SUPREME COURT OF INDIA

Binny Ltd.

Vs.

Their Workmen

C.A.Nos.1291 and 1292 of 1967

(C. A. Vaidialingam, I. D. Dua, G. K. Mitter, JJ.)

15.02.1972

JUDGEMENT

VAIDIALINGAM, J.:-

1. These two appeals, by special leave, are directed against the common Award, dated June 30, 1970, of the Additional Industrial Tribunal, Bangalore, in two References, A.I.D.S. 6 and 8 of 1966.

2. On December 8, 1965, the Government of Mysore referred to the Industrial Tribunal for adjudication the following questions :

"Is the Management of the Bangalore Woollen, Cotton and Silk Mills Company Limited, Bangalore, justified in announcing payment of one month's basic wages as advance against wages for the half-year ending June 1965 instead of declaring this payment as an advance against payment of bonus as was being done all these years?

If not, what other relief the workers are entitled to?"

3. This was numbered as Reference No. A.I.D. 6 of 1966, Civil Appeal No. 1291 of 1967 is directed against that part of the order of the Tribunal regarding this Reference.

4. On March 5, 1966, the Government of Mysore referred to the same Tribunal for adjudication the following question:

"Whether the demand of the workers of Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore, for additional bonus for the years 1962 and 1963 at the rate of 2 months' additional bonus and 4 months' additional bonus on total wages respectively is justified?

If not, to what other relief or reliefs are the workmen entitled?"

5. This Reference was numbered as A.I.D. 8 of 1966, Civil Appeal No. 1292 of 1967 is directed against that part of the order of the Tribunal regarding this Reference. Both the appeals are by the Company.

6. We will first take up Civil Appeal No. 1291 of 1967. The appellant was making two payments of bonus every year, one for the half-year ending 30th June and half-year ending 30th December. The accounting year is the calendar year. The half-yearly payments were unilaterally declared by the appellant and not on the basis of any agreement between the parties. The quantum of bonus that was paid for each half-year was also not constant. Half-yearly payments were made at the end of the half-year when the working result of the said year was known and if there was sufficient profit to pay bonus. The payment of bonus for the half-years also depended upon the approximate estimate that the Directors used to make about their prospective future earnings for the next half-year. According to the appellant the bonus amounts were paid out of profits. As the Payment of Bonus Act, 1965 (hereinafter to be referred to as the Act) had come into force on August 28, 1965, the appellant issued a circular to the effect that for the half-year ending June 30, 1965, payments will be made as advance of wages equivalent to 1/6th of the basic earnings of the employees. In this circular there is a reference to the Payment of Bonus Ordinance, 1965, promulgated on May 29, 1965 and that under the terms of the Ordinance, bonus is payable only within a period of 8 months from the end of the accounting year. The circular further states that no bonus is payable for the accounting year 1965 until the accounts for the year are closed. It was further mentioned that the amounts are paid as advance wages in view of the representations made by the employees. The circular further mentioned that the amounts paid as advance wages will be set off against the bonus that may be

found payable for the accounting year 1965 and that if no bonus is payable, the amount paid will be adjusted against the wages due for any month after March, 1966.

7. The issue of the above circular led to the unions concerned raising a dispute with the management that the payment of bonus at the end of each half-year has become a condition of service of the workmen as the same was being paid for several decades without any relation to profits. The appellant was charged by the unions of having changed the conditions of service by offering to make payments as advance against wages instead of payment by way of bonus. As conciliation proceedings failed, the workmen resorted to a strike in December 1965, which led to the Reference being made by State Government on December 8, 1965, No. A.I.D. 6 of 1966.

8. The short stand taken by the appellant before the Tribunal was that the payments were being made as bonus at the end of each half-year on the basis of the profits earned by the Company. Such payment was a voluntary act of the appellant and related to profit and it had not become a condition of service of the employees. The further case of the appellant is that as the Act had come into force, bonus is governed by the provisions of the Act and that bonus is to be paid only within eight months after the close of the year of account, i.e., December 31, 1965.

9. The unions pleaded that the payment of bonus at the end of eachd half-year, which was being done for a long number of years, has become a condition of service and the amounts paid were not related to the profits earned by the Company. The unions further contended that the Act has not in any manner affected the right of the employees getting bonus in the manner paid by the appellant, namely, at the end of every half-year.

10. The Tribunal has recorded the following findings: The payment of bonus was not a settled condition of service, but is dependent upon the profits earned during half-year. Payments made by the appellant at the close of the half-year cannot be considered as customary or festival bonus and that the appellant has made no change in the conditions of service of the workmen by altering the quantum of bonus. Though bonus was paid at the close of each half-year, the quantum of such bonus varied depending upon the profits earned by the Company. The Company has no doubt been paying for a long time profit bonus in two instalments, namely, in the month of August for the half-year ending 30th June and in the month of March or April of the succeeding year for the half-year ending 31st December. The coming into force of the Act has not created any right in the appellant to withhold the payment for each half-year as it used to do. The appellant will be entitled to deduct the amount of bonus paid for the first half-year from the amount of bonus payable to its employees under the Act in respect of the accounting year and the employees will be entitled to receive only the balance for the second half-year. On these findings the Tribunal held that the appellant was not justified in announcing the payment of the amount towards advance wages under the circular dated August 28, 1965. In the end the Tribunal gave a direction to the effect that the appellant is liable to pay profit bonus in two instalments-one as advance against the final declaration of bonus to be paid during the last week of August or first week of September and the balance, if any, was to be paid in

the month of March or first week of April of the succeeding year. It further gave a direction that the first payment that is to be paid is to be as advance against payment of bonus and not as against wages.

