Shivraj Fine Arts Litho Works

Vs

The State Industrial Court, Nagpur and Others

Vasant Fine Arts Litho Works

Vs

The State Industrial Court, Nagpur and Others

Shakti Offset Works, Nagpur

Vs

The State Industrial Court, Nagpur and Another

Civil Appeal Nos. 2418

(N. L. Untwalia, P. S. Kailasam, Jaswant Singh JJ)

28.02.1978

JUDGMENT

KAILASAM J.

1. These three appeals are filed by the Shivraj Fine Arts Litho Works, Vasant Fine Arts Litho Works and Shakti Offset Works by special leave granted by this Court against the decision of the Nagpur High Court. The history of the industrial dispute may be shortly stated.

2. The dispute relates to the litho industry in the Vidarbha region. An award known as the Puranik Award was made on October 26, 1956. The award fixed Rs. 35 as the minimum wage but did not attach any scale of pay to the basic pay of Rs. 35 for the unskilled employees. By a notice dated January 22, 1958 the employees of the litho industry gave notice of change and as a result, the Puranik Award stood terminated as from July 22, 1958. The employees of Shivraj, Shakti and Raj gave a notice of change dated September 2, 1960 making certain demands against their respective employers. On March 13, 1961 the employees of the said three Units filed three references under Section 38A of the C.P. and Berar Industrial Disputes Settlement Act, 1947, before the State Industrial Court, which were numbered as references 9, 10 and 11 of 1961. When the three references were pending employees of other industrial concerns made certain demands against their employers. Pending the decision in references 9, 10 and 11 of 1961 an agreement was entered into on February 21, 1964 between the employers and the employees of various concerns requesting the State Government to exercise its powers under Section 39 of the Act and to refer to the Arbitration of the State Industrial Court the disputes mentioned in that agreement. On January 7, 1965 the State Government issued its notification making a reference to the State Industrial Court under Section 39 of the Act. By the notification the Government referred the disputes in respect of the demands of the employees set out in Schedule II to the notification made against the ten employers specifically

mentioned in Schedule II to the notification, being the employers in the litho press industry in the Vidarbha region. The demands that are set out in Schedule II are 15 in number but as we are concerned only with demands 3, 4, 5, 6, and 7 we will leave the rest out of consideration. Demand 3 relates to the disputes as to living wage and demand 4 for scales of wages for each category and occupation. Demand 5 is for fitment of the employees already in service at the date of the demand. Demand 6 is that the revised scales of wages should be given with retrospective effect from 1958, and demand 7 is for dearness allowance with retrospecitve effect from 1959 and that the dearness allowance should be linked with the index number at the rate of 2 paise per point with 1955 as 100. The State Government by its notification dated December 31, 1964 fixed Rs. 70 per month as the minimum wage under the Minimum Wages Act. The notification divided the employees into several classes. It did not attach any scale of pay to the minimum wages fixed but provided that at an interval of every six months the State Government may issue a notification fixing certain amounts payable in addition to the minimum wages as special allowances.

3. The Industrial Court made its award on May 10, 1965. The award divided the employers into two classes being classes A and B on the basis of the financial capacity of the employers to pay. The award fixed rates and scales of wages for the employees of the three employers in class A being Shivraj, Shakti and Vasant Litho Works. The award did not fix any rates and scales of wages in respect of other units of the industry the reason being that they did not have adequate financial capacity. In the case of class A the award also fixed the employees of various duration of service by way of fitment into the scales of wages awarded in the award. It also fixed the date from which the new rates and scales of wages were to be deemed to have commenced.

4. Against the award six writ petitions were filed before the High Court, three by the appellants in this Court, Shivraj Fine Arts Litho Works, Vasant Fine Arts Litho Words and Shakti Offset Works. Another three writ petitions were filed by the employees, they being Special Civil Applications 210 of 1969, 733 of 1969 and 734 of 1969. There are no appeals filed in this Court by the employees.

