Workmen vs Management Of Sijua (Jherriah) ... on 25 September, 1973

Equivalent citations: 1973 AIR 2766, 1974 SCR (1) 760, AIR 1973 SUPREME COURT 2766, 1974 3 SCC 473, 1973 LAB. I. C. 1621, 1974 (1) SCJ 596, 1974 (1) SCR 760, 1975 BLJR 135, 1973 2 LABLJ 488, 44 FJR 382, 27 FACLR 333

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, S.N. Dwivedi, P.K. Goswami

PETITIONER:
WORKMEN

Vs.

RESPONDENT:
MANAGEMENT OF SIJUA (JHERRIAH) ELECTRIC SUPPLY CO. LTD.

DATE OF JUDGMENT25/09/1973

BENCH:
REDDY, P. JAGANMOHAN
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DWIVEDI, S.N.
GOSWAMI, P.K.

CITATION:
1973 AIR 2766 1974 SCR (1) 760
1974 SCC (3) 473

ACT:
Bonus Act--Three items, the rebate payable to consumers under Electricity Supply Act 1948, Development Rebate and Development Reserve under Income Tax Act 1961, whether to be deducted from profits for the purpose of ascertaining bonus.

HEADNOTE:
The dispute between the respondent company and the workmen arose in respect of the permissible additions and deductions to be made to the profits for the purpose of ascertaining the bonus payable to the workmen under the provisions of the Bonus Act. The controversy between the Company and its workmen was in relation to three items mentioned in the profit and loss account which were also the subject matter

of the reference. The first item related to a sum representing the rebate payable to the consumers under paragraph 11(l) of the VI Schedule to the Electricity Supply Act 1948. The second one related to a sum on account of Development Rebate under Income Tax Act 1961 and the third one related to a sum in respect of Development Reserve. The appellants, however, challenged the first and the third items before this Court.

Partly allowing the appeal,

HELD : (i) The computation and payment of bonus under the Bonus Act is provided on unit-wise basis in accordance with the formula laid down under the Act. In the present case, the payment of bonus is related to the profits of the year subject to the maximum bonus and the amount available by way of set-on. As, the Company is not a Banking Company, the method of computation of gross profits is laid down in the If Schedule of Bonus Act. S. 6 enumerates the deductions that have to- be made out of the gross profits in order to arrive at the available surplus.

The sums liable to be deducted from gross profits under Section 6 are : (a) Any amount by way of depreciation according to s. 32(l) of the Income Tax Act or according to the provisions of the Agricultural Income-Tax law.

(b)Any amount by way of development rebate which the employer is entitled to deduct from his income.

(c) Any direct tax which the employer is liable to pay, and

(4) Such further sums as specified in respect of the employer in the 3rd Schedule etc.

The appellants contended that rebate payable to the consumers cannot be deducted so as to reduce the net profit share in the profit and loss account. [764G-765G]

(ii)According to the workmen, a rebate payable to the consumers of electricity cannot be deducted so as to reduce the net profit shown in the profit and loss account because entry I of the second Schedule to the Bonus Act is " not profit as per profit and loss account". Para 11(i) of the VI Schedule to the Electricity Supply Act provides that if the clear profit of a licensee exceeds the amount of reasonable return, the excess has to be divided into three equal portions and one portion has to be given as a rebate to the consumers. If rebate is given to the consumers in respect of the electricity consumed by them, and for which payment has already been made, it is apparent that the price of electricity which the consumers will pay after receiving the rebate, would be the actual price paid by them for the electricity consumed. Therefore, any amount in the hands of the undertaking liable to be returned to the consumers as rebate cannot be taken into account in computing the gross profits of the

