CALCUTTA HIGH COURT

National Carbon Co. (India) Ltd

Vs.

M.N. Gan, Judge

Civil Rule No. 551 of 1956

(Sinha, J.)

12.04.1957

ORDER

Sinha, J.

1. The petitioner is the National Carbon Co. (India) Ltd., a well-known company engaged in the manufacture of 'eveready' brand batteries and similar goods. In the year 1949, some of the workmen of the petitioner Company demanded bonus. Following upon this demand, the petitioner Company introduced a fund called the Joint Contributory Fund. This is a fund to which the workmen make contribution at a certain rate and the Company makes its own contribution. It is in the nature of a savings fund, the rules whereof are set out in annexure 'B' to the petition. It will appear therefrom that contribution to this fund is optional on the part of the workmen, and in case of discharge on account of misconduct the Company is not liable to make any contribution. On or about the 15th of January, 1951 the workmen through their representatives entered into an agreement or settlement with the petitioner Company in the course of conciliation proceedings. The agreement provided that it settled all claims of the workmen, and would be in force until the 26th August, 1952 and that during the subsistence of the settlement no other demands regarding wages, allowances, remuneration, payment, gratuities or bonuses of any kind were to be made.

2. Section 19 of the Industrial Disputes Act lays down the period of operation of such a settlement. The relevant provision runs as follows :

> "19 (1) A settlement arrived at in the course of a conciliation proceeding under this Act shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.
> (2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

3. On the 6th of September, 1952 the respondent No. 6 served a notice in writing on the petitioner Company informing the petitioner of its intention to terminate the said settlement. On the 6th September, 1952 the respondent No. 6 served a notice claiming bonus equivalent to four months' earnings plus 50 per cent. of the profit. The word 'earnings' has been defined in the Rules set out in Annexure 'B' and is as follows :-

> "Earnings", means only the fixed monthly salary or wages received by each employee from the Company and, in the case of an employee engaged in piece or time work the actual amount of the wages received by him in any month in respect of the amount of work done or of thenumber of hours worked respectively and does not include any acting, officiating personal or dearness allowance, night allowance, overtime payment, bonus commission or other remuneration or profit whatever, derived by an employee by any means outside his fixed ascertained salary or wages."

4. As I have said above, the workmen, or at least a substantial part thereof, terminated the settlement arrived at between the parties, and there being a dispute, the Government of West Bengal, by an order dated the 21st May, 1953 being Order No. 1858 Dis/D/10L-57/53 read with an addendum dated the 30th July, 1953 referred the dispute to the Fifth Industrial Tribunal, West Bengal. The disputes referred to adjudication were as follows :

> (1) Increment in rates and grades;
> (2) Bonus;
> (3) When the workman is transferred to a different job whether his rates or wages, etc., should remain unchanged or not.

5. On the 16th of August, 1955 the Tribunal made its award. In this application we are only concerned with the first two issues, as it is in respect of these two issues that there has been a challenge. With regard to issue No. 1, the Unions preferred a claim of 25 per cent. over-all increment in the piece rates, time rates, and monthly rates of the workmen. The Company contended that the majority of the workmen in the factory were unskilled, so that they were given Rs. 30/- as basic salary. In addition to this, there were many other kinds of payments, namely, incentive, dearness allowance, savings fund, provident fund, night allowance, overtime and other benefits. The average remuneration of hourly paid workmen in the years 1952, 1953, 1954 will appear from Annexure A' to the petition. The tribunal in its award, started by saying that the Unions had not placed before the tribunal the exact amount of increment and rates and grades that they claimed. The Company had also not placed enough materials before the Tribunal so as to enable it to ascertain the rates and grades. "Unless that is done", states the tribunal, "it is difficult for the Tribunal to fix with precision the exact amount of increment in rates and grades". The Tribunal notices the basic salary that is paid to unskilled worker, namely, Rs. 30/-, but states that it must ignore the dearness allowance as that was not a matter before the Tribunal. The tribunal then holds that it was not a fact that the workers consisted mostly of unskilled men. It holds that since the work was in connection with complicated machinery, the unskilled workers became semi-skilled after working for a year. "So, where is the ground", asks the Tribunal, "for denying them Rs. 30/- as the basic wage after one year?" The Tribunal then proceeds to say as

follows :