5. The High Court agreed with the view of the Industrial Court and held that the award classifying the employers into two classes A and B on the basis of their paying capacity determining the rates and scales of wages and the dearness allowance regarding class A employers is valid. The High Court set aside the award on demands 3, 4, 5, 6 and 7 and directed the Industrial Court to reconsider the above 5 demands and to make a fresh award in accordance with the law and principles laid down by the High Court. In so directing the High Court held that fixation of an industrial minimum wage is necessary and that in fixing such industrial minimum wage the factor of employer's capacity to pay is irrelevant and the industrial minimum wage should be fixed on a consideration of different ingredients which it seeks to provide for i.e. contents of the basket. It was possible that the Industrial minimum wage can be higher in some cases than the current statutory minimum wage and when the industrial minimum wage happens to be higher than the statutory minimum wage it will be industrial minimum wage which has to be paid because when it is fixed by an industrial award it becomes enforceable at law. The High court further held that the provisions of minimum wages show that there is nothing in it to prevent payment of anything more than the minimum wage fixed under it. The appellants in these appeals seriously challenge the direction of the High Court to the Industrial Court to fix an industrial minimum wage regardless of the paying capacity of the industry or the employer. Their contention is that there is no warrant for such a conclusion.

6. The High Court went into the question as to how the capacity of an industry to pay a fair wage has to be determined. For determining the surplus for paying capacity the High Court held that a sort of loss and profits account will have to be prepared having a credit and debit side. On the credit

side will appear all the gross takings of the unit of the industry. Gross taking will include gross realisations by the sale of the goods or services, the income, if any, earned by way of rents, interest or dividends or investments and the income of all other nature. Dealing with the items of expenses that can be legitimately deducted from the gross income the High Court held that all the expenses incurred by the employer in connection with the working of the industry will have to be deducted. It accepted the plea on behalf of the employers that the cost of raw materials which are necessary for production and expenses in connection with the working of the industry and sale of the finished products will have to be deducted, but not any other wage paid apart from the minimum wage payable. The Court held that appropriate amount for depreciation is deductible and interest on capital will also have to be deducted. It also held that a fair amount of remuneration payable to the partners can also be deducted. Regarding the bonus the High Court held that annual incidence of only the minimum bonus can be deducted, and any excess bonus paid is not deductible. It disallowed the claim of the amounts that were paid as income-tax or other taxes in ascertaining the paying capacity of the industry or the employer.

7. Regarding dearness allowance the High Court held that the industrial minimum wage has got to be paid on the basis of pay or perish and the rationalisation must be 100 per cent of the rise in prices. Regarding the claim for giving effect to the enhanced rates of page (sic pay), scales of wages and dearness allowance from the date of the order of reference i.e. from January 7, 1965 the Court held that the provisions of the award should take effect from January 7, 1966 being the date of the order of reference. While fixing January 7, 1965 as the date of operation it gave a discretion to the Industrial Court for valid and lawful reasons to fix a later date in respect of all or any of the employer-units. In the result the High Court found that the award in respect of demands 3, 4, 6, and 7 was not in accordance with law and had to be set aside as the award did not ascertain the rates and scales of wages and dearness allowance on the basis of an industrial minimum wage and that the industrial minimum wage should be ascertained without any reference to the capacity of the industry or the employer to pay. The Court also found that the correctness and truthfulness of the accounts and the balance-sheets of some of the employer-units has not been properly appreciated, investigated into and taken into account. The financial capacity to pay has not been properly evaluated. The financial capacity to pay has not been taken into consideration for the purpose of awarding a fair wage with corresponding dearness allowance. Finally, the question of giving retrospective effect and fixing the date from which the wages and the dearness allowance awarded should become operative has not been properly considered. As demand 5 is also an integral part of the award the Court also quashed the award on the demand.

8. The appellants in these appeals challenge the correctness of the order of the High Court remanding the award for fresh disposal according to the directions given in the judgment. First and foremost the appellants questioned the correctness of the order of the Industrial Court as confirmed by the High Court classifying the employers into two categories classes A and B and directing that the employers belonging to class A should pay enhanced wages, dearness allowance etc. Secondly, it was submitted that the High Court misdirected itself in holding that the Industrial Court ought to have fixed an industrial minimum wage and that the such wage should have been fixed without taking into account the paying capacity of the industry or the employer. Thirdly, it was contended that the Court erred in holding that in determining the paying capacity certain items such as minimum wage and the minimum bonus can alone be deducted. The disallowance of the income-tax and other taxes that were paid was also questioned. The method of fixation of the dearness allowance as well as the direction to give retrospective effect to the payment of wages, dearness allowance etc. from the date of the order of reference was challenged as imposing an intolerable burden on the industry. We will now proceed to deal with each of the above contentions.

