Management of the Kirlampudi Sugar Mills Ltd.

Vs

The Industrial Tribunal, A. P. and Another

Civil Appeal Nos. 1602 and 1603 of 1966

(G.K. Mitter, C.A. Vaidialingam, P. Jagmohan Reddy JJ)

26.08.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. These are two appeals by Special Leave. Civil Appeal No. 1602 of 1966 is by the Management against the Award passed by the Industrial Tribunal on a reference made by the Government for categorisation of workers, their fitments, fixation of workload, the demand for increase of Rs. 10/- to be given to every worker over the basic wage, implementation of weightage, dearness allowance, the demand for giving grades and for giving retrospective effect etc. Civil Appeal No. 1603 of 1966 by the workmen is against the same Award for disallowing the increase of Rs. 10/- and the weightage of Rs. 5/- and also against the fitment of certain categories of workers. The Tribunal held that the financial capacity of the appellant was not such as to justify increase of Rs. 10/- to all the workers over the basic wage and dearness allowance. On the safe grounds it also disallowed the payment of Rs. 5/- to workmen for implementation of the weightage recommended by the Wage Board for Sugar Industry. These were the subject-matter of Issues Nos. 2 and 5 of the reference made to the Tribunal. So far as Issue I-A is concerned, it held that categorisation of workers and their fitments and workload should be in accordance with the recommendations of the Wage Board for Sugar Industry and even as to these it decided in favour of the management in respect of certain categories of workers but in respect of some others, it gave relief to the workers. The employers appealed against that part of Issue I-A which was decided against them, while the Workmen's Appeal is against the finding of issues Nos. 2, 5 and Part of 1(a) which was against them. We will first take up the appeal of the Management.

2. It appears that the Kirlampudi Sugar Factory was started in 1951 as a small unit and later was increased to a larger crushing capacity of 1,000 tons which according to the Tariff Commission would not be considered economically profitable though according to the Sugar Wage Board it would be. By 1963, the factory got into financial embarrassment as it had to pay heavy debts to the Government on account of Sugar cess, cane prices payable to the growers and income-tax. These demands it is alleged practically brought the factory to a stop, when in the middle of 1963 the present management took over the factory on the specific assurance from the Government that they will provide for and give all facilities to enable them to run the factory. After the management was taken over there were disputes between the management and workers with the result that they referred various matters for adjudication including the claim for implementation of the Wage Board's recommendation which was alleged to have been implemented by the former management as early as 1961-62. It was the case of the workers that implementation was not satisfactory and it was their demand that the Sugar Wage Board's recommendations should be implemented. The management raised a specific objection before the Industrial Tribunal that the reference relates to a

wholesale promotion of workers from one grade to the other under the guise of fitment under the Wage Board's recommendations which is illegal and without jurisdiction; and in any case the question of promotion categorisation and fitment is a managerial function which the Tribunal cannot interfere unless it can be established that the management acted mala fide or it resorted to unfair practices. It was further pleaded that the factory had not the financial capacity to implement the demand. One of the grievances of the appellant was that though the Tribunal found that it had not the financial capacity to meet the additional burden of the demands made by the workmen it granted large scale promotions which it had no jurisdiction to grant. Despite this the management states that it had implemented the Award in most of the cases and challenged it is respect of some only.

3. It may be mentioned that the Central Wage Board for Sugar was appointed in terms of Paragraph 25 of Chapter XXVII of the Second Five Year Plan. This Wage Board for Sugar Industry divided India into 4 regions and each region included every State containing even a single unit unlike that adopted by the Tariff Commission which in its Report on the cost structure left out some of the States from the 4 divisions. It then considered the wage structure categorisation, etc. for each of the said regions, in relation to a fair cross-section of the industry in each of the regions. In comparison with this method, the Jute Wage Board had taken India as a whole and fixed a uniform rate for the Jute Industry. The first contention which was been urged is that the recommendations of the Wage Board were not binding in view of the fact that it was not a Statutory Board but was only a recommendatory one and the Tribunal could not implement them as a whole because it had recommended that fitments and categorisation should be affected by recourse to Tripartite machinery. The case of Workmen of Shri Bajrang Jute Mills Ltd. v. Employers of Shri Bajrang Jute Mills Ltd. ([1969] 2 SCR 593 : AIR 1970 SC 878 : (1970) 1 SCJ 709) is cited as an authority for the proposition that as the procedure prescribed therein was not valid, the recommendations of the Wage Board were declared to be in valid and inapplicable to the Jute Industry. The learned Advocate on behalf of the Respondents raised a preliminary objection to the maintainability of this contention as this issue had neither been referred to the Tribunal, nor had it been urged before it nor had a ground been taken in the Special Leave Petition. He seeks to distinguish the case of the Bajrang Mills, as in that case there was a specific issue while there is none in this case. In answer it is pointed out that the contention raised on behalf of the Respondents is implicit in issue 1(a) which is as follows :

> "1.(a) Whether the demand for categorisation of worker and their fitment and workload should be in accordance with the recommendations of the Wages Board for Sugar Industry is justified."

