1958

May 22.

THE STATE OF MYSORE

v.

THE WORKERS OF GOLD MINES

(GAJENDRAGADKAR, A. K. SARKAR, SUBBA RAO and VIVIAN BOSE JJ.)

Industrial Dispute—Gold mining industry—Claim of bonus by employees—Available surplus, Calculation of—Applicability of Full Bench Formula—Duty of Industrial Tribunal.

This was an appeal against an award of bonus to the workmen of the Mysore gold mining industries, then under company management. A covenant in the lease executed in favour of the companies permitted them to create a reserve fund to meet depreciation and development expenditure by contributing 15% of the revenue expenditure to it and deduct the same in calculating the net surplus. The covenant imposed no obligation on the lessees to create such a fund and was obviously intended to provide a basis for the lessor's claim to royalties. It was contended on behalf of the employer companies that the formula for determination of available surplus as evolved by the Full Bench of the Labour Appellate Tribunal in *Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay,* (1950) L.L.J. 1247, was inapplicable to gold mining industries which had special and distinguishing features of their own and that the employers were entitled under the said covenant to deduct 15% of the revenue expenditure as a prior charge in calculating the available surplus. It was their case that, thus calculated, there was no available surplus out of which bonus could be awarded. The Tribunal was not impressed by this argument, disallowed the claim made on the basis of the covenant, applied the formula, upheld the claim for depreciation but as there was no evidence to show that any sums had actually been spent for rehabilitation for the years in question, refused to make any allowance on that head. It was further urged in appeal that since the companies were misled by previous awards passed in their favour in not preferring any specific claim for rehabilitation, apart from the general claim under the covenant, they should, in case their general claim was disallowed, be permitted to do so :

Held, that the formula evolved by the Labour Appellate Tribunal and generally approved by this Court and the categories of prior charges prescribed by it were comprehensive enough to cover each individual case and there was no reason why it should not apply to the gold mining industries as well.

Mill Owners Association, Bombay v. *The Rashtriya Mill Mazdoor Sangh, Bombay,* (1950) L.L.J. 1247, discussed.

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Muir Mills Co. Ltd., Kanpur v. *Suti Mills Mazdoor Union, Kanpur,* [1955] 1 S.C.R. 991, referred to.

The covenant in the lease, apart from the question whether it could bind the workmen, imposed no obligation on the employees and could not preclude an investigation by the Tribunal as to the merits of each particular claim of expenditure in order to ascertain the existence of any available surplus, and the Tribunal was right in disallowing the claim made solely on the basis of the covenant which could otherwise have been made under the formula itself.

Held, further, that the concept of social and economic justice on which the claim of bonus is founded apply equally to gold mining industries as to any others and the formula, which had for its purpose the ascertainment of the available surplus to make an award possible, owed its origin to the same principles of social and economic justice enshrined in the Directive Principles of State Policy enunciated by Arts. 38 and 43 of the Constitution.

It is for the Industrial Tribunal to determine in each particular case, on the evidence adduced by the employers and having regard to the special requirements of the industry, which items of expenditure should be admitted under each of the four categories prescribed by the formula and in doing so they should apply the principles laid down and discussed in decided cases in a flexible manner suited to the requirements of each case.

Ganesh Flour Mills Co. Ltd., Kanpur v. *Ganesh Flour Mills Staff Union,* (1952) L.A.C. 172, *Trichinopoly Mills Ltd., Ramjeenagar* v. *National Cotton Mills Workers' Union, Ramjeenagar,* (1953) L.A.C. 672, *The Meenakshi Mills Ltd., Madurai and Manapparai* v. *Their Workmen,* (1954) L.A.C. 131, *The Rohtas Sugar Ltd.* v. *Their Workmen,* (1954) L.A.C. 168 and *The Mettur Industries Ltd., Mettur Dam* v. *The Workers,* (1957) L.A.C. 288, referred to.

As in the present case, the employers were misled by the previous awards, it was only proper that they should be allowed an opportunity to prove their claim for rehabilitation apart from the general claim under the covenant.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 648 of 1957.

Appeal by special leave from the judgment and order dated November 24, 1956, of the Central Govt. Industrial Tribunal, Madras, in Industrial Dispute No. 1 of 1956.

H. N. Sanyal, Additional Solicitor-General of India,

R. Ganapathy Iyer, T. Rangaswami Iyengar and *T. M. Sen*, for the appellant.

Janardan Sharma, for respondents Nos. 1, 2 and 6.

