitation reserve in the calculation of available surplus pointed out that it was necessary for Tribunals to weigh with great care the evidence of both parties to ascertain every sub-item that went into or subtracted from the item of rehabilitation. If parties agreed, agreed figures could be accepted. If they agreed to a decision on affidavits, that course could he adopted. But in the absence of agreement the procedure prescribed by Order XIX, Code of Civil Procedure had to be followed. He said at page 847 :

> "The importance of this question in the context of fixing the amount required for rehabilitation cannot be over-estimated. The item of rehabilitation is generally a major item that enters into the calculations for the purpose of ascertaining the surplus and, therefore, the amount of bonus. So, there would be a tendency on the part of the employer to inflate this figure and the employees to deflate it. The accounts of a Company are prepared by the management. The balance-sheet and the profit and loss account are also prepared by the Company's Officers. The labour has no concern in it. When so much depends on this item, the principles of equity and justice demand that an Industrial Court should insist upon a clear proof of the same and also give a real and adequate opportunity to the Labour to canvass the correctness of the particulars furnished by the employer."

At pages 847-850, the Indian Hume Pipe Co.'s case (supra) [citation given is incorrect - the correct citation in (1959) 2 LLJ 357; Tata Oil Mills Co., Ltd. v. Its Workmen case (supra), (citation given in the report incorrect) and Anil Starch Products Ltd. v. Ahmedabad Chemical Workers Union, (AIR 1960 SC 1346 : (1960) 2 LLJ 88 : (1960-61) 18 FJR 103) cases were referred to and discussed. It was pointed out that Anil Starch Products Ltd. case (supra), again reinforced the view of this Court that proper opportunity should be given to the labour to test the correctness of the evidence given on

affidavit on behalf of the management in regard to the user of the reserves as working capital.

11. In Petlad Turkey Red Dye Works Ltd. v. Dyes and Chemical Workers Union, Petlad and Another, ((1960) 2 SCR 906 : AIR 1960 SC 1006 : (1960) 1 LLJ 548) the question whether the balance-sheet can be taken as proof of claim as to a portion of the reserve that has been used as working capital was again considered. The Khandesh Spinning and Wvg. Mills case (supra) as well as the Management of Trichinopoly Mills Ltd. v. National Cotton Textile Mills Workers Union, ((1960) 2 LLJ (SC) 96) were referred to with approval. The contention that Indian Hume Pipe's case (supra), held otherwise was pointed out to be not justified for "If it had been intended to state as a matter of law that the balance-sheet itself was good evidence to prove the fact of utilisation of a portion of the reserve as working capital", it would have been unnecessary to make the observations referred to at page 362.

12. In the Petlad Turkey Red Dye Works case (supra), it was pointed out by reference to the Trichinopoly Mills Ltd. case (supra), that the question as regards the sufficiency of the balance-sheet itself to prove the fact of utilisation of any reserve as working capital was also considered and it was held "that the balance-sheet does not by itself prove any such fact and that the law requires that such an important fact a the utilisation of a portion of the reserve as working capital has to be proved by the employer by evidence given on affidavit or otherwise and after giving an opportunity to the workmen to contest the correctness of such evidence by cross-examination".

13. In Bengal Kagazkal Mazdoor Union v. Titaghur Paper Mills Co. Ltd., ((1964) 3 SCR 38 : (1963) 7 FLR 202 : (1963) 2 LLJ 358) Wanchoo, J. (as he then was) observed at page 45 :

> "It is now well settled that the balance-sheet cannot be taken as proof of a claim to what portion of reserve has actually been used a working capital and that the utilisation of a portion of the reserves as working capital has to be proved by the employer by evidence on affidavit or otherwise after giving opportunity to the workmen to contest the correctness of such evidence by cross-examination (See Petlad Turkey Red Dye Works Ltd. v. Dyes and Chemical Workers' Union (supra)."