The appellate had in its statement before the Tribunal in Para 9 categorically challenged the recommendations of the Wage Board in these words : "It may be noticed even though the Wage Board recommendations are not binding, in spite of huge losses the management went out of the way and implemented the same." In the Special Leave Petition also in Paragraph 2 the appellant had challenged the jurisdiction of the Tribunal "to go into the question of the capacity to pay of an individual unit in respect of one of the recommendations of the Wages Board for Sugar Industry when such recommendations had been made for the industry as a whole and agreed to by the management itself."

4. It is therefore contended that if the financial capacity is taken into account for placing fitments on the basis of Bajrang Jute Mills, no other question arises. In the Bajrang Mills case (supra) it was held that fixation of fair wage depends on the financial capacity but once when the Tribunal had held that the appellant did not have the financial capacity the categorisation and fitments directed by it in its Award are invalid. The Tribunal is concerned with the implementation of the Wage Board

recommendations forgetting that it cannot do so when the implementation of those recommendations relating to categorisation and fitment cannot be effected without recourse to the Tripartite machinery. It is also contended that categorisation and fitment is a managerial function and requires technical knowledge of the various duties and functions which each of the category of workmen have to discharge.

The following contentions have been urged, namely :

(1) The Wage Board recommendations having regard to the case of Bajrang Jute Mills are invalid and cannot be enforced, inasmuch as it has fixed a uniform wage for the entire region without further dividing the industry in the region into classes of units according to their capacity namely region-cum-industry for fixation of the wage structure for these classes of units. At any rate since what is prescribed in the Report is only recommendatory, unless there is capacity to pay, no one can claim its implementation as of right.

(2) The appellant has not the financial capacity to implement the Award which has been held by the Tribunal to be a fact. On this score itself it cannot implement the Award.

(3) In Para 263 of the Wage Board recommendation of 1960, that when there is a difference between management and labour regarding fitment the Tripartite machinery should be brought into existence. The Tribunal was wrong in thinking that the Wage Board was giving an example of border-line cases where there may be a difference of opinion and it is only in those cases that the Tripartite machinery in the case of fitments is to be resorted to.

(4) Fitment is a managerial function and unless the Tribunal finds that the act of the management is mala fide or it has resorted to unfair practices it is not justified in interfering with the fitments effected by the management.

(5) In any case in respect of certain specific fitments the Tribunal was in error and acted without evidence.

5. Before dealing with these contentions it is necessary to consider the preliminary objection raised on behalf of the respondents that before the Tribunal the appellant did not object to the implementation of the Wage Board on the ground that its recommendations were not industry-cum-region wise or that it had not divided the industry into various classes and fixed a wage for those classes in that region and in any case no such issue was referred to the Tribunal unlike in the Bajrang Jute Mills case (supra). In the case what was referred to the Tribunal was whether the demand of the workmen in Shree Bajrang Mills Ltd., for implementation of the recommendations of the Central Wage Board for Jute Industry is justified, and if so, to what extent. In this case Issue I-A did not specifically raise on objection to the implementation of the Sugar Wage Board's recommendations in general terms but issues Nos. 1, 2, 4, 5 and 6 did raise the question whether the Board was justified in its recommendations regarding categorisation of workers, fitment, increase of Rs. 10/- to every worker over the basic wage, dearness allowance, the minimum wage, the demand of fixation of work-load and the demand for implementation of weightage. Apart from this a question seems to have been raised that the Tribunal could not implement the Wage Board recommendations because it had envisaged the implementation of the categorisation etc. through the Tripartite machinery, as such the Tribunal had no jurisdiction to implement it. It would appear from the Award that the learned Advocate for the appellant had challenged the jurisdiction of the Tribunal to fix the workload or undertake the fitments in view of the recommendations in Paragraph 263 of

the Wage Board's Report that fitments have to be effect by the Tripartite machinery to be appointed by the Government. Even in the statement of claim filed on behalf of the management it was said that though the Wage Board's recommendations are not binding in spite of the huge losses the management went out of the way and implemented the same. The fact that it was said that the Wage Board recommendations are not binding is pressed into service to support the contentions that the validity of the recommendations of the Wage Board was challenged. While we are inclined to agree with the submission of the learned Advocate for the respondents that nowhere except in the statement of the case before this Court has a specific plea that the recommendations of the Wage Board not being in accordance with the well accepted principle laid down by this Court in the several cases to which reference has been made cannot be implemented and on that account the Tribunal has no jurisdiction to implement those recommendations, it may nonetheless be pointed out that Issue I-A and other issues in terms challenge the implementation of the recommendations. Even if we permit the learned Advocate for the appellant-and we think there is justification for it-to challenge the Wage Board's recommendations generally, for reasons which we will presently give, those recommendations do not suffer from any vice but on the other hand the Board had fixed a fair wage for the industry in accordance with the principles laid down by this Court.