11. Mr. Malhotra, learned counsel for the appellant, has challenged the above directions given by the Tribunal. The counsel pointed out that after the coming into force of the Act, the rights and liabilities of the parties, regarding bonus, are governed by its provisions. Under the Act, the computations of the available and allocable surplus have to be made on the basis of the gross profits ascertained at the end of the relevant accounting year and the payment of bonus has to be made within eight months of the close of the accounting year. As the Act envisages payment of only one bonus, at the end of the accounting year, after computation of the amount as per the Act, the direction given by the Tribunal regarding payment of half-yearly bonus is illegal and contrary to the provisions of the Act. This direction, the counsel pointed out, given by The Tribunal, will apply not only to the year 1965, but also to all succeeding years.

12. On the other hand, Mr. H. K. Puri, learned counsel for the respondents Nos. 2 and 3, whose contentions have been accepted by the counsel for the other respondents, urged that the Act does not prohibit an employer from paying bonus at the end of each half-year. The appellant has been paying bonus in two instalments, namely, at the end of each half-year. It is always open to the appellant, both by virtue of the provisions of the Act and the direction given by the Tribunal to deduct when paying final bonus at the end of the accounting year, any amounts that may have been paid for the first half-year. Therefore, according to Mr. Puri, the directions given by the Tribunal are neither illegal nor contrary to the provisions of the Act.

13. We are not inclined to accept the contentions of Mr. Puri. We have already referred to the findings of the Tribunal to the effect that the amount that was paid by the appellant as bonus at the end of each half-year was on the basis of the profits earned by it. The Tribunal has rejected the claim of the unions that the payment of bonus, in the manner claimed by them, was not a condition of service and that the payment had nothing to do with any custom or festival. These findings have not been and in fact could not be challenged by the respondents. There is also no controversy that payment of bonus for the accounting year 1965 is governed by the provisions of the Act. If so, the question is whether the directions given by the Tribunal and referred to above, can be supported by the provisions of the Act.

14. The Act has come into force with effect from August 28, 1965. As provided under sub-section (4) of Section 1, it applies to all accounting years commencing on any day in the year 1964 and in respect of every subsequent accounting year. Section 2 defines amongst others the expressions 'accounting year', 'allocable surplus', 'available surplus' and 'gross profits'. Section 4 deals with the computation of gross profits. So far as the appellant is concerned, under Section 4, Cl. (b), the gross profits are to be calculated in the manner specified in the Second Schedule. Section 5 provides for computation of available surplus. It is to be ascertained after deducting from the gross profits the

various items, referred to in Section 6. Section 6 deals with the items to be deducted as prior charges from the gross profits. Section 10 makes it obligatory on an employer to pay minimum bonus to the employees in an accounting year of 4 per cent of his salary or wages or Rs. 40, whichever is higher. This payment is irrespective of the fact whether a company has or has not earned profits in an accounting year. But this provision is subject to the provisions of Sections 8 and 13. Section 11 provides for payment of bonus subject to a maximum of 20 per cent of the salary or wages, if the conditions mentioned therein are satisfied. Section 17 enables an employer, who has paid during any accounting year Puja Bonus or other customary bonus or a part of the bonus payable under the Act before the due date, to deduct the amount so paid from the amount of bonus payable by him to an employee under the Act in respect of that accounting year. It further provides that under such circumstances the employee will be entitled to receive only the balance. Section 19 fixed the time limit for payment of bonus. If there is a dispute regarding payment of bonus pending before any authority, the bonus will have to be paid within a month from the date on which the Award becomes enforceable or the settlement comes into operation. In any other case the bonus will have to be paid within a period of eight months from the close of the accounting year. Under the proviso to Section 19, power is given to the appropriate Government to extend the period of eight months in accordance with the provisions contained therein. Section 34 provides that the Act except as otherwise provided in the section, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any Award, agreement, settlement or contract of service made before May 29, 1965.

15. We have referred to some of the relevant provisions of the Act. From a perusal of the scheme of the Act, it is clear that the bonus for a particular accounting year will have to be computed in accordance with the provisions of the Act on the basis of the gross-profits which are determined at the close of the accounting year. The Act itself provides as to how the gross-profits are to be calculated and the available and allocable surplus arrived at. The Act also provides the outer limit, the period within which bonus has to be paid. It further gives the employer a right to deduct any amount that may have been paid during the accounting year as part of the bonus payable under the Act.