> "So, I think, I can fairly give Rs. 35/- as basic wage to all the workmen after one year's service in this concern. This means that the basic wage should be raised by 16-2/3 per cent. If the last stratum of the workmen get this lift, the corresponding lifts should also be given to other workmen who are in grades above them. So, in answer to the Unions' claim I grant in round sum 15 per cent. increment in all the rates, whether hourly rates, or daily rates or piece rates, or monthly rates. This is also made prospective. It will come into effect with the operation of the award".

6. Next we come to issue No. 2, namely, that of bonus. The first difficulty with regard to the determination of this issue was that no year was mentioned. The tribunal held that in the written statements filed, the parties had confined their claim to bonus for the year 1952, and although at the hearing the Unions claimed that bonus should also be determined for 1953-54, this should not be allowed. It has, therefore, determined the bonus of 1952, and upon this point there is no dispute raised before me. In any event, I think that the Tribunal was quite justified upon the facts to hold that the dispute related to the bonus for the year 1952. Before the Tribunal, the respondent No. 8 claimed bonus equivalent to four months' wages in a year of 12 months. The respondent 1 claimed bonus amounting to six months' wages in a year of 12 months and respondent No. 6 claimed 50 per cent, of the profits earned during the year with a guaranteed minimum of an annual bonus equivalent to four months' emoluments. In the respective written statements of the said respondents, it is alleged that the Company's balance sheets were not forthcoming and, therefore, they were not in a position to show the profit earned by the Company which was, however, stated to be of ample proportion. At the hearing before the tribunal, neither party adduced any evidence. The tribunal states that the Company took up the position that it was not bound to produce the balance sheet because it does not plead any financial incapacity to pay. The tribunal states as follows :

> "Next, I come to the actual calculation and computation of bonus for the year 1952. Here the Company has preferred not to produce its balance sheet. Neither does it want to disclose the profits it made in the year 1952. The Company meets the demand of the workers for production of the balance sheet by saying that it is not bound to produce it because it does not plead any financial incapacity to pay. So the position is that the Company asks the tribunal to assume any amount of profit it has been making. The tribunal is free to award any quantum of bonus it likes. But to keep the quantum of bonus within a certain limit, it has produced a chart showing the amount of bonus that the other engineering firms are giving to their workers. This is, indeed, a queer method of placing things. But the reference to other engineering firms on this point is practically out of place in the present case. ..... In the present case though it will be to a certain extent arbitrary, but it cannot be otherwise, because of the Company's peculiar attitude, I grant 3 months' basic pay of the workers as bonus for the year 1952."

7. In refuting the claim of the workers for payment of bonus, the Company inter alia made out the following points. First of all it stated that regard being had to the settlement, the claim for bonus was not tenable. Secondly, it gave a chart showing the payment of bonus by other

engineering firms and showed that the bonus granted by them fell much short of what the workers were claiming. Thirdly, it stated that in answer to the claim for bonus of the workers, it started the Joint Contributory Fund, which worked out at two months' basic salary of the employees and that in view of this the claim to bonus was excessive. So far as the first point is concerned, the tribunal does not seem to have dealt with it at all. With regard to the second point, it pointed out that there is nothing before the tribunal to show the amount of profits earned by the firms whose names appear in the chart, nor were the circumstances under which bonus was granted by them known to the Tribunal, and therefore it would not be possible to consider the figures in the chart at all. With regard to the third point, it was held that the right to bonus was not an optional right like the Savings Fund and there were many other differences. The right to bonus could not, therefore, be defeated by the amount received from the Joint Contributory Fund. The tribunal, therefore, awarded three months' basic pay in a year of twelve months, but deducted the benefits received by the workmen under the Joint Contributory Fund, where such benefits had been received.