6. Since a good deal of argument is based on the recommendations of the Wage Board it may be profitable to examine generally the factors which were taken into consideration in fixing the wage structure for the industry. The Wage Board as has already been noticed adopted the method employed by the Tariff Commission by dividing the country into four zones or regions but unlike it included every State in each region which had even one unit. It further took these regions which were considered for fixation of price structure of Sugar also for wage structure in this industry. In adopting this course the Wage Board took into consideration the seasonal nature and the duration, the sucrose content of sugarcane and its yield which varies from region to region. It was noticed that the duration of seasons vary somewhat widely from area to area depending on the availability of cane and the year to year variations. As a consequence of some of the factories in the South owning their own sugarcane farms while this is not so in the North, the Southern factories do not suffer from the handicap of Northern factories which have to get sugarcane from nearby growers depending on the conditions of the crops in the vicinity which is not destroyed by pest or is unsuitable for any other reason, for otherwise to get the sugar-cane from growers from long distance would involve transport costs. This disadvantage the Southern factories do not have. The quality of cane as determined by the sucrose content varies from area to area depending on climatic conditions, irrigation facilities and cane development activities. Factories in Maharashtra and to some extent those in the North enjoy these advantages. Their recovery percentage is higher than in the North. Thus the average percentage of recovery of Sugar in Maharashtra was noted to be the highest as against those in U.P. and Bihar and also as compared with the all-India average. The variation in the yield of cane per acre was also taken into consideration; for instance in Bombay it is much higher than in North. The Board indicated the main factors responsible for variation in the yield of sugarcane in different regions due to : (1) improved variety of cane; (2) irrigation facilities; (3) ecological factors; and (4) improved methods of cultivation. The differences in the case of yield in the various areas has been one of the factors which the Board said had persuaded it to divide the country into four regions.

7. Though the industry is rural based, it was stated the price of essential commodities in townships where sugar factories are located, did not vary appreciably from the urban areas. In spite of the urban amenities not being available in these factory areas, the Board noted that while the impact of the wages it worked out, on the economy of the country has been taken into account, it was not proper to take agricultural wages as the prevailing rate of wages for comparison. Further it appeared

to the Board that the Sugar Industry was a highly regulated industry where the minimum cane price is fixed by the State and higher price depending upon the quality of the cane is to be paid according to the price depending upon the quality of the cane is to be paid according to the price linking formula laid down by the State and that even the ex-factory price for the finished product is fixed by the State in the North and some other States have fixed prices at least for one of its by-products the molasses. The price fixation in the North it is observed has its effect on the price of sugar in the South where normally sugar cannot be sold for a price higher than fixed in the North plus the freight.

8. The Board also set out the procedure followed by it in ascertaining the financial capacity and profitability of the industry region-wise by calling for the balance-sheets of all the factories for a period of 10 years and undertook detailed studies for 8 years beginning from 1951 which corresponds to the beginning of the First Five Year Plan. However, out of the balance-sheets of 118 Companies, balance-sheets for 9 years were available in respect of 87, 8 Companies supplied balance-sheets for 7 out of 8 years and among the rest, balance-sheets were available for one or more years. The Board thought that this data is fairly well if not absolutely, comparable from year to year. Where a Company owned two or more factories in the same State or region it was decided to consider only the combined balance-sheets for the number of factories covered, because splitting the combined balance-sheets over the number of factories did not serve the end in view. However, where a Company had under its management two or more factories in different States but in the same region, it was decided to exclude it from State-wise study and include it in the regional total. It also took into consideration some of the Companies which along with the sugar manufacture carried other manufacturing activities. Then it also applied the dividend tests, examined the main profitable ratios, considered the total dividend as coverage by paid-up capital, compared gross profits and total capital employed and profits and profitability in relation to per day crushing capacity from 1955-58. A region-wise analysis of financial data was made and the same was also distributed in different ranges of daily crushing capacity. In so far as South region is concerned in which the appellant's unit is located it was observed that "the factories seem to have been more or less evenly distributed among all the regions." Analysis of financial data region-wise was also made according to different crushing capacity ranges for each of the years 1955 to 1958 under different heads namely, gross profits, sales, total capital employed, profit after tax, ordinary dividend, ordinary paid-up capital, total dividends, total paid-up capital, profits before tax, taxation provisions, retained profits and net worth.