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undertaking. It is only after deducting this amount that the actual revenue of the undertaking could be computed. Therefore, the amount to be returned as rebate to the

consumers is a deductible item. [766B]
Poona Electric Supply Ltd. v. C.I.T. Bombay, [1965] 3 S.C.R. 878 and Jabulpur Bijilighar Karmachari Panchayat V. Jabalpur Electric Supply Company Ltd. and Another [1972] 1 S.C.R. 60, referred to.
(iii)As regards the sum of the development reserve which the workmen disputed, and which was deducted under item 6 of the III Schedule to the Bonus Act, it appears from the Affidavit filed in the High Court by the Company that theparticulars of development reserve incurred in preceding 4 years included the 1964-65. According to the workmen, only a sum of Rs. 10,555 being the proportionate development reserve calculated on the development rebate for the year 1964-65 was permissible, but no addition could be made for the proportionate development reserve in respect of the years 1961-62, 1962-63, and 1963-64 and as under the proviso to Sub-Paragraph (i) of Paragraph 5-A of the VI Schedule to the Act , "reasonable return had to be provided for the company" in each year which could not be provided because there was no sufficient fund available for development reserve from 1961-62 to 1963-64. All the sums which should have been appropriated in the years of account preceding the year in question, were appropriated in the year 1964-65. Item 6 of the III Schedule to the Bonus Act provides that any "employer falling under item No. 1, 3, 4 and 5 etc., in addition to the sums deductible under any of the aforesaid items such items as are required to be appropriated by the licencee in respect of the accounting year to a reserve, under the Sixth Schedule to that Act. shall also be deducted." The words, 'required to be appropriated" indicate that the Company should be obliged under the Sixth Schedule to appropriate an amount to the development reserve funds. The words "in respect of" have a wide connotation. The first requirement for the applicability of item 6 of the Sixth Schedule to the Act is a legal obligation on the company to appropriate the amount to the development reserve fund. The second requirement is that the appropriation made must be connected with or related to the accounting year. [767 D-F; 768 F-H]
(iv)Sub-paras (1) and (2) of paragraph V-A of the Act provides that there shall be a Development Reserve to which shall be appropriated in respect of each accounting year, a sum equal to the amount of Income-tax and Supertax etc.. provided that if in any accounting year, a clear profit etc., falls-short of the reasonable return. the sum to be appropriated to the Development Reserve in respect of such accounting year shall be reduced by the amount of the short fall, and under sub para (2), any such amount may be appropriated in annual instalments spread over a period not exceeding five years. [769C]
(v)The words "that accounting year" refer to the year of account in respect of which appropriation to the Reserve and the deduction under the Bonus Act is being considered. In

the present case, the deductions for the years 1961-62, 1962-63 and 1963-64 are not being considered, nor have there been. any appropriations in terms of paragraph VA of the Sixth Schedule to the Act in the respective accounting years. There is nothing in sub-paragraphs (1) or (2) of paragraph VA of the Sixth Schedule to the Act which justifies the submission that what has not been appropriated for the earlier years could be appropriated in the year of account. In this view, the only amount that is deductible on account of development reserve as contended by the appellants is Rs. 10.5551- in respect of the accounting year 1964-65. [770A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2446 & 2447 of 1967.

From the Judgment and Order dated the 26th March, 1968 of the Patna High Court in C. W. J. C. Nos. 121 and 137 of 1967.

A . B. N. Sinha and A. K. Nag, for the appellants. 7 62 Lal Narain Sinha, Solicitor General of India, Alok Kumar Verma ;and B. P. Singh, for respondent No. 1. R. C. Prasad, for respondent No. 2.

The Judgment of the Court was delivered by JAGANMOHAN REDDY, J. The Management of Sijua (Jherriah) Electric Supply Company Ltd.-the respondents-had initially offered only 4 per cent. bonus to all the employees of its establishment because the allocable surplus which was available was less than 4 per cent. Subsequently, having regard to the decision of the Madras High Court it revised the calculations of allocable surplus and offered to distribute to its employees under the Payment of Bonus Act, 1965 (hereinafter termed 'the Bonus Act'), a sum of Rs. 34,492/-. The workmen (Appellants) refused to accept this amount as the management had failed to furnish the details or the basis of computing the amount which was being offered to them. A dispute was thus raised, and it was referred to conciliation. It appears that during these conciliation proceedings, both the parties agreed to the following terms of settlement :

" (1) The Union agree to accept the present offer of the management purely on provisional basis without prejudice to their claim for. higher bonus for the year 1964-65. The management agree to distribute this amount as early as possible.

