Britannia Biscuit Company Ltd. Vs. Its Workmen

LegalCrystal Citation : legalcrystal.com/347839

Court : Mumbai

Decided On : Jul-04-1958

Reported in : (1958)IILLJ371Bom

Judge : M.R. Meher, J.

Acts : Industrial Law; Civil Law

Appeal No. : Reference (I.T.) No. 57 of 1958

Appellant : Britannia Biscuit Company Ltd.

Respondent : its Workmen

Judgement :

Acts/Rules/Orders:

Industrial Law; Civil Law

AWARD

1. This is a reference by the Government of Bombay for adjudication of a dispute between the Britannia Biscuit Company, Ltd., Bombay, and the workmen (excluding clerical staff) employed under it over the following demands :-

'Demand No. 1. - An additional pro rata bonus equivalent to two months earnings for the financial year ending 1955 should be paid to all employees who have worked during the same financial year without any conditions attached to it.

'Demand No. 2. - A pro rata bonus equivalent to four months' earnings inclusive to the allowances for the year ending March 1956 should be paid to all employees who have worked during the said year without any conditions attached to it.'

2. In the statement of claim filed on behalf of the workmen by the General Kamgar Union (Red Flag) it has stated that the company was started in January 1925 with head office and factory at Calcutta. At that time it was a limb of a British concern, Peak Freerst, Ltd. The Bombay factory was put up in 1938 and is the largest of its kind in Bombay and was further expanded with modern automatic machines in 1953. The auto plant was installed at a cost of Rs. 7 1/2 lakhs. The Company has another factory at Delhi. The Calcutta factory was also expanded with the installation of two auto plants, and the head office was remodeled at a cost of Rs. 30 lakhs in 1953. The Company is the premier concern in the biscuit manufacturing industry in India and has been enjoying prosperity. The Bombay factory employs about 250 daily rated

workmen and 40 monthly-rated workmen (excluding clerical staff), while the Calcutta factory employs about 600 workmen. The company has, on a capital of Rs. 46 lakhs, built up reserves to the tune of Rs. 32 lakhs. The sales have been going up every year and the company has been paying handsome dividends to the shareholders. As a result of the policy of Government to protect indigenous products from competition by imported goods, there are good prospects for the industry. The workers' wages have been stagnated to a certain level of wages fixed 10 to 12 years ago. The minimum wage is Rs. 1-4-0 per day and so the gap between the actual wage and the living wage is large.

3. The Company has paid bonus equivalent to two months' basic wages to the workmen for the year ending 31st March 1955 and the year ending 31 March 1956. The union has stated that on 8 December 1955 it wrote to the management of the Company demanding additional bonus equal to two months' wages for the year ending 31 March 1955 and by another letter dated 24 December 1956 it asked for a further bonus of two months' wages for the year ending 31 March 1956. The Management offered an additional bonus for each year on condition of a long-term agreement for future years with certain conditions. One of the conditions being not acceptable to the union the negotiations broke down.

4. The Company has in its written statement stated that in spite of its fluctuating profits it has paid to its workmen bonus equivalent to one-sixth of their earnings for several years except from the year 1952-53 when bonus equivalent to one-twelfth of the total Basic earnings was given. The company is struggling hard to obtain a foothold in the export market. It has to encounter serious competitions with other manufacturers. The wages and dearness allowances of the workmen were revised as recently as 8 March 1956 by the award of the Late Shri. S. H. Naik, in reference (I.T.) No. 4 of 1955 1956 I.C.R. 883. The Company has been paying dearness allowance at the rate of the revised textile scale, which is not the case with the other biscuit companies. It has also been providing free medical aid to the workmen, and has both provident fund and gratuity schemes. The company has further stated that according to the Full Bench Formula of the Labour Appellate Tribunal there is a deficit of Rs. 10 lakhs for the year 1954-55 and Rs. 7 lakhs for the year 1955-56 The workmen have been receiving not only a fair but a very generous deal because according to the formula of the Labour Appellate Tribunal the workmen would not have been entitled to receive the bonus which they have been given in the past years. The Company has denied that the gap between the actual wage of the workmen and the living wage is large. Only a small percentage, not exceeding 30 per cent of the total number of workmen, are in the unskilled category and they are on scales of Rs. 1-4-0 per day going up to Rs. 1-12-0 per day. Only permanent workmen get the minimum of Rs. 1-4-0 per day. The company has submitted that there is no justification for paying any more bonus than the bonus already paid.