9. After taking into consideration the several factors in detail the conclusion of the Tribunal are summed up as under :

> "(a) the profit margin whether on sales or on total capital employed, or on the net worth does not appear to bear any set relationship - increase or decrease consistently - with the size of the Company. The trends are mixed and irregular. This observation is equally applicable to other ratios and also to the allocation of profits. It does not seem possible from these studies to locate any optimum size of the factory in respect of any region. The reason probably is that profits depend not only on the size of the factory but on various other factors, e.g. efficiency of management, condition of machinery, availability of raw materials and efficiency of workers.
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> (b) However, considering the overall position it is evident that with not outside competitor in the field, with a consuming public increasing and with national income which is rising the industry has a good future. In spite of high taxation, high

> Government imports, by way of cess, rise in price of raw material, rise in freight charges and in some regions higher labour charges owing to recent revision of wages, the demand for white sugar has been increasing and most of the existing sugar mills have been fairing well. Many of them have expanded their capacity and new units are fast coming into operation. Progress of the industry has been rapid..... but the increase in taxes has hit the retained earnings particularly in the case of North and Central region Companies.
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> (c) Taken region-wise, the financial position of Maharashtra is the best. It has natural advantages. They yield of cane per acre is higher. Its quality is better. A large number of the factories have their own farms. The co-operatives have laws assured supply of cane. The cane growers are the share holders. Then comes the South region. North region occupies the third position and Central region the last. In cess Punjab, West Bengal Madhya Pradesh, Rajasthan, Madras and Kerala enjoy some advantage with no or lower rates per maund of cane..... It may be added here that recovery in some of these States is lower than the average of the country."

10. It would appear therefore that the Board took into consideration the special features of the Sugar Industry and all the relevant factors with great care and perspicuity and fixed a fair wage for the industry in each of the regions. What it was called on to assess is the fair wage which as it may by noticed according to the Report of the Fair Wage Committee was that which while determining the capacity of an industry to pay, it considered it to be wrong to take the capacity of of all industries in the country, into account. The relative criterion should be the capacity of a particular industry in a specified region and as far as possible same wage should be prescribed for all units in that region. It will obviously now be possible for the wage fixation Board to measure the capacity of each of the units of an industries in a region, as such the only practical method is to take into consideration a fair cross-section of that industry. This is what in fact the Board has done. The minimum wage that has to be paid is as interpreted by this Court in Express Newspapers (Pvt.) Ltd. v. The Union of India and Others, (1959 SCR 12 : AIR 1958 SC 578 : 1958 SCJ 1113) different from the subsistence wage "which has got to be paid to the workers irrespective of the capacity of the industry to pay while the minimum wage is something more than the bare minimum or subsistence wage." It further observed "The minimum wage thus contemplated postulates the capacity of an industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported". In that case the Court also observed at Page 90 : "that the capacity of an industry to pay should be gauged on an industry-cum-region basis after taking a fair cross-section of the industry. In a given case it may be even permissible to divide the industry to pay class-wise." The classification into classes, it will be seen is not a obligatory one but is required only in cases where otherwise a fair wage cannot be determined. Any injunction that the industry in a region should in all cases be divided into classes in determining a fair wage for that industry would on the other hand likely to introduce greater disparity.

11. A reference has been made to the case of French Motor Car Co. Ltd. v. Workmen, (1963 Supp 2 SCR 16 : AIR 1963 SC 1327 : (1962) 2 Lab LJ 744) for the proposition that large units ought not be compares with small units even where the Board is considering the wage structure on industry-cum-region basis. No doubt in that case the Tribunal had gone into the history of the wage revision in the undertaking and having regard to a large increase in the cost of living found that a case for further revision was made out notwithstanding the fact that wage scales were the highest in the industry. In appeal this Court held that it was settled law that in fixation of wage scales, dearness allowances and similar conditions of services an industrial Court has to proceed on industry-cum-region basis and

compare similar concerns in the region which would be those in the same line of business as the concern in dispute. But such comparison must not be between a small struggling concern and large flourishing one.

12. These cases were considered in Workmen v. Bajrang Jute Mills (supra), to which one of us was a party (Vaidialingam, J.) That case was considering the Report of the Jute Wage Board which in making recommendation for the industry adopted a different approach. The Wage Board took the whole of India as one unit while in fact almost all the Jute Mills were situated in West Bengal and a few in Bihar and still fewer in Andhra Pradesh. What the Wage Board did was to compare 20 Mills from West Bengal and 9 Mills from the rest of India as representing a fair cross-section of the industry. The respondents have a fairly small suit in Andhra Pradesh which was considered as a comparable unit with two larger mills in the State and with some of the prosperous mills in West Bengal. The management of the mill refused to accede to the demand of the workmen to pay the wages in accordance with the recommendation of the Wage Board, fixing uniform wage scale for the industry on the plea that the mill had no financial capacity to bear the burden of the Wage scale. On the dispute being referred to the Tribunal it upheld the claim of the management. This Court in appeal sustained the Award of the Tribunal that the payment of the workmen for implementation of the recommendation of the Wage Board is not justified. In this connection at Pages 609-610 it was observed by reference to the manner in which the Wage Board had laid down uniform scales for the entire industry irrespective of where its several units were situate and of the different conditions prevailing in various areas, that it would have been better if it had "considered the units in each area separately and determined the wages scales for each such area by taking from that area a representative cross-section of the industry where possible or where that was not possible by taking comparable units from other industries within that area, thus following the principle of industry-cum-region." It was further observed :

> "It is true that in doing so uniformity of wage scales for the entire industry would not have been attained. But in a vast country like ours, where conditions differ often radically from region to region and even the index of living differs within a fairly wide range, such a target cannot always be just or equitable. If the wage scales had been determined "by the Board in the manner aforesaid, even though the Board is not a statutory body and consequently its decisions are of a recommendatory character, it would be possible for Industrial Tribunal to give due weight to its recommendations as such recommendations would have been in conformity with the principle of industry-cum-region, a principle binding on the tribunals. It would be difficult in that event for any unit in the industry in that region to propound a grievance that its capacity to pay was not taken into account as the scales so framed would have been determined after taking into consideration scales prevailing in comparable units, whether in that industry or other industries in that region depending on whether in a particular area the accent was on the industry part or the region part of the principle of industry-cum-region."