8. Against these findings of the Tribunal, there was an appeal to the Appellate Tribunal. With regard to Issue No. 1 the Appellate Tribunal upheld the award and inter alia stated as follows :

> "The Company's present prosperity and future stability not having been questioned, we feel that the Company ought not to grudge their workmen the increment which the lower Tribunal awarded. The lower tribunal is of opinion that if there is one concern who can afford to pay living wage to its workmen, it is the present company. This is not challenged and it is not contended that the wage rates of the workmen have reached living wage standards. Hence, we prefer to leave award of the lower Tribunal without any alteration either by increasing or decreasing the increment in wages granted by it."

9. On the question of bonus the Appellate Tribunal held that the right to bonus could not be defeated by the Joint Contributory Fund, but it also held that there was no reason why the benefits received in that Fund should at all be considered together with bonus or deducted from the amount that is payable as bonus. The Appellate Tribunal stated as follows :

> "The object of the Fund was 'to encourage the habit of saving among the employees' as stated in the preamble to Ext. B. The object of paying bonus is not to encourage the habit of saving. It is to fill up the gap between living wage and actual wage as far as possible in the year in which the concern earned profit and is paid out of the available surplus in profits which are earned with the help of the labour of the workmen, after deducting all prior and necessary charges and making allowance for reasonable return on capital and for rehabilitation, replacement and modernisation of plant etc., as a matter of social justice".

10. With regard to the quantum payable, the Appellate Tribunal said as follows :-

> "The next question is what the amount of bonus should be. The final demand of the workmen was for six months' wages as bonus for the entire year, 1952. The Company

declined to produce its documents showing the amount of profit for the year on the ground that it did not plead inability to pay bonus. Therefore, the legal inference that if the documents are produced, the available surplus would be such as can justify the grant of the demand in full, must be drawn. The Company does not object to this course. It only contends that the other comparable firms paid bonus not exceeding 1½ months' wages and that we also should not exceed it under any circumstances".

11. The Appellate Tribunal also refused to take into consideration the bonus paid in other firms. It held that the amount of the bonus could only be judged with reference to the facts and figures of each case and not by comparison with other concerns about whose profits nothing was known. "Such comparison" said the Appellate Tribunal "is permissible only to check exorbitant demands and not to limit bonus payable in any concern to that given in another". Finally, the Appellate Tribunal granted six months' wages in a year of twelve months. The wages meant 'basic wages', including incentive, night allowance and over-time. It was further held that the benefits received under the Joint Contributory Fund should not be deducted.

12. It is against these findings that this Rule is directed. I might mention here that on the 19th November, 1956 the parties other than respondents 1, 2, 3, 4, 5 and 6, agreed to certain terms of settlement. In reality it was the respondent No. 6 which stood out, and contested the application. The main item of contest is the direction to pay bonus, so, I will deal with that point first.

13. As will appear from the facts stated above, the Company and its workmen arrived at a settlement on or about the 15th January, 1951. That agreement provided that it settled all claims, and that no other demand regarding bonus or any other kind of payment could be made as long as the settlement was subsisting. The agreement was to be in force until the 26th of August, 1952. Notice was given by respondent No. 6 for terminating the agreement on the 6th of September, 1952. According to Section 19 (2) of the Industrial Disputes Act, the settlement would extend to two months from the date on which notice in writing was given disclosing an intention to terminate the settlement. Thus, the settlement would continue until the 6th of November, 1952 during which time no claim to bonus could be entertained. Although this point was taken in the court below, the Tribunal did not deal with it, while the Appellate Tribunal appears to have followed a decision of the Appellate Tribunal, Employees of *Messrs. India Reconstruction Corporation Ltd., Calcutta v. India Reconstruction Corporation Ltd*[1]*.,* It appears to have been held there that where these was a settlement, there was no question of extension of two months after notice. It only comes into operation if no period is agreed upon, during which the settlement was to remain binding. I am unable to accept this interpretation of Section 19 (2) of the Industrial Disputes Act. A plain reading of Section 19 (2) of the said Act shows that where a period is agreed upon during which a settlement shall be binding, then also, upon the expiry of that period, the agreement continues until notice in writing is given of an intention to terminate the settlement and two months thereafter have expired. It will be observed that where no period is fixed, still by operation of statute the period is fixed for six months during which the settlement was to be binding. If the period is fixed either by contract or statute, then it amounts to the same thing, and there is no reason why the provision as to notice and extension of the period during which the settlement would subsist, should refer only to the one and not to the other. We must remember that the Industrial Disputes Act is based on principles of Industrial harmony, and its chief object