(2)Both the parties agree to refer to the Industrial Tribunal for adjudication the following points of difference in respect of calculation of available surplus for the year 1964-65 to settle the issue of payment of bonus for that year.

(a) Whether a sum of Rs. 18,086/- provided for in the profit and loss account as provision for rebate to consumers in accordance with 6th Schedule of the Elec-

tricity Supply Act, 1948 should be added back to arrive at the gross profit for the said accounting year in accordance with the Payment of Bonus Act? If so, whether this amount should also be deducted from the gross profit to arrive at available surplus ?

(b) Whether deduction of following amounts from the gross profit is in accordance with the provisions of the Payment of Bonus Act.

(i) Rs. 23,455/- on account of development rebate allowable under the Income- tax Act.

(ii) Rs. 35,682/- on account of development reserve."

Pursuant to the above agreement, the Governor of Bihar referred for adjudication of the Industrial Tribunal the disputes referred to in sub-clauses (a), (b) (i) and (b)

(ii) of clause (2) of the said agreement. Before the Tribunal it was contended on behalf of the appellants that the amount in sub-clause (a) of the reference cannot be ,deducted from the gross profits because it is a rebate to consumers and is paid from out. of profits. It cannot, therefore, be shown in the revenue accounts of the company as an item of expenditure and must be added back for the purpose of calculation of bonus. In respect of the amount in sub- clause (b) (i) of the reference the contention is that it cannot be deducted as a rebate and if it has to be deducted, it has to be added back also. It was lastly contended in respect of the amount in sub-clause (b) (ii) of the reference that the deduction is not contemplated by item 6 of the Third Schedule to the Bonus Act.

On January 16, 1967, the Tribunal gave the following award (1) Inrespect of the sum of Rs. 18,086/-

it held-

(a) that although the aforesaid sum represented the amount of rebate payable to the consumers and not to be retained by the company, nonetheless it was a profit for the purpose of computation in order to arrive at the amount which the workers should get as bonus;

(b) that the aforesaid amount of Rs.

18,086/- which has been retained by the management to be returned to the consumers later on, must be taken as a reserve within the meaning of Item 2(c) of the Second Schedule of the Bonus Act, 1965, and has to be added back; and

(c) that the sum of Rs. 18,086/- which was deemed to be a reserve and had to be added back under item 2(e) of the Second Schedule of the Bonus Act was not an amount to be deducted as a reserve under s. 6(d) of the Bonus Act and, therefore, could not be deducted for the purposes of the computation of profits for payment of bonus. (2)That in regard to the amount of Rs.

23,455/- the Tribunal held that merely because the company has, for some reason or the other, omitted to mention the aforesaid amount in the profit and loss account that would not prevent the

same being added back particularly when the same is being claimed as deducti on under the provisions of the Bonus Act. Accordingly it came to the conclusion that the deduction of Rs. 23,455/- on account of the development rebate allowed under the Income-tax Act from the gross profits without adding back to it is not in accordance with the Bonus Act.

(3)In so far as the sum of Rs. 35,682/-

which has been both added and deducted, the Tribunal held that the amount has been rightly deducted under clause (d) of s. 6 of the Bonus Act for the purpose of arriving at the available surplus.