L. K. Jha, B. R. L. Iyengar and *C. V. Ramachar*, for respondents Nos. 3 and 5.

1958. May 22. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This is an appeal with special leave by the State of Mysore against the award passed by the Central Government Industrial Tribunal, Madras, on November 24, 1956, in Industrial Dispute No. 1 of 1956 between the employers in relation to the Gold Mines of the Kolar Gold Fields, Mysore, and their workmen. The employers were the Champion Reef Gold Mines of India (KGF) Ltd., Mysore State, the Mysore Gold Mining Company (KGF) Ltd., Mysore State and the Nundydroog Mines (KGF) Ltd., and their allied establishments the Central Administration, the Kolar Gold Fields Electricity Department, the Kolar Gold Field Hospital and the Kolar Gold Field Watch and Ward establishment. The dispute between these employers and their workmen arose from the claim made by the workmen for bonus for the calendar years 1953 and 1954. The Unions representing the workmen alleged that the employers had sufficient available surplus in their hands from which they could and should be awarded bonus for the two years in question. The Union representing the workmen in Mysore Gold Mining Co. Ltd., demanded four months wages and five months wages as bonus for the years 1953 and 1954 respectively. The Union on behalf of the Nundydroog Mines demanded four months total wages as bonus for 1953 and 1954 whereas the workmen in Champion Reef Gold Mines demanded four months wages as bonus for the said two years. The management opposed these demands on the ground that there was no available surplus for both the years in all the mines and so no bonus can be awarded. In substance the tribunal has rejected the case made out by the

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management and has passed an award in favour of the workmen. Taking into consideration all relevant factors the tribunal has awarded as bonus wages at the rate of 1½ months in 1953 and three months in 1954 to the workers of Champion Reef Mines Ltd; 2½ months in 1953 and 3½ months in 1954 to the workers of the Nundydroog Mines Ltd; and one month's in 1953 and three months in 1954 to the workers of the Mysore Gold Mines Co. Ltd. In regard to the workmen employed in the allied establishments, the tribunal has awarded as bonus one month's wages in the year 1953 and two months basic wages in the year 1954.

It was urged before the tribunal by the management that it would be inappropriate to apply the Full Bench formula evolved by the Labour Appellate Tribunal in the *Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay* (1) without suitable modifications to the case of the mines. The argument was that, unlike the textile industry, gold mining is a wasting industry, and the adjustment of the rival claims of the employer and the employee, even on the basis of social justice, cannot be properly made by the rigid application of the said formula. In the case of gold mines it is of considerable importance that the industry should invest a large amount in search of new ore and higher expenditure has to be incurred even for renewal and replacement of machinery. The tribunal accepted the argument that the special requirements of the gold mining industry would have to be considered in dealing with the workmen's claim for bonus, but nevertheless it was inclined to take the view that the principles laid down by the Labour Appellate Tribunal in arriving at the Full Bench formula should be adhered to.

The next argument which was raised before the tribunal was based on sub-para. (5) in the lease deed executed in favour of the management on February 20, 1949. The case for the management was that the management was entitled to deduct 15% of the revenue expenditure as a prior charge in calculating

(1) (1950) L.L.J. 1247.

the available surplus. It was urged that the relevant clause in the lease deed required the management to create a reserve fund to meet depreciation and development expenditure of a capital nature and to provide for the search of new ore and it was urged that the amount debited by the management in pursuance of this clause should be treated as a prior charge. The tribunal was not impressed by this argument. It held that a separate fund for finding out new ore and keeping the longevity of the industry was absolutely necessary but it was not satisfied that the covenant in the lease on which reliance was placed by the management could bind the workmen and that the amount in question could be treated as a prior charge. The tribunal also found that no evidence had been adduced before it that any part of the amount thus debited had been in fact used for any of the purposes mentioned in the covenant. According to the tribunal there was also no evidence that, in addition to the statutory depreciation any further allowance should be made for rehabilitation reserve and it held that it was not shown that any amount had in fact been spent for rehabilitation in the two relevant years. On these findings the amount of Rs. 20·26 lakhs on which the management relied was not allowed by the tribunal because, in its opinion, the said amount was a mixture of very many items depending upon the options exercised by the management under the terms of the joint operation schemes.

Another point of dispute between the parties was in respect of the contribution made by the management to the Pension Fund scheme. The management claimed credit both for the initial and the annual contribution made by it in the relevant years. The tribunal held that, having regard to the circumstances under which the pension fund was introduced by the companies and having regard to the fact that it was intended only for the benefit of the covenanted staff of the companies, it would be inequitable to allow either the initial or the annual contributions to take precedence over the workmen's claim for bonus. Therefore, the claim by the management for deduction

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of both the initial and annual contributions was rejected. It was also urged by the management that the amount representing the bonus paid to the workmen for the year 1950 should be deducted in 1953 since it was actually debited to the workmen in that year. The tribunal held that this claim was inadmissible. Lastly, the tribunal disallowed the claim made by the management for interest at a higher rate than 2% on reserve employed as working capital during the relevant years. Having thus rejected most of the contentions raised by the management, the tribunal applied the Full Bench formula and came to the conclusion that there was enough available surplus in the hands of the management for the years 1953 and 1954 and so it made an award in favour of the workmen for payment of bonus as already indicated. It is this award which has given rise to the present appeal.

