# Bareilly Electricity Supply Co. Ltd vs The Workmen & Ors on 16 August, 1971

## Equivalent citations: 1972 AIR 330, 1972 SCR (1) 241, AIR 1972 SUPREME COURT 330, 1972 LAB. I. C. 188, 1972 (1) SCR 241, 1971 2 LABLJ 407, 1972 23 FACLR 273, 1973 2 SCJ 499, 40 FJR 360, 23 FAC LR 273

## Author: P. Jaganmohan Reddy

## Bench: P. Jaganmohan Reddy, G.K. Mitter

PETITIONER:
BAREILLY ELECTRICITY SUPPLY CO. LTD.

Vs.

RESPONDENT:
THE WORKMEN & ORS.

DATE OF JUDGMENT16/08/1971

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
MITTER, G.K.

CITATION:
1972 AIR 330 1972 SCR (1) 241
1971 SCC (2) 617
CITATOR INFO :
RF 1973 SC2394 (15)

ACT:
Industrial Dispute-Bonus-Available surplus-Full Bench formula--Documents filed before Industrial Tribunal whether require formal proof-Depreciation for double shift-Allowances for income-tax, computation of--Return on working capital-Amounts required for rehabilitation-Contingency and Development reserves-Financial capacity.

HEADNOTE:
The appellant was an electricity supply company. The dispute between the appellant and its workmen relating to the bonus payable for the year 1960-61 was referred to the Industrial Tribunal. The case ,of the appellant was that

after allowing for prior charges no available surplus was left for the payment of bonus. The Tribunal however, computed the available surplus at Rs. 1,29,248 and out of this awarded three months' bonus amounting to Rs. 730,00 to the workmen. In appeal to this court it was contended on behalf of the appellant that the Tribunal was in error in disallowing (a) depreciation on account of double shift, (b) income-tax, (c) return on working capital, (c) amounts required for rehabilitation, (e) contingency reserve and (f)development reserve, the latter two of which were statutory reserves which the undertaking had to provide under the schedule to the Electricity Supply Act 1948. Inter alia the appellant contended that since the Evidence Act as a whole was not applicable to industrial proceedings certain documents such as balance sheet should have been accepted by the Tribunal without formal proof.

HELD: (i) In earlier cases decided by this Court in which the Full Bench formula of the Labour Appellate Tribunal had been considered by this Court with reference to Electricity Undertakings and other wise, the following principles were laid down for the purpose of working out the available surplus: (1) first gross profits have to be ascertained and for that purpose balance-sheet and the profit and losses count as required under the Companies Act have to be looked into. If the entries are contested they have to be proved like any other contested fact; (2) The relevant year for which bonus is claimed is a self sufficient unit and the appropriate accounts have to be made on the notional basis in respect of the said year; (3) The ascertainment of depreciation is according to the Income-tax Act and what is allowed as a prior charge is the annual notional normal depreciation and not the actual depreciation which is in fact allowed. Apart from the notional normal depreciation the depreciation allowable under Income-tax Act for multiple shift is also allowable; (4) In calculating the income-tax for deduction as a prior charge it is not the notional normal depreciation alone that has to be deducted but the statutory -depreciation namely the concessions given under the Income-tax Act to the employers which would include the depreciation for multiple shifts, if -any, and thereafter the income-tax

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will have to be calculated; (5) Return on paid up capital allowable for deduction from the gross profits is 6%; a slightly higher percentage may be allowed in risk undertakings like plantations; (b) In regard to return on working capital, if it is, shown that the reserves were available and were actually used as working capital, whether the reserves utilised were depreciation reserves or any other, a return from 2% to 4% is allowable according to the industry, taking into consideration any special circumstances which may justify a claim for a higher interest; (7) Rehabilitation reserve has to be provided for

in order to keep the original capital of the business intact. It is necessary in the interest of labour as well as capital to Provide for depreciation of the assets yearly and also to provide for rise of prices. For the determination of this receive it is suggested that the undertaking be first divided into blocks such as 'plant and machinery' on the one band and other assets like Road, Buildings, Railways, sidings etc. on the other. Then the cost of these separate blocks has to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the plant or machinery will require replacement; and it is the probable price of such replacement on a future date that decides the amount to which the employer is entitled by way of replacement cost. The claim for rehabilitation includes the claim for replacements and modernization. The probable cost is reached by adopting a multiplier based on the ratio, between the cost price of the plant and machinery and the probable price which may have to be paid for its rehabilitation, replacement or modernization. After ascertaining the multiplier, a divisor has to be adopted in respect of each block in order to ascertain the annual requirement of the employer in that behalf year after year; (8) In Mathura Parshad Srivastava's case the claim for contingency reserve and development which have to be provided under the Electricity (Supply) Act was upheld though these do not constitute prior charges like items (3), (4), (5), (6) and (7) above. The Tribunal cannot fix such a high figure of bonus as to leave insufficient funds in the bands of the company and make it difficult to provide for these two statutory reserves. Various factors including the financial capacity of the undertaking to pay, have to be taken into account in fixing bonus. [251 C.-254 G]

Mill Owners Association, Bombay v. The Rashtriya Mazdoor Sargh, Bombay & Anr., [1950] L.L.J. 1247, Muir Mills Co. Ltd., v. Suti Mill Mazdoor Union, Kanpur, [1951] 1 S.C.R. 991, U.P. Electricity Supply, Co. Ltd.,, v. Their Workmen, (1952) 2 L.L.J. 43 1, Shree Meenakshi Mills Ltd. v. Their Workmen, [1968] S.C.R. 878, Tinavelly-Tuticorn Electric Supply Co. Ltd., v. Their Workmen, [1960], 3 S.C.R. 68 Ahmedabad Miscellaneous Industrial Workers Union v. Ahmedabad Electricity Co. Ltd., [1962] 2 S.C.R. 934, Associated Cement Companies Ltd., v. Its Workmen, [1959] S.C.R. 925 Surat Electricity Co. Ltd., Staff Union v. Surat Electricity Co. Ltd., [1957] 2 L.L.J. 648, Hamdard Dawakhana Wakf v. Its Workmen & Ors., [1962] 2 L.L.J. 772, Workmen v. Hindustan Motors Ltd., [1968] 2 S.C.R. 311 and Mathura Parshad Srivastava v. Sagour Electric Supply Co. [1966] 2 L.L.J. 307, referred to.