9. Mr. Phadke, the learned Counsel for the appellants, submitted that the classification of the employers into two categories A and B depending upon the profits is not justified in law. He submitted that the rule is that the wages, dearness allowance, scales of pay etc. should be fixed on the basis of region-cum-industry, the wages normally being the same in all industries in the region. The Tribunal in its award found that the Industrial Court is entitled to fix a wage for every unit in accordance with its capacity to pay. This view was affirmed by the High Court. But the submission of the learned Counsel is that this view is unsustainable in law.

10. Before the High Court apart from the proposition of law enunciated that the classification should be fixed on the basis of region-cum-industry, it was submitted that as on the facts of the present case no such classification was contemplated in the agreement between the parties or in the reference by the Government, the Tribunal ought not to have classified the industry into two categories. Reliance was placed on the wording of the agreement requesting the Government to make an industry-wise reference to the entire region and the reference necessarily being in accordance with the agreement it was submitted would not justify any such classification. This argument was rejected by the High Court on the ground that the Industrial Court had inherent jurisdiction to classify the employers into several categories. Reference was made by the appellants to the demands and it was submitted that the power to classify was restricted only in respect of employees and not as regards employers. This plea was rightly rejected by the High Court as no such express reference is necessary in view of the powers of the Industrial Court. The third contention of the appellants before the High Court was that the pleadings did not refer to the classification of the employers. It was rightly held by the High Court that the absence of any reference to the classification of the employers in the pleading would not affect the power of the Industrial Court. The other contentions put forward before the High Court basing on the construction of Section 22 of the Industrial Disputes Act and Rule 288 of the C.P. and Berar Industrial Disputes Settlement Rules, 1949, that the increase or decease of wages should be in an industry as a whole and not differing from one industry to another is also without any basis.

11. This Court has clearly laid down in a series of decisions starting from the case of Express Newspapers (P) Ltd. v. The Union of India (1959 SCR 12 : AIR 1958 SC 578 : (1961) 1 Lab LJ 339), that it is permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay classwise. At p. 90 of the Reports (SCR) this Court in laying down the principle in determining the capacity of an industry observed (Ed. : Quoted from the Report of the Committee on fair Wages, pp. 13-15, paras 21 & 23) :

> The relevant criterion should be the capacity of a particular industry in a specified region, and, as far as possible, the same wages should be prescribed for all units of that industry in that region.

But the Court qualified that rule by stating (SCR p. 90, para 68) :

> It is clear therefore, that the capacity of an industry to pay should be gauged on an industry-cum-region basis after taking a fair cross-section of that industry. In a given case it may be even permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay classwise.

12. In Willamsons (India) Private Ltd. v. Workmen ((1962) 1 LLJ 302 : (1962-63) 22 FJR 255) this Court held that the extent of the business carried on by the concerns, the capital invested by them, the profits made by them, the nature of the business carried on by them, their standing, the strength

of their labour force, the dividends declared by them and the prospects about the future of their business and other relevant factors have to be borne in mind for the purpose of comparison. Approving the view expressed in the above decision in French Motor Car Co. Ltd. v. Workmen (1963 Supp 2 SCR 16 : AIR 1963 SC 1327 : (1962) 2 LLJ 744), this Court observed at p. 20 that comparison should be made in the same line of business and a small concern. When there is a large disparity in the two concerns in the same business, it would not be safe to fix the same wage structure as in the large concern without any other consideration.

13. In cinema Theatres v. Their Workmen ((1964) 2 LLJ 128), this Court approved the classification of the Tribunal of the Cinemas into two classes based on gross revenue. The Court observed that the gross revenue taken by the Tribunal as the basis for classification appears to be a satisfactory criterion.