16. It will be seen from the scheme of the Act that the claim for bonus can be made only after the close of the accounting year and in accordance with the provisions of the Act. The gross-profits can be calculated only at the end of the accounting year and the available and allocable surplus can also be worked out only at the end of the accounting year. There is no question of an employer computing the gross-profits, available and allocable surplus in the middle of an accounting year or at any time before the close of the relevant accounting year. The direction given by the Tribunal really amounts to the employer having to make two computations at the end of each half-year. No doubt, the Tribunal has given a direction to the effect that any amount paid for the first half-year can be deducted when the final bonus is paid at the end of the accounting year. Even without any such consideration being shown by the Tribunal allowing an employer to so deduct, Section 17 itself clearly gives such a right to an employer. We are not impressed with the contention of Mr. Puri that as there is no prohibition in the Act against an employer making the payment by way of bonus at the end of a half-year, the direction given by the Tribunal can be sustained.

17. Mr. Puri referred us particularly to the provisions contained in Section 17 of the Act. He pointed out that though a time limit is fixed by Section 19, the Act itself as is evident from Section 17, clearly envisages payment of bonus at the end of each half-year. We are not inclined to accept this contention of Mr. Puri. The direction given by the Tribunal making it obligatory on the Management to make half yearly payment of bonus, apart from being opposed to the scheme of the Act, also runs counter to the provisions of Section 19. Whether it is the minimum bonus of 4 per cent, under Section 19 or the maximum bonus of 20 per cent, under Section 11, they have to be paid, as is made clear by Section 19, only within the period mentioned therein. It may be that an employer voluntarily pays amount during the accounting year by way of part bonus which he is entitled to take into account and adjust when making final payment at the close of the accounting year. It is one thing to say that an employer can make voluntary payment, but it is a different thing for the Tribunal to give a direction to that effect.

18. Section 17 on which reliance is placed by Mr. Puri is as follows :

"Where in any accounting year-

(a) an employer has paid any puja bonus or other customary bonus on an employee; or

(b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable,

then the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance."

19. Clause (a) has no application as the Tribunal has categorically held that there is no question of any payment by way of puja bonus or other customary bonus. Even then, if any such bonus has been paid, the employer is entitled to deduct the same from the amount of bonus payable under the Act. Clause (b) is an enabling section in favour of the employer in that it visualises a situation or contingency where he may have paid during the accounting year a part of bonus payable under the Act "before the date on which such bonus becomes payable." If an employer has paid any amount during an accounting year by way of part of the bonus, he is entitled to deduct the same from the final amounts that may be payable under the Act. That provision does not give a right to an employee to claim payment of bonus even by way of part payment during the currency of the accounting year. If so, the Tribunal has also no jurisdiction to give a direction to an employer to pay bonus at the end of each half-year.

20. In this case, it is no doubt, seen that the appellant has been paying bonus at the end of each half-year. But the Tribunal has found that such payment has not become a condition of service. Therefore by the mere fact that the appellant has been making payments on previous occasions every half-yearly, does not confer a right on the employee to have such payments by way of bonus in the same manner even after the Act came into force.

21. From the above discussion it follows that the directions given by the Tribunal in A.I.D. No. 6 of 1966 have to be set aside.

22. Now coming to Civil Appeal No. 1292 of 1967, as mentioned earlier, it is against that part of the Award of the Tribunal in A. I. D. No. 8 of 1966. The question that was referred to the Tribunal has also been extracted in the earlier part of the judgment. That relates to a claim for additional bonus for the years 1962 and 1963. There is no controversy that the appellant has already paid for the year 1962, three months basic wages as bonus. Similarly for the year 1963 also four months basic wages as bonus has already been paid. The claim was for two months total wages as additional bonus for the year 1962 and four months' total wages as additional bonus for the year 1963. The findings recorded by the Tribunal in A. I. D. No. 6 of 1966 regarding the nature of bonus paid to the employees have been adopted for this reference also. The respondents-Unions do not challenge those findings. Therefore, even in respect of the years 1962 and 1963, what is payable is only profit bonus. There is also no controversy that for these two years the quantum of bonus payable has to be calculated in accordance with what is known as the Labour Appellate Tribunal Full Bench Formula, which has been approved by this Court in Associated Cement Co. Ltd., Dwarka Cement Works, Dwarka v. Its Workmen, 1959 SCR 925 = (AIR 1959 SC 967). Both the parties have filed statements of calculations according to the said Formula. The statements Exs. M-1 and M-2 filed by the Management represent the computation of available surplus for the years ended December 31, 1962 and 1963 respectively, Ex. M-1 is as follows :

"THE BANGALORE WOOLLEN, COTTON AND SILK MILLS CO., LTD.

Statement showing the computation of available surplus for the year

ended 31st December, 1962

(Under L.A.T. Formula)

Profit as per profit and Loss Account	6801756

ADD

Provision for Bonus 1614000

Depreciation on Fixed Assets 1696481

Donations 107362

Additional Bonus for 1961 146000

3563843

10365599

LESS

Profit on sale of assets 174542

6

8620173

LESS

Normal Depreciation and Shift

Allowance 146

5812

7154361

LESS

Tax Liability :

Profit as above 7154361

LESS

Development Rebate

586415

6567946

Income-tax Liability at 50% on Rs. 6553408 3276704

Income-tax at 25% on Rs.