(ii) Even if all the technicalities of the Evidence Act are not strictly applicable except so far as Section It of the Industrial Disputes Act 1947 and the rules prescribed

therein permit it, it is inconceivable that
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the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. [259-D F]

The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied. upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. [258 H]

When the appellant in the present case produced the balance sheet and profit and loss account of the company, it did not by its mere production amount to proof of it or of the truth of the entries therein. If these entries are challenged the appellant must, prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity given to the opposite party who challenges this fact. [259 B-D]

Indian Hume Pipe Co. Ltd., v. Their Workmen, [1959] 2 L.L.J. 357 Khandesh Spinning and Wag. Mills Co. Ltd., v. The Rashtriya Grin Kamgar Sangh Jalgaon,[1960],2S.C.R.841,Anil Starch Products Ltd.,v. Ahmedabad Chemical Workers Union Civil Appeal No. 684 of 1957, Petlad Turkey Red Dye Works Ltd., v. Dves and Chemicals Workers Union, Petlad, [1960] 2 S.C.R., 906, Management of Trichinopoly Mills Ltd. v. National Cotton Textiles Mills Workers Union; Civil Appeal No. 309 of 1957, Bengal Kagazkal Mazdoor Union v. Titaghur Paper Mills Co. Ltd., [1964] 3 S.C.R. 38 and Union of India v. Verma, [1958] 2 L.L.J. 259, referred to.

(iii) In view of the unsatisfactory oral and documentary evidence the Tribunal was justified in rejecting the claim for depreciation on the basis of double shift. It could not be assumed that in an Electric Undertaking the boilers and turbines must be working throughout, at any rate more that 8 hours. In view of disallowance the amount to be, allowed as prior charge towards depreciation will have to be computed after allowing for the notional depreciation. [260 F, 261B]

(iv) The computation of income-tax by the Tribunal after deducting the statutory depreciation was in accordance with the decisions of this Court and could not be assailed. [262 C-D]

Burm and Co. Ltd., v. Its Workmen, [1954] 5 S.C.R. 82

referred to.
(v) In considering a claim for return on working capital two questions must be kept in view; whether the reserve were available and if they were, whether they were used as working capital and if so, what is the amount. These are questions of fact and if the employer fails to establish by satisfactory evidence the claim will have to be rejected.
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In this case there was no proof that any of the reserves had been utilised. The claim in this respect was therefore rightly rejected by the Tribunal.
[263 D-E]
(vi) The letters filed by the appellant in support of the replacement cost had not been proved by any of the persons who wrote them or any of the representatives of the firms whose letters they were. There was no oral evidence of the precise requirement for rehabilitation. The Tribunal was justified in holding that the appellant had failed to prove the original cost of the machines, plant and machinery, its age, the probable requirement for replacement, the multiplier and the divisor. In these circumstances this claim also had been properly disallowed.
[264 C-G]
(vii) The provision for contingency reserve and development reserve has been made under the Electricity (Supply) Act for a special purpose, namely to work out the charges to be recovered from the consumers for the supply of Electricity but that does not mean that these are not to be taken into consideration in declaring bonus though they have not been treated as prior charges. In these circumstances the amount of Rs. 55,233 had to be provided for. Except for this amount the computation made by the Tribunal for ascertaining the available surplus was justified. [265C-D]
(viii) The available surplus found by the Tribunal was Rs. 1,29,248.. If Rs. 55,233 is to be provided for contain-envy reserve and development reserve there will be available surplus of Rs. 74,015. The Tribunal awarded three months bonus amount to Rs. 73,000 which works to Rs. 24,333 per month. Having regard to the financial capacity of this Undertaking one month's bonus which will leave a surplus for the working of the Undertakings will meet the ends of justice. [265 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1254 of 1966.

Appeal by special leave from the Award dated November 15, 1965 of the Industrial Tribunal (111), Allahabad in Adjudication Case No. 10 of 1962.

G. B. Pai and H. K. Puri, for the appellant. J. P. Goyal and M. V. Goswami, for respondent No. 1. P. N. Tiwari, for respondent No. 2.

The Judgment of the Court was delivered by P. Jaganmohan Reddy J.-The Appellant is an Electricity Supply Co., and in this Appeal by Special Leave challenges the Award made against it, by the Industrial Tribunal (111) at Allahabad on 15th November 1965. The dispute between the Appellant and its Workmen is one relating to the bonus payable for the year 1960-61. As an amicable settlement could not be arrived at, the State of U. P. by its order dated 24-1-1962 referred the following dispute for adjudication to the Tribunal:

> "Should the employers be required to pay bonus to their workmen for the year 1960-61 ? If so, at what rate and with what details ?"