[1]1953 Lab AC 563 (Cal)
is to maintain that harmony. It is quite in keeping with this object that a provision should be made maintaining a settlement as long as possible, and until one or the other party expressly repudiates the same. That being so, it is obvious that the finding on the question of bonus is defective, since no bonus could be awarded until the 6th of November, 1952. In other words, the only period during which bonus could be awarded would be the remaining days of November, and the whole of December 1952. In the case of *Munir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur*[2], the principles were discussed upon which a claim for bonus can be founded. The Supreme Court did not finally determine what were the pre-conditions for the grant of bonus, but it said as follows :-

> "There are, however, two conditions which have to be satisfied before a demand for bonus can be justified and they are, (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied.

The principles for the grant of bonus were discussed and a formula was evolved by the Full Bench of the Labour Appellate Tribunal in, - '*Mill Owners' Association, Bombay v. Rashtreeya Mill Mazdoor Sangh Bombay*[3]', * * * and the following were prescribed as the first charges on gross profits, viz.

(1) Provision for depreciation,
(2) Reserves for rehabilitation,
(3) A return at 6 per cent. on the paid up capital.
(4) A return on the working capital at a lesser rate than the return on paid up capital.

The surplus that remained after meeting the aforesaid deductions would be available for distribution as bonus. It is, therefore, clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits". If the above test is applied to the facts of this case, how does the matter stand? In order to calculate the bonus, what has to be found out is the available surplus. It is argued here that here is no evidence at all as to what the available surplus was. It is stated on behalf of the workmen that the Company has been earning huge profits but that in the absence of the balance sheets it is not possible to say anything about the actual profits or the available surplus. The Company has of course denied that it earned huge profits, but is is true at the same time that it has not been very co-operative in the way of disclosing its balance sheets. The first question to be considered is upon whom the onus lay. The claim has been put forward by the workmen. The claim is one for bonus, and the payment of bonus is dependent on there being an available surplus. It appears to me that applying the ordinary test as to onus, it would be for the party who would fail if no evidence was called, that the onus lay. Plainly, it would be the workmen who would fail if it was not established that there was an available surplus. Therefore, it was clearly the duty of the workmen to cause evidence to be produced about the available surplus. It is true that the Company refused to disclose their balance sheets, but I fail to

[2] AIR 1955 SC 170
[3](1950) 2 Lab LJ 1247 (FB)

understand what the real difficulty was in compelling them to do so, because under the rules as framed, the Tribunal could have called for evidence (Rule 10) could order discovery of documents (Rule 18), could issue summons (Rule 11) or could appoint experts and assessors (Rule 17). In other words, it was possible for the Tribunal to compel the Company to produce its audited balance sheet and to find out or calculate the available surplus. However, the Tribunal went upon the footing of admission. It states as follows :

> "Next, I come to the actual calculation and computation of bonus for the year 1952. Here the Company has preferred not to produce its balance-sheet. Neither does it want to disclose the profits it made in the year 1952. The Company meets the demand of the workers for production of the balance-sheet by saying that it is not bound to produce it because it does not plead any financial incapacity to pay. So the position is that the Company asks the Tribunal to assume any amount of profit it has been making. The Tribunal is free to award any quantum of bonus it likes".