14538

3635

6567946 3280339

Super Profits Tax on Rs. 6553408

409158

3689497

Return on Capital employed :

Preference Share Capital 7.8% on Rs. 600000 46800

Ordinary Share Capital 6% on 12150000 729000

Reserved employed in business during the year

ended 31-12-1962 4% on Rs. 44468315

178733

2554533

6244030

Available Surplus* Rs.

910331

* Subject to claim for rehabilitation.

We have prepared the above statement from the audited accounts of the Company and is in

accordance therewith. The return on Capital and Reserves is as claimed by the Company.

Sd. Illegible

Chartered Accountants."

23. Similarly Ex. M2 regarding the year 1963 is as follows :

"THE BANGALORE WOOLLEN, COTTON AND SILK MILLS CO., LTD.

Statement showing the computation of available surplus for the year

ended 31st December, 1963

(Under L.A.T. Formula)

Profits as per Profit and Loss Account		5239220
ADD		
Provision for Labour Bonus	2245000	
Depreciation on Fixed Assets	1733719	
Donations	8804	
Provision for Taxation		8110000
		12007523
		17336743
LESS		
Profit on Sale of Assets	83093	
Excess Provision of Electricity charges and interest written back		675184
		758277
		16578466
LESS		
Normal depreciation and Shift Allowance		
		1647555

14930911

LESS

Tax Liability :

Profit as above 14930911

LESS

Development Rebate

460548

14470363

Income-tax Liability at 50% on Rs. 14455825 7227912

25% on RS. 14538 3635

Dividend-tax 164025

Companies (Profit) Surtax

1786212

Liability on Rs. 14455825

9181784

Return on Capital Employed:

Preference Share Capital 7.8% on Rs. 600000 46800

Ordinary Share Capital 6% on Rs. 12150000 729000

Reserves employed in the business

4% on Rs. 46937947

1877518

2653318

11835102

3095809

Available surplus*

* Subject to claim for rehabilitation.

We have prepared the above statement from the audited accounts of the company and certify that it is in accordance therewith. The return on capital and reserves is, as claimed by the company.

Sd. Illegible

Chartered Accountants."

24. The Tribunal has accepted as correct the gross-profits as given by the appellant in these two exhibits for the two years in question. Even though the Unions contested the return on Preference Share Capital at 7.8 per cent., the Tribunal has rejected their objections. It has held that under the Preference Shares Regulations Act, the Company is bound to pay 7.8 per cent on Preference Share Capital. The Workmen did not raise any controversy regarding the return on Ordinary Share Capital at 6 per cent. The Tribunal, therefore, accepted the figures given in both Exs. M-1 and M-2 and to the return of Ordinary Share Capital. But the controversy arose about the claim made by the appellant regarding return on Reserves employed during the two years. It will be noted that neither in Ex. M-1 nor in Ex. M-2 the appellant has made any claim for rehabilitation excepting adding a note to the statement that they are subject to a claim for rehabilitation.

25. The two points in controversy between the parties regarding these two years were : (1) The claim for Return on Reserves and (2) Provision for Rehabilitation.

26. We will first take up the question regarding the claim of the appellant for return on Reserves. In Ex. M-1, the appellant has claimed a sum of Rs. 17833.00 as 4 per cent, return of Rs. 44468315.00, being the amount employed in business. Similar by in Ex. M-2, for the year 1963, it had claimed Rs. 1877518.00, being 4 per cent. return on Reserves on Rs. 46937947.00, employed in the business. The Unions contested the claim of the appellant on the ground that they are not entitled to any return on Reserves. The appellant had filed two statements Exs. M-1 (a) and M-2 (b) for the years 1962 and 1963 respectively, showing how the amounts claimed as Reserves employed in business have been arrived at Ex. M-1 (a) for the year 1962 is as follows :

"THE BANGALORE WOOLLEN, COTTON AND SILK MILLS CO., LTD.

Year ended 31st December, 1962

Reconciliation of Capital employed in the business during the year ended 31st December, 1962.

As at 31-12-1961 :

Fixed Assets and Capital Works in Progress 43139570

Investments 595216

Interest accrued on Investments 17477

Stores and Spare parts 6179042

Raw Materials 6886058

Process Stocks 5053558

Finished Stocks 1380082

Sundry Debtors 2473722

Advances 2768223

Balances with Railway and Excise Authorities 292529

Deposits

18993 68806470

LESS

Sundry Creditors 7077709

Due to Directors 63744

Unclaimed Dividends 18257

Provision for Taxation 1057850

Proposed Dividends 1481400

Provision for Gratuity 1860431

Officers' Retiring Fund 26764

(Fund less investments)

11588155

57218315

LESS

Share Capital

12750000

Rs.