The case of the Appellant was that after allowing for prior charges no available surplus was left for the payment of bonus to workmen. According to the Company a gross profit of Rs. 6,06,684/- was earned for the year ending 31st March, 1961, but the Tribunal added to it a sum of Rs. 9,949/- as representing extraneous income and consequently computed the gross profit at Rs. 6,16,633/-. The following prior charges were claimed by the Appellant and we have indicated as against each one of these in the opposite columns what the Tribunal has awarded and disallowed:-

| | Amount claimed by the Appellant | | Amount allowed by the Tribunal |
|---|---|---|---|
| Expenses as per profit and loss account: | Rs. 1,32,156 | | Rs. 1,32,156 |
| Depreciation: | | | |
| | Rs. | | |
| Normal | 2,02,814 | Notional normal: | 2,02,814. |
| Double shift. | 28,413 | Double shift:Nil. | |
| | 2,31,227 | 2,31,227 | |
| Income Tax | | 1,09,485 | 1,04 4155 |
| Contingency Reserve | | 32,900 | Nil. |
| Development Reserve | | 22,333 | Nil. |
| Return on share capital | | 48,000 | 48,000 |
| Return on working capital | | 60,540 | Nil. |
| Rehabilitation requirement | | 15,66,497 | Nil. |
| Total | | 22,03,138 | 4,87,385 |

After making the necessary allowance as aforesaid towards deductions claimed as prior- charges from the gross, profit (Rs. 6,16,633/- minus Rs. 4,87,385/-) the Tribunal computed the available

surplus at Rs. 1,29,248/-. Out of this amount of available surplus three months bonus which amounts to Rs. 73,000/- was awarded as bonus leaving sufficient funds for the Company to run its undertaking.

On behalf of the Appellant it is contended that the Tribunal was in error in disallowing depreciation on account of (a) double shift, (b) Income-tax, (c) return on working capital,

(d) amounts required for rehabilitation, (e) contingency reserve and (f) development reserve, the latter two of which were statutory reserves which the under taking had to provide for, under the schedule to the Electricity (Supply) Act.

The reasons given by the Tribunal for disallowing the double shift depreciation was that the Company did not produce any documents to, show the total running hours of each boiler or turbine, that in any case the evidence relating to the running of each of the boilers and turbines does not justify the claim for depreciation for the double shift on the entire plant and machinery; that the Company could only claim double shift allowance with regard to certain specified machinery and that in the previous years it had not claimed double shift allowance nor did it claim any deductions before the Income-tax authorities for the year in question. For these reasons it held that the Appellant was not entitled to claim the double shift depreciation during the year in dispute. The contingency reserve and the development reserve were disallowed as in the view of the Tribunal they were not a charge on the profits. The rehabilitation requirements were rejected on the ground that the Company had failed to prove the original cost of the plant and machinery; that it had failed to show the actual amount spent on rehabilitation of plant and machinery either in the year in dispute or in any subsequent year; that no rehabilitation allowance was claimed in the previous year; that the cost of the assets of the Company had not been duly proved as engineers were not called and that the quotations produced by the Company could not be relied upon. The return on working capital was disallowed on two grounds; namely that the calculation of the working capital has been made on the basis of the assets and rehabilitation as they stood on the closing day of the year 1960-61 namely on 31-3- 61 Which is a mistake because whatever may have been the assets and liabilities at the end of the year they would not be the same at the beginning of the year nor could they be applied as the working capital. The second ground is that on the evidence it cannot be established that any reserves were utilised as working capital, nor was there any necessity to do so.

Before us the learned Advocate of the Appellant has urged that the Tribunal was not justified in rejecting the material placed before it, from which the several deductions claimed by it ought to have been allowed in computing the available surplus. It will be convenient to deal with each of the items separately but before doing so we wish to set out several factors and certain essential features which have to be taken into consideration in claims made by workmen for bonus. The basic assumption which has been accepted by this Court approving the first and second Full Benches of the Labour Appellate Tribunal is that the award of bonus is not by way of an ex-gratia payment but in furtherance of social justice the claim of capital and labour which contribute to the earnings of the industrial concern, make it equitable to grant labour the benefit of their efforts if there is a surplus. The first full Bench in the Mill Owners Association, Bombay v. The Rashtriya Mazdoor Sangh,

Bombay and Anr.(i), had laid down a general formula applicable for determining the available suprplus of an Industrial undertaking for the purposes of awarding bonus to its workmen. The first step in this regard is the ascertainment of the gross profits of a concern, which are arrived at after payment of wages and dearness allowances to the employees and other items of expenditure. The next step is to ascertain what are the prior charges which have to be deducted from the gross profits in order to arrive at the available surplus.

The Full Bench formula concerns the claim of capital -to prior charges which have to be taken into account to give a fair return to the investor and also to keep the industry working efficiently which in the long run will inure to the benefit of labour. The items considered as prior charges are : (1) fair return on-(a) paid up capital; (b) working capital; (c) reserves utilised as working capital which obviates the necessity to borrow at higher rates of interest. (2) Amount of money required for replacements rehabilitation and modernization of machinery. (3) De- preciation allowed by the Income-tax authorities being only a percentage of the Written down value, the fund set apart (1) [1950] L.L.J. 1247.

17-M 1245 Sup. Cl/71 yearly for depreciation and designated under that head would not be sufficient for these purposes, so an extra amount would have to be annually set apart under the heading reserves to make up the deficit. The question what is the ratio of the available surplus which could be awarded as a bonus was also considered. The Full Bench felt that the answer was not an easy one, but essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review which is reflected in the amount of surplus; the needs of labour at existing wages is also a consideration of importance. It observed in para 37:

> "..... but we should make it plain that these are not necessarily the only considerations; for instance no scheme of allocation of bonus could be completed if the amount of which bonus is to be paid is unrelated to the employees" efforts; and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject".