13. The learned Advocate for the appellant lays stress upon the observations contained at Page 607 where while dealing with the Express Newspapers case (supra), this Court had observed :

> ".....the requirement of considering the capacity of each individual unit to pay may not become necessary if the industry is divided into different classes. Even if the industry is divided into different classes it will still be necessary to consider the capacity of the respective classes to bear the burden imposed on them. For this

> purpose a cross-section of these respective classes may have to be taken for careful consideration for deciding what burden the class considered as a whole can bear."

14. These observations must be read in the light of what was earlier stated namely "as the Wage Board was fixing a fair wage for the entire Jute Industry it may not have been strictly necessary to consider the financial capacity of each individual unit." There is nothing in the Bajrang Jute Mills case (supra), which makes it obligatory on a Wage Board to divide the industry into regions as well as classes or to examine the financial capacity of every unit in that industry in the region, irrespective of the conditions prevailing in the different regions of that industry. As long as all relevant factors appertaining to that industry, industry-wise and region-wise have been considered and the capacity of a fair cross-section of that industry to pay in that region has been ascertained the recommendations of the Wage Board cannot be held to be invalid. It is not in every case that a division into classes in the same region, on a unit-wise capacity should be made before recommendation of the wage structure, dearness allowance or other conditions of service in that industry could be held to be fair and within the financial capacity of the industry in that region. The criteria on which the recommendations of the Jute Wage Board were held not to be in accordance with the principle laid down by this Court in Bajrang Mills case (supra), do not form the basis of the recommendations of the Sugar Wage Board. The Sugar Wage Board not only divided the industry into regions as already pointed out but on the other hand found that there was no great disparity in the region nor did the size of the unit make any difference. It standardised the wage structure it adopted a standardisation of nomenclature by taking note of the various nomenclatures used in the industry and defined the qualification for each of the categories. The predominant conditions for wage structure which weighed with the Board were that firstly in view of the great unemployment nothing should be done to reduce the existing employment but on the other hand efforts should be made to increase it. Secondly the need for increase in production was payment and any action likely to reduce it should be studeously avoided as far as possible. Thirdly the capital should not be idle for if a wage structure is evolved which leads to the closure of any unit or units, a number of persons will be thrown out of employment, production will be reduced and capital invested in them will become idle. Keeping these consideration in view the Board determined the wage structure which it recognised may be lower than norms laid down by the Fifteenth Labour Conference but the fact that there is a tremendous rush for employment in factories is proof that the wages recommended by it are higher than the rates fixed under the Minimum Wages Act in industries to which that Act applies or those prevailing in the open market. It also took into consideration the economic units in the regions which as accepted by it is a unit having a crushing capacity of at least 800 to 1,000 tons though it has noted that the majority of sugar factories have a crushing capacity higher than this and several of those having uneconomic size have already applied for expansion. According to the Board there were only 38 factories which were below 800 tons crushing capacity but a good many of them were making profits. However, there are some which are running at loss and for them the Board recommended that some consideration should be given to adjust themselves which should be the same as those given to new factories. This is what the Board stated in Chapter XIII at Page 111 :

> "The conclusion is that except some cases other units below 800 tons are making profits. The examination is set out in the Annexure to this Chapter. The Board is of the view that relaxation in wages is not the real remedy for those un-economic units. They will have to fall in line with the scheme of wages recommended by the Board. The real remedy for them it to expanded themselves into economic units."

15. It would therefore appear that the Wage Board following the principles laid down by this Court

has considered the capacity of the industry region-wise and has also fixed wages different from region to region having regard to the difference in the capacity of the industry region-wise. Further it has given good reason for not furnishing a criteria for further classification of the industry within the region. In these circumstances prescribing the same wage for all units of industry in the same region is in our view justified and the fact that the industry in the region has not been divided into classes cannot be vitiate the recommendation of the Wage Board.