14. In Workmen of Balmer Lawrie & Co. Balmer Lawrie & Co. ((1964) 5 SCR 344 : AIR 1964 SC 728 : (1964) 1 LLJ 380), at p. 353 this Court held that in determining the question whether one concern is comparable with another in the matter of fixing wages, the total capital invested by the concern, the extent of its business, the order of the profits made by the concern, the dividends paid, the number of employees employed in the concern, the standing in the industry to which it belongs and other matters have to be examined. In Greaves Cotton & Co. v. Their Workmen ((1964) 5 SCR 362 : AIR 1964 SC 689 : (1964) 1 LLJ 342), after referring to the decision in French Motor Car Co. Ltd. v. Workmen (supra) this Court held that the principle is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there were a large number of concerns in the same region carrying on the same industry, but where the number of industries of the same kind in a particular region was small, it was the region part of the formula which assumed importance. In the former case in order that production cost may not be unequal and there may be equal competition, wages should general be fixed on the basis of the comparable industrial, namely, industries of the same kind.

15. In Unichem Laboratories Ltd. v. The Workmen ((1972) 3 SCR 567 : (1972) 3 SCC 552) this Court after referring to the cases cited above held that in the fixation of wages and dearness allowance the legal position is well-established that it has to be done on industry-cum-region basis having due regard to the financial capacity of the unit under consideration. The same view was reiterated in The Silk & Art Silk Mills' Association Ltd. v. Mill Mazdoor Sabha ((1973) 1 SCR 277 : (1972) 2 SCC 253) at p. 288, where the Court re-emphasised the principles laid down in the earlier cases. There is thus ample authority in support of the view taken by the Tribunal and the High Court that the employer can be classified according to his paying capacity.

16. The second contention of the learned Counsel for the appellants is that the High Court was in error in holding that the Tribunal ought to have fixed an industrial minimum without any reference to the paying capacity of the employer. According to the High Court even when a statutory minimum wage is payable an industrial minimum wage has to be ascertained to find out which is high because it is the higher of the two which has to be paid. The High Court also held that the industrial minimum wage will have to be fixed without reference to the paying capacity of the industry.

17. The agreement dated July 30, 1968 entered into between the parties which led to the reference by the Government to expedite fixation of minimum wages in the litho industry in the Vidarbha region if necessary by appointing a sub-committee for this purpose. In pursuance of the agreement the notification was issued by the Government on January 7, 1965. Schedule II lists the demands of

the employees. The demands with which we are concerned in this appeal have already been referred to. The demand is that the employees should be paid a living wage. In pursuance of the agreement the Government fixed a minimum wage on December 30, 1964 under the Minimum Wages Act (Act 11 of 1948), and again revised it pending the appeal before this Court on May 7, 1976. It was conceded before the Tribunal by the employees that there was no justification for demanding a living wage but that the units had the capacity to pay fair wages. On the basis of the stand taken by the employees, the Tribunal proceeded to fix a fair wage taking into account the paying capacity of the industry. The dispute therefore related to fixation of a fair wage and not a minimum wage. In fact, the employees requested the Government to fix a minimum wage which was accordingly fixed. The High Court relied mainly on two decisions of this Court in Express Newspapers (P) Ltd. v. Union of India (supra) and U. Unichoyi v. State of Kerala ((1962) 1 SCR 946 : AIR 1962 SC 12 : (1961) 1 LLJ 631), for coming to the conclusion that the Tribunal is bound to fix an industrial minimum wage. In the former case this Court stated that broadly speaking the wages have been classified into there categories, the living wage, the fair wage and the minimum wage. After elaborately setting out the concept of living wage at p. 79, the concept of minimum wage at p. 82 and the concept of a fair wage at p. 84 of the Reports (SCR), this Court observed that fair wage is a mean between living wage and minimum wage and even the minimum wage contemplated above is something more than the bare minimum of the subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family, a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities. The Court further observed that it must be remembered that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, a minimum wage thus contemplated postulates the capacity of the 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. This view is explained in U. Unichoyi v. State of Kerala. The Court in rejecting the contention on behalf of the employers that the minimum wage prescribed under the Minimum Wages Act can only be fixed taking into account the capacity of the industry to pay held that it had no hesitation in rejecting the argument that because the Act prescribed the minimum wage rates it is necessary that the capacity of the employer to bear the burden of the wage structure must be considered. It is now not in dispute that so far as minimum wage is concerned it is to be fixed without any reference to the paying capacity of the industry.