Before dealing with the merits of the appeal, it would be relevant to state the material facts in regard to the working of the Gold Mines which has ultimately brought the State of Mysore as the appellant in the present appeal before us. Four Public Joint Stock Companies incorporated in the United Kingdom were operating the Gold Mines of the Kolar Gold Fields by virtue of leases of mining rights obtained by them from the Government of Mysore. These companies were the Mysore Gold Mining Co. Ltd., the Champion Reef Gold Mines of India Ltd., the Oorgaum Gold Mining Co. Ltd., and the Nundydroog Mines Ltd. The terms and conditions of the leases obtained by these companies were the same. After the second world war broke out, the value of gold increased and so the Mysore legislature passed an act called the Mysore Duty on Gold Act, 1940 (Mys. XIX of 1940) imposing duty on gold produced in the mines. This duty was in addition to the royalty, rent, cesses and taxes payable under the lease deeds executed on March 25, 1935. It appears that the gold mining companies represented that the imposition of gold duties meant hardship for them and that it did not leave sufficient funds from which provision could be made for depreciation and

development so necessary for the longevity of the mines. As a result of the negotiations, the Act of 1940 was repealed in 1946 and a fresh agreement made under which contribution was levied by the State of Mysore against the companies. Under this agreement rupee companies had to be formed in India to take over the undertakings and assets in Mysore of the Sterling or U. K. companies and the seat of management had to be transferred from the United Kingdom to India. In pursuance of this agreement four rupee companies corresponding to the four Sterling or U. K. companies were formed in India. Their names were the Mysore Gold Mining Co. (KGF) Ltd., the Champion Reef Gold Mines of India (KGF) Ltd., the Oorgaum Gold Mines (KGF) Ltd., and the Nundydroog Mines (KGF) Ltd. All the shares in the rupee companies were held by the corresponding Sterling or U. K. companies. The assets in Mysore of the Sterling companies were transferred to the corresponding K. G. F. companies and the mining operations were carried on by these companies from April 1, 1951, by conforming to the terms and conditions embodied in the agreements (copies of which are Exs. 1 and 2).

The four gold mining companies had for the purposes of convenience and economy common establishments called Central Administration, Medical Establishment and the Electricity Department. There was also a private limited company named Kolar Mines Power Station (K. G. F.) Private Ltd., all the shares of which were held by the said gold mining companies. This was only an ancillary company and its object was to maintain a stand-by emergency plant for generating electricity in case of emergency and to distribute electric power to the gold mining companies. The gold mining companies were managed by the same managing agents by name John Taylor & Sons (Private) Ltd.

The Oorgaum mine soon became an uneconomic unit because it had reached such depths that owing to technical difficulties ore could no longer be taken out of them. This company, therefore, ceased mining

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operations in 1953 and transferred its leases with the concurrence of the Mysore Government to the Champion Reef Gold Mines of India (K. G. F.) Ltd. Since then Oorgaum company has gone into liquidation. That is how in the year 1954 there were only three operating mining companies and their allied establishments.

In 1956 the Mysore State nationalised the gold mining industry by an act called the Kolar Gold Mine Undertakings (Acquisition) Act, 1956 (Mys. XXII of 1956). According to the provisions of this Act and the notification issued thereunder, the undertakings of the gold mining companies vested in the State from November 29, 1956. In consequence, the Government became liable to pay the bonus awarded by the Central Government Industrial Tribunal, Madras. That is how the State of Mysore felt aggrieved by the said award and has preferred the present appeal by special leave to this Court.

The first point which calls for our decision is whether the tribunal was justified in applying the principles underlying the Full Bench formula in determining the existence or otherwise of the available suplus in the hands of the appellant during the relevant years. In *The Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay* (1), the Labour Appellate Tribunal was called upon to consider the workmen's claim for bonus. The appellate tribunal held that bonus was not an ex-gratia payment even where wages had been standardised nor was it a matter of deferred wages. The recognition of the workmen's claim for bonus rests on the view, which is now well established, that both labour and capital contribute to the earnings of the industrial concern and that social justice requires that workmen should be allowed a reasonable share in the profits made by the industry. In determining the quantum of the profit to which workmen as a whole can be held to be entitled, the Labour Appellate Tribunal evolved a formula under which the amount of the available surplus in the hands of the employer

(1) (1950) L.L.J. 1247.

can be determined. This formula takes the figure of the gross profits made by the industry for the relevant year and makes provisions for depreciation, for reserves, for rehabilitation, for return at 6% on the paid-up capital, for a return on the working capital at a lesser rate than the return on the paid-up capital and for the payment of income-tax. These items are treated as prior charges and the amount determined after deducting the aggregate total of these items from the gross profits is deemed to be the available surplus for the relevant year. It is in this available surplus thus deduced that labour is entitled to claim a reasonable share by way of bonus. It would thus be clear that under this formula the existence of an available surplus is a condition precedent for the award of bonus to workmen. The formula also postulates that the claim for bonus is made by workmen who are not paid what may properly be regarded as living wages. The payment of bonus is thus intended to attempt to fill up the gap, to the extent that is reasonably possible, between the wages actually paid to the workmen and the living wages which they legitimately hope in due course to secure. This formula has received the general approval of this Court in *Muir Mills Co. Ltd., Kanpur* v. *Suti Mills Mazdoor Union, Kanpur* (1). It is conceded before us that since 1950 the basis supplied by this formula has been adopted by industrial adjudication all over the country in dealing with the workmen's claim for bonus in different kinds of industries.

It is, however, urged by Mr. Sanyal, for the appellant, that the appellant's industry is a wasting industry and it needs special consideration. Search for new ore which is essential for the prosperity and longevity of this industry is its special feature and the interests of the industry itself require that proper and adequate provision for prospecting new ore must be made before the workmen's claim for bonus can be awarded. Similarly a larger provision may have to be made for depreciation or

(1) [1955] 1 S. C. R. 991.