16. It is contended on behalf of the appellant that while this is so and the wage fixed is a fair wage for the industry in that region and cannot be challenged nonetheless the Tribunal is not precluded from considering a plea by any particular unit that in fact its financial position is such that it cannot bear the burden of implementing the recommendations of the Wage Board. The learned Advocate for the respondents, however, counters this on the ground that once a wage has been fixed by the Board as a fair wage on Industry-cum-region basis, whether those recommendations are statutory or otherwise, no plea by any individual unit that it has not the capacity to implement the recommendations, can be entertained. He asked whether and Industrial Tribunal to which a dispute regarding the fixation of wage is referred fixes a wage structure, it is open to any particular unit to say that it is unable to pay ? If this is not so, on the same parity of reasoning it is that contended that no unit in a region can be permitted to plead that it has not the financial capacity to implement the Wage Board's recommendations. It appears to us that if in law, it is open to the unit to plead financial inability to implement the recommendations of the Wage Board the hypothesis on which the question has been posed will not be relevant because in such a contingency as is envisaged there would be specific issue and a determination of the wage structure by the Tribunal will be on the evidence produced before it according to the financial capacity of the unit. Once this is finally determined, the unit cannot continue to assert that it has no financial capacity to implement the Award.

17. In our view there is warrant for the submission of the learned Advocate for the appellant that notwithstanding the fact that a fair wage has been fixed by the Board which would be applicable to all the units in the region for which wage has been fixed, it may be open to any particular unit plead that in fact its financial position is not such that it can bear the burden of implementing the recommendations. In Ahmedabad Mills Owners' Association etc. v. The Textile Labour Association, ([1966] 1 SCR 382 : AIR 1966 SC 497 : (1967) 1 SCJ 360) the observations of this Court at Page 421 lend support to our conclusions. Gajendragadkar, J. delivering the Judgment of this Court observed at Page 421 :

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

> but on principle, if such situations arise, a claim by the employer for the reduction of the wage structure cannot be rejected summarily."

18. Of course the justification of the plea of want of financial capacity will depend upon the evidence of its financial position over a period of years, to show that it cannot bear the burden or that it is only a temporary or fortuitous situation with every possibility of financial improvement in the immediate future.

19. It is accordingly contended that an examination of the financial position would show that the appellant is not in a position to implement the recommendations and that even the Tribunal had recognised this position when it refused to implement an increase of Rs. 10/- to all the workers over the basic wage and dearness allowance, and Rs.5/- as weightage to certain categories of workers. It would appear from the statement of the Company as evidenced by Ex. M. 51 that it had secured and unsecured debts for each of the four years as follows :

Debts secured Debts unsecured Rs. Rs.1960-61 73,59,344 8,13,2631961-62 67,78,270 2,64,9821962-63 33,31,438 28,06,0001963-64 32,99,599 18,71,522 ---------- ---------- 207,68,651 57,55,767##

20. The details of debts would show that they are far in excess of the paid-up share capital and even taking the profit and development, rebate reserves and other reserves into account the financial position of the Company is certainly bad. A reference has also been made to the notices issued by the Revenue Divisional Officer, Ex. M-53 for showing that on December 30, 1962, a sum of Rs. 15,91,777.11 P. was due towards sugarcane cess for 1958-62 and a sum of Rs. 11,66,718.37 P. towards cane price in accordance with the details given thereunder.

21. Subsequently it would appear from Ex. M. 53/1 that notices under Section 53 of the Revenue Recovery Act were also issued by the Revenue Divisional Officer, Kakinada for the recovery of these amounts. There were also other notices and a press note published in the Indian Express showings that the Government was going to auction the sugar mills for recovering its dues. The Minister concerned is reported to have said that its Department was taking action to collect its dues as arrears of land revenue.

22. It is on the other had contended that the appellant's unit is an economic unit and has been expanded into a 1000 ton unit in 1956 and there is nothing to show thereafter what its financial position was. In any case the profit and loss figures for the four years starting with 1960 would indicate that there was loss only in one year whereas in all the other three years there was profit and from this we are asked to conclude that the appellant-Company was in a sound financial position. No doubt any unusual profits or losses in any year due to advantageous circumstances should not be allowed to cloud the decision one way or the other. In Ahmedabad Mills Owners' Association case (supra) it was observed at Pages 420-421 as follows :

> "It is a long-range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face ? These and similar other considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial

> adjudication vide Express Newspapers (Pvt.) Ltd. and Another v. Union of India and Others (supra). Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would make in regard to the construction of a wage structure. A broad and overall view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it, and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit."