5. The company has filed calculation according to the bonus formula at Ex. C. 14 and Ex. C. 15. They show that the gross profit for the two years after allowing for depreciation provided and for before deducting the bonus paid was Rs. 15.99 lakhs and Rs. 17.86 lakhs respectively. This is after providing Rupees 5.32 lakhs and Rs. 5.09 lakhs as depreciation. The capital of the company is Rs. 46.12 lakhs and reserves on 31 March 1956 were Rs. 32.91 lakhs. The company has claimed rehabilitation charges of Rs. 11.81 lakhs and Rs. 10.24 lakhs for the two years respectively. And this reduces the surplus to a big deficit so that, if this calculation is correct, there is no scope for bonus at all, not even the bonus already paid, and I am asked to accept the

submission that the company has been generous enough, in spite of a deficit to pay voluntarily bonus equal to two months' basic wages for each of the two years to the Bombay employees. It might be mentioned that the company has paid bonus equal to three months' basic wages to its Calcutta employees for the year 1954-55. The union's calculations are at Ex. U. 1 and they show that the company could easily pay for each of the two years an additional bonus of two month's wages over the bonus already paid and there would still be a fair surplus left for the company. The union in its calculations has made no provision for rehabilitation; it has submitted that, taking all the available reserves and excess of liquid assets over liquid liabilities and reserves, there are more than sufficient funds to meet rehabilitation charges. The company has relied on the bonus award of the Additional Industrial Tribunal, Delhi, in respect of this company for the years 1953-54 and 1954-55 (the second year is common to this reference). The award is reported in Delhi Gazette, dated 19 December 1957. In it the learned adjudicator has allowed the actual depreciation provided in the accounts and rehabilitation amount for both the years at the rate of Rs. 4.56 lakhs, in addition to the depreciation. The result is a deficit. No calculations as to how the amount of rehabilitation is arrived at are given, but it is stated :

'The management placed on record a statement called rehabilitation cost statement (M. 37) on record. It has gives all the necessary figures. The replacement cost has been calculated with 2.7 as the multiplied and the original cost. The total amount required for rehabilitation has been spread over a period of fifteen years. This statement is verified by a chartered accountant. I am of the opinion, that this statement should be taken as sufficient evidence to justify the inclusion of this sum under this head for both the years.'

The company has claimed a much higher rehabilitation charge in this proceeding than was claimed before the Delhi tribunal. It has been urged on behalf of the company that even if the whole amount claimed in the proceeding is not allowed but only the rehabilitation allowed in Delhi case is allowed there would still be a deficit.

6. In the case of the Indian Oxygen and Acetylene Company, Ltd., Bombay v. Workmen employed under it 1957 I.C.R. 466 I had decided that it is open to a tribunal to reduce the allocation for rehabilitation, replacement and modernization, if the estimated costs far exceed the amount that can be reasonably provided from the profits, that in such cases it would ordinarily be appropriate to deduct as a prior charge for rehabilitation what the company has itself provided for depreciation plus any amount out of the profits earmarked by it as a rehabilitation reserve. A similar view has been taken by the Industrial tribunal Shri S. H. Naik in the case of the Associated Cement Companies Ltd. 1957 I.C.R. 586. The learned Advocate-General has urged that in the Indian Oxygen case some points which should have been urged do not appear to have been urged, and he has argued that that case was therefore not correctly decided and should not be followed in this case, that the Full Bench Formula, of the Labour Appellate Tribunal has been followed in its entirety by tribunals in a number of decisions, that Courts should follow decisions of Courts of co-ordinate jurisdiction, and a fortiori this tribunal should therefore follow the decisions of the Labour Appellate Tribunal; he has further urged that the Supreme Court has in the Muir Mills case approved in effect, the Full Bench Formula of the Labour Appellate Tribunal and only the Supreme Court can modify the formula. Some of these points have already been dealt with by me in Para. 10 of the Indian Oxygen Case. To what I have stated there in I may add that in the Full Bench case the surplus was sufficient to meet the requirements of rehabilitation, the prior charges and a reasonable bonus

to the Employees. The Full Bench of the Industrial Court, in the decision which went up to the Full Bench of the Labour Appellate Tribunal, did not take the view that all the estimated costs of rehabilitation, replacement and modernization must come out always by equal annual allocations from the profits. On the other hand the Full Bench observed :