This Court in Muir Mills Co. Ltd. v Suti Mill Mazdoor Union, Kanpur(1), generally accepted as sound the view of the Full Bench, that since labour and capital both contribute to the earnings they should derive benefit, if there is a surplus after meeting the four prior or necessary charges specified in the formula. However, neither the priority as between the four prior charges and their relative acceptance nor the conditions upon which they were allowed was examined by this Court, but it was nevertheless held that bonus is neither a gratuity nor gift nor can it be regarded as deferred payment. The principles enunciated by the First Full Bench had been approved in U. P. Electricity Supply Co. Ltd. v. Their Workmen(2) as being also applicable to Electricity Undertakings. It was pointed out that in determining the available surplus it is not the profits that have to be determined as required under the Electricity (Supply) Act 54 of 1948, which had to be, considered but the gross profits as computed from the balance sheet and profit and loss account to be prepared under the Companies Act, subject to scrutiny if challenged. The reason for (1) [1955] (1) S.C.R. 991. (2) [1952].(2) L.L.J.

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non-applicability of the Electric (Supply) Act according to this Full Bench was that the object of 'the Act being to reduce the price of electricity which was affected by fixing a maximum above which the profits of the concern shall not rise, the formula of the first Full Bench which was intended to do social justice was at variance with the purpose which the Electricity (Supply) Act was intended to subserve. The Tribunal said at page 4381:

> "There is therefore no basis between the two for any convergence on the point of bonus as now understood; it is not permissible to inject the Full Bench items into the Electricity (Supply) Act and on the other hand the accounting under the Electricity (Supply) Act is at variance with normal commercial practice under the Companies Act and with the basis of our Full Bench decision. In the result we have come to the conclusion that our Full Bench decision must reapplied as a whole for the ascertainment of bonus of these concerns. This, however, does not preclude consideration of the suggestions for clarification and modification....."

This decision was approved by this Court in Shree, Meenakshi Mills Ltd. v. Their Workmen(1) but that was not a case dealing with an Electricity undertaking. The case which dealt directly with an Electricity Undertaking was Tinavelly-Tuticorn Electric Supply Co. Ltd. (also referred to as T. T. E. Supply Co.) v. Their Workmen.(2), In this case also this Court held that the Full Bench formula was applicable to electrical undertakings and to the formula relating to the statutory depreciation except for additional and initial depreciation-though there was nothing in it which would indicate whether the depreciation deductible was according to the Electricity (Supply) Act or the Income-tax Act. There is however, no doubt that in the U. P. Electricity case the Full Bench did in fact apply the income-tax Rules for ascertaining depreciation. In Ahmedabad Miscellaneous Industrial Workers Union v. Ahmedabad Electricity Co. Ltd.(1) the Full Rench formula applying the Income-tax Act rules to ascertain depreciation as a prior charge was approved. It was also observed that it was not open to the Appellant to raise the question that (1) [1958] S.C.R. 87 (2) [1960](3) S.C.R. 68.

3 [1962] 2 S.C.R. 934.

25 0 the provisions of the seventh schedule to the Electricity (Supply) Act should be applied for purposes of calculating depreciation in preference to the income-tax rules in working ,out the Full Bench formula. Even on the assumption that the question was still open, because as Wanchoo, J.,

-observed "it was never directly raised in this Court and specifically decided" they were of opinion that the Income- tax rules should be applied in preference to the provisions of the Seventh Schedule to the Electricity (Supply) Act. The reasons for arriving at that conclusion are given at pages 939-941. In Associated Cement Companies Ltd. v. Its Workmen(1), Gajendra gadker, J., (as he then was) said at page 944 with reference to Muir Mills Company case that:

> "neither the propriety nor the order of the priority as between the four prior charges and their relative importance nor their content was examined by this Court in that

case; and though the formula has :subsequently been generally accepted by this Court in several reported decisions..... the question about

-the adequacy, propriety or validity of its provisions has not been examined nor had the general problem ,as to whether the formula needs any variation, change ,,or addition been argued and considered. It is for the first tinge since 1950 that in the present appeals, we are ,called upon to examine the formula carefully and express our decision on the merits of its specific provisions."

Having examined the several aspects of the formula in great ,detail and if we may say so with respect with some thoroughness the various matters dealt with by the two Tribunals -in respect of the prior charges relating to depreciation, incometax; fair return on capital, fair return on reserves utilised -as working capital and any amount required in excess ,of the depreciation for the purpose of rehabilitation, replacement and modernization of machinery, the formula evolved there in has been approved. In the application of the formula for determining the available surplus, the balance sheet and profit and loss account of an undertaking are important documents. At any rate the proof of the various prior charges has to be given, after affording an (1) 1959 S.C.R. 925.

opportunity to the workmen, if need be, by the cross -exami- nation to contest it.

The formula of the Full Bench both in the Textil case and its application to the Electricity Undertakings as held in the U. P. Electricity case has now been accepted by this Court in several cases with further clarification and elucidation. We can therefore deduce the following principles for ascertainment of the available surplus in respect of an Industrial undertaking and/or an Electricity Undertaking:

(1)First gross profits have to be a scertainad and for that purpose the balance-

sheet and the profit and loss account as required under the Companies Act has to be looked into. If the entries are contested then they have to be proved like any other contested fact.

(2)The relevant year for which bonus is claimed is a self sufficient unit and the appropriate accounts have to be made on the notional basis in respect of the said year. 'Once the bonus year is taken as a Unit self sufficient by itself the decision of the Labour Tribunal in regard to the refund of excess profits tax and the adjustment of the previous years depreci-ation and losses against the bonus year's profit must be treated as logical and sound.' (3)The ascertainment of depreciation is according to the Income-tax Act and what is allowed as a prior charge is the annual notional normal depreciation and not the actual depreciation which is in fact allowed. The formula of the Full Bench in the U.P. Electricity case as explained and clarified in Surat Electricity"Co. Ltd. Staff Union v. 'Surat Electricity Co. Ltd., (1) was approved in the Ahmedabad Miscellaneous Industrial Workers Union case and in the case in Hamdard Dawakhana Wakf v. Its Work-. men & Ors. (2) Apart from the notional normal depreciation the depreciation allowable under Income-tax Act for multiple shift is also allowable. (1) [1957] (2) L..LJ. 648.