By a writ petition the respondents challenged the validity of the award which was against them, and the workmen by a separate writ petition contested the validity of the award which was against them. The High Court which heard both these petitions together came to the 76 4 conclusion that the decision of the Tribunal on item (1) (a) of the reference directing the respondents to add back Rs. 18,086/- for calculating the gross profits was wrong and it was accordingly quashed. The remaining portion of the award which disallowed the deduction of the said sum from the gross profits was maintained. As regards item (b) (i) of the reference relating to the sum of Rs. 23,455/- shown as development rebate, it held that the portion of the award which directed that it should be added back to the net profits to calculate the gross profits under clause (2) (d) of the Second Schedule of the Bonus Act was also wrong and it was accordingly quashed. In respect of the award on clause (b) (ii) of the reference it maintained the award of the Tribunal. In the result of respondents' petition was allowed and the appellants' petition dismissed. Against the aforesaid decision, these appeals are by certificate granted by the High Court.

The dispute between the company and the workmen, as already stated, arose in respect of the permissible additions and deductions to be made to the profits for the purpose of ascertaining the bonus payable to the workmen under the provisions of the Bonus Act. The balance-sheet of the company for the year ending March 31, 1965, showing the profit and loss account was duly published, and there was a controversy between the company and its workmen as regards three items mentioned in the profit and loss account which were also the subject-matter of the reference. The first item related to a sum of Rs. 18,086/- representing the rebate payable to the consumers under paragraph II(i) of the Sixth Schedule to the Electricity (Supply) Act, 1948- hereinafter called 'the Electricity (Supply) Act'; the second one related to a sum of Rs. 23,455/- on account of development rebate allowable under the Income-tax Act, 1961; and the third one related to a sum of Rs. 35,682/- in respect of development reserve.

The learned Advocate for the appellants, however, at the outset indicated that he was not challenging the decision of the High Court in respect of the second item of Rs. 23,455/- deducted under the Income-tax Act, 1961, as development rebate. This leaves the first and the third items, one in respect of Rs. 18,086/- which has been directed by the High Court to be deducted on account of rebate payable to the consumers under Paragraph II(i) of the Sixth Schedule to the Electricity (Supply) Act, and the third item in respect of Rs. 35,682/- on account of development reserve. It may be mentioned that the computation and payment of bonus under the Bonus Act is provided on

unit-wise basis in accordance with the formula laid down under that Act. As far as this case is concerned, the payment of bonus is related to the profits of the year subject to the maximum bonus and amount available by way of set-on. As the company is not a banking company to which the First Schedule is applicable, the method of computation of gross profits is laid down in the Second Schedule to the Bonus Act. Section 6 enumerates the deductions that have to be made out of the gross profits in order to arrive at the available surplus. The deductions consist of depreciation development rebate, direct taxes and items mentioned in the Third Schedule. It may be observed that rehabilitation grant is left over as an item of deduction from gross profit, which is a departure from what was required to be deducted under the Full Bench formula of the Labour Appellate Tribunal. The amount of depreciation and development rebate are to be arrived at as provided under the Income-tax Act. In case of depreciation, however, it one employer has been paying bonus to his employees under an award, agreement, or settlement made before the commencement of the Bonus Act and subsisting at such commencement after deducting from the gross profits, then the depreciation deducted, at the option of the employer, shall be the notional normal depreciation. Section 2(4) defined "allocable surplus" as meaning "(a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends, payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent, of the available surplus and includes any amount treated as such under sub-section (2) of section 34."

> "Available surplus" is defined in s. 2(6) as meaning "the available surplus computed under Section 5." Section 4 provides for computation of gross profits in the manner provided by the First Schedule in the case of a banking com- pany and in other cases in the manner provided by the Second Schedule. By s. 5 the available surplus' in respect of any accounting year is the gross profit for that year after deducting therefrom the sums referred to in s. 6. The sums liable to be deducted from gross profits under s. 6 are :
>
> (a) any amount by way of depreciation admissible in accordance with the provisions of sub-s. (1) of s. 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, as the case may be;
>
> (b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income Tax Act;
>
> (c) any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year; and
>
> (d) such further sums as are specified in respect of the employer in the Third Schedule.