'We would also make it clear that we should not be understood as having inextricably tied ourselves down to allocate 4.15 crores every year; we might reduce the allocation to a suitably lower figure if in any year the amount of gross profits appears so low as not to admit of a reasonable surplus for bonus as well as dividend.' [Paragraph 10 of the decision reported in 1950 I.C.R. 1164.]

The Labour Appellate Tribunal in appeal did not deal with this point, perhaps because it was called upon to decide that point in that year's bonus case, but if the decision is interpreted as laying down an inflexible rule that the entire costs of rehabilitation, replacement and modernization must always be a first charge on the profits, then, with respect, that proposition cannot be accepted as correct for reasons which have been fully given in the Indian Oxygen case. The Advocate-General conceded in his arguments that industrial law is not static, and stated that the view taken on the subject of rehabilitation in the Indian Oxygen, case may be correct, but still I should provide for the full requirements of rehabilitations, replacement and modernization out of the profits, leaving it to the aggrieved party, if so advised, to approach the Supreme Court for special leave to appeal, as only the Supreme Court can modify the formula. I cannot accept this submission. When I find that the profits are more than sufficient to enable the company to pay a bonus of at least three month's wages. I would not be justified in rejecting the claim and leaving it to the workmen to incur the expense of making an application to the Supreme Court for special leave to appeal to redress their grievances. With regard to the 'doctrine of precedent' or stare decisis on which great reliance has been placed, I might refer to the following observations in Salmond's Jurisprudence at p. 184, 10th Edn. :

'Whenever a decision is departed from, the certainty of the law is sacrificed to its rational development, and the evils of the uncertainty thus produced may far outweigh the very trifling benefit to be derived from the correction of the erroneous doctrine. The precedent, while it stood unreversed, may have been counted on in numerous cases as definitely establishing the law. Valuable property may have been dealt with in reliance on it; important contracts may have been made on the strength of it; it may have become a great extent a basis of expectations and the ground of mutual dealings. Justice may therefore imperatively requires that the decisions though founded in error, shall stand inviolate none the less.'

But these considerations cannot apply to the same extent in industrial matters. Because in some cases workmen have got less bonus than what they should have by reason of a rigid application of the formula with regard to rehabilitation, and an excessive allocation for rehabilitation, it is no good reason for doing the same thing in other cases. It is observed in Salmond's Jurisprudence at p. 196 that in recent years the 'doctrine of precedent' has been debated. If that is the position in civil law, it would not be right in industrial matters to walk always in the shadow of the past; industrial tribunals which should keep in view social justice must bow to the lessons of experience, realizing that the process of trial and error useful in physical sciences cannot be cast aside in industrial matters. Industrial law is not static but progressive and a blind adherence to precedent would, to use the words of A. L. Goodhart, 'make

us slaves to the past and despots for the future.'

7. I now turn to the argument of the Advocate-General that having regard to the decision of the Supreme Court in the Muir Mills case the tribunal has no option but to allow the entire costs of rehabilitation from the profits. Reliance is placed on the fact that the Supreme Court has quoted the observation of the Labour Appellate Tribunal in one of its cases which is as under :

'And what is social justice Social justice is not the fancy of any individual adjudicator; if it were so, then ideas of social justice may vary from adjudicator to adjudicator over all parts of India. In our Full Bench decision 1950 L.L.J. 1247, we carefully considered the question of social justice in relation to bonus, and there we equated the rights and liabilities of employers and workmen with a view to achieving a just formula for the computation of bonus. That Full Bench decision stands, and this Tribunal and all other tribunals are bound by it.'