18. The Minimum Wages Act (Act 11 of 1948), secures the payment of the minimum wage. This Act was enacted with a view to provide for fixing minimum rates of wages in certain employments. It provides under Section 3 that the appropriate Government shall fix the minimum rates of wages according to the provisions of the section. Section 4 provides that the minimum rate of wages fixed or revised by the Government in respect of scheduled employments under Section 3 may consist of basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index. Section 5 provides the procedure for fixing and revising minimum wages. Section 3(2A) provides that when an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in the Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the

award is made. It is therefore clear that when a dispute is pending before any Tribunal regarding the minimum wage, the award will bind and to that extent the provisions of the Act will not be applicable but in other cases the Government is entitled under the Minimum Wages Act to fix a minimum wage. Section 5 prescribed the procedure under which the minimum wage is to be fixed and revised. Provision is made for appointment of committees and consultation of the person concerned before the minimum wages is fixed. The procedure is that in the absence of a dispute pending before the Tribunal regarding the fixation of a minimum wages the minimum wages fixed by the Government will bind the parties. It has been decided in Ahmedabad Mill Owners' Association v. The Textile Labour Association ((1966) 1 SCR 382 : AIR 1966 SC 497 : (1966) 1 LLJ 1), that in an industrial dispute a basic minimum were can be fixed when the statute has not fixed the minimum wage. Section 3(2A) of the Minimum Wages Act does contemplate fixation of minimum wages by the Tribunal. In fixing such a minimum wage which may be higher than the minimum wage contemplated under the Minimum Wages Act. We have already found that the Industrial Tribunal was not called upon to fix a minimum wage for both the employers as well as the employees proceeded on the basis that the Tribunal was fixing a fair wage. In fact, the employees requested the Government to fix a minimum wage which was accordingly done. In this view no further reference need be made to Section 3(2A) of the Minimum Wages Act. The Tribunal proceeded on the basis that it was called upon to fix a fair wage. In the circumstances, we do not find any support in law for the view taken by the High Court that it was incumbent on the Tribunal to fix an industrial wage apart from the minimum wage without taking into account the paying capacity of the industry.

19. The Tribunal was not called upon to fix the minimum wage. The demand by the employees was for a living wage and after observing that living wage cannot be secured the Tribunal proceeded to determine the fair wage. In the circumstances, there is no substance in the plea of the respondents that the Tribunal was only fixing a minimum wage. The plea of the respondents that the cases under appeal fall under Section 3(2A) in that the dispute as to fixation of minimum wage was pending before the Tribunal and it was a continuation of the proceedings in references 9, 10 and 11 cannot be accepted, for the three references in question got merged in the reference by the Government under Section 39 which included not only demands which were not included in the original reference but also disputes relating to other industries. The reference as it has been pointed out earlier did not relate to the fixation of minimum wages as shown either in the agreement or in the order of reference by the Government.

20. At this stage it will be proper to deal with the plea of the respondents that the Tribunal was in error in stating that so far as the industries classified as B are concerned, the employees are not entitled to any relief by way of the financial capacity. In view of our finding that what the Tribunal was called upon to fix was a fair wage and not a minimum wage, the financial capacity of the concerns classified under B is relevant and the finding of the Tribunal that their finances would not justify any provision for fair wages has to be accepted. Further, it will be seen that the employees of the concerns classified under B have nor preferred any appeal and the question cannot be gone into in these appeals.