(2) [1962] (2) L.L.J. 772- 25 2 (4)In calculating the Income-tax for deduction as prior charge it is not the notional normal depreciation alone that has to be deducted but the statutory depreciation namely the concessions given under the Income-tax Act to the employers which would include the depreciation for multiple shifts if any, and thereafter the Income-tax will have to be calculated.

(5) Return on paid up capital allowable for deduction from the gross profits is 6%. This 'is generally the formula adopted by the Full Bench for Industrial Undertakings though it has been known to have allowed a slightly higher percentage of return in risky undertakings like plantations.

(6) Return on working capital. This amount is also allowed but at a lower rate. The formula as approved by this Court is that if it is shown that the reserves were available and -were actually used as working capital whether the reserves utilised were depreciation reserves or any other, a return from 2% to 4% is allowable according to the industry, taking into consideration any special circumstances which may justify a claim for a higher interest. The utilisation of the reserves obviate the necessity to borrow from outside sources and pay higher interest which will be to the detriment of labour as the available surplus is likely to be less on this account,Workmen v. Hindustan Motor Ltd.(1) (7)Rehabilitation reserve also has to be provided for in order to keep the original capital of the business in tact because assets of an Undertaking waste -and or lost by the end of a particular period depending on the nature of the Undertaking and its asset. The

-only value of such assets at the end of the period is , the scrap value. It is therefore necessary in the interest of labour as well as capital to provide for depreciation of such assets yearly and also to take into account and provide for the rise in prices after- the war. The determination of this reserve poses problems, but it was suggested that a reasonable method would be first to divide the undertaking into (1) [1968] (2) S.C.R. 311 340, 342, 344.

blocks such as "Plant and machinery" on the one hand and other assets like Roads, Buildings, Railway sidings etc. on the other. Then the cost of these separate blocks has to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the Plant or machinery would need replacement; and it is the probable' price of such replacement on a future date that ultimately decides the amount to which the employer is entitled by way of replacement cost. The claim for rehabilitation includes also the claim for replacements and modernization. It is quite conceivable that certain parts of machines, which constitute a block may need rehabilitation though the block itself can carry on for a number of years. This process of rehabilitation is a continued process and unlike replacement, its date cannot always be fixed or anticipated. So with modernization all these three items are included in the claim for rehabilitation. It is therefore necessary for tribunals to exercise their dis- cretion in admitting all available evidence to determine this difficult question. For a fuller discussion in see: The Associated Cement Companies case at pages 966-968. The probable cost is reached by adopting a multiplier based on the rates between the cost price of the plant and machinery and the probable price which may have to be paid for its rehabilitation, replacement or modernization. The older the plant, the higher the multiplier and hence the area of conflict between the employer and employees is larger, the former allowing the asset to become older to get a higher multiplier and the latter feeling aggrieved because of it as the provision made therefor reduces the available surplus in the bonus

year. After as curtaining the multiplier, a divisor has to be adopted in respect of each block in order to ascertain the annual requirement of the employer in that behalf year after year. As this provision constitutes a large amount which eats into the gross profits and reduces the surplus the Tribunals must call for all relevant material evidence from the employer and the employees should be allowed to properly test it by cross-examination.

25 4 The deductions specified in items (5), (6) and (7) like those in items (3) and (4) are prior charges.

(8)In Mathura Parshad Srivastava v. Sagour Electric Supply Co (1)., at page 309 the claim for contingency reserve and development reserve which have to be provided u nder the Electricity (Supply) Act was upheld. It was observed that though these do not constitute a prior charge they have to be taken into consideration, to arrive at the figure of bonus after ascertaining the available surplus. The Tribunal cannot fix such a high figure of bonus as to leave insufficient funds in the hands of the Company and make it difficult to provide for these two statutory reserves. After taking these into consideration the ratio of available surplus for distribution as bonus would depend on a number of factors and is not susceptible to any general formula. What these factors are were posed in the form of series of questions by Gajendragadkar, J., at page 973-974 in the Associated Cement Co's case, such as what are the wages paid, what is the extent of the gap betwe en the same and a living wage, has the employer set apart any gratuity fund, what is the extent of the available surplus, what is the general financial position of the employer, what are the dividends paid and has the employer to meet any urgent liability etc. The fact that the employer would be entitled to a rebate of Income-tax on the amount of bonus paid to his workmen has also to be taken into account and in many cases it plays a significant part in the final distribution. It was also held that overtime payment ought not to have been taken into account as part of the basic wage in calculating bonus payable. This innovation would make an unreasonable distinction between workmen and workmen on the basis thatG some have contributed more and the others less to the earning of profits.

We now propose to examine each of the claims of the Appellants in the light of our observations as to the for- mula applicable in determining its validity or otherwise. At the outset it may be noted that on behalf of the Appel- (1) [1966] (2) L.L.J. 307.

lant only a solitary witness, M. K. Ghosh a Chartered Accountant of the Company who on his own admission had joined the Company six months prior to his giving_ evidence was produced. Obviously this witness could not speak about the relevant matters from his personal' knowledge. Apart from this infirmity the Tribunal has characterised his eividence as contradictory, evasive and not reliable. Innumerable statements, letters, balancesheet, profit and loss account and other documents called for or otherwise were filed on behalf of the Appellants. It cannot be denied that the mere filing of any of the aforementioned documents does not amount to proof of them and unless these are either admitted by the Respondents. or proved they do not become evidence in the case.