14. So far as the Appellate Tribunal is concerned, it has stated as follows :-

> "One important thing that has to be noticed in this case, at the outset, in connection with all the issues is that the Company's resistance to the demands of the Unions is not based on financial inability of the Company to bear the additional burden that may be involved if the demands are conceded either in whole or in part .....

The Company declined to produce its documents showing the amount of profit for the year on the ground that it did not plead inability to pay bonus. Therefore, the legal inference that if the documents are produced, the available surplus would be such as can justify the grant of the demand in full must be drawn. The Company does not object to this course. It only contends that the other comparable firms paid bonus not exceeding 1½ months' wages and that we also should not exceed it under any circumstances".

15. I have already stated above that various claims were put forward as to the quantum of bonus. The respondent No. 8 claimed four months' wages, respondent No. 7 claimed six months' wages, whereas respondent No. 6 claimed four months' wages plus 50 per cent. of the profits. What then was the admission of the Company in respect of such claims? All that I can see from the record is that the Company did not produce its audited balance-sheet. But no attempt was made to compel it to produce the same. I have also stated above that in computing the bonus it would be necessary to find out the gross profits and then make provision for depreciation, reserves for rehabilitation, return at 6 per cent. on the paid-up capital etc. In the present case, no figures exist on record. I fail to see how then the bonus can at all be calculated. The Tribunal admitted that the calculation of bonus under such circumstances would be "arbitrary" and yet it proceeded to fix the bonus on no materials at all. Similarly, the Appellate Tribunal had before it no material and yet it enhanced the amount of bonus payable. What it ultimately held was as follows :-

> "In view of the peculiar attitude adopted by the Company, we are of opinion that the full demand of the workmen should be conceded, i.e., that the bonus should be 4/12x6: 2

months' basic wages for the period of approximately four months from September to December in 1952".

16. The process of reasoning adopted seems to be as follows. The workmen have asked for bonus at a particular rate. The rate would be dependent on figures. The company has failed to furnish the figures. Therefore, the rate claimed must be allowed. This process of reasoning has ignored several facts. Firstly, it has ignored the fact that the demand of all the workers was not six months. The minimum demand was four months wages and the maximum demand was 4 months wages plus 50 per cent. of the profits. If the above reasoning is a correct one, then logically bonus should have been granted at that rate, namely, 4 months' wages plus 50 per cent. of the profit.

17. With regard to the presumption drawn against the Company for non-production of its balance-sheet, possibly the principle enunciated in Section 114, Illustration (g) of the Evidence Act was being followed. This lays down that the Court may presume that evidence, which could be but is not produced, would, if produced, be unfavorable to the person who withholds it. Here, the Company has not produced the balance-sheet, nor was any step taken to enforce its production. The issue of bonus was being tried in a judicial proceeding and the workers upon whom the onus lay gave no evidence at all. Under the circumstances, I do not see why the Company was called upon, until compelled to do so, to produce the balance-sheet. In my opinion under such circumstances no presumption could be drawn. So far as the admission is concerned, all that appears to have been stated on behalf of the Company was that there was no financial inability to pay. That does not necessarily mean that it had an available surplus or that the available surplus amounted to whatever was claimed. The Company has an American counterpart and it may be that it has large reserve funds or that in some manner finance is not wanting. The point, however, is that a claim of bonus is to be granted upon some legal basis and computed in a particular manner. It cannot be done arbitrarily and this is exactly what both the Tribunal and the Appellate Tribunal have done in this case. If this finding is supported, the result would be that in every case where bonus is demanded, the onus would be shifted upon the employer to show that he had or had not got an available surplus. This, to my mind, cannot be the law. I realise that it would be extremely difficult for workmen to establish by evidence what the available surplus is. But there are means by which the result can be achieved. A power has been granted to the Tribunal to cause production of necessary documents and papers as also books of account. In my opinion, some attempt must be made in order to find out the available surplus and it would be highly unsatisfactory to fix an amount on no data whatsoever.