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rehabilitation because of the special needs of this industry. It may be conceded that this industry has some special needs of its own; but it cannot be denied that the principles of social justice on which a claim for bonus is founded apply as much to this industry as to others. Social and economic justice have been given a place of pride in our Constitution and one of the directive principles of State policy enshrined in Art. 38 requires that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life. Besides, Art. 43 enunciates another directive principle by providing that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state. It is on this concept of social justice that the formula in question has been founded and experience in the matter of industrial adjudication shows that, on the whole, the formula has attained a fair amount of success. It is true that in industrial adjudication purely technical and legalistic considerations which are apt to lead to rigidity or inflexibility would not always be appropriate; nor is it desirable to allow purely theoretical or academic considerations unrelated to facts to influence industrial adjudication. In its attempt to do social justice, industrial adjudication has to adjust rival claims of the employer and his workmen in a fair and just manner and this object can best be achieved by dealing with each problem as it arises on its own facts and circumstances. Experience has shown that the formula in question is, in its application, elastic enough to meet the requirements of individual cases, and so we do not think that the appellant has made out a case for any addition to the

existing categories of prior charges. It is clear that the amounts which can be admitted under the said existing categories would have to be determined in the light of the evidence adduced by the employer and having regard to the special requirements of the employer's industry. In the present case the special features of the appellant's industry on which Mr. Sanyal relies would have to be taken into account in determining the amounts which could be included either under depreciation or under rehabilitation. That is the approach adopted by the tribunal in the present case and we do not think that any complaint can be validly made against it.

The next point which has been urged by Mr. Sanyal relates to the claim made by the appellant for the deduction of 15% of the revenue expenditure under a special covenant of the lease. Let us first refer to the relevant terms of the lease on which this argument is founded. The original lease which was executed in 1935 had, under para. 3, imposed upon the lessees an obligation that they shall, during the term of the lease, in the best and the most effectual manner and without intermission, except when prevented by unavoidable accident, search for all gold metals, metallic ores, precious stones, coal and other substances of a saleable or mercantilable nature within or upon the mining block. The second schedule to the lease purported to define the expression 'adjusted annual profits of the lessee' on which the lessor's claim for royalty was based. The adjusted annual profits of the lessee had to be ascertained under this schedule by reference to the published annual accounts of the lessees and meant the difference in any year between the gross income of the lessees from all sources and the gross amount of the sums mentioned in paras. 1 to 6 of the schedule. Para. 5 to the schedule referred to a sum equal to 15% of the aggregate amount of the expenses mentioned in para. 4 of this part of the schedule. Thus it appears that amongst the items which the lessee was entitled to deduct from the gross revenue for the purpose of determining his adjusted annual profits was included the amount mentioned in para. 5. Subsequently by an

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agreement and deed of variation executed in 1949 the deductions which the lessee was entitled to make from the gross profits for the purpose of determining his adjusted surplus were stated in a modified form. The adjusted profit was now called the net surplus and the procedure to be adopted to determine this net surplus has been mentioned in para. 5 of this document. Clause (v) of para. 5 is the material clause with which we are concerned. Under this clause a sum up to 15% of the aggregate amount of the expenses of the lessees shown as debit items in their published revenue account or Income and Expenditure account shall be reserved for depreciation and development expenditure of a capital nature such as search for new ore, purchase of machinery, etc., and for renewals and replacements and shall be credited to a separate fund, provided, however, that the accumulated balance in the said fund less commitments does not exceed 25% of the expenses of the lessee shown as debit items in their published revenue account or Income and Expenditure account as the case may be for the first year on which the 15% was calculated or of the last preceding year whichever shall be greater. It is on this clause that the appellant claims to treat the amount of 15% as a prior charge in the present proceedings. The argument is that this is a valid contract between the lessor and the lessee and the lessee is entitled to claim the benefit of the contract and to treat the amount as a prior charge.

In dealing with this point we do not think it is necessary to decide the larger academic question as to whether such a contract would bind the workmen. The tribunal has held that since the relevant covenant has the effect of withdrawing from the gross profits a substantial amount, workmen are entitled to contend that the contract does not bind them and the amount should not be treated as a prior charge. In our opinion it would be possible to deal with this question in a different way. The appellant's argument assumes that the lessee is under an obligation to create a reserve fund and to contribute to it an amount equal to 15% as mentioned in the clause. This

assumption is not justified by the clause itself. It is significant that the clause does not impose on the appellant an obligation to create a reserve fund at all. The only obligation which the lease has imposed on the appellant is that the appellant shall make a search for all gold and metallic ores during the continuance of the lease. If, for carrying out this search the appellant actually spends any amount he may be entitled to claim credit for that amount; but neither the lease nor its annexures impose any obligation on the appellant to spend a particular amount in that behalf or to create a special fund earmarked for that purpose. The lessor has merely allowed the appellant to create a specific fund as indicated in the relevant clause and the lessor has agreed to allow the appellant to deduct the amount thus put in the said reserve fund from year to year from the gross receipts for the purpose of determining the appellant's net surplus. In other words, for deciding the amount of net surplus on which the lessor's claims such as that for royalties or contributions may be based, the appellant is allowed to make certain specified deductions; amongst these is the 15% mentioned in para. 5, cl. (v). Besides, the 15% of the aggregate amount mentioned in the clause is the maximum limit which the contribution to the special fund in any year is allowed to reach under this clause. Prima facie it appears to be doubtful if the appellant's failure to create a reserve fund or to make a contribution to the said fund from year to year would necessarily incur forfeiture of his lease. However, apart from this consideration there is no obligation imposed on the appellant under this clause and any argument based on the alleged obligation cannot, therefore, be accepted.

There is also another consideration which must be borne in mind. The fund contemplated by the relevant clause is intended to meet depreciation and development expenditure and it is clear that the depreciation and rehabilitation are included in the Full Bench formula amongst the items of prior charge in dealing with workmen's claim for bonus. If the appellant wants to make a claim for depreciation and rehabilitation

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it would be open to him to make such a claim even under the Full Bench formula. Indeed its claim for depreciation has been upheld by the present award. The fact that items of depreciation and rehabilitation are included in this clause shows that even if the amounts claimed by the appellant solely on the strength of this clause are not allowed, it would nevertheless be open to the appellant to make a claim in respect of admissible items independently of the clause and if he succeeds in proving this claim there could be no injustice to the appellant. In our opinion it would not be reasonable or fair to allow the appellant's specific claim for 15% by way of rehabilitation solely on the ground that the clause allows it to debit up to 15% in a special fund without examining the question as to whether a claim for depreciation and rehabilitation is justified, and if yes, what should be the amount which should be treated as a prior charge in the present proceeding. Inclusion of these items in a separate fund allowed under the relevant clause cannot preclude an investigation by the industrial tribunal into the merits of the said items and that is what the appellant seeks to do by placing his claim in that behalf solely on the relevant clause. We are, therefore, satisfied that the tribunal was not in error in disallowing the claim made by the appellant solely on the strength of this particular clause.

As we have already pointed out the tribunal has in fact conceded that the appellant would be justified in making a claim for prospecting new ore and thereby helping the longevity of its industry; but since no material was placed before the tribunal on which the tribunal could determine the amount which the appellant can legitimately claim in that behalf, the tribunal was unable to give the appellant any relief in this matter. In this connection Mr. Sanyal referred us to the entries in the extracts from the balance-sheets which referred to the captial expenditure during the relevant years on buildings, machinery and plant and sundries as well as on shaft sinking, etc. In regard to the Mysore Gold Mining Co., for instance, the capital

expenditure in question during the year ending December 31, 1953, was shown as Rs. 3,30,729 (Ex. VIII-A). But the difficulty in accepting this figure as a prior charge either under depreciation or under rehabilitation arises from the fact that Mr. Rajagopal Srinivasan who was examined on behalf of the appellant was unable to explain how this total amount was made up. The witness expressly admitted that the companies had no record to show separately the amounts under different heads. Mr. Sanyal fairly conceded that the companies might have led better evidence in support of their case. As the evidence stands, however, it is difficult to challenge the correctness of the view taken by the tribunal that the amounts shown in the different extracts from the balance-sheets are a mixture of very many items depending upon the options exercised by the management and that it would be impossible to say which part of the said amounts can be legitimately treated as prior charge under the heading of rehabilitation. That is why we do not think that Mr. Sanyal can succeed in his argument that, on the evidence as it stands, the appellant is entitled to any particular amount under the heading of rehabilitation.

That takes us to the appellant's case in regard to the annual contribution towards the pension fund which has been disallowed by the tribunal. It appears that the scheme of pension fund which was intended for the benefit of the covenanted servants of the sterling companies came into operation as from January 1, 1951, soon after the rupee companies came into existence. Certain rules appear to have been framed in respect of this pension fund and a trust has apparently been created for the administration of the fund. Under these rules the companies made the contribution which is called the initial contribution to the fund as specified in para. 1(c) of the rules. In addition to this initial contribution, the companies had to pay to the fund by half-yearly instalments on June 30 and December 31 of each year an ordinary annual contribution at the rate specified in para. 6. The appellant makes a claim for the deduction of this annual contribution as a prior charge and his grievance is that this

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claim has been unreasonably disallowed by the tribunal. In regard to this fund the tribunal has made certain findings of fact which cannot be challenged before us. The tribunal has relied on the circumstances under which this fund came into existence. Mr. Jha, for the respondents, has characterised this fund as a parting gift of the Sterling companies to their covenanted servants and it would appear as if the tribunal was inclined to take a similar view about the genesis of this fund. The class of persons for whose benefit this fund has been created consists of a very small number of officers. It does not appear from the record that these persons claimed this benefit or that granting this benefit was otherwise necessary for the successful operation of the affairs of the companies. The officers who got the benefit of this fund were entitled to gratuity and during all the years of their existence the Sterling companies had never thought before of creating such a fund. A claim for the initial contribution to this fund has not been made before us; but even in regard to the annual contribution the tribunal was not satisfied that the amount was reasonable and that the payment of this amount was otherwise justified on the merits. As against these facts the tribunal referred to the cases of a larger number of non-covenanted servants of the companies and other employees for whom no such fund exists. Having regard to all these circumstances the tribunal held that it would not be fair or just to allow the appellant to claim that the annual contribution to the pension fund in question should be treated as a prior charge, and thereby reduce the gross profits which would adversely affect the respondents' claim for bonus. In our opinion, whether or not this particular amount should be allowed as claimed by the appellant does not raise any general question of law and the reasonableness of the claim has, therefore, to be judged in the light of all relevant facts and circumstances. As the tribunal has found against the appellant on this point we do not think we would be justified in interfering with the decision of the tribunal.

The next contention raised by Mr. Sanyal is in

respect of the finding made by the tribunal in regard to the amount of bonus paid by the companies to their workmen for the year 1950. The employer's case was that though this bonus had accrued for the year 1950 it was actually paid in 1953 and so the amount of the bonus should be deducted from the gross profits for 1953. This contention has been rejected by the tribunal. The tribunal has observed that though the disbursement of bonus for the year was actually made in the early part of 1953 the amount was provided and debited in 1952. This can be seen from the income-tax assessment order to which the tribunal has referred. The employer had claimed as an expenditure the amount in respect of bonus relating to 1950 in the said income-tax proceeding and so it was held that the said amount cannot now be taken into consideration for the year 1953. We do not see any error of law committed by the tribunal in recording this finding. It is clear that the respondents were found entitled to bonus for the year 1950, because the companies held in their hands sufficient available surplus from the trading profits of that year. In the absence of satisfactory evidence, normally the bonus paid to the respondents for the year 1950 cannot be brought into accounting for a subsequent year. We are, therefore, satisfied that the appellant cannot successfully challenge the tribunal's finding on this question.

It will now be material to refer to the two previous awards between the companies and their workmen because Mr. Sanyal has based an argument on these awards and that argument yet remains to be examined. On January 5, 1953, Mr. V. N. Dikshitulu, the sole member of the industrial tribunal made his award in an industrial dispute between the Champion Reef Gold Mines of India Ltd., and its workmen. By this award the tribunal held that the claim made by the employer on the strength of the clause permitting the creation of a reserve fund and an annual contribution to it up to 15% "cannot but be allowed because mining operations can be performed only subject to the condition of making the said item of

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reserve as per the agreement and hence it stands to reason that the reserve should be deducted from the gross profits to ascertain the available surplus". It is clear from the award that the tribunal did not consider the effect of the terms contained in the clause after construing the relevant clauses and we see no discussion about the merits of the rival contentions in respect of this claim. Apparently, the tribunal accepted the employer's case at its face value and granted the relief to the employer without considering all the relevant clauses of the lease and its annexures and without examining the merits of the workmen's case on the point. The next award was passed by Mr. Dave on December 31, 1954, in Reference Nos. 6 and 7 of 1954. These two references arose from disputes between the Oorgaum Gold Mines and the Champion Reef Gold Mines and their workmen. By this award Mr. Dave rejected the employer's claim for deducting 15% from the gross profits under the relevant clause because he was not satisfied that the maximum limit of 25% mentioned in the clause had not been exceeded during the year 1952. The employer did not produce relevant books of account and Mr. Dave took the view that the non-production of the books showed that the employer was afraid that the books would indicate that the maximum limit had already been exceeded. On that view Mr. Dave reached the conclusion that the employer was not entitled to make any contribution to the fund during the relevant year. In regard to the pension fund Mr. Dave disallowed the claim for initial contribution but allowed the claim for annual contribution. He was inclined to hold that the annual contribution was made for services rendered during that year and should certainly form part of the expenses of that year. This award was taken before the Labour Appellate Tribunal. The Labour Appellate Tribunal confirmed Mr. Dave's decision both in regard to the initial and the annual contribution towards the pension fund. The Appellate Tribunal, however, differed from Mr. Dave in regard to the employer's claim for the deduction of 15% under the relevant clause. It accepted

the finding of the tribunal that the employer had failed to prove that in a particular year the maximum of 15% was in fact required to be contributed to the reserve fund. However, it held that the amount of Rs. 4·77 lakhs represented the actual expenditure incurred by the employer during the year and so this amount was allowed to be treated as a prior charge. It would no doubt appear as if the Appellate Tribunal took the relevant figure from the balance-sheet as showing the actual expenditure. It is unnecessary for us to consider whether this finding was justified or not. What is, however, relevant for the present purpose is the finding of the tribunal that the company was not entitled to claim the full provision of the rate of 15% of the total revenue expenditure allowed under the clause in question.

Mr. Sanyal has referred to these two awards in support of his contention that the companies did not think it necessary to make a specific claim for rehabilitation because it was thought that following the previous awards the claim made for 15% would be allowed. His argument is that if the claim based on the covenant is disallowed it would be unfair to his client not to allow any claim for rehabilitation at all. It is clear that the claim for rehabilitation which could have been separately made by the company was not so made because it was included in the claim for the deduction of 15%. There is also some force in Mr. Sanyal's argument that, having regard to the previous awards the companies may have thought that the said claim would be allowed. Since we have held against the appellant in respect of the major claim made on the said relevant clause of 15% it is necessary to consider whether the appellant should be allowed an opportunity to make out a specific claim for rehabilitation and lead evidence in support of the said claim.