Their lordships of the Supreme Court went on to say :

'Without committing ourselves to the acceptance of the above formula in the entirety we may point out that the Labour Appellate Tribunal did not apply its own formula to the facts of the present case. It is also significant to know that even while importing considerations of social justice the Labour Appellate Tribunal was oblivious of the fact that it was by their own acts of indiscipline and strike that the workers of the appellant company themselves contributed to the trading losses incurred by the appellant and it hardly lay in their mouth then to contend that they were none the less entitled to a payment of bonus commensurate with the dividend paid to the shareholders out of the undistributed profits of the previous years.'

The Supreme Court did not therefore commit itself to the acceptance of the formula in its entirety and the quotation from the Labour Appellate Tribunal's decision that the Tribunal and other tribunals were bound by the formula was not intended to signify approval by the Supreme Court of that view but to show that in that case the Labour Appellate Tribunal did not apply its own formula and imported considerations of social justice which were irrelevant and untenable. It might also be mentioned that on a number of matters Benches of the Labour Appellate Tribunal took different views, and one Bench of the Labour Appellate Tribunal did not consider itself absolutely bound by a decision of another Bench. For instance, in the Full Bench decision a return of 2 per cent was allowed on reserves used as working capital, but smaller Benches of the Labour Appellate Tribunal allowed, in other cases, a return of 4 per cent. In the Full Bench decision and in other decision a return of 6 per cent was allowed on the entire capital including bonus shares but in the subsequent decision (?) of the Labour Appellate Tribunal in the case of Ganesh Flour Mills 1952 I L.L.J 524 a return of 4 per cent was held to be sufficient in view of the large part of the capital having been made up of bonus shares.

8. The Labour Appellate Tribunal has in some cases observed that since its Full Bench decision concerns had become rehabilitation-conscious and claims for rehabilitation were expanding. [See for instance the observations in the Alcock Ashdown & Co. v. Their workmen 1952 I L.L.J. 819 and Metal Box Company of India, Ltd. v. Their workmen 1952 I L.L.J. 830 . In the present case the tall claim for rehabilitation of Rs. 11.81 lakhs for 1954-55 and Rs. 10.24 lakhs for 1955-56, which the company expects to come out of the profits of these two years, has no basis in realities, and the only

practical purpose served by such claims is to deprive the workmen of bonus. The claim would wipe off the surplus even if the profits are higher than what they are. As stated above the claim made is much higher than was made before the Delhi tribunal in the bonus case for the same year (1954-55). In my opinion, the company should not be allowed more than Rs. 5.32 lakhs and Rs. 5.09 lakhs for the two years respectively, for rehabilitation, which is the actual provision made in the accounts towards depreciation. It is higher than the figures of normal and multiple-shift depreciation given by the company, viz, Rs. 5.10 lakhs and Rs. 4.88 lakhs respectively, and represents what the company has itself considered as a fair allocation from out of the profits for rehabilitation. Therefore, the provision for rehabilitation in addition to the normal and multiple-shift depreciation would be Rs. 0.22 lakh and Rs. 0.21 lakh respectively.

9. I, however, give my findings on the basis that the entire costs of rehabilitation must be provided for as a prior charge from the profits, so that if this case is taken up further, and a higher Court were to take the view that the entire costs of rehabilitation, replacement and modernization must be deducted as a prior charge from out of the profits it would not be necessary to remand the case. On this view also in this particular case the claim in respect of rehabilitation is extravagant and no more amount should be allowed than the actual provision for depreciation made in the accounts. The company has in statement II attached to its written statement given its calculations on the basis of the life of the buildings, machinery, furniture, fittings, vehicles, etc., and the costs of replacement. The calculations given by the company in respect of replacement of plant, machinery, furniture, fittings, motor vehicles, etc., are reproduced at appendix A to this award. In statement III further calculations for the year 1955-56 are given which are reproduced at appendix B to this award. For the preceding year calculations are made on a similar basis and the claim is for Rs. 11,81,581. The sum of Rs. 15,18,916 is claimed in respect of machinery bought before 1939 and Rs. 13,24,283 for the year ending 31 March 1956 also in respect of machinery bought before 1939. But the entire expenditure for rehabilitation, replacement and modernization according to the Full Bench formula, need not come out of one year's profits and has to be spread over. The company has also not deducted from the estimated costs of rehabilitation the reserves available for rehabilitation on the ground that all the reserves are utilized in the business of the company. This is also not correct. Until machinery is available a company is not expected to keep its reserves idle. The prudent and businesslike course is to use the amount in the business. But it does not follow, therefore, that the reserves should not be taken into consideration as available for rehabilitation. On behalf of the company it has been argued that in the Full Bench case only the liquid assets have been deducted. In that decision it is stated that the industrial court had found that Rs. 30.46 crores were available as liquid assets and this sum was deducted from the estimated costs of rehabilitation. But the liquid assets as found by the industrial court did not comprise only cash and investments but reserves. This point is fully discussed in Para. 9 of the decision of the Full Bench of the Industrial Court in the case of the Rashtriya Girni Kamgar Singh v. Khandesh Spinning and Weaving Company, Ltd. [Bombay Government Gazette, Part I-L., dated 26 September 1957, p. 4199]. In this view reserves other than those earmarked for special purposes and having priority over rehabilitation, e.g., gratuity reserve, should be considered as available for rehabilitation purposes. The reserves available for rehabilitation for the year 1955-56 would be Rs. 21,91,091 (Rs. 32,91,091 minus taxation reserve Rs. 10 lakhs and provident fund reserve Rs. 1 lakh). It might be mentioned that in the bonus case of this company for the year 1952-53 1956 I.C.R. 883 the learned tribunal Sri S. H. Naik