23. Bearing these observations in mind, it is necessary to determine what the position of the appellant is ? The conclusion of the Tribunal in respect of the claim for increase of Rs. 10/- is that having regard to the balance-sheet "the profits made in the four years are about Rs. 4 lakhs and the loss sustained in 1962-63 is of Rs. 16 lakhs and after wiping it off to some extent by sale of debentures it is about Rs. 9 lakhs. This will show that the financial position of the concern is not satisfactory". After noting that except for this one year the concern has always been making profits, it went on to observe; "Still, to judge the financial position of a concern, it is always relevant to see what are its reserves. It appears from the balance-sheet that the reserves have never risen beyond Rs. 8 lakhs or so. In the circumstances, it appears to me that it will be difficult to hold that the financial position of the Company is sound. I, therefore, agree with learned Advocate that it has not the financial capacity to implement this increase of Rs. 10/- over and above the fitment in the grade recommended by the Board. I hold accordingly". The comment of the learned Advocate for the respondent is that these losses did not preclude the management from accepting the recommendations of the Wage Board and willingly agreeing to its implementation. In a letter, dated December 18, 1961 to the President of the Workers Union, the management stated that as per their talks on December 10, 1961, it accepts the implementation of the Wage Board recommendations and will pay from December, 1961, onwards salary as per fitments made by it. Final figures and fitments will be made after the Government Tripartite Committee comes and discusses with it and the Union and arrives at a decision. It also promised to pay the difference in the wage as per wages paid till the month of November, 1961 and the Wage Board fitments as made by them will be paid to the workers before the end of March, 1962. Again in the agreement between the management and the employees under Section 18(1) of the Industrial Disputes Act, dated September 19, 1963 it was specifically stated that "the question of fitments will be taken up as per the Sugar Board's recommendations in the month of January, 1964 and finalised before the end of 1963-64." Even at that stage it was never the case of the management that the Wage Board's recommendation could not be implemented. Even the new management in its letter of September 5, 1964 addressed to the Union (Ex. W-36) stated :

> "With a view to arrive at an amicable settlement with regard to fitments a discussion had taken place between the members of the Tripartite Committee constituted by the Commissioner of Labour and it was agreed during the discussions among other matters, that -
>
> (1) Wherever there is a standard nomenclature in the Wage Board Report corresponding to the previous designation held by an individual before November, 1960, he will be given that designation provided the duties and responsibilities of the individual are similar to the duties assigned by the Wage Board.

(2) In other cases, where no standard nomenclature can be applied to the existing cadre, the cadre will be fixed with reference to duties and responsibilities and the time scale of pay attached to the cadre in factory before November, 1960."

24. From the several exhibits it would appear that both old and the new management were anxious to implement the Wage Board's recommendations but according to the fitments made by it. But the employees as represented by the Worker's Union were not prepared to accept those fitments and wanted fitments in a higher cadre and other advantages according to their reading of the Wage Board's recommendations which the management felt, it is not able to accommodate not only because those recommendations did not justify it but on the ground of financial incapacity.

25. No doubt it is for the management to show what its financial position is and how it is going to place undue or impossible burden upon it to implement the recommendations. That burden it seeks to discharge by production of the balance-sheets which have not been challenged and the contents of which are, therefore, deemed to have been accepted. We find from the balance-sheet and the Director's Report for the period ending, June 30, 1960 that a sum of Rs. 6,15,254/- had to be written off against the old losses leaving a balance of Rs. 40,774/- in the profit and loss account. The directors thought that the Company's financial position has now been established and all the old losses have been wiped off but that hope was only short-lived as the subsequent balance-sheets for the period ending June 30, 1961, would show. According to the report for 1961 though there was a net profit of Rs. 1,08,005/- which together with the carry forward profit of the previous year of Rs. 40,774/- amounted to Rs. 1,48,779/- and after making provision for reserve for development rebate of Rs. 38,788/- a balance of Rs. 1,09,991/- was carried forward to next year's account. For the year no dividends were declared and the Managing Agents also waived their remuneration. For the year ending June 30, 1962, the position is more or less the same, the net profit for the year amounted to Rs. 30,616/- which together with the profits of the previous year of Rs. 1,09,991/- amounted to Rs. 1,40,607/- This amount was again recommended by the Directors to be carried forward for the next year. No dividend was declared and the Managing Agents also waived their recommendations. In 1963 the position had become critical, the loss incurred was Rs. 16,12,196/- which wiped out the previous year's profits. There was no question of declaration of any dividends but Managing Agents remuneration of Rs. 30,000/- (minimum) was drawn. These losses would have the effect of eating into the capital of the Company, unless it could borrow and tide over them. In the year ending June 30, 1964, a loss of Rs. 6,61,386/- was carried forward to next year. It may be noted that in the year in June, 1964 the Government of India had approved the change in the Constitution of the Managing Agency of the Company and it is stated that because of the efforts of the n__ew management who borrowed large sums on their personal security for putting the appellant in better shape, large sums were in fact advanced to the appellant. 26. As could be seen from the statement M. 51 that for the years 1960-61, 1961-62, 1962-63 and 1963-64 the secured and unsecured debts were approximately Rs. 81 lakhs, Rs. 70 lakhs, Rs. 61 lakhs and Rs. 51 lakhs respectively. It is stated that the losses were coming down and therefore the financial position is getting better but in our view this by itself does not mean that the Company is in a sound financial position. What was happening evidently is as suggested by the learned Advocate for the appellant that the sugar stocks pledged were being sold and therefore the debts were getting less. It is no doubt true that attachment orders which were made in 1962 must have been paid off and the attachment withdrawn. That again is not an iication of the soundness of the financial position because there is evidence to show that the new management had to secure a large loan of about Rs. 30 lakhs on its personal security to pay these demands and that is why Rs. 16 lakhs loss is paid off and hence in the year 1962-63 the unsecured debts is shown as Rs. 28 lakhs. The Tribunal was therefore justified in coming to the conclusion that the Company was not in a sound financial position to implement the recommendations of the Wage Board to increase

Rs. 10/- on the basic wage and the dearness allowance or Rs. 5/- as weightage. Apart from these losses the general reserves are very negligible. Each year about Rs. 3,000/- is being provided for. In all Rs. 8 lakhs reserves were accumulated from its inception which is not very encouraging.