18. There is however another ground upon which the calculation of the bonus must be declared to be defective. The Company gave evidence of the bonus paid in 17 Engineering Concerns in the year 1952. The list will be found in Annexure "GI" to the petition. It is found that in none of these Companies has the bonus been fixed at more than 1½ months, or at least not more than two months' basic wages. The Tribunal thinks that it is a queer method of calculation, and practically out of place in the present case. It complains that it has not been supplied with circumstances under which the Engineering Firms referred to gave those particular amounts of bonus, nor did the Tribunal know about the profit that they had made. It pointed out that the matter before the Tribunal was not what should be the customary bonus in the case of Engineering Firms, but what the actual bonus should be. The Appellate Tribunal however concedes that such comparison was

not wholly out of place, but it states that it is permissible only to check exorbitant demands and not to limit bonus payable in any concern to that given in another. With these words this contention is rejected.

19. The exact reason why this comparative chart was filed may be found in Grounds Nos. 11 and 12 of the Grounds of Appeal before the Appellate Tribunal, which runs as follows :-

> "11. For that the Learned Tribunal below misconceived the facts and evidences given by the Appellants regarding payment of bonus by other engineering concerns in the locality for the year in question and his findings were vitiated by the said misconception.
> 12. For that the Learned Tribunal below should have taken into consideration the quantum of bonus paid by other engineering concerns in the relevant year inasmuch as the said matter is very relevant, to avoid repercussions in other industries in the region".

20. This principle has been adumbrated in several decisions of the Appellate Tribunal and I am informed that the leading case in *Assam Oil Co. Labour Union, Digboi v. Assam Oil Co. Ltd., Digboi*[4]*,* It has been held there that the amount of bonus paid by a highly prosperous concern should not be violenty out of proportion to the general bonus level, to avoid repercussion and creation of problem in the vicinity. Mr. Mukherjee appearing on behalf of the respondent No. 6 does not dispute this principle. His objection is that the list contains the names of several firms who are not carrying on business of the same nature as the petitioner firm. He points out that the petitioner firm cannot be compared with the Calcutta Tramways Co. Ltd. or the Gramophone Co. Ltd. Although the 17 names have been given as names of Engineering Concerns, they are not all strictly so. For example, the Calcutta Tramways Co. Ltd. can scarcely be called an engineering firm, although it has extensive workshops. The principle adumbrated above, however, is not based on affinity in the nature of work. The idea seems to be as follows. There are firms that are modestly prosperous, whereas others may be highly prosperous to such an extent that if the bonus to be paid is to be calculated upon the available surplus the figures would be fantastically high. If such fantastically high bonus is paid by one firm or "company, it would throw the entire manufacturing world into a state of chaos because the workers in other concerns would feel highly discontented and there would be serious dislocation of industrial harmony. The names of the firms that have been furnished in Annexure G(1) to the petition are the names of very well-known firms in or around Calcutta. These firms are so well-known that it can be safely presumed that they have a large available surplus. In any event, there can be little doubt of this fact with regard to a large number of companies figuring there, e.g., The General Electric Co. of India, The Gramophone Co. Ltd. or the Philips Electrical Co. (India) Ltd. The point, therefore, that was put forward is as follows. Assuming that the petitioner Company had a large available surplus, the bonus claimed was exorbitant and, therefore, if allowed it would put the other companies out of gear, or to put it in other words, if the amount claimed is granted, it would be so far in excess of that granted in the companies in the vicinity that it would have a repercussion
on the entire industrial world and, therefore, in determining the bonus, one of the things