had observed that reserves amounting to 22 lakhs were available for the purposes of rehabilitation and it does not seem to have been urged in that case that the reserves were not available for the purposes of rehabilitation.

10. The company has taken the replacement value of machinery to be Rs. 55 lakhs. The bulk of the machinery was purchased in the period 1951-54. Sri Soundy, the factory manager of the company, has given evidence about his estimates of the life of the machinery. He has stated that plant bought before 1938 is still not replaced on account of import restrictions, that machinery, that machinery installed in the period 1939-45 is entirely due for replacement but, machinery is not available. He has further admitted that the output of new machinery replacing old machinery would be more and would also be labour-saving. In the award of Sri S. H. Naik in the bonus dispute for the year 1953-54 (cited above) the spreadover was fifteen years. Taking a shorter period of twelve years the annual cost would come to Rs. 55/12 = 4.6 lakhs approximately. So far as buildings are concerned, the bulk of the buildings were built in the period 1951-54. The company's estimated life of 16 years for such buildings is too short and is not supported by any evidence. If the average life of all its buildings is taken to be 30 years as was done by Sri S. Naik in the award referred to above, the annual replacement cost would come to Rs. 67/30 lakhs, i.e., 2.23 lakhs. The total requirement of rehabilitation would be Rs. 6.83 lakhs. The provision for depreciation for the year 1955-56 is Rs. 5.09 lakhs. The reserves available are Rs. 21.91 lakhs. If the amount is spread over a period of twelve years the annual spread-out of reserve would be Rs. 1.82 lakhs approximately. Deducting this from Rs. 6.83 lakhs the annual allocation for rehabilitation would be Rs. 5.01 lakhs which is less than the depreciation provided in the accounts for the year, but more than the normal and multiple-shift depreciation. The company is, therefore, entitled to no further allocation for rehabilitation in addition to the depreciation provided for in the account. In the bonus case for 1952-53 Sri S. H. Naik had recorded a similar finding, viz., that the company was entitled to any allocation for rehabilitation in addition to the depreciation of Rs. 5,04 lakhs.

11. In the calculations both of the company and of the union return on preference shares is taken at the actual rate at which the dividend on them is payable, viz., 8 per cent. With regard to the ordinary paid-up capital the company had at the outset asked for 6 per cent return for both the years but in the course of the hearing it was conceded on behalf of the company that the portion of the capital representing bonus shares issued during the year 1954-55 should be allowed a return of 4 per cent for 1954-55, but it was urged that for the year 1955-56 the return should be at the rate of 6 per cent on the whole of the paid-up capital. The union has made its calculations at the rate of 4 per cent on the amount representing bonus shares issued in 1954-55 for both the years. It has pointed out that three-quarters of the entire capital of the company is comprised by bonus shares. But it has been well established that when bonus shares are issued than become part of the capital and a deduction should not be made in the return in respect of that portion of the capital which represents bonus shares. It has also to be borne in mind that a company cannot capitalise its reserves at its will. It has to take the consent of the Controller of Capital Issues who sees that the balance of the reserves would still be adequate after the proposed capitalisation. I accept the submission of the company on this point and have in the calculation below allowed return at 6 per cent on the whole of the paid-up capital for the year 1955-56.

12. With regard to the return on reserves used as working capital Sri. Sule has argued that no return should be allowed as a considerable portion of the capital has

been sunk in the block and the balance sheet does not make it clear what portion of the reserves has been used as working capital. However at Ex. U. 1 the union has in its calculations allowed a return of 4 percent on reserves to the extent of Rs. 23.41 lakhs. It cannot be predicated from the balance sheet what portion of the reserves has been sunk in the block and what portion has been utilized as working capital. The reason why return on reserves employed as working capital is given at a lower rate is given in the Full Bench decision of the Labour Appellate Tribunal as follows :-

'The paid up capital, however, runs a double risk. viz., (1) normal trade risks and (2) risks incidental to trade cycles, where as the case of the reserves employed as working capital which is more liquid than fixed capital which is more liquid than fixed capital the incidence of risk to which it is subject is rather small. So the fair return on reserves employed as working capital must necessarily be much lower than the fair return on paid up capital. This has been recognized by the Tariff Board in its Report on the Cotton Yarn and Cloth Prices in Bombay (1948).'

If a portion of the reserves has been sunk in the block it would be an argument, if at all, to give it a higher return than other reserves used as working capital as it has been irretrievably sunk in the block and the amount of reserves sunk in the block cannot be considered as 'more liquid than fixed capital.' I am therefore unable to accept the contention of Sri Sule on this point and I would allow return at the rate of 4 per cent on the whole of the reserves utilized in the business of the company. The company has filed a certificate of its auditors Lovelock and Lewes to the effect the funds of the company (including the reserves) were entirely utilized and employed in the business of the company and the balance sheet also shows this :

13. In the calculations filed by the company tax is deducted on the whole of the profits, while the union has in its calculations deducted from the profits the bonus claimed and then deducted the tax. The company has contended that the surplus must first be ascertained after providing for the prior charges and then divided between the workers and the shareholders of the company and bonus cannot be first taken into account. Reliance has been placed on the decision of the Labour Appellate Tribunal in respect of bonus for the year 1953-54, in which the tribunal observed :

'It is however more appropriate and in fact envisaged by our Full Bench decision, that the available surplus should be first determined, and that the possible reduction in income tax should be one item for consideration in ascertaining what portion of the available surplus should go to the workmen.'

But in the Full Bench decision of the Labour Appellate Tribunal referred to by the Bench which made there observations the sum of Rs. 2.40 crores deducted as tax was arrived at after allowing the tax on the bonus awarded. In Para. 31 of the Full Bench decision it is stated :

'The amount of taxes to be deducted from the balance 8.08 crores would depend upon what bonus would be awarded.'

And it is also clearly seen from the decision of the Industrial Court which was the one under appeal to the Full Bench 1950 I.C.R. 1164 that the sum of Rs. 2.40 crores was calculated as the tax on the balance of profits after deducting the bonus awarded. Subsequent decisions of benches of the Labour Appellate Tribunal after the Full Bench decision have not been uniform on this point. In some reported cases decided