21. The fixation of rate of wages which includes within its compass the fixation of scales of wages and fitment of workmen into wage scales will also depend upon the paying capacity of the industry. The Tribunal dealing with demand 5 in its award accepted the suggestion that the Court may grant some increments in proportion to the years of service put in by an employee. It provided two increments for persons who have put in 2 to 6 years of service, three increments for persons who put in service of 5 to 10 years, four increments for persons who have put in service of 10 to 15 years

and five increments for persons who have put in service over 15 years. The Tribunal also directed that there shall be a fitment and the employee should be fitted into the scale of pay by placing him in the stage in the scale equal to next above, his basic pay. The award regarding the fitment and increment was accepted by the High Court but in the order of remand the High Court directed a general revision as it was not satisfied with the manner in which the financial capacity of the concerns was determined.

22. This leaves us with the question as to how the financial capacity of the concerns is to be determined. After fixing of the financial capacity the fair wage which would include fitment, wage scales, dearness allowance payable has to be determined. The question as to the period during which retrospective effect has to be given for payment of fair wages has also to be considered.

23. A fair wage is a mean between the living wage and the minimum wage. Wages must be fair, that is to say sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding its (sic his) wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and work-load. While the lower limit of wage structure is the minimum wage any increase over that will depend upon the capacity of the industry to pay. The factors which determine the capacity to pay will be the productive of the labour, the prevailing rates of wages in the same or similar industries, in the same or neighbouring localities, the present economic position of the industry, its prospects in the near future etc. The fair wage will grow with the growth and development of the national economy and the progress made by the industry must approximate to the capacity of the industry to pay. As stated by the Nation Commission on Labour a policy dealing with this chronic problem cannot be simply economic as it is to reckon with relative multi-dimensional, social phenomena in which in consequence the State are all vitally interested. The claim of the employees for a fair and higher wage depends not only on the financial capacity of the employer but also on the interests of the consumer and the State, the employers' desire for a reasonable profit, the rise in price which may affect the consumer and the national economy which may have and adverse effect on the Labour itself.

24. In order to determine the fair wage including the scale of pay, the price rise, the dearness allowance etc., the financial capacity of the concern has to be determined. A close scrutiny of the concern's working has to be made. The profit and loss account, the prospects of the company improving itself in future and all other relevant matters will have to be taken into account. The expenses properly incurred in running the factory, office and other transport expenses, the expenses incurred in running the factory, office and other transport expenses, the expenses incurred in marketing and other such as buying of the raw materials, expenses incurred in running the factory, office and other transport expenses, the expenses incurred in marketing and other such allowable expenditure has to be deducted. We are unable to accept the contention of the learned Counsel for the respondents that the gross profit alone has to be taken into account. Equally we are unable to accept the pleas on behalf of the appellants that net profit alone should be the basis of determining the financial capacity. The determination of gross profit and net profit vary according to the basis of accounting adopted. In Gramophone Company Ltd. v. Its Workmen ((1964) 2 LLJ 131 : (1964) 9 FLR 10), this Court held that (LIJ p. 136) :

> When an industrial tribunal is considering the question of wage-structure and gratuity which, in out opinion, stands more or less on the same footing as wage-structure, it has to look at the profits made without considering provision for taxation in the shape of income-tax and for reserves. The provision for income-tax and for reserves must,

> in out opinion, take second place as compared to provision for wage-structure and gratuity, which stands on the same footing as provident fund which is also a retrial benefit. Payment towards provident fund and gratuity is expense to be met by an employer like any other expense including wages and if the financial position shows that the burden of payment of gratuity and provident fund can be met without undue strain on the financial position of the employer, that burden must be borne by the employer ..... While on the one hand casting of this burden reduces the margin of profits, on the other hand it will result in the reduction of taxation in the shape of income-tax.

This Court affirmed the view taken in the above case in Indian Link Chain Manufacturers Ltd. v. Their Workmen ((1972) 1 SCR 790 : (1971) 2 SCC 759). The law was stated in Unichem Laboratories Ltd. v. The Workmen (supra) at p. 583 as follows (SSC p. 568, para 54) :

> From the above decision it is clear that : (1) Fixation of wage-structure stands more or less on the same footing as framing of a gratuity scheme and the principles applicable for ascertaining the profits are the same; (2) provision for taxation and provision for reserves cannot take precedence over provision for gratuity and fixation of wages; and (3) the provision for income-tax and for reserves must take second place as compared to provision for wage-structure and gratuity.