8315

27. Exhibit M.2 (a) for the year 1963 is as follows :

"THE BANGALORE WOOLLEN, COTTON AND SILK MILLS CO., LTD.

Year ended 31st December, 1963

Reconciliation of Capital employed during the year ended 31-12-1963

As at 31-12-1962 45229453

Investments 548575

Interest accrued on Investments 8703

Stores and Spare Parts 6553343

Raw Materials 4701434

Process Stocks 7285534

Finished Stocks 1688931

Sundry Debtors 3429299

Advances 3165324

Balances with Railway and Excise Authorities 346450

Deposits 24234

72981280

LESS

Sundry Creditors 7686123

Due to Directors 65278

Unclaimed Dividends 22837

Provision for Taxation 2305645

Proposed Dividends 1481400

Provision for Gratuity 1736251

Officers Retiring Fund 25799

(Fund less investments)

13293333

59687947

Less Share Capital

12750000

Rs.

46937947

28. It will be seen that the last figures shown in both the statements have been claimed by the appellant as Reserves employed in business for each of these two years.

29. The Tribunal after a reference to the evidence of the Chartered Accountant, M.W. 1 has held that the amounts which should have been used as Working Capital are those mentioned in Exs. M-1 (a) and M-2 (a), less the fixed assets and capital works in progress. The Tribunal has further held that the working capital cannot include fixed assets nor the capital works in progress, as they represent the funds required for day to day work of the Company. According to the Tribunal these fixed assets have been accumulated over years and they cannot form part of the working capital. However, the Tribunal accepted the claim of the appellant that the other items in Exs. M-1 (a) and M-2 (a), namely, investments, interest accrued on investments, stores and spare parts, raw materials process stocks, finished stocks, sundry debtors, advances etc., are the amounts available to be used as working capital. On this reasoning the Tribunal held that in calculating the return on working capital, the amounts mentioned in Ex. M-1 (a) and M-2 (a) less the amount sunk in fixed assets and working capital in progress, have to be deducted. On this basis it deducted from Rs. 44468315, a sum of Rupees 43139570, and fixed a sum of Rs. 1328745, as Reserves employed in business during the year ended December 31, 1962. On this amount it allowed a sum of Rs. 53150/- as return on Reserves at 4 per cent, for the year 1962.

30. Similarly, for the year 1963, it deducted from Rs. 46937947, a sum of Rs. 45229423, and fixed a sum of Rs. 1708524/- as Reserves employed in business during that year. On this amount it allowed Rs. 68340 as return on Reserves at 4 per cent.

31. Mr. Malhotra, learned counsel for the appellant, while accepting that the principle adopted by the Tribunal in this regard is correct, contended that it had made a mistake in calculation. According to the learned counsel, the claim must have been allowed in the manner calculated by the appellant. In this connection, the learned counsel pointed out that even in cases where the evidence regarding the utilisation of Reserves as Working Capital as claimed by the Company, is not very satisfactory, this Court, on the basis of the balance sheets, which indicated that some amount must have been used as working capital has allowed such a claim. In this connection, he relied on Workmen of M/s. Hindustan Motors Ltd. v. M/s. Hindustan Motors Ltd., (1968) 2 SCR 311 = (AIR 1968 SC 963) and Aluminium Corporation of India v. Their Workmen, (1969) 3 SCC 832.

32. We may straightway say that these decisions do not assist the appellant. In the case before us it is not necessary to do any guesswork as the appellant wants us to do. The appellant has filed statements showing how it has calculated the amount of reserve utilised as working capital and we have to find out whether the calculations made by it are correct. In fact, Mr. Malhotra has not been able to point out from the balance sheets, as to what amount, according to the appellant, can be considered to have been used as working capital. In the two decisions, relied on by him, the company concerned was able to refer to the figures in the balance sheets from which this Court was able to draw a conclusion regarding the approximate amount that would have been utilised as working capital. The position before us is entirely different.

33. On the other hand, Mr. Puri, learned counsel for the respondents, referred us to the balance sheets for the years in question regarding the share capital of the company being shown as Rs. 1,27,50,000. The counsel further pointed out that the said share capital must have been sunk in acquiring the fixed assets and for capital works in progress and, therefore, the Tribunal was justified in deducting the amount of fixed assets and capital works in progress shown in Exhibits M-1 (a) and M-2 (a) from the total shown by the appellant in those statements. The counsel further urged that in considering the claim for return on working capital two questions have to be kept in view: (1) Whether the Reserves were available, and if they were (2) whether they were used as working capital and if so, what is that amount? The Tribunal, in our opinion has correctly kept these two principles in view in arriving at the amount of Reserves used as working capital and on which a return is to be allowed. We see no error committed by the tribunal in the calculation made for arriving at the Reserves which must have been used as working capital, especially as the evidence on the side of the appellant was very unsatisfactory. Even the appellant has deducted the amount of share capital before arriving at the final figures mentioned in Exhibits M-1 (a) and M-2 (a). But the appellant was claiming the whole of the final amount shown in these two statements as reserves used as working capital, which it was not certainly entitled to in law.