Counsel for the workmen says that the Company has shown a certain amount as its net profit in the profit and loss account. Rebate payable to the consumers of electricity cannot be deducted so as to reduce the net profit shown in the profit and loss account, because entry I of the Second Schedule to

the Bonus Act is "net profit as per profit and loss account". It may be mentioned that Paragraph II(i) of the Sixth Schedule to the Electricity (Supply) Act provides that if the "clear profit" of a licensee exceeds the amount of reasonable return, the excess has to be divided into three equal portions. One portion has to be given as a rebate to the consumers; another portion is set apart as Tariffs and Dividends Control Reserve; and the third 7 66 portion is kept apart for distribution as a proportionate rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future in such manner as the State Government may direct. A perusal of Paragraph 11(i) of the Sixth Schedule to the Electricity (Supply) Act would show that the portion that is set apart as a rebate to the consumers has not been described as a reserve in the same manner as the other portions have been described, for the simple reason, that the amount has to be returned to the consumers in the form of a rebate. If rebate is given to the consumers in respect of the electricity consumed by them and for which payment has already been made, it is apparent that the price of electricity which the consumers will in fact pay, after receiving the rebate, would be the actual price paid by them for the electricity consumed. To put it differently the charges paid by the consumers of electricity before the rebate is given to them would be treated as payments on account or provisional payments, and it is only after the end of the year when rebate is ascertained and paid to them in accordance with the provisions of the Electricity (Supply) Act that the charges recovered for supply of electricity could be said to be finalised. On this assumption it would appear that any amount in the hands of the undertaking liable to be returned to the consumers as rebate cannot be taken into account in computing the gross profits of the undertaking. It is only after deducting this amount that the actual revenue of the supply undertaking could be computed. If this assumption is correct, and we think it is, then the amount to be returned as rebate to the consumers is a deductible item. We cannot accept the contention of the learned Advocate that this item, not being an expenditure necessary for earning a profit, is not deductible. The basic assumption underlying the contention that consumers' rebate has been deducted as an expenditure has no validity. In Poona Electric Supply Co. Ltd. v. Com- missioner of Income-fax, Bombay('), this Court, while dealing with the Income-tax Act, considered the effect of Paragraph II(i) of the Sixth Schedule to the Electricity (Supply) Act and held that the amounts set apart for rebate and for which deduction was claimed were a part of the excess amount paid to the assessee company and reserved for being returned to the consumers. They did not form part of the assessee's real profits and, therefore, to arrive at the taxable income of the assessee from the business under s. 10(l) of the Income-tax Act, the said amounts had to be deducted from its total income. Even thought this case was decided under the Income-tax Act, the provision of the Electricity (Supply) Act which we have interpreted was also interpreted by this Court in that case. In Jabalpur Pijlighar Karamchari Panchayat v. Jabalpur Electric Supply Co. Ltd. & Anr.(2) the question was again considered by a Bench of this Court to which one of us (Jaganmohan Reddy, J.,) was a party. At P. 75, it was observed by reference to what the Tribunal had held:

> "This goes to show that the rebate to the consumers is not to be utilised by the company except for distribution to the consumers as may be directed. If the company cannot (1) [1965] 3 S. C. R. 8 1 8.

> (2) [1972] 1 S. C. R. 60, have the benefit of it, it stands to reason that the _worker cannot ask for a share and the claim of the appellant for inclusion of this sum must be rejected."