Summing up the position the Court held that the above decision (Gramophone Company Ltd. v. Its Workmen) categorically rules out any deduction of taxation. It also excludes from deduction all provision for reserves which will take in depreciation reserve also. The decision makes it clear that provisions for taxation and reserve cannot take precedence over gratuity and fixation of wages. The provisions for income-tax, reserve and depreciation are not permitted. The High Court was therefore right in its view that no rebate can be allowed toward payment of income-tax.

25. After allowing certain deductions the High Court held that so far as bonus is concerned as the minimum bonus is compulsorily payable it can be deducted in determining the financial capacity of the employer. But the High Court was of the view that in the case of any amount which was paid as bonus in addition to the minimum bonus fixed, such amount cannot be deducted. The reason given by the High Court is that the incidence of minimum bonus like the incidence of basic wage is fixed and is known at the beginning of the financial year of the employer and is not to be calculated unlike in the case of excess bonus after the end of that year when the amount of profit that is available surplus is determined. We are unable to agree with the view taken by the High Court that any amount paid as bonus in addition to the minimum bonus cannot be deducted as expenses. The amount which is paid as bonus goes, in substance, to augment the wages and as such is liable to be deducted in determining the paying capacity of the employer. It seems that the High Court was influenced by the fact that the additional bonus cannot be deducted at the beginning of the year. We do not think that it will make any difference for, the paying capacity of the concern can be ascertained after deducting the amount in the subsequent year.

26. The two questions that now remain for consideration are the fixation of dearness allowance and the date from which the dearness allowance and the wage structure as determined should be given effect to. The Government in fixing the minimum rate of wages under the Minimum Wages Act also makes a provision for special allowance to be paid along with the basic rate of wages. The special allowance is fixed by the Government to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers. So far as provisions under the Minimum

Wages Act relating to the minimum wages and special allowances are concerned they are fixed without allowance is fixed as a part of the fair wage it will have to depend upon the paying capacity of the employer. It has been held that though the dearness allowance is given to compensate for the rise of cost of living, cent per cent neutralisation is not given as it may tend to inflation. It was held in Clerks of Calcutta Tramways v. Calcutta Tramways Co. Ltd. (1956 SCR 772 : AIR 1957 SC 78 : (1956) 2 LLJ 450) (SCR p. 779) :

> We can now take it as settled that in matters of the grant of dearness allowance except to the very lowest class of manual labourers whose income is just sufficient to keep body and soul together, it is impolitic and unwise to neutralise the entire rise in the cost of living by dearness allowance.

In The Hindustan Times Ltd., New Delhi v. Their Workmen ((1964) 1 SCR 234 : AIR 1963 SC 1332 : (1963) 1 LLJ 108), it was held that the purpose of dearness allowance was to neutralise a portion of the increase in the cost of living. The same view was expressed in Kamani Metals & Alloys Ltd. v. Their Workmen ((1967) 2 SCR 463 : AIR 1967 SC 1175 : (1967) 2 LLJ 55). It was noted that one hundred per cent neutralisation is not advisable as it will lead to inflation and therefore dearness allowance is often a little less than one-hundred per cent neutralisation. In fixing the dearness allowance the principle that is followed in determining the paying capacity for fixing wage structure, is equally applicable. In determining the dearness allowance, increase in the cost of living, the resulting change in the economic conditions and the pattern of dearness allowance prevailing in other concerns in the same region are factors to be taken into consideration. The increase in the cost of living since the time when the dearness allowance was last fixed is also taken into account. In Ahmedabad Mill Owners' Association v. The Textile Labour Association (supra) it has been held that in giving effect to the demand for a fair wage including the payment of dearness allowance to provide for adequate neutralisation, industrial adjudication must always take into account the problem of the additional burden which such wage-structure would impost upon the employer and ask itself whether the employer can reasonably be called upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. The Tribunal has taken into account the paying capacity of the three concerns which it has classified as A and fixed the dearness allowance payable by them. But the High Court has found that the Tribunal has not adopted the correct principles in arriving at the paying capacity. The learned Counsel appearing for the respondents also pointed out that even a cursory examination of the profit and loss account would show that the three companies which are classified as A had a larger income than was taken into account by the Industrial Tribunal. The High Court is not right in its observation that the dearness allowance should effect a cent per cent neutralisation as it is not in conformity with the decisions cited above.