On this aspect it was observed in Associated Cement Companies case at page 956:

> "As a general rule the amount of gross profits thus ascertained is accepted without submitting the, statement of the profit and loss account to close scrutiny. If however, it appears that entries have been made deliberately and Male-fide to reduce the amount of gross profits, it would be open to the Tribunal to examine the question..... The case of the Indian Hume Pipe Co., Ltd., v. Their Workmen (1) however seems to have given scope for the contention that the balance-sheet could be relied upon for proving that certain amounts stated therein were available for use as working capital and that it showed that they wherein fact so used. In fact in that case it was conceded that the reserves were in fact used as working capital. Bhagwati J., who delivered the Judgment of the Court, presumably to meet the contention that the balance-sheet had not been proved, observed at page 362 thus:
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> "Moreover, no objection was urged in this behalf, nor was any finding to the contrary recorded by the Tribunal."

This case was considered in Khandesh Spinning & Wvg. Mills Co. Ltd., v, the Rashtriya Girni Kamgar- Sangh, Jalgaon, (2) it was pointed out that the observation is made; (1) [1959] (2) L.L.J. 357.

(2) [1960] (2), SC.R. 841.

25 6 by Bhagwati J, were not intended to lay down the law that the balance-sheet by itself was good evidence to prove as , fact the actual utilisation of reserves as working capital Subba Rao J. (as he then was) in that case, while dealing with the importance or rehabilitation reserve in the calcula

-tion of the available surplus pointed out that it was necessary for Tribunals to weigh with great care the evidence -of both parties to ascertain every sub-item that went into or subtracted, from the item of rehabilitation. If parties agreed figures could be accepted. It they agreed to a decision of affidavits, that course could be adopted. But in the absence of.agreement the procedure prescribed by Order XIX, Code of Civil Procedure had to be followed. He said at page 847:

> "The importance of this question in the contestant 01 fixing the amount required for rehabilitation cannot be over-estimated. The item of rehabilitation is generally a major item that enters into the calculations for the purpose of ascertaining the surplus and therefore, the amount of bonus. So, there would be a tendency on the part of the employer to inflate this figure and the employees to deflate it. The accoun ts of a Company are prepared by the management. The balance sheet and the profit, and loss account are also prepared by the Company's officers. The labour has no concern in it. When so much depends on this item, the principles of equity and ,justice demand that an Industrial Court should insist upon a clear proof of the same and also give a real and adequate opportunity to the Labour to canvass the correctness of the particulars furnished by the employer,"

At Pages 847-850, the Indian Hume Pipe Co's case (citation given is incorrect--the -correct citation is 1959 (2) LLJ

357) -Tata Oil Mills Co. Ltd., Vs.. Its Workmen (citation given in the report incorrect) and Anil Strach Products Ltd. v. Ahmedabad Chemical Workers Union, cases (1) were referred to and discussed. It was pointed out that Anil Starch Products Ltd., again reinforced the view of this Court that proper opportunity should be given to the labour to test the correctness of the evidence given on (1) Civil Appeal No. 684 of 1957.

affidavit on behalf of the management in regard -to the use of the reserves as working capital.

In Petlad Turkey Red Dye Works Ltd., v. Dyes & Chemical Workers Union, Petlad & Anr. (1)., the question whether the balance-sheet can be taken as proof of claim as to a portion of the reserve that has been used as working capital was again considered. The Khandesh Spinning & & Wvg. Mills case as well as the Management of Trichinopoly Mills Ltd. v. National Cotton Textile Mills Workers Union (2) were referred to with approval. The contention that Indian Hume Pipe's case held otherwise was pointed out to be not justified for "If it had been intended to state as a matter of law that the balance-sheet itself was good evidence to prove the fact of utilisation of a portion of the reserve as working capital it would have been unnecessary to make the observations referred to at page 362.

In the Petlad Turkey Red Dye Works(1) case it was pointed by reference to the Trichinopoly Mills (2) case that the ques- tion as regards the sufficiency of the balance sheet itself to prove the fact of utilisation of any reserve as working capital was also considered and it was held "that the, balance sheet does not by itself prove any such fact and that the law requires that such an important fact as the utilisation of a portion of the reserve as working capital has to be proved by the employer by evidence given on affidavit or otherwise and after giving an opportunity to the workman to contest the correctness of such evidence by cross-examination".

In Bengal Kagazkal Mazdoor Union v. Titaghur Paper Mills Co. Ltd. (3) Wanchoo J., (as he then was) observed at page 45 :

> "It is now well settled that the balance-sheet cannot be taken as proof of a claim to what portion of reserves has actually been used as working capital and that the utilisation of a portion 'of the reserves as working capital has to be proved by the employer by evidence on affidavit or otherwise after giving opportunity to the workmen to contest the correctness of such evidence by cross- examination (1) [1960]2S.C.R.906. (2) [1960] 2 L.L.J. (S.C.) 46.
>
> (3) [1964] 3 S.C.R. 38.

(See Patlad Turkey Red Dye Works Ltd. v. Dyes & Chemicals Workers' Union)".

An attempt is however made by the learned Advocate for the Appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof The observations of Venkatram lyer J, in Union of India v. Varma, (1) to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the Public Servant in which he complained he was not permitted to cross-examine. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination then to allow the delinquent to exercise his right to crossexamine him was not followed, but that ,the Enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognised rules of procedure. In these circumstances it was observed at page 264:

> "Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of Law".

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not (1) [1958] 2 L.L.J. 259, 263-264.

spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure -under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all tech- nicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act 1947 and the rules prescribed therein permit it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be

produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.

We now propose to examine the claim under each one ,of the heads, not-only those in respect of the prior charges but also in respect of contingency and development reserves which have to be taken into consideration for determining the amount of bonus to be declared out of the available surplus.