In our view there is no doubt that the amount payable as consumers' rebate under the Electricity (Supply) Act has to be deducted before profits could be compulted and has been rightly held to be deductible by the High Court. The last item of reference is whether the sum of Rs. 35,682/can be legally appropriated by the licensee to the development reserve in respect of the accounting year 1964- 65 and deducted under item 6 of the Third Schedule to the Bonus Act. It appears that before the High Court an affidavit was filed by the company which gave particulars of the break up of the development reserve of Rs. 35,682/as having been incurred in the four years including and preceding the year 1964-65 for which the bonus was being considered. The proportionate development reserve for the year 1961-62 was Rs. 4,864/-; for the year 1962-63 Rs. 1,671/-; for the year 1963-64 Rs. 18,602/and for the year 1964-65 Rs. 10,5551-. On behalf of the workmen it was urged that only a sum of Rs. 10,5551- being the proportionate development reserve calculated on the development rebate for the year 1964-65 was permissible, but no addition could be made for the proportionate development reserve in respect of the years 1961-62, 1962-63 and 1963-64. The argument on behalf of the company which was accepted by the learned Judges of the High Court was that the funds in the hands of the company did not permit of any sum being appropriated as development reserve in the years 1961-62, 1962-63 and 1963- 64, and as under the proviso to sub-paragraph (1) of paragraph VA of the Sixth Schedule to the Electricity (Supply) Act "reasonable return had to be provided for the company". which could not be provided because there were not sufficient funds available for development reserve, all the sums which should have been appropriated in the years of account preceding the year in question were appropriated in the year 1964-65. The High Court thought that the development reserve had to be calculated for each year in the manner indicated in sub-paragraph (1) of paragraph VA of the Sixth Schedule to the Electricity (Supply) Act, but the actual appropriation may be spread over a period of five years in order to ensure that the reasonable return to the licensee is not impaired. Though normally the "annual instalments" specified in sub-paragraph (2) of paragraph VA of the Sixth Schedule to the Electricity (Supply) Act may indicate that some amount must be appropriated every year, but on a strict construction of sub-paragraph (2) along with the proviso to sub-paragraph (1) of paragraph VA, it was of the view that in order to secure a reasonable return, no amount may be available for appropriation to the development reserve in some years, and that in such contingencies, there seems to be no legal bar if the instalments for some of the years are reduced to zero, and the entire sum is appropriated in a succeeding year, provided that the maximum period of five years is not exceeded. It was also pointed out by the learned Judges that the actual language used by the Legislature in item 6 of the Third Schedule to the Bonus Act shows that any sum which is "required to be appropriated by the LIcensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted"

> showed that the emphasis was on the sum "required to be appropriated" in respect of the accounting year and not the sum calculated in respect of the accounting year. Hence, the various sums calculated as development reserve. for preceding years also, if permitted by sub-paragraph (2) of paragraph VA of the Sixth Schedule to the

Electricity (Supply) Act to be appropriated in the accounting year 1964- 65 will come within the scope of item 6 of the Third Schedule to the Bonus Act and hence deductible. The arguments before us have also followed the same contentions which found favour with the High Court, but, in our view, those contentions are not supported by the language of item 6 of the Third Schedule to the Bonus Act. That item is as follows Category of employer Any employer falling under Item No. 1 or Item No. 5 and being a licensee within the meaning of the Electricity Supply Act, 1948.

Further sums to be deducted In addition to the sums deductible under any of the aforesaid items, such sums as are required to be appropriated by the licensee in respect of the accounting year to a reserve under the Sixth Schedule to that Act shall also be deducted (emphasis added).

The view of the High Court would have been correct, if the words in Item 6 were "such sums as are appropriated by the licensee in the accounting year to a reserve under the Sixth Schedule to that Act." If these words were there, it may be that the allocations of development reserve in respect of the previous years in the accounting year would have also become deductible. But the High Court has overlooked the expressions "required to be appropriated .... under the Sixth Schedule to that Act" and "in respect of". The words "required to be appropriated" indicate that the Company should be obligated under the Sixth Schedule to the Electricity Supply Act to appropriate an amount to the development reserve funds. The words "in respect of" have a wide connotation and being colourless are generally intended to convey a connection or relation between the two subject matters to which they refer. In the context in which they have been used, they mean "connected with" or " relating to". The first requirement for the applicability of Item 6 of the Sixth Schedule to the Electricity (Supply) Act should, therefore, be a legal obligation on the Company to appropriate an amount to the development reserve fund. The second requirement is that the appropriation made must be connected with or related to the accounting year. Clause 5