34. We have already pointed out that the Tribunal has held that the working capital cannot include fixed assets nor the capital works in progress as it represents the funds required for day-to-day running of the company. The Tribunal has further held that the appellant is entitled to deduct investments, interest accrued on investments, etc., which have been shown in Exhibits M-1 (a) and M-2 (a) on the ground that they must be considered to be the amounts available to be used as working capital. These findings have not been challenged by the learned counsel for the appellant.

The appellant has also filed details of reserves employed in the business during the years ended 31st December, 1962 and 1963 as shown in Exhibits M-1 (b) and M-2 (b) respectively. Even there the appellant has deducted the share capital before giving final figures.

35. Therefore, the contention of Mr. Malhotra that the Tribunal has committed a mistake in calculating the amount of Reserve used as working capital for these two years, cannot be accepted. If so, it follows that the amount fixed by the Tribunal as return at 4 per cent on Reserves used as working capital for these two years, is correct.

36. The second question that arises for consideration is the claim made by the appellant for provision for rehabilitation for the two years and which claim has been rejected by the Tribunal. The claim made by the appellant for provision for rehabilitation for the year 1962 was Rs. 1,80,30,871.00 and for the year 1963 Rs. 1,80,62,336.00. Thus, the appellant was claiming for each year provision being made of more than a crore of rupees for rehabilitation. The appellant has filed a charge Exhibit M-8 giving the calculations for the year 1962, its claim for rehabilitation for Rs. 1,80,30,871.00. If the claim for rehabilitation is accepted, then the result will be that there will be no profits at all from and out of which any bonus can be paid for the years in question.

37. The claim of the appellant has been opposed by Mr. I. N. Keshava, learned counsel for the first respondent and his contentions have been adopted by the counsel appearing for the other respondents-unions. The claim of the appellant is opposed mainly on two grounds, namely, (1) that the appellant has no scheme for rehabilitation for the relevant years and (2) in any event there were huge reserves available from which the claim for rehabilitation can be easily met. The Tribunal has rejected the claim for rehabilitation both on the grounds that the appellant has no scheme for rehabilitation and that the rehabilitation claim can be adequately met with from the huge reserves of nearly four crores of rupees that the appellant had.

38. It must be noted that Rehabilitation Reserve is a substantial item which goes to reduce the available surplus and as a result affects the right of the employees to receive the bonus. Hence the employer will have to place all relevant materials and the Tribunal will have to scrutinise them carefully and be satisfied that the claim is justified. It is no doubt true that it is but proper in the larger interest of the industry as well as the employees that proper rehabilitation reserve should be built up taking into consideration the increase in price in plant and machinery which has to be replaced at a future date and by determination of multiplier and its divisor. It is also clear from the decisions of this Court that if a company has no scheme for rehabilitation, then, of course, its claim on that head must be rejected (vide Azam Jahi Mills Ltd. v. Their Workmen, (1967) 2 Lab LJ 18 = (AIR 1967 SC 1222). Further, since it is the employer who seeks replacement costs, it is for him to satisfy the Tribunal as to what will be the overall cost of replacement and in doing so, it is he who has to discharge this burden by adducing proper evidence and giving other party an opportunity to test the correctness of that evidence by cross-examination (vide National Engineering Industries Ltd. v. Its Workmen, (1968) 1 SCR 779 = (AIR 1968 SC 538).

39. It is also now well settled that in determining the claim of the employer for rehabilitation, 2 factors are essential to be ascertained, namely, (1) the multiplier, and that has to be done by reference to the purchase price of the machinery and the price which has to be paid for rehabilitation or replacement; and (2) the determination of the diviser and that has to be done by deciding the probable life of the machinery (vide Honorary Secy., South India Millowners' Association and others v. Secy., Coimbatore District Textiles Workers' Union, (1962) Supp 2 SCR 926 = (AIR 1962 SC 1221) and Messrs. Gannon Dunkerley and Co. Ltd. v. Their Workmen, AIR 1971 SC 2567.

40. Mr. Malhotra, learned counsel for the appellant, very strongly relied on the statement Exhibit M-8 as well as the evidence of M.W. 2, the Mill Manager and M.W. 3, the Assistant Officer, Efficiency Section of the Mill, in support of his contention that the appellant has a scheme for rehabilitation and that the claim made by the appellant for making provision for rehabilitation is proper. The counsel also pointed out that the evidence of these two witnesses clearly establishes that most of the items of machinery have long outlived their normal age of 25 years and therefore they require replacement in order to ensure proper production. The counsel further pointed out that the rejection by the Tribunal of the claim made by the appellant on the basis that the life of the textile machinery is only 25 years, is not correct and that the view of the Tribunal that the normal age is more than 25 years is opposed to the decisions of this Court.