The first claim is in respect of depreciation on account of double shift. The Appellant did not claim any depreciation in respect of electric cables. The only 2 6 0 was relating to plant and machinery which comprises of boilers and turbines. Ghosh P. W. I stated that the plant and machinery worked more than double shift. In support of his statement he filed Exhibit E. 16 which he stated was correct as he had verified it from the records. Exhibit E.- 16 is not a document prepared by the witness but appears to have been prepared and signed by the Resident Engineer, according to which the total number of hours which the four boilers and the four turbines had worked during 1960-61. So far as boilers are concerned all of them are said to have worked 21,327 hours the average of which for each boiler for the year was computed at 5,331 8 hours. Similarly the turbines worked 21,629 hours which works out to an average of 5412 -3 hours per turbine per year. If the year is taken as 365 days the average for the boiler and turbine works out to 14.6 and 14.8 hours while if it is taken as 300 days it works at 17.77 and 18.04 hours respectively. The Appellant contends that there is no cross-examination of witness Ghosh nor have the employees challenged this statement. Accordingly he submits that a sum of Rs. 28,413/- should be allowed. It is however admitted that no claim was made before the Incometax Officer nor has any amount been allowed in the Company's assessment for the relevant year (see Ex.

11). But even if the amount was not claimed under the Incometax Act, that does not by itself preclude us from allowing dreciation for double or multiple shifts but in this case thee difficulty is that there is no -proof as such of the plant and machinery working double shift. We are asked to assume that any an Elec tricity Undertaking the boilers and turbines must be working throughout at any rate more than 8 hours. We however, do not know to what extent each of these were working for how many days and how many hours each day. The Resident Engineer was not produced nor was Ghosh in a position to speak to the facts of the state- ment therein from his knowledge or in any a credible manner as to make his evidence acceptable. The Tribunal said that the veracity of the statement Ex. 16 is also doubtful because the employers have not produced anything before it to show the total running hours of the boilers or turbines. It further went on to say "The Statement of M. K. Ghosh is self contradictory. He has said one thing at one time and quite another at another place in 2 6 1.

respect of the same matter. The Tribunal had to put to the witness scores of questions in order to clarify orin order to ascertain which of the two statements made-, by the witness could be taken to be correct".

We think the Tribunal was justified, in rejecting this. claim. In view of this disallowance- the amount to be, allowed as prior charge towards depreciation wil have to be computed after allowing for the

notional depreciation.- In calculating the amount deductible from gross profits. on account of Income-tax the learned Advocate of the Appellant contends that the Tribunal's calculations were: wrong. What the tribunal has done-is though it deducted the notional normal depreciation of Rs. 2,02,814/- from the gross profits it had for the purposes of computation of' Incometax deducted the statutory depreciation of Rs. 2,52,442/- and on the balances of that figure namely Rs.. 2,32,035/- computed Income-tax @ 45% amounting to. Rs. 1,04,415/-. If the contention of the learned Advocate, for the Appellant was accepted and only the notional nor-mal depreciation alone was deducted for computing the Income-tax the Income-tax deductible would come to Rs.. 1,26,748/-. It was again sought to be contended that the development rebate on plant installed @ 25 % on, Rs. 1,28,513/- amounting to Rs. 49,628/- could not form. part of the statutory reserve which together with the notional normal depreciation came to Rs. 2,52,4421-. It was submitted that development rebate is not one of the species of' depreciation; that it is a rebate for development which is, dehors depreciation and has nothing to do with the written down value of the asset for calculating depreciation. From the Tribunal's order it would appear that there was no dispute with respect to the provision for Income-tax or its. quantum because after deducting the amount of statutory depreciation the amount as computed at 45 % is Rs. 1,04,415/- which was the amount claimed by it as statutoryreserve as per Ex. E. 13. That the deduction of statutoryallowance for computing Income-tax is the true principleis borne out by the decisions of this, Court. The contention that only notional normal depreciation and not statutory, depreciation should be taken into account was raised in Bengal Kagazkal Mazdoor Union. v. Titaghur peper- Mills Co. Ltd., where Wanchoo J. (as he then was) at page:

> 2 6 2 44 negatived it but nonetheless, because the quantum of statutory depreciation was in controversy and it was not possible to calculate the correct amount of Income'-tax to be calculated in the absence of evidence, the case was remanded to the tribunal for further evidence for arriving at the correct statutory depreciation to compute the Income Tax. Reference was also made to the Meenakshi Mills case and the Associated Cement Companies case. In the latter case it was held at page 962 that in calculating the amount of tax payable for the bonus year the Tribunals should take into account the concessions given by the Income-tax Act to the employers under the two more depreciations allowed under S. 10 (2) (vi) of the Income-tax Act. In Burn & co Ltd. v its Workmen(1) also it would -appear "that the Income-tax after making the allowance for statutory depreciation and development rebate was computed". Though it is said that no reasons were given ,this computation is in consonance with the decisions of this Court. In this view the computation of Income-tax by the Tribunal after deducting the statutory depreciation cannot be assailed. The amount deductible on this account will be Rs. 1,04,415/-.