Mr. Jha, for the respondents, has resisted the appellant's request for a remand to enable it to put forward this claim for rehabilitation. He argues that the companies deliberately did not make a specific claim for rehabilitation and chose to rest their case on the relevant terms of the contract because they knew that

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a claim for rehabilitation would not be sustained. In this connection Mr. Jha referred us to the principles adopted by industrial courts in determining the employer's claims for rehabilitation. We are not impressed by this argument. It seems to us that, if the employer was partly misled by the previous awards and did not in consequence put forward a specific claim for rehabilitation, it would not be fair or just that he should be precluded from making such a claim even after his general claim for the deduction of 15% is disallowed. After all, the Full Bench formula has recognised the existence of four items as constituting a prior charge on principles of social justice and if, in the present case, the employer failed to make out a claim for deduction of one of the items substantially as a result of the previous awards passed in its favour, he cannot be penalised as suggested by Mr. Jha. We would accordingly allow the appellant to put forward before the tribunal a specific claim under the heading of rehabilitation and lead evidence in support of the said claim.

While we are sending this case back for the purpose of determining the appellant's claim for rehabilitation and for deciding two other points which we would presently indicate, it would be useful, if we briefly refer to the principles which are usually adopted by industrial courts in adjudicating upon the employer's claim for rehabilitation. It is not disputed before us that these principles would have to be borne in mind by the tribunal in determining the validity of the appellant's claim for rehabilitation which we are now permitting it to make. It has been observed by the Labour Appellate Tribunal in *Ganesh Flour Mills Co. Ltd., Kanpur* v. *Ganesh Flour Mills Staff Union* (1) that though the employer is entitled to claim deductions from the gross profits in respect of rehabilitation as a matter of right it is difficult to lay down any general rule applicable to each and every industry. The Full Bench formula evolved in the case of *The Mill Owners Association, Bombay* (2), was not intended to lay down any hard and fast rule in that behalf. For

(1) (1952) L.A.G. 172. (2) (1950) L. L. J. 1247.

the purpose of sustaining the claim for rehabilitation there must be evidence to show the age of the machinery, the period during which it requires the replacement, the cost of replacement, the amount standing in the depreciation and reserve fund and to what extent the funds at the disposal of the company would meet the cost of replacement. In *Trichinopoly Mills Ltd., Ramjeenagar* v. *National Cotton Mills Workers' Union, Ramjeenagar* (1) the appellate tribunal has observed that for determining the total amount required for rehabilitation it is the original cost that has to be multiplied by an appropriate multiple, for instance 2·7, for the purpose of ascertaining the replacement value of the machinery, buildings and plant. From the amount thus obtained 5% of the original value is to be deducted as breakdown value. The balance is treated as sufficient to complete replacement of machinery and buildings. Then the amounts in hand under the head of depreciation, general reserve and rehabilitation have to be totalled and this total has to be deducted from the aforesaid balance which is required to complete replacement of machinery and buildings. It is the balance thus drawn that has to be spread over a number of years, as for instance 15, for the purpose of rehabilitation; in other words, the balance has to be divided by 15 and the amount thus determined has to be treated as prior charge under the heading of rehabilitation for the relevant year. (Vide *The Meenakshi Mills Ltd., Madurai and Manapparai* v. *Their Workmen* (2); *The Rohtas Sugar Ltd.* v. *Their Workmen* (3); and *The Mettur Industries Ltd., Mettur Dam* v. *The Workers* (4)). Thus the appellant's claim for rehabilitation would have to be tried by the tribunal in the light of these decisions. In the application of the principles discussed in these decisions, industrial adjudication cannot adopt an inflexible or rigid approach; these principles will have to be applied with such modifications and adjustments as may be found necessary, just and expedient having regard to the evidence led by the parties before the tribunal and

(1) (1953) L.A.C. 672.
(2) (1954) L.A.C. 131.
(3) (1954) L.A.C. 168, 184.
(4) (1957) L.A.C. 288.

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having regard to the special needs and requirements of the industry. This position appears to be fully recognised by the Labour Appellate Tribunal in these decisions themselves.

There is another point on which Mr. Sanyal has requested us to call for a finding from the tribunal. His case is that the award of the tribunal in one material particular suffers from an error apparent on the face of the record. In the award, the initial contribution to the pension fund and the annual contribution to the pension fund have been added back for both the years in respect of all the companies. Mr. Sanyal contends that the amount added back under the heading " annual contribution to the pension fund " really includes the initial contribution to the said fund also, and so it was erroneous to have added back a separate amount under the heading " the initial contribution to the pension fund". In other words, the grievance is that the amount of the initial contribution has been added back twice. Mr. Jha, for the respondents, does not accept Mr. Sanyal's contention that this is an error apparent on the face of the record. He disputes the assumption made by Mr. Sanyal that the annual contribution to the pension fund in each case includes the initial contribution as well. We do not propose to express any opinion on the merits of this dispute. We think it is desirable that the tribunal should be requested to make its finding on the question as to whether the amount of initial contribution has been added back twice over as suggested by the appellant. This is the second point which we want to remit for the consideration of the tribunal.