41. So far as the age of the machinery is concerned, it is no doubt true that in (1962) Supp 2 SCR 926 = (AIR 1962 SC 1221) this Court, after a reference to the evidence adduced, confirmed the findings of the Tribunal that the estimated life of the textile machinery in question should be taken to be 25 years, but in the said decision itself it is observed as follows:

"We are not prepared to accept either argument because, in our opinion, the life of the machinery in every case has to be determined in the light of evidence adduced by the parties."

But it is unnecessary for us to pursue this aspect further as we are disallowing the entire claim for rehabilitation.

42. Mr. Malhotra, also criticised the view of the Tribunal that in this case the evidence of the witnesses on the side of the appellant clearly shows that the machines are working very efficiently though they have been running for over 50 years. On the other hand, the counsel urged that the principle to be borne in mind, when considering the claim for rehabilitation, is that the life of the machinery is the period during which it is estimated to work with reasonable efficiency and not the period during which it has actually been operated, that is, till it becomes too deteriorated for use. No doubt the last proposition enunciated by the counsel in the abstract is correct; but the question is whether the appellant has discharged its burden of satisfying the Tribunal that it had a scheme for

rehabilitation and whether it had placed the necessary materials for the purpose of working out the multiplier and the divisor.

43. Mr. Keshava, learned counsel for the first respondent, referred us to the written statement filed by one of the unions, Binny Mills Labour Association, wherein it has specifically stated that the plant and machinery owned by the Mills are amongst the most modern machineries and that no provision for rehabilitation is necessary. The appellant, it is pointed out, in its reply statement did not controvert these averments. Even in the statements Exhibits M-1 and M-2, filed by the appellant, no claim for rehabilitation has been made. He also referred to the evidence of M.Ws. 2 and 3 and pointed out that their evidence does not show that the Company had any scheme for rehabilitation. On these grounds, the counsel pointed out that the appellant has not placed sufficient materials before the Tribunal to sustain its claim for rehabilitation.

44. It must be emphasised that in dealing with the claim of an employer for rehabilitation, as pointed out earlier, the onus of proof is on the employer. He has to prove the price of the plant and the machinery, its age, the period during which it requires replacement, the cost of replacement, the amount standing in the debentures and reserve funds and to what extent the funds at its disposal would meet the cost of replacement. If the employer fails to lead satisfactory evidence on these points, the result will be that the claim for rehabilitation will have to be totally rejected.

45. It is no doubt true that a chart Exhibit M-8 has been filed by the appellant and M.W. 3, the Assistant Officer, Efficiency Section, has spoken regarding the same. But he has admitted that the original quotations received from the dealers regarding the price of new machinery for the purpose of replacement have not been produced before the Tribunal. He has further admitted that the appellant has not produced the letters written by it calling for quotations regarding the price of the machinery. He has further admitted that no charts have been produced to show the value of the machineries in 1962. The multipliers, according to this witness, have been adopted as advised by the appellant's legal adviser.

46. It is clear from the above answers of the witness that there is no material placed before the Tribunal by the appellant from which the multiplier and divisor can be properly worked out for the purpose of considering the claim for rehabilitation. In fact, the Mill Manager, M.W. 2 has stated that the company has floated a debenture for 1 1/2 crore for buying new machinery. This clearly shows that the appellant had no scheme for rehabilitation and that explains the reason why it had not made any provision for rehabilitation.

47. Mr. Malhotra then urged that at any rate the Tribunal itself has proceeded on the basis that some amount for rehabilitation is necessary to be provided for each year. Based on this observation of the Tribunal, the counsel pointed out that the appellant should be allowed at least the amount that it has actually spent for replacement of machineries in the years 1962 and 1963. According to him a sum

of Rs. 26,19,608 and Rs. 21,24,102 have been spent in the years 1962 and 1963, respectively, for machinery and plant installed in those years. In this connection he referred us to the balance sheet and profit and loss accounts for these two years and stressed that the Tribunal has committed an error in not allowing at least these amounts by way of provision for rehabilitation.

48. It is no doubt true that these amounts are shown in the schedules to the balance sheets for the years concerned. Admittedly, there is no such claim made in the written statement filed by the appellant before the Tribunal. When the unions were contesting the claim of the appellant on the ground that it has no scheme for rehabilitation and that it has not spent any amount by way of replacement of old machinery, it was the duty of the appellant to have made a proper claim and it should have adduced evidence regarding that aspect before the Tribunal. Mere production of balance sheet and profit and loss accounts by themselves will not entitle the appellant to sustain its claim for rehabilitation.

49. For all the reasons given above, it is clear that the Tribunal was justified in holding that the appellant has not been able to make out its claim for making provision for rehabilitation. In this view the Tribunal was justified in rejecting this claim of the appellant.

50. We may also state that the Tribunal is also of the view that the appellant has large reserves with which it can meet rehabilitation expenses of the machinery. In this connection the Tribunal has also referred to the evidence on the side of the appellant, that even according to the appellant rehabilitation will have to be completed only within eight years from 1962 and that only a sum of rupees eighty lakhs will be required for each year. On this reasoning the Tribunal has held that this amount of rupees eighty lakhs can be easily met with from the large reserves available with the appellant. It is not necessary for us to consider this aspect further because we have already agreed with the findings of the Tribunal that the appellant has no scheme for rehabilitation and that it has not placed any satisfactory evidence before the Tribunal in support of its claim.