Two further items are sought to be deducted as prior charges namely the return on working capital and the amounts required for rehabilitation. The claim of the Appellant for return on working capital was Rs. 40,360/which is 6 % on Rs. 10,09,000/- said to have been employed in the Undertaking. The Tribunal referred to Ex. E. 17 in which details of the reserves used as the working capital have been given as also another statement Ex. E. 18 which showed details of the approximate working capital required for running the Undertaking. Ex. E. 6 is a statement. Showing the annual

wages and salaries and E. 7 shows ,deficiency of surplus of funds for normal working of the Undertaking. The Tribunal attached no value to these -statements as the calculations of working capital was arrived at on the basis of assets of reserve as they stood on 31-3-61 i.e. on the closing day of the year 1960-61. The ,learned Advocate for the Appellant had to concede that the 'Tribunal was right in rejecting this basis as the basis for working capital. What he says should have been done ,was to have taken the amount at the beginning of the year [1964] 5 S. C.R. 823.

namely 1st April 1960 and to add to this amount the amount of reserve actually utilised during the bonus year as working capital. The evidence of Ghosh in this as in other matters was of little assistance to the Appellant. While he stated that Rs. 10,09,000/- was the working capital of the Company during the year, in cross-examination he admitted that the consumers deposits have been used in the business as working capital. Later on he sought to explain it by an application in which he said that what he meant was that the consumers deposit had been invested in the business. The Tribunal has carefully gone through this evidence and was of the view that Ghosh has given contradictory and false statements in respect of the consumers deposits not being used as working capital. This apart as already stated, he has no personal knowledge. In any case the Tribunal has on an examination of the Cash Book and profit and loss account Ex. W. 16 and E. I held that the receipts of the concern are little more than two lacs a month which amount by itself would be sufficient to meet its day-to-day expenses. In considering a claim for return on working capital two questions must be kept in view; whether 'the reserves were available and if they were, whether they were used as working capital and if so, what is that amount. These are questions of fact and if the employer fails to establish by satisfactory evidence the claim will have to be rejected. In this case we may point out there is no proof, that any of the reserves have been utilised.

Lastly the claim for rehabilitation has also to be rejected on the same grounds. We have already discussed the approach that has to be made in considering this claim. As rehabilitation reserve is a substantial item which goes to reduce the available surplus and as a result, effects the right of the employee to receive the bonus, the employer will have, to place all relevant materials and the ,Tribunal will have to scrutinise these carefully and be satisfied that the claim is justified At the same time it is equitable also in the larger interest of the industry as well as of the employees that proper rehabilitation reserve should be built up taking into consideration the increase in prices in plant and machinery which has to be replaced at a future date and by the determination of a multiplier and its divisor. The case of the Appellant is that the requirement of the Undertaking in this regard is Rs. 15,66,496/-.. The assets .

MI245 SupCI/71 26 4 required to be replaced have been divided into three blocks

-one upto 31-12-59, the second from January, 1940 to December 1947 and the third from January 1948 to March 31, 1961. Certain statements were filed which were intended to show what the yearly replacement cost as well as the original cost was, as also the life and the yearly requirements of all the assets, the multiplier and divisor. In support of the replacement cost, quotation of prices Ex. E. 21 to E. 24 have been filed. These are from M/s. Martin Burn Ltd., as Agents of M/s. C. A. Pearson & Co. Ltd., Babcocks & Willcox of India (P) Ltd., -Indian Cable Co. Ltd., representing British Insulated Calendar Cables Ltd., and the Indian Iron & Steel Co. The first objection against the admissibility of

these letters is that they have not been proved by anyone of the persons who have written these letters or any of the representatives of the firms whose letters they are. As has been noticed Ghosh is the omnibus witness and he has no knowledge whatever in respect of any of the matters- stated therein nor can he speak to the precise requirement for rehabilitation. It is rather surprising that the employer who is making such a big claim have not called any one as a witness who can speak with knowledge of the age, the, requirements and the increase in the prices of replacements. The original cost ,of these blocks has been prepared by Shri Chatterji (Ex. E. 19 and Ex. 20). But he has, not been produced and an ,attempt was made to prove them through the evidence of Ghosh. The Tribunal states that a number of questions were put to the witness to ascertain as to how he calculated the original cost and his reply was that the same has been taken from the balance-sheet. The balance-sheets for ,earlier years have also not been produced to show what the original cost was. The Tribunal has examined these matters and the evidence relating thereto in great detail ,and we agree with it that the Appellant has failed to prove the original cost of the machines, plant and machinery, its age, the probable requirements for replacement, the multiplier and the divisor. In these circumstances this claim also has been properly disallowed.

There is then the claim for contingency reserve and development reserve which it is not disputed has to be provided under the Electricity (Supply) Act amounting to Rs. 32,900/- and Rs. 22,333/- respectively in all Rs. 55,233/-.

The Tribunal, however, has disallowed this claim on the round that since they have been created under the Electri- city (Supply) Act which according to its understanding of the legal position, could not be deducted. These two reserves it may be stated have to be created under the pro- visions of Clause V and Clauses V (a) of the Sixth Schedule of the Electricity (Supply) Act, 1948. The Tribunal has gone into the reason for the creation of these reserves, their use etc. We have already examined the legal position earlier and have noticed that the provision for the said reserves has been made under the statute for a special purpose namely to work out the charges to be recovered from the consumers for the supply of Electricity but that does not mean that these are not to be taken into consideration in declaring bonus though they have not been treated as prior charges. We have referred to the case of Mathura Prashad Srivastava as supporting this view. In these circumstances the amount of Rs. 55,233 /- has to be provided for. Except for this amount the computation made by the Tribunal for ascertaining the available surplus is in our view justified. The amount found by the Tribunal in this regard is Rs. 1,29,248/- and if Rs. 55,233/- is to be provided there will be an available surplus of Rs. 74,015/-. The Tribunal as we / said awarded three months bonus amounting to Rs. 73,000/- which works out to Rs. 24,333/per month. We think having regard to the financial capacity of this Undertaking one month's bonus which will leave a surplus for the working of the Undertaking, will meet the ends of justice. We accordingly order the payment of one month's wages as bonus. Each party will bear their own costs in this Appeal.

G.C. Ordered accordingly.