14. An attempt is however made by the learned Advocate for the appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employee were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observation of Venkatrama Iyer, J., in Union of India v. Varma, ((1958) 2 LLJ 259 and 263-264 : AIR 1957 SC 882 : 1958 SCR 499) to which our attention was invited do not justify the submission that in labour matters when issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the public servant in which he complained he was not permitted to be cross-examined. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the Enquiry Officer, took upon himself to cross-examine the witness from the very start. It was contended that this method would violate the well recognised rules of procedure. In these circumstances it was observed at page 264 :

> "Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in this mode prescribed in the Evidence Act; but that Act has no application

> to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtain in a Court of Law."

But the application of principal of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contests and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.

15. We now propose to examine the claim under each one of the heads, not only those in respect of the prior charges but also in respect of contingency and development reserves which have to be taken into consideration for determining the amount of bonus to be declared out of the available surplus.

16. The first claim is in respect of depreciation on account of double shift. The appellant did not claim any depreciation in respect of electric cables. The only claim was relating to plant and machinery which comprises of boilers and turbines. Ghosh, P.W. 1, stated that the plant and machinery worked more than double shift. In support of his statement he filed Ex. E. 16 which he stated was correct as he had verified it from the records. Ex. E. 16 is not a document prepared by the witness but appears to have been prepared and signed by the Resident Engineer, according to which the total number of hours which the four boilers and the four turbines had worked during 1960-61. So far as boilers are concerned all of them are said to have worked 21,327 hours the average of which for each boiler for the year was computed at 5331.8 hours. Similarly the turbines worked 21,629 hours which works out to an average of 5,412.3 hours per turbine per yea. If the year is taken as 365 days the average for the boiler and turbine works out to 14.6 and 14.8 hours while if it is taken as 300 days it works out at 17.77 and 18.04 hours respectively. The Appellant contends that there is no cross-examination of witness Ghosh nor have the employees challenged this statement. Accordingly he submits that a sum of Rs. 28,413/- should be allowed. It is, however, admitted that no claim was made before the Income-tax Officer nor has any amount been allowed in the

Company's assessments for the relevant year (see Ex. 11). But even if the amount was not claimed under the Income-tax Act, the does not by itself preclude us from allowing depreciation for double or multiple shifts but in this case the difficulty is that there is no proof as such of the plant and machinery working double shift. We are asked to assume that in the Electricity Undertaking the boilers and turbines must be working throughout at any rate more than 8 hour. We, however, do not know to what extent each of these were working for how many days and how many hours each day. The Resident Engineer was not produced nor was Ghosh in a position to speak to the facts of the statement therein from his knowledge or in any a credible manner as to make his evidence acceptable. The Tribunal said that the veracity of the statement Ex. 16 is also doubtful because the employers have not produced anything before it to show the total running hours of the boilers or turbines. It further went on to say "The statement of M. K. Ghosh is self-contradictory. He has said one thing at one time and quite another at another place in respect of the same matter. The Tribunal had to put to the witness scores of questions in order to clarify or in order to ascertain which of the two statements made by the witness could be taken to be correct".

17. We think the Tribunal was justified in rejecting this claim. In view of this disallowance the amount to be allowed as prior charge towards depreciation will have to be computed after allowing for the notional depreciation.