[4](1954) Lab AC 543, (Cal)

that should be considered is that it should not be violently out of proportion to the bonus granted by concerns in the vicinity. The Appellate Tribunal conceded this principle but thought that it was limited to exorbitant demands. The demand made in this case, or at least part of the demand is certainly exorbitant. It would be remembered that so far as respondent No. 6 is concerned it

claimed not only the bonus equivalent to four months' basic wages, but also 50 per cent. of the profit. I do not think that the bonus has been granted on this footing anywhere in India, and in fact the Tribunal below have not acceded to this exorbitant demand. The point therefore is whether in calculating the amount of bonus, the Tribunal should have taken into consideration the bonus paid to firms in the vicinity. Both the Tribunals summarily rejected this evidence. It will be observed that the list not only contains the names of other Engineering firms, but also firms carrying on the manufacture of electrical goods as also batteries. If the principle adumbrated above is correct, and it is not disputed that it is correct, there is no excuse for totally ignoring this evidence. As will appear from the facts stated above, the bonus that has ultimately been granted is six months' wages which is about six times the bonus granted in most of the firms mentioned above. If the above principle is to be followed, then I must hold that it is not irrelevant to consider the question as to whether if one month's bonus is sufficient for the workers of the General Electric Co. of India (Mfg) Ltd. or the Calcutta Tramways Co. Ltd. or the Gramophone Co. Ltd. or the Philips Electrical Co. (India) Ltd., then whether the payment of about six times that amount to the workers of a much smaller and more recently founded company would have repercussions in the industrial world in the vicinity and disturb the industrial harmony of the workers in general in such industries. This point was raised, but wrongly rejected.

21. Coming now to the question of the joint contributory fund, I do not think that the lower Tribunals were entirely unjustified in refusing to take it into account. Firstly, the fund is not a compulsory fund, but an optional one. Secondly, the company may refuse to make its contribution under certain circumstances. For example, in the case of discharge on account of misconduct, the company's contribution is not payable. So far as the bonus is concerned, the principle of payability is quite different. Because the workers contribute to the gaining of profits, therefore a part of the available surplus profit is made payable to them. Such payment would, therefore, naturally depend on profits, and if there is a profit, the liability to pay at once arises. It is, therefore, not possible to mix up the bonus with the joint contributory fund, because the latter being optional, some people would get benefit under it and others not. Bonus cannot be paid to some workmen and denied to others, as this will not lead to industrial harmony but to industrial discord. It is true that looking into the history of the dispute between the company and its workers, it does appear that the joint contributory fund came into existence as a result of the workers' claim for bonus. But this will not warrant the mixing up of the two items.

22. I now come to the determination of Issue No. 1, namely, increment in rates and grades. As I have already stated above, certain increments in rates and grades were made by the Tribunal and this is being accepted by the Appellate Tribunal, so that all I have to do is to consider whether the Tribunal came to a proper finding. With regard to this issue also, it is astonishing that none of the Unions on behalf of the workmen placed before the Tribunal the exact amount of increment in rates and grades that they claimed. The Tribunal complains that the company also did not place enough materials before it so as to enable it to ascertain the rates and grades. Under these circumstances, I fail to see how the Tribunal fixed the amount. The first item that it has decided is that all workers in the company are not unskilled workers, but since they have to work complicated machines, therefore it can be assumed that after one year they become semi-skilled. I do not see how this logically follows. Supposing that there is a complicated machine, but a workman has to do nothing relating to it excepting to work as a coolie, transporting materials from one place to another. Does he still become semi-skilled in the course of a year? However, this is a question that depends on the facts and circumstances of the case, and as I understand

there has been some sort of an inspection, I would not be inclined to disturb the finding if it rested upon this point alone. But there is one aspect of the calculation which must be condemned. Since there is no material placed before the Tribunal, it made the calculation on the basis that the workers should have living wages. Now, I take it that to calculate what would be a living wage you have got to take into account the wages that are actually received by the workmen and consider whether under the prevailing economic circumstances a man and his family could live upon it and not starve. In this view, I do not see the justification of not taking into account certain amounts which are being actually received by the workers. This is the way that the Tribunal has dealt with this aspect of the matter :-