27. While this is so having regard to its working we had called for the balance-sheets subsequent to 1964-65 to assess the financial prospect of the appellant during this period. These reveal the following position :

The balance-sheet for the year ending June 30, 1965, showed a profit of Rs. 12,72,126/- before depreciation. After deducting Rs. 5,25,545/- towards depreciation and Rs. 1,16,138/- as reserve towards development rebate and after adjusting the loss brought forward from last year, a loss of Rs. 30,943/- was carried forward to the next year.

28. The balance-sheet for the year ending June 30, 1966 showed a profit of Rs. 3,23,789/-. After setting apart depreciation a sum of Rs. 2,27,942/- was the loss carried forward and in the balance-sheet for the period ending June 30, 1967, there was shown a loss of Rs. 5,10,771/- and after providing for depreciation there was a loss of Rs. 9,90,526/-. It may also be noticed that in the year of account the Company had to provide a sum of Rs. 2,16,353/- towards additional cane price payable to the cane growers for the seasons 1958-59 and 1959-60. After allowing for this there was a total loss of Rs. 14,23,505/- which was carried forward to the next year. In the balance-sheet for the year ending June 30, 1968, there was a gross profit of Rs. 13,22,932/- and after providing for depreciation and adjustment of loss brought forward there was a balance of loss of Rs. 5,93,620/- carried forward to the next year. The year ending June 30, 1969 was one year in which dividend of 7.15% was paid on the 5 1/2% Income Tax Free Cumulative Preference Shares. The profits for the year after adjusting all the losses and providing for depreciation, payment of bonus to staff and taxation it showed a balance of Rs. 2,27,430/- out of which dividend was declared as aforesaid. For the year ending June, 1970, there was again a loss of Rs. 5,96,913/- after providing for depreciation. The Directors explained this loss due mainly to high rates of interest charges, provision for depreciation and the passing of the entire realisable profit on 1968-69 seasons production for the benefit of the cane growers in that year.

29. The balance-sheets for the years 1960 to 1970 for a period of 10 years show that the except for the year ending June 30, 1969 the Company was not in a position to declare any dividends. Though the factory appears to have been expanded after 1964 to 1300 tons capacity it did not show uniform net profits, on the other hand losses continued. The profits that it made in any year seems to be consumed by losses of the previous years. In some years the yield of cane seem to be slightly over 10% the average being a little over 9 1/2% which no doubt is encouraging but in spite of it there are various factors which seem to contribute to its financial unsteadiness.

30. This being the position we think that the Tribunal was justified in holding that the appellant did not have the financial capacity to bear the burden of payment of Rs. 10/- increase and Rs. 5/- as weightage in accordance with the recommendations of the Sugar Wage Board. On this conclusion and also on an examination of the relevant material it is evident that the Company is not in a financial position to meet the burden of implementing the recommendations of the Wage Board. The claim of the respondent for categorisation and fitment in accordance therewith cannot in the circumstances be accepted. The appeal of the respondents which challenges the Award on the Tribunal rejecting their claim for an increase of Rs. 10/- and a weightage of Rs. 5/- and for the categorisation and fitments in respect of the hierarchy of supervising category namely Assistant Cane Organisers, Liaison Field Supervisors and Field Supervisors as also in respect of Head

Panman and Panman In-charge of shift, Panman Assistant Panman Bench Chemists and Cane Analysists and Canteen Supervisor are all dependent upon the financial capacity of the respondent-Company to implement the Wage Board's recommendations which we have held it has not. As stated earlier the Company which is the appellant in Civil Appeal No. 1602 of 1966 has already implemented the Award of the Tribunal in respect of a large number of workers both as to categorisation and fitment. It is in respect of fitment of only four categories that it has not implemented, namely Welders, Turbine Engine Drivers, Switch Board Attendants and Boilers Masons, that the appellant has objected to the Award on the ground that the Tribunal has acted without evidence and in some cases contrary to the recommendations. The learned Advocate for the respondents felt that he could not really challenge the contention in respect of the Switch Board attendants and Turbine Engine Drivers, as it would appear that the Tribunal has acted without any evidence. Why we have referred to these specific cases objected to by the Company in their appeal is to indicate, that, notwithstanding the finding that the Wage Board's recommendations in the circumstances, cannot be implemented, the Company has given effect to the Tribunal's Award, which will remain in force till a revision takes place. In the view we have taken the appeal of the appellant is allowed subject to the above directions and that of the respondents dismissed. We make no order as to costs.

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