18. In calculating the amount deductible from gross profits on account of Income-tax the learned Advocate of the Appellant contends that the Tribunal's calculations were wrong. What the tribunal has done is though it deducted the national normal depreciation of Rs. 2,02,814/- from the gross profits it had for the purposes of computation of income-tax deducted the statutory depreciation of Rs. 2,52,442/- and on the balance of that figure namely Rs. 2,32,035/- computed income-tax @ 45% amounting to Rs. 1,04,415/-. If the contention of the learned Advocate for the Appellant was accepted and only the notional normal depreciation alone was deducted for computing the Income-tax, the Income-tax deductible would come to Rs. 1,26,748/-. It was again sought to be contended that the development rebate on plant installed @ 25% on Rs. 1,28,513/- amounting to Rs. 49,628/- could not form part of the statutory reserve which together with the notional normal depreciation came to Rs. 2,52,442/-. It was submitted that development rebate is not one of the species of depreciation; that it is a rebate for development which is dehons (sic) depreciation and has nothing to do with the written down value of the asset for calculating depreciation. From the Tribunal's order it would appear that there was no dispute with respect to the provision for Income-tax or its quantum because after deducting the amount of statutory depreciation the amount as computed at 45% is Rs. 1,04,415/- which was the amount claimed by it as statutory reserve as per Ex. E. 13. That the deduction of statutory allowance for computing Income-tax is the true principle is borne out by the decisions of this Court. The contention that only notional normal depreciation and not statutory depreciation should be taken into account was raised in Bengal Kagazkal Mazdoor Union v. Titaghur Paper Mills Co. Ltd. (supra) where Wanchoo, J., (as he then was) at page 44 negatived it but nonetheless, because the quantum of statutory depreciation was in controversy and it was not possible to calculate the correct amount of Income-tax to be calculated in the absence of evidence, the case was remanded to the Tribunal for further evidence for arriving at the correct statutory depreciation to compute the Income-tax. Reference was also made to the Meenakshi Mills case (supra) and the Associated Cement Companies case (supra). In the latter case it was held at page 962 that in calculating the amount of tax payable for the bonus year the Tribunal should take into account the concessions given by the Income-tax Act to the employees under the two more depreciations allowed under Section 10(2)(vi) of the Income-tax Act. In Burn and Co. Ltd. v. Its Workmen, ((1964) 5 SCR 823 : (1964) 8 FLR 138 : (1964) 1 LLJ 370) also it would appear "that the income-tax after making the allowance for statutory depreciation and development rebate was

computed". Though it is said that no reasons were given, this computation is in consonance with the decisions of this Court. In this view the computation of Income-tax by the Tribunal after deducting the statutory depreciation cannot be assailed. The amount deductible on this account will be Rs. 1,04,415/-.

19. Two further items are sought to be deducted as prior charges namely the return on working capital and the amounts required for rehabilitation. The claim of the Appellant for return on working capital of Rs. 40,360/- which 6% on Rs. 10,09,000/- said to have been employed in the undertaking. The Tribunal referred to Ex. E. 17 in which details of the reserves used as the working capital have been given as also another statement Ex. E. 18 which showed detail of the approximate working capital required for running the Undertaking. Ex. E. 6 is a statement showing the annual wages and salaries and E. 7 shows deficiency of surplus of funds for normal working of the Undertaking. The Tribunal attached no value to these statements as the calculation of working capital was arrived at on the basis of assets of reserve as they stood on March 31, 1961 i.e., on the closing day of the year 1960-61. The learned Advocate for the Appellant had to consider that the Tribunal was right in rejecting this basis as the basis for working capital. What he says should have been done was to have taken the amount at the beginning of the year namely April 1, 1960 and to add to this amount the amount of reserve actually utilised during the bonus year as working capital. The evidence of Ghosh in this as in other matters was of little assistance to the Appellant. While he stated that Rs. 10,09,000/- was the working capital of the Company during the year, in cross-examination he submitted that the consumers deposits have been used in the business at working capital. Later on he sought to explain it by an application in which he said that what he meant was that the consumers deposit had been invested in the business. The Tribunal has carefully gone through this evidence and was of the view that Ghosh has given contradictory and false statements in respect of the consumers deposits not being used as working capital. This apart a already stated, he has no personal knowledge. In any case the Tribunal has on an examination of the Cash Book and profit and loss account Ex. E. 16 and E. 1 held that the receipts of the concern are little more than two lacs a month which amount by itself would be sufficient to meet its day to day expenses. In considering a claim for return on working capital two questions must be kept in view; whether the reserves were available and if they were, whether they were used as working capital and if so, what is that amount. These are questions of fact and if the employer fails to establish by satisfactory evidence the claim will have to be rejected. In this case we may point out there is no proof that any of the reserves have been utilised.