> "The Unions have preferred the claim of 25 per cent over-all increment in the piece-rates, time-rates and monthly rates of the workers. The Company resists the claim. The Company contends that the majority of the workmen in this factory are unskilled. So they are given Rs. 30/-as basic salary, as granted by the major Engineering Tribunal. But in place of Rs. 317- as D. A. per month, the Company is granting Rs. 39/- as D. A. per month. Now, unfortunately, the matter of D. A. is not before me as covered by the issues. So I have to confine my attention to the basic salary of the workers only."

23. As will appear from Annexure 'A' to the petition, apart from basic wages there are at least seven other items of benefits enjoyed by the workmen. In calculating living wages. I do not see how one should take into account only the basic wage and entirely ignore the other items, namely, benefits actually enjoyed by the workmen. For example, in 1954 the average remuneration of hourly paid workmen shows basic wages as Rs. 53/1/11 whereas the total remuneration including all benefits is Rs. 147/7/5, the D. A. alone being Rs. 43/9/10. In my opinion, both the Tribunals below have erred in the calculation of the increments in rates and grades by ignoring all other benefits except basic wages and certainly in totally ignoring the D. A. For a proper determination of Issue No. 1 the Tribunal should first find out the different grades of workers in the Company and the amount of basic wages and benefits that workmen are getting in each grade and also the rate of payment (which would be very important in the case of hourly paid workers), and then call upon the workmen to make their specific demands, and proceed to determine whether the amount of wages received, or the rates paid, are consistent with living standards. The Tribunal was entirely in error in thinking that the matter of D. A. is beyond its scope for the purpose of determining Issue No. 1. It is quite true that it had no right to fix the D. A. that being beyond the scope of the reference. It was, however, entirely within the scope of reference to consider the D. A. or any other benefits actually received by workmen, in order to come to a determination of the question as to whether there should be any increment in rates and grades. The Tribunals neither considered what grades existed nor what was being received by the workmen in the different grades. The finding is therefore, erroneous and does not answer the issue raised nor determine that particular dispute.

24. Before concluding, I should mention one or two points which were taken but not developed. The first is that bonus was awarded at a rate higher than demanded. As I have stated above, some of the workers claimed four months' wages, others for six months and so far as the respondent No. 6 is concerned, it claimed bonus equivalent to four month's basic wages plus 50 per cent profit. The Appellate Tribunal ultimately granted six months' basic wages. It is argued that the Tribunal had no power to grant bonus at a rate greater than that demanded by the workers

themselves. So far as the present application is concerned, the point has become academic, because the respondent No. 6 claimed not merely four months' wages as bonus but together with 50 per cent of the profits, and it is not denied that this will amount to more than six months' basic wages. The other parties having settled the application, the point does not arise.

25. The next point that was taken is that the Constitution, in Articles 43 and 47, provides that the State shall make laws for granting living wages to the workers, but it has also laid down that no Court shall give effect to such directive principles, it being the duty of the Legislature to do so. It is argued that the whole attempt of ensuring living wages to workers is illegal as being an enforcement by the Courts of a directive principle which is beyond their powers. In my opinion, this point is of no substance. What the Industrial Tribunals are supposed to do is to ensure "Industrial Harmony". They do not order living wages to be paid because the Constitution directs it, but because it must be done to avoid industrial discord. Therefore, the Tribunals are not attempting to give effect to the directive principles but doing something in order to ensure industrial harmony, which is the object of the statutes dealing with Industrial disputes.

26. For the reasons aforesaid, the findings of the Tribunals below on the two issues abovenamed cannot be supported and are erroneous on the face of it. The findings must be quashed and/or set aside and there will be a writ of certiorari issued for that purpose, and a writ in the nature of mandamus is granted directing the respondents not to give effect to the same. This however will not affect the finding and award on other issues.

27. No order as to costs.

Writs issued.