by the Labour Appellate Tribunal bonus has been deducted before the incometax. See the case of Pierce Leslie & Co., Ltd. v. Its workmen 1956 I L.L.J 458 where the bonus of two months is first deducted. In the case of the Textile Labour Association, Ahmedabad v. Ahmedabad Millowners' Association [F.J.R. 334], the Labour Appellate Tribunal first deducted the bonus when the tax and held that a bonus of two month's wages was justified. It is seen from the calculations given in that case that if the incometax on the entire net profits is deducted, then it would appear that more than the entire surplus is given as bonus, though the saving in incometax would convert the deficit into a small surplus left for the company. So also in the case of the Metal Box Company of India, Ltd. v. Their workmen 1952 I L.L.J 830 which is a case decided by two of the Judges who gave the Full Bench decision, bonus is deducted first. See also the case of the Minakshi Mills, Madurai, and Manapparai v. Their workmen 1953 II L.L.J 520 where bonus is deducted first. It makes no difference whether the bonus is deducted first or after the other items as long as tax is calculated after allowing for bonus, which is allowed as business expenditure for purposes of incometax. Where bonus is deducted tax, it does not mean that it is allowed as a prior charge. It might be stated that often there is great disproportion between the monthly wage bill and the paid up and working capital, and the proportion would vary with different concerns; to deduct the incometax on the entire net profits (which is now over 8 annas in the rupee in case of companies) and then deduct the prior charges and then allocate the surplus in some definite arithmetical proportion between capital and labour does not appear appropriate and gives a less bright picture of the available surplus than the facts warrant. If the bonus is deducted and thereafter tax, the calculations would show on the face of them what is the amount given to labour and what is the residuary amount left for the company. Incometax is not business expenditure; it is the State's share of the profits. This view is supported by an English case Allen v. Farquaharson 1932 17 Tax Cas. 59 where Finally J., observed :

'Incometax is not a deduction before you arrive at the profits; it is a part of the profits. It is, as has been expressed by some well-known persons - I cannot remember who, but it does not matter - the Crown's share of the profits ... What you have got to so is to arrive at a correct computation of the profits, and then those profits are, or very often are, anyhow, shared out.'

Therefore more than what the State would actually get on the profits should not be deducted. For all these reasons I am of opinion that income tax should be calculated after allowing for bonus as was dome in the Full Bench case of the Labour Appellate Tribunal.

14. The company has stated that it has already paid bonus equal to two months' already paid bonus equal to two months' basic salary or wages to all employees including officers. In the calculations made by me below I have not considered it necessary to allow as a prior charge any more bonus to officers [see para. 8 of my award in the case of Forbes Forbes Campbell & Co. (Bombay Government Gazette, Part I-L, dated 22 May 1958, p. 2621), where the point is fully discussed].

15. In the result the calculations made by me are as under :

1954-55 1955-56 (Rupees in Lakhs) Profit as per profit and loss account 8.44 8.14 Add depreciation 5.32 5.09 Add bonus already paid 1.74 1.83 Add tax charged 2.20 4.52 ----- ----- 17.70 19.58 Less normal and double shift depreciation as calculated by the company 5.10 4.88 ----- ----- 12.60 14.70 Less two month's basic salary/wages paid

to all employees 1.74 1.88 ----- ----- 10.86 12.87 Less additional bonus of a month's basic wages to all workmen except officers 0.77 0.81 ------ ----- 10.09 12.06 Less tax at 7 annas in the rupee 4.41 5.28 ------ ----- 5.68 6.78 Add back income tax not payable on initial and statutory depreciation (as calculated by the company) 2.06 1.89 ----- ----- 7.74 8.67 Less 8 per cent return on preference shares 0.01 0.01 ----- ---- 7.73 8.66 Less 6 per cent return on ordinary shares 1.86 2.78 ----- ---- 5.87 5.88 Less 4 per cent return on reserves employed as working capital (Note : For the year 1954-55 the sum of Rs. 15,32,340 capitalized during the year is included in this figure, see Para. 12 of the award) 1.55 1.18 ------ ----- 4.32 4.70 Less provision for rehabilitation in addition to the depreciation 0.22 0.21 ----- ---- Surplus 4.10 4.49

It will be seen from the calculations that the company can afford to pay three month's basic wages as bonus to the workmen concerned in this reference, and that this will still leave a very adequate amount for the company after allowing for the prior charges.

16. I direct that the company shall pay to the workmen concerned in this reference bonus at the rate of one-fourth of the annual basic earnings (excluding dearness and other allowances and overtime) for each of the years 1954-55 and 1955-56 (less the bonus already paid) within a period of six weeks from the date this award becomes enforceable subject to the following conditions :

(a) Any employee who has been dismissed for misconduct resulting in financial loss to the company shall not be entitled to bonus to the extent of the loss caused.

(b) Persons who are eligible for bonus but who are no longer in the service of the company on the date of payment shall be paid the same provided that they make a written application for the same within three months of the publication of this award. Such bonus shall be paid within one month of receipt of application provided that no claim can be enforced before two months from the date this award becomes enforceable.