(a) (i) of the Sixth Schedule to that Act also speaks of appropriation to the development reserve "in respect of each and every accounting year". The phrase "accounting year"

does not appear to have been defined in that Act. Instead, the expression "the year of account"

is defined in s. 2(14) of that Act. It means the financial year in relation to a licensee. The expression "accounting year" has been defined in s. 2(l) of the Bonus Act. In respect of the Company, it would mean "the period in respect of which any profit and loss account of the Company laid before it in annual genera, meeting is made up, whether that period is a year or not." The Company prepared its profit and loss account in 1964-65. So for purposes of Item 6 in the Third Schedule, the accounting

year of the Company would be 1964-65. Section 5 of the Bonus Act provides that the available surplus "in respect of any accounting year" shall be the gross profits for that year, after deducting therefrom the sums referred to in section 6. The amount which could be deducted is the amount which is required to be appropriated by the licensee in respect of the accounting year 1964-65. A reference to sub-paragraphs (1) and (2) of paragraph VA of the Sixth Schedule to the Electricity (Supply) Act does not justify the submission that the sums which could have been appropriated for the years 1961-62, 1962-63 and 1963-64 were the amounts required to be appropriated in the accounting year 1964-65. Paragraph VA, in our view, deals only with appropriation to a development reserve for the year of account, which in this case would be 1964-65, and if in that year the whole of the development reserve could not be appropriated to the reserve, sub-paragraph (2) of paragraph VA permits the appropriation in annual instalments spread over a period not exceeding five years from the commencement of that accounting year. Sub-paragraphs, (1) and (2) of paragraph VA of the Electricity (Supply) Act which are relavant are as follows :

"VA. (1) There shall be created a reserve to be called the Development Reserve to which shall be appropriated in respect of each accounting year a sum equal to the amount of income-tax and super-tax calculated at rates applicable during the assessment year for which the accounting year of the licensee is the previous year, on the amount of development rebate to which the licensee is entitled for the accounting year under clause

(vi) (b) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922.

Provided, that if in any accounting year, the clear profit [excluding the special appropriation to be made under item (va) of clause (c) of sub-paragraph (2) of paragraph XVII] together with the accumulations, if any, in the Tariffs and Dividends Control Reserve less the sum calculated as aforesaid falls short of the reasonable return, the sum to be appropriated to the Development Reserve in respect of such accounting year shall be reduced by the amount of the short-fall.

(2) Any sum to be appropriated towards the Development Reserve in respect of any accounting year under subparagraph (1), may be appropriated in annual instalments spread over a period not exceeding five years from the commencement of that accounting year."

As we have noticed earlier, the words "that accounting year"

refer to the year of account in respect of which appropriation to the reserve and the deduction under the Bonus Act is being considered. In this case, the deductions for the year 1961-62, 1962-63 and 1963-64 are not being considered, nor have there been any appropriations in terms of paragraph VA of the Sixth Schedule to the Electricity (supply) Act in the respective accounting years. There is nothing in subparagraphs (1) and (2) of paragraph VA of the Sixth Schedule to the, Electricity (Supply) Act which justifies the submission that what has not been appropriated for the earlier year

could be appropriated in the year of account. In this view, the only amount that is deductible on account of development reserve as contended by the appel- lants is Rs. 10,555/- in respect of the accounting year 1964-65. The award of the Tribunal and the judgment of the High Court directing the deduction of Rs. 35,682/- cannot be sustained and are set aside. Instead we direct the deduction of Rs. 10,555/- only.

The result is that the appeals are partly allowed, but in the circumstances each party will bear their own costs.

S.C. Appeals partly allowed.