27. Regarding the date from which retrospective effect should be given the High Court has observed that the reference was made on January 7, 1965 and the award was given on May 10, 1968, that is after a lapse of about three and a half years. Taking all the circumstances into account the High Court directed that subject to any other consideration which may require to the contrary effect should have been given to the provisions of the award relating to the rates and scales of wages and dearness allowance as and from January 7, 1965 being the date of the general reference. Having observed so the High Court left it open to the Tribunal to examine whether there are any other circumstances which would require the later date to be fixed in the case of all or any of the employers. In granting retrospective effect the Tribunal has a discretion to fix the date taking into account the financial position of the company. The delay in giving the award and the subsequent proceedings in the High Court and in the Supreme Court has caused a lapse of several years.

Though the employees are entitled to be given the increase in wages from the date of reference it may not be practicable taking into account the considerable lapse of time. The employers may not have the capacity to pay the entire arrears. It may be that in some cases the employer may be able to do so if it is directed to make the payment in instalments. There questions will have to be taken into account depending upon the facts and circumstances of each case.

28. To sum up we agree with the view taken by the Tribunal and the High Court that the appellants belong to A category and are liable to pay fair wages.

29. We do not agree with the view taken by the High Court that the Industrial Tribunal should fix an industrial minimum wage without taking into account the paying capacity of the employer. To this extent the order of the High Court will have to be set aside.

30. Mr. Phadke, the learned Counsel for the appellants, submitted, that as the employees have not preferred any appeal against the judgment of the High Court no order adverse to the industry can be passed in these appeals. As we have not agreed with the view of the High Court that an industrial minimum should be fixed by the Tribunal even though it was fixed by the Government under the Minimum Wages Act, the judgment of the High Court cannot be sustained. As in the absence of an appeal by the employees final decision can only be by the Tribunal, we confirm the order of the High Court remanding the matter for a fresh disposal by the Tribunal. But as we do not agree with some of the conclusions arrived at by the High Court we modify the order of remand. We confirm the classification of the industries into classes A and B as determined by the Tribunal and the High Court. We also find that the appellants and industries belonging to class A are in a position to pay fair wages. We also find that so far as the order of the Industrial Tribunal as confirmed by the High Court that the industries classified as B are not in a position to pay anything more than the minimum wages under the Minimum Wages Act is concerned, it will have to be confirmed.

31. The High Court has found that the determination of the paying capacity of the industry has not been satisfactory. It has found that some accepted. The Tribunal will have to examined the accounts afresh and determine the paying capacity. In fixing the paying capacity the Tribunal will have to fix the income as well as permitted deductions and allowances properly incurred. There can be no dispute that expenses incurred for purchase of raw material, maintenance of the establishment and expenses incurred in marketing of the produce should be deducted. The items mentioned above are not exhaustive. As to whether a particular item of expenditure is liable to be deducted or not will have to be determined on the facts of the case. This Court has clearly laid down that no deduction should be allowed for payment of income-tax or for allowances made for depreciation or for making provision for reserves. So for as expenses incurred towards payment of wage bill inclusive of dearness allowance, bonus, gratuity etc. are concerned they will have to be deducted. After properly determining the paying capacity of the industry the Tribunal will have to process to fix fair wages which would include the fitment, scale of wages and dearness allowance. While after fixing the above the Tribunal will have to determine as to from which date retrospective effect will have to be given for payment of the wages thus fixed. As the paying capacity will have to be re-determined the wage structure including fitment scale of wages, dearness allowance, period during which retrospective effect is to be given will have to be determined afresh.

32. We, accordingly, allow these appeals in part and modify the order of remand made by the High Court to the extent and in the manner indicated above. We make no order as to costs. As there has been enormous delay, the Tribunal will dispose of the case as expeditiously as possible, preferably not later than six months.

</html