20. Lastly, the claim for rehabilitation has also to be rejected on the same ground. We have already discussed the approach that has to be made in considering this claim. As rehabilitation reserve is a substantial item which goes to reduce the available surplus and as a result, affects the right of the employee to receive the bonus, the employer will have to place all relevant materials and the Tribunal will have to scrutinise these carefully and be satisfied that the claim is justified. At the same time it is equitable also in the larger interest of the industry as well as of the employees that proper rehabilitation reserve should be built up taking into consideration the increase in prices in pant and machinery which has to be replaced at a future date and by the determination of a multiplier and its divisor. The case of the Appellant is that the requirement of the Undertaking in this regard is Rs. 15,66,496/-. The assets required to be replaced have been divided into three blocks - one upto December 31, 1959, the second from January, 1940 to December 1947 and the third from January 1948 to March 31, 1961. Certain statements were filed which were intended to show what the yearly replacement cost as well as the original cost was, as also the life and the yearly requirements of all the assets, the multiplier and divisor. In support of the replacement cost, quotation of prices Ex. E. 21 to E. 24 have been filed. These are from M/s. Martin Burn Ltd., as

Agents of M/s. C.A. Person and Co. Ltd., Babcocks and Willcox of India (P) Ltd., Indian Cable Co. Ltd., representing British Insulated Calendar Cables Ltd., and the Indian Iron and Steel Co. The first objection against the admissibility of these letters is that they have not been proved by anyone of the persons who have written these letters or any of the representatives of the firms whose letters they are. As has been noticed Ghosh is the omnibus witness and he has no knowledge whatever in respect of any of the matters stated therein nor can he speak to the precise requirement for rehabilitation. It is rather surprising that the employer who is making such a big claim have not called any one as witness who can speak with knowledge of the age, the requirements and the increase in the prices of replacements. The original cost of these blocks has been prepared by Shri Chatterji (Ex. E.19 and Ex. 20), but he has not been produced and an attempt was made to prove them through the evidence of Ghosh. The Tribunal states that a number of questions were put to the witness to ascertain as to how he calculated the original cost and his reply was that the same has been taken from the balance-sheet. The balance-sheets for earlier years have also not been produced to show what the original cost was. The Tribunal has examined these matters and the evidence relating thereto in great detail and we agree with it that the Appellant has failed to prove the original cost of the machines, plant and machinery, its age, the probable requirements for replacement, the multiplier and the divisor. In these circumstances this claim has been properly disallowed.

21. There is then the claim for contingency reserve and development reserve which it is not disputed has to be provided under Electricity (Supply) Act amounting to Rs. 32,900/- and Rs. 22,333/- respectively in all Rs. 55,233/-. The Tribunal, however, had disallowed this claim on the ground that since they have been created under the Electricity (Supply) Act which according to its understanding of the legal position, could not be deducted. These two reserves it may be stated have to be created under the provisions of Clause V and Clause V(a) of the Sixth Schedule of the Electricity (Supply) Act, 1948. The Tribunal has gone into the reason for the creation of these reserves, their use, etc. We have already examined the legal position earlier and have noticed that the provision for the said reserves have been made under the statute for a special purpose namely to work out the charges to be recovered from the consumers for the supply of electricity but that does into mean that these are not to be taken into consideration in declaring bonus though they have not been treated as prior charges. We have referred to the case of Mathura Prasad Srivastava case (supra) as supporting this view. In these circumstances the amount of Rs. 55,233/- has to be provided for. Except of this amount the computation made by the Tribunal for ascertaining the available surplus is in our view justified. The amount found by the Tribunal in this regard is Rs. 1,29,248/- and if Rs. 55,233/- is to be provided there will be an available surplus of Rs. 74,015/-. The Tribunal as we said awarded three months bonus amounting to Rs. 73,000/- which works out to Rs. 24,333/- per month. We think having regard to the financial capacity of the Undertaking one month's bonus which will leave a surplus for the working of the Undertaking, will meet the ends of justice. We accordingly order the payment of the month's wages as bonus. Each party will bear their own costs in this Appeal.

</html