The third point which we propose to remit for the consideration of the tribunal has been raised by Mr. Jha for the respondents. He argues that the tribunal has committed an obvious error in allowing a deduction of statutory depreciation to each one of the companies for both the years in question and in support of his argument he relies on the statements contained in the report of the directors in each case. As an illustration we should refer to the report and accounts of the Nundydroog Mines (KGF) Ltd., for the

year ended December 31, 1953. In this report, under the item "capital expenditure", it is stated that the sum of Rs. 13,50,000 being depreciation for the period April 1, 1951 to December 31, 1953 has now been written off. Mr. Jha contends that, since this amount has been written off as depreciation, in calculating the available surplus for the year no amount should be allowed by way of statutory depreciation. This argument has been considered by the tribunal in para. 20 of its award but Mr. Jha wants to challenge the correctness of the conclusion reached by the tribunal. We would normally not have allowed Mr. Jha's request for a reconsideration of this matter; but since on two points raised by the appellant we are remanding the case to the tribunal and calling for its findings on the said points we think it right to allow the respondents an opportunity to re-agitate this point. In fairness to Mr. Sanyal we may add that he did not object to this matter being remitted to the tribunal for reconsideration. We would, however, like to make it clear that in dealing with this point it would not be open to the respondents to contend that the appellant was not entitled to claim additional depreciation under the head of statutory depreciation. This Court has held in *Sree Meenakshi Mills Ltd.* v. *Their Workmen* (1) that additional depreciation which is admissible under s. 10(2)(vi) of the Income-tax Act need not necessarily be allowed by industrial courts in determining the available surplus under the Full Bench formula. We wish to make it clear that it would not be open to the respondents to raise any contention on the strength of this decision under the issue which is being remitted to the tribunal at their request.

It is somewhat unfortunate that, though we have held against the appellant on the main points urged by Mr. Sanyal before us, we cannot finally dispose of the appeal today. It is true that it is of the utmost importance that industrial adjudication should be dealt with speedily and without unnecessary delay; but in the present case we have come to the conclusion that it would be fair and just to allow the appellant to raise

(1) [1958] S.C.R. 878.

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the two points mentioned in the judgment. That is why we think it necessary that this case should be sent back to the tribunal with the direction that the tribunal should make its findings on the issues remitted to it by this judgment. The three issues on which we want a finding from the tribunal are:

(1) In addition to the statutory depreciation allowed, is the appellant entitled to claim any deduction under the head of rehabilitation, and if yes, to what amount?

(2) Does the award in substance add back the initial contribution to the pension fund twice over in making calculations for ascertaining the available surplus?

(3) In allowing statutory depreciation to the appellant for the relevant years, has the award virtually allowed the said depreciation twice over having regard to the fact that a large amount has been written off by the appellant towards depreciation for the said period?

Parties will be at liberty to lead additional relevant evidence. The tribunal should consider the evidence led by the parties, hear their learned advocates and make its findings on these issues. We would also direct the tribunal to consider whether, as a result of its findings on any of the said issues, any adjustment will have to be made in its final award. If, as a result of its findings, the amount of available surplus is likely to be materially affected then the tribunal should indicate what the available surplus in that case would be in respect of each of the companies in regard to each of the two years in question. The tribunal should also make a finding as to the amount of bonus to which the respondents would, in its opinion, be entitled on this altered finding as to available surplus.

We desire that this appeal should be finally disposed of as soon as possible; so we direct that the tribunal should submit its findings along with the evidence to be recorded hereafter to this Court within three months from today. Both parties have stated to us that this matter has to be and would be dealt with by the Central Government Industrial Tribunal functioning

at Bangalore. The proceedings will accordingly be remitted to the said tribunal. The appellant will pay the cost of remand in any event. Costs of the present hearing of the appeal will be costs in the appeal.

We would like to add that Mr. Sanyal has agreed without prejudice that the appellant will pay to the respondents fifteen days basic wage towards their claim for bonus during the relevant years.

Case remanded.

ANANT GOPAL SHEOREY

v.

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May 22.

(B. P. SINHA, JAFER IMAM and J. L. KAPUR JJ.)

Criminal trial—Amendment in procedure during pendency of trial—If retrospective—Code of Criminal Procedure (V of 1898), s. 342 A—Criminal Procedure Code (Amendment) Act (26 of 1955), s. 116.

A complaint was filed against the appellant on January 13, 1953, and the Special Magistrate trying him commenced the recording of evidence on July 4, 1955. During the trial the Criminal Procedure Code (Amendment) Act (26 of 1955) came into force on January 2, 1956, which introduced s. 342 A in the Code of Criminal Procedure. The appellant made an application to the Magistrate claiming the right to appear as a witness on his own behalf under s. 342 A in disproof of the charges made against him. The Magistrate rejected the application on the ground that s. 342 A could not be applied to pending proceedings which would be according to the procedure laid down in the unamended Code:

Held, that on a plain construction of s. 116 of the amending Act which provided for procedure to be followed in pending cases s. 342 A was clearly applicable in such cases. Under the general law also a change in procedure operates retrospectively.

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