51. The last point that arises for consideration is regarding the available surplus for the years 1962 and 1963 as calculated by the Tribunal and the award by it of one-third of the amount as additional bonus for the two years after deducting the bonus already paid by the appellant. The Tribunal, after rejecting the appellant's claim for rehabilitation and also allowing return on reserves used as working capital in the manner, already referred to, had arrived at the available surplus for the year 1962 in the sum of Rs. 26,35,914 and for the year 1963 at Rs. 49,04,987. The appellant filed a statement Exhibit M-4 showing the amount of bonus already paid for the years 1962 and 1963 to all employees drawing a total of Rs. 500 and less per mensem. From that statement it is seen that for the year 1962 it had paid a sum of Rs. 14,41,455 and for the year 1963 a sum of Rs. 19,60,795. On the basis of the available surplus worked out for the years 1962 and 1963, the balance available surplus after deducting bonus already paid will be as follows :

1962 Rs.

Available surplus as worked out by the Tribunal .. 26,35,914

Amount already paid as bonus by the appellant ..

14,41,455

Balance ..

11,94,459

1963

Rs.

Available surplus as worked out by the Tribunal .. 49,04,987

Amount already paid as bonus by the appellant ..

19,60,795

Balance ..

29,44,192

What the Tribunal has done is to distribute one-third of the amount shown as balance above, for each of the years as additional bonus. That results in the workmen getting Rs. 3,98,153 representing 25 days' basic wages as additional bonus for the year 1962. Similarly, the workmen get Rs. 9,81,397 representing two months' basic wages as additional bonus for the year 1963.

52. Therefore, it will be seen that the total bonus that the workmen will get for each of the years will be as follows :

1962

Rs.

1. Amount already paid by the appellant .. 14,41,455

2. Additional amount awarded by the Tribunal ..

3,98,153

Total ..

18,39,608

53. From the avilable surplus of Rs. 26,35,914 in 1962, the workmen will get a total sum of Rs. 18,39,608 as bonus for that year which works out to more than 60 per cent of the available surplus.

54. Similarly, for the year 1963, the figures are as follows :

1963

	Rs.
1. Amount already paid by the appellant ..	19,60,795
2. Additional amount awarded by the Tribunal ..	9,81,397
Total ..	29,42,192

55. From the available surplus of Rs. 49,04,987 in 1963, the workmen will get a sum of Rs. 29,42,192 for that year which works out more or less about 60 per cent of the available surplus, falling short by a sum of Rs. 800.

56. Mr. Malhotra, learned counsel for the appellant, attacked the method of calculation adopted by the Tribunal. According to him the Tribunal should not have fixed more than 60 p.c. of the available surplus as bonus payable for a year. On the other hand, the amounts of bonus now awarded by the Tribunal and already paid by the appellant exceed 60 per cent. In our opinion, there is considerable force in the contention of the learned counsel. The available surplus, as found by the Tribunal for the year 1962 is Rs. 26,35,914. Working out roughly 60 per cent of this surplus to be distributed as bonus to the workmen, the amount of bonus will be about Rs. 15,81,600. The appellant had admittedly paid a sum of Rs. 14,41,455. The balance that the workmen will be entitled to will be Rs. 1,40,145.00 whereas the Tribunal has directed the appellant to pay for this year by its Award a sum of Rs. 3,98,153. The award of this amount is not justified.

57. So far as 1963 is concerned, the available surplus as found by the Tribunal is Rs. 49,04,987. 60 per cent of this available surplus, to which the workmen will be entitled to will be Rs. 29,42,992. On the other hand, the total amount that the workmen will get as per the award including the amount already paid by the appellant as bonus is Rs. 29,42,192. The appellant will have to pay only

an additional sum of Rs. 800 to make up 60 per cent. There is no appeal by the unions and therefore the bonus awarded for the year 1963 does not require any interference.

58. In allocating the available surplus between the company and the workmen, it has been held by this Court that it will be equitable if roughly 60 per cent of the surplus is distributed as bonus to the workmen and the Company is left with the remaining 40 per cent. The Company will get in addition to this 40 per cent, the benefit of the income-tax rebate on the 60 per cent bonus payable to the workmen (vide AIR 1971 SC 2567). We have adopted the same principle in the case on hand.

59. To conclude, the Award of the Industrial Tribunal in A.I.D. No. 6 of 1966 is set aside and Civil Appeal No. 1291 of 1967 is allowed. There will be no order as to costs.

60. The Award of the Industrial Tribunal in A.I.D. No. 8 of 1966 is modified to the following extent: For the year 1962 the appellant will be liable to pay as additional bonus only a sum of Rs. 1,40,145 instead of a sum of Rs. 3,98,153 as directed by the Tribunal in the Award. To this extent Civil Appeal No. 1292 of 1967 is allowed in part. In other respects, it is dismissed. There will be no order as to costs.

Order accordingly.