

Killick Nixon Limited vs Killick & Allied Companies Employees ... on 2 May, 1975

Equivalent citations: 1975 AIR 1778, 1975 SCR 453, AIR 1975 SUPREME COURT 1778, 1975 2 SCC 260, 1975 LAB. I. C. 1315, 1975 2 LBLJ 53, 47 FJR 412, 1976 (1) SCJ 475, (1976) 2 LAB L J 53, 30 FACLR 401

Author: P.K. Goswami

Bench: P.K. Goswami, M. Hameedullah Beg, A. Alagiriswami, N.L. Untwalia, Hans Raj Khanna, P.N. Bhagwati

PETITIONER:
KILLICK NIXON LIMITED

Vs.

RESPONDENT:
KILLICK & ALLIED COMPANIES EMPLOYEES UNION

DATE OF JUDGMENT 02/05/1975

BENCH:
GOSWAMI, P.K.
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GOSWAMI, P.K.
BEG, M. HAMEEDULLAH
BEG, M. HAMEEDULLAH
ALAGIRISWAMI, A.
UNTWALIA, N.L.
KHANNA, HANS RAJ
BHAGWATI, P.N.

CITATION:
1975 AIR 1778 1975 SCR 453
1975 SCC (2) 260
CITATOR INFO :
RF 1976 SC2439 (6,7,9,10)
RF 1977 SC 322 (26)
D 1978 SC 419 (12)
R 1980 SC 31 (8)
D 1986 SC1794 (7)
E&D 1992 SC 504 (31)

ACT:
Industrial Dispute--Fixation of ceiling on D.
A.--Principles.

HEADNOTE:

The appellant-company wanted to introduce the following scheme of D.A for its clerical staff and drivers.

Basic Pay slabs.	Percentage of basic salary (C.P.I. 441-450)	Variation for every 10 points of C.P.I.
1st Rs. 100	120	5%
2nd Rs. 100	40	2%
Rs. 201 to Rs. 500	30	1%
Over Rs. 500	25	

Maximum D.A. Rs. 325

Placing the ceiling of Rs. 325 on the D.A. was not acceptable to the employees and a reference was made to the Industrial Tribunal and the Tribunal removed the ceiling.

In appeal to this Court,

HELD:

While the question of the desirability of ceiling on D.A. was not in issue in any references to Tribunals of appeals therefrom, referred to by the parties, the question of imposing a ceiling on D. A. is not an absolutely alien phenomenon. Although it might not have been the general practice, ceiling was not rejected out of hand as irrational or unjust by unions in the course of collective bargaining in the Bombay region, in which the head-office of the appellant is situated. In the case of the employees under the Central Government also a kind of ceiling has been in vogue. [461F.G., 462A]

(1) The problem of imposing or removing a ceiling on D. A. has to be viewed from the following among other important aspects :

- (1) Condition of the wage scale prevalent in the company.
- (2) Condition of the wage level prevalent in the industry and the region.
- (3) The wage packet as a whole of each earner in the company with all amenities and

ties and

benefits and his ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and industrial peace.

(4) The position of the company viewed in relation to other comparable concerns in the industry and the region.

(5) Peremptive necessity for full neutralisation of the cost of living at the

rock-bottom of wages scale if at, or just above, the subsistence level.

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(6) The rate of neutralisation which is being given to the employees in each salary slab.

(7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.

(8) Degree of sacrifice necessary even on the part of workers in general interest.

(9) The compulsive necessity of securing social and distributive justice to the workmen.

(10) Capacity of the company to bear the additional burden.

(11) Interest of national economy.

(12) Repercussions on other industries and society as a whole.

(13) The state of the consumer price Index at the time of the decision.

(14) Forebodings and possibilities in the foreseeable future as far as can be envisaged.

(15) Price indices have now assumed menacing figures. Any problem regarding wage or D.A. has to be considered in that background and at the same time not losing sight of the national economy. [466E-H, 467A-C]

II. The removal of ceiling in the instant case is not justified even though, on the. appellant company is a prosperous company with capacity to bear the additional financial burden if the ceiling is removed, and (ii) the consumer ,rice index has been soaring higher and higher; because : [465A-B, 467D]

(a) The unprecedented rise in the consumer price index produces steep rise in D.A.[458H]

(b) The absence of ceiling on D.A. can thus result in curious anomalous situations wherein the pay packet of the clerical staff would exceed the pay packet of junior executives which would hardly be conducive to discipline, efficiency and effective exercise of control. [463-GA]

(c) Although the appellant employs a total of 1142 workmen in its various factories and branches, the dispute relates to only 265 workers in the head-office. A general problem like imposition of ceiling on D.A. in a company cannot be treated on the statistical burden relevant only to a section of the employees. [463C-E]

111. D.A. being intimately connected with the cost of living, the matter cannot be judged by the test submitted by

the workmen, namely, that there cannot be a ceiling on D.A. unless there is a ceiling on profits. [467-F]

IV. Also, in dealing 'with the problem of ceiling on D.A., the Tribunal's view that there should not be a ceiling on D.A. unless the company would be required to close down if the ceiling is removed, is not correct. [465-H]

V. At what particular amount there should be a ceiling on D.A. is a matter which will have to be gone into by the Tribunal. But so far as the lowest paid employees at or just above subsistence level are concerned, they are entitled to 100 per cent or at any rate 95 per cent neutralisation of the rise in cost of living, and hence, there should be no ceiling on D.A. payable to employees within the slab of first Rs. 100/- unless it can be shown by the management that the rate of neutralisation in their case is more than 100 per cent. The manner in which the ceiling may be imposed, that is, at a certain amount as the outside limit of the D.A. or by reference to the quantum of D.A. payable at a certain wage level, or in any other manner, would also

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have to be decided by the Tribunal in the exercise of its judicial discretion. The Tribunal will have to perform this delicate task by striking a balance the weightage to be given to any principle being variable according to the conditions-and keeping in view the dominant principle of doing social justice. [467DE, CH, 468A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 734 & 735 of 1973.

Appeal by special leave from the Award dated the 24th January, 1973 of the Industrial Tribunal, Bombay in Ref. Nos. (IT) 149 of 1966 & (IT) No. 257 of 1966.

A. K. Sen, I. N. Shroff, D. G. Shroff, M. S. Gagrati & F. D. Dalmania, for the appellant.

R. J. Mehta, for the respondent A. K. Gupta, for the, applicant/intervener (Killick Nixon Employees' Union) D. C. Shroff, O. P. Mathur, K. J. John, F. K. Kaka and J. B. Dadachanji, for the applicant/intervener (Cynamid India Ltd.) G. B. Pai, S. V. Gupte, O. C. Mathur, K. J. John, A. G. Meneses and J. B. Dadachanji, for the applicant/intervener (Voltas Ltd.).

Janardan Sharma and Jitendra Sharma, and K. T. Sule, for the applicant/intervener (Cynamid Employees' Union) Janardan Sharma and Jitendra Sharma, for the applicant/intervener The Judgment of the Voltas & Vol Kart Employees Union court was delivered by Goswami, J.-The only question with which we are concerned in these appeals by special leave is: Should there be a ceiling on dearness allowance in this case ?

On May 11, 1966, the employers gave a notice of change for placing a ceiling on dearness allowance (for brevity D.A.) already in vogue at the figure of Rs. 325/-. Since this was not acceptable to the union, both sides agreed for a reference to the Industrial Tribunal, Maharashtra. By the impugned order of January 24, 1973, the Tribunal removed the ceiling and hence this appeal.

'Mere was also another demand with regard to the D.A. for drivers on the same basis as that for clerical staff. The Tribunal following this Court's decisions in *Bengal Chemical & Pharmaceuticals Works v. Its Workmen*(1) and *Greaves Cotton and Co. and Others v. Their Workmen* (2) allowed the union's claim for the two categories to be treated on equal footing. This Court held in the above decisions that employees getting the same wages should get the same D.A. irrespective of whether they are working as clerks or as members of subordinate staff or as factory workmen. This part of the award is, therefore, rightly not challenged before us. (1) [1969] 2 S. C. R. 113.

(2) [1964] 5 S.C. R. 362.

10 SC/75-30 The reference was made in June 1966. There was an earlier award in the reference. At the instance of the management, the High Court set it aside and remanded the above two items of dispute alone for disposal. The Tribunal had in the earlier award rejected all other claims of the union including that of revision of wage scale.

The only point that survives, therefore, is with regard to the ceiling on D.A. When the reference was made in June 1966 the cost of living index for Bombay city was 626. At the time of the impugned award in January 1973 it rose to 906 and in December 1974 it reached 1336 mark.

Various expert committees and commissions have dealt with the question of wages and D.A. from time to time. Dearness 'allowance as such is not known in foreign countries with the exception of Ceylon and Pakistan. Whenever there is any significant rise in the cost of living in foreign countries there is a revision of wage rather than payment of any D.A. as such. D.A. in India is a relic of the First World War to cope with the rise of cost of living although then in the shape of ad hoc payments not linked to any consumer price index. During the Second World War it was introduced in the form of a Grain Compensation Allowance to compensate the hardship of the employees for the rise in prices of foodgrains. So far as the Central Government employees were concerned, the Government constituted the First Pay Commission in 1947 to examine the wage structure. The Government of India also set up a Committee on Fair Wages and the report was submitted in June 1949. A Second Pay Commission was also constituted by the Government in 1959. The Government of India in August 1964 constituted a One-man Independent Body to enquire into the question of D.A. payable to the Central Government employees and the report was submitted in January 1965 by Shri S. K. Das. In July 1966, the Government of India appointed a Dearness Allowance Commission presided over by Shri P. B. Gajendragadkar. The Commission examined the principles which should govern the grant of D. A. to Central Government employees in future and was also required to review the formula for the grant of D.A. as recommended by the Second Pay Commission and to recommend, changes, if any. In December 1966, the Government of India set up a National Commission on Labour presided over by Shri P. B. Gajendragadkar with exhaustive terms of reference and the Commission submitted its report on August 28, 1969. Then in sequence came the report of the Third

Pay Commission in 1973. The parties have extensively quoted from the above reports during arguments. Historically and by the industrial texts and also observations of various commissions and committees, D.A. was regarded as "applicable to those employees whose salaries are at the subsistence level or little above it..... in order to enable them to face the increasing dearness of essential commodities". (See Gajendragadkar Commission on Dearness Allowance, May, 1967).

Like all changes in life and in continuous march in progress of society the concept of D.A. also may change to take in a wider range of commodities and services to make life worth living as far as practicable subject to compelling limitations of general interest. We recognise that the old definition of D.A. may not even serve the climate of new aspirations of various classes of employees of this vast country. Luxuries of Yesterday may be the comforts of to-day and necessities of tomorrow. Economic solutions must reckon the turnabouts in social urges. Because even the worm turns. Industrial adjudication which has not the limitations of the ordinary, courts has to respond to the needs of changing society and it may be possible to widen the scope of D.A. if that serves the cause of general welfare. There may be no inexorable rule tying down economic existence to definitions of bygone days, if unsuitable or irrelevant in the context of the times.

The National Commission on Labour (1969) while dealing with D.A. observed :

"We consider that payment of D.A. has to be viewed in broader context of wage policy, many elements of which have been discussed in the previous chapter. In a developing economy where price stabilisation has proved ineffective, or the inflationary potential cannot be controlled, any arrangement for compensating for price rise will have its *raison d'être*. At the same time, a direct linkage between a rise in the index and the D.A. may create problems for price stabilisation. It can hardly be disputed that the index is the best available indicator of changes of price level. The reason for a disproportionately high D.A. is the fixation of basic wage on a date far remote from the present". (Para, 16,39, page

240).

The Commission further observed "It is obvious that unless money wages rise as fast as the consumer prices, it would result in an erosion of real wages. But the extent of its impact will depend on the margin of cushion available at different levels of income..... We accordingly recommend that 95 per cent neutralisation should be granted against rise in cost of living to those drawing minimum wage in non-scheduled employments". (para 16.47, page 242).

The Third Pay Commission in its Interim Report made some significant observations :

"We need hardly emphasise that it would be an exercise in futility to keep on increasing the emoluments of Central Government employees, if these increases are largely wiped out soon afterwards by increases in prices of goods and services. There is, therefore, paramount need to maintain price stability and we are confident that the Government will take all necessary fiscal, monetary and other measures,

including control over production and distribution, to maintain the price line".

D.A. was primarily intended to be a temporary expedient and ,as sought to be made available as a protection to those who have of cushion at all in their wage packet in the face of any appreciable rise in prices. Some relief was given to others also. The hope of 'he two Pay Commissions that prices will decline and stablise, never same true. D.A. has, therefore, come to stay. The price indices have now assumed menacing figures. This is the stark reality of the situation and any problem regarding wage or D.A. has to be considered in that background at the same time not losing sight of the national economy.

In considering the question of D.A. the total wage packet of the employee must be kept in view. The first and foremost consideration is the case of the employees at the minimum wage level. it must, however, be remembered that minimum wage should enable an employee not merely for the bare sustenance of life but for the preservation of his efficiency by providing for some measure of education, medical requirements and amenities. The concept of minimum wage as also of fair wage cannot be static. It will change with the progress of time and development. In a recent decision of this Court in Bengal Chemical (supra) ,the principles for fixing of D.A. came up for consideration. After reviewing the earlier decisions, this Court held as follows :-

- "1. Full neutralisation is not normally given, except to the very lowest class of employees.
2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
3. The basis of fixation of wages and dearness allowance is industry-cum-region.
4. Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.
5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account".

It is submitted on behalf of the employers that in a scheme of D.A. linked not only to the cost of living index but also to basic wages by way of slabs, there must be a ceiling as otherwise it will not be a compensation for increased cost of living but additional remuneration unconnected with the increasing cost of living at the lowest level. It is emphasised that where there is a dual link, a ceiling removes the incongruity in the D.A. rising with the basic wages out of proportion to the cost of living compensation at the lowest level. It is fairly admitted that the ceiling fixed act any given time on the basis of a possible rise in the cost of living index in the foreseeable future may be altered if the rise in the cost of living index later makes the ceiling unreflective of the requisite neutralisation of the

increase in the cost of living at the lowest level. It is submitted that without a ceiling it will be impossible for any management to plan the business of the employers including production, expansion, etc. without any certainty of wage bill being estimated at any definite figure for the foreseeable future.

On the other hand it is submitted on behalf of the workers that there should be no ceiling on D.A. till the workers reach the level of living wage. It is also submitted that in the interest of social justice there should be no ceiling on wages without first putting a ,ceiling on profits and controlling and stablising prices.

The award pertains to the clerical staff and drivers working in the Head Office of the appellant numbering about 265 out of about 743 workmen in its various establishments (page 120 of the record). Out of that also only two classes of workers are involved, namely, the clerks and the drivers. Amongst the clerical staff. there are three grades, Grade A, Grade B and Grade C as under ,Grade A: Rs.

165-15-240-20-400-E.B.-25-500.

Grade B: Rs. 110-10-150-12-1/2-200-15-260-E.B.-20-360. Grade C: Rs. 70-5-90-8-130-10-200-E.B.-12-1/2-250. The wage scale for drivers is as follows:

Rs. 75-5-100-7-135-7-50-150. The scheme of D.A. which is sought to be introduced with the ceiling is as under

Percentage Variations Basic Pay slabs of Basic Salary for every (C.P.I. 44 1-450) 10			
p	o	i	n
t	s	o	f
C	.	P	.
I	.		
=====			
1st Rs. 100 120 5 %.			
2nd W.	100	40	2%
Rs. 201 to Rs. 500	30		1%
Over Rs. 500	25		
=====			
Maximum D.A. Rs. 325/-			

Mr. Mehta, representing the union, has drawn our attention to. a few awards in the Bombay region prescribing slab system of D.A. without ceiling. The first is that of the Ahmedabad Manufacturing & Calico Printing Company Limited. It is true that on 4th slab of Rs. 100/- and balance, 9.75% D.A. was allowed without imposition of any ceiling. D.A. was awarded by the Industrial Tribunal in this case on a slab system at the consumer price index 841-850. The second is the case of Indian Vegetables

Products Limited, Bombay, where there was no introduction of any ceiling and 10% D.A. at the 3rd slab of Rs. 100/- and above was granted. In that case the consumer price index was at 311-320. The third case is that of Godrej Soap Private Limited where again although no ceiling on D.A. was imposed, the Tribunal was dealing with a case when the consumer price index was at 396-405. It is pointed out that in all the three above cases special leave was refused by this Court. That, however, cannot be a ground for holding that this Court endorsed non-imposition of ceiling on D.A. as a principle. The question as such was neither raised before the Tribunal nor before this Court in any of the above cases. Mr. Mehta also filed a list of 25 awards during the period between 1st January, 1970 and December, 1974 in the Bombay region. This was with the object of establishing case for a slab system of D.A. linked to the consumer price index with point variation without ceiling, Mr. A. K. Sen has commented that some of these awards were as a result of settlement and the question of ceiling on D.A. was not even raised for a decision. In the case of Dorr-Oliver (India) Limited, the scale of pay was fixed on the basis of the consumer price index 700 and D.A. was fixed, if the index rose beyond 700, on a slab system. It is to be noted that a flat sum of Rs. 9/- as D.A. was allowed on the salary of Rs. 5001- and above and for variation for rise of every ten points in slab above 700, Rs. 9/- was fixed for such slab. It is to be noted that there is no percentage basis of D.A. on the salary and it is any linked to the consumer price index. In the case of Kanji Jadhavji, 210 & Company, it is, however, seen that for pay in excess of Rs. 210/- but upto Rs. 670/- per month 1/2 paisa per rupee per point upto Rs. 180/- per month plus 1/3 paisa per rupee per point in excess of Rs. 180/- upto Rs. 210/- plus 1/4th paisa per rupee per point in excess of Rs. 210/- subject to a maximum of Rs. 1.65 per point per month was allowed. There is a fixed salary of Rs. 670/- beyond which D.A. was not made admissible. In the case of Tata Press Limited which is an award said to be by settlement, additional D.A. of 10 per cent has been given on the basic wage of above Rs. 401, but there is no linkage to the consumer price index. In Godavari Sugar Mills Mamli Private Limited, D.A. stopped at the 4th Rs. 100/- of basic salary. At this slab 36 per cent D. A. was awarded with variation of 1 per cent for every ten points rise or fall in the consumer price index 791-800. Identical is the case of another award in the case of Somaiya Organo Chemicals Limited. In Britannia Biscuit Company Limited's case. no D.A. has been awarded beyond the salary slab of Rs. 500/ D. A. was considered in this case when the cost of living index number was 301-310 (old series). In several awards in the compilation given by Mr. Mehta, minimum D.A. has been fixed. On the other hand Mr. Kaka intervening for Cynamid India Limited has drawn our attention to a number of awards in the Bombay region wherein there appears to be a ceiling on D. A. These are :

1. National Machinery Manufacturers Ltd. Maharashtra Gazette (M.G.G.) dated 30.6.1966.
2. Indian organic Chemicals Ltd. M.G.G. dated 21.11.1974.

3. The Millowners Association.M.G.G. dated 31.10.1974.
4. PhoeuLx Mills Ltd. M.G.G. PaRt I-L dated 22.6.1972.
5. Bayer (India) Ltd. M.G.G. dated 31.1.1974
6. West Coast Paper MillsM. G. G. dated 20.7.1972
7. voltas Limited 1. C. R. February 1970' page 57
8. Murphy India LimitedM. G. G. dated 27. 7. 1972
9. Polychen Limited M. G. G. dated 6. 8. 1970 Mr. Mehta has, however, submitted that most of the settlements in pursuance of which awards had been made have expired and notices of termination have been served on the employers and in some cases disputes have been raised.

The management also argued that this Court in M/s Unichem Laboratories Ltd. v. The workmen (1) noticed in paragraph 33 of the decision-

"Another feature of the scheme adopted by the Tribunal is that it puts a ceiling on the employees drawing basic wages up to Rs. 300 per month alone being eligible for dearness allowance; whereas under the practice originally obtaining in the company there was no such limit."

and, therefore, must be held to have approved of imposition of ceiling. We are unable to accept that this Court was called upon to decide about the question of. ceiling in that appeal which was at the instance of the employers and not of the employees nor against the imposition of ceiling. The management also drew our attention to a decision of this Court in Remington Rand of India v. Its Workmen (2) when the scheme of D.A. contained a maximum of Rs. 200 at the index figure 351-360 and the maximum was not interfered with by this Court. It is sufficient to point out that the question of desirability of ceiling or otherwise was not at all in issue in that appeal and therefore, this Court was not called upon to pronounce upon the matter.

We, however, find that in the case of employees under the Central Government a kind of ceiling has been in vogue. For example one of the Second Pay Commission's recommendations was that the benefit of D.A. should in future adjustments be extended to all employees drawing a basic pay below Rs. 400 per menses in such a way that the total of basic pay and D.A. paid to an employee in the pay range of Rs. 300 to Rs. 400 does not exceed Rs. 400 (page 97, paragraph 16). The Third Pay Commission also after fixing D.A. at a percentage of 3.5 per cent of pay upto the pay range of Rs. 300 fixed a maximum of Rs. 10 per month and a minimum of Rs. 7 per month. Similarly for the pay range above 300 a percentage of 2.5 per cent of pay was fixed subject to a maximum of Rs. 20 per month and a minimum of Rs. 10 per month. The Commission further recommended that the pay plus D.A. should in no case exceed Rs. 2,400 per month.

(1) [1972] 1 L. L. J. 576, (2) [1962] 1 L. L. J. 287, From the above one thing, however, is clear that the question of imposition of ceiling on D.A. is not an absolutely alien phenomenon. Although it might not have been the general practice, ceiling was not rejected out of hand as irrational or unjust by unions in the course of collective bargaining in the Bombay region. So far as the workers involved in these appeals are concerned the question whether D.A. should cease at a certain level of salary does not arise for consideration. The maximum basic of the highest grade in the case of these employees is Rs. 500. It may, however, be noted that a system has been in vogue in the case of Government employees where D.A. ceases to be admissible on reaching a certain level of salary. The question remains as to whether a ceiling should be placed on D.A. itself, when it exceeds Rs. 325 as has been sought to be done by the employers. The employers gave a notice of change for imposition of ceiling on D.A. in May 1966 when the cost of living index has been on the constant rise each year. While the for 1966 was 630 those for the subsequent years from 1967 to 1974 were 697, 740, 766, 797, 832, 876, 982 and 1198. In December 1974 it was 1336. The cost of living index being on a constant rise it is necessary to consider the totality of the wage packet of the workers and other relevant factors in order to decide if a ceiling on D.A. should be imposed. In this context our attention has been drawn by Mr. Sen to the statement of objects and reasons to the Additional Emoluments (Compulsory Deposit) Bill 1974 which is as follows :-

"Controlling inflation is today the single most important task facing the country. Periodical revision of wages and adjustments in the rates of dearness allowance, which have been adopted as remedies for moderating the impact of rising prices, have been proving ineffective. In view of the mounting pressure of inflationary forces, payments of additional wages or dearness allowance will give an upward thrust to prices and will inevitably aggravate the situation, and also neutralise the effect of any increase in the wages or dearness allowance. In the circumstances, urgent steps aimed at breaking this vicious circle of money incomes chasing prices be came inescapable. These measures undoubtedly involve some sacrifices by different sections of the community. As a part of these anti- inflationary measures, the Additional Emoluments (Compulsory Deposit) Ordinance, 1974, was promulgated by the President on the 6th July, 1974.....

Reference to the above is made in order to highlight the dreadful consequences of inflation and the inefficacy of mere wage rise as a solution.

We may, however, in this connection usefully refer to what the National Commission on Labour said on this subject:

"Firstly, the increased purchasing power in the hands of the workers on account of compensatory payments for rise in cost of living forms a small part of the overall increase in purchasing power. Secondly, the elasticity of compensatory payments to changes in cost of living is generally less than unity so that the feed-back must taper off. Money wage stability, though important for price stability, is seldom a necessary, much less a sufficient condition for it. On the other hand, holding of the price line, particularly of the cost of living is an adequate condition for preventing increases in

money wage payments that are not related to increases in productivity. This alone can prevent a fall in real wages."

Before we proceed further we have to take note of certain facts concerning the dispute. Although the company employs a total of 1142 workmen in-its various factories and branches the present dispute relates to 265 workers in the Head Office (Bombay) out of them. It is not disputed that the supervisory staff consisting of 86 members, although not involved in this reference. have been in receipt of D.A. under the same scheme. There is no ceiling on D.A. in the Calcutta branch of the company where the workers are paid according to the Bengal Chamber of Commerce's rates. The industry-cum-region aspect may at present take care of the few employees working in Calcutta. It is, however, not unlikely that all the employees of the company may claim to be treated alike. There are also disputes pending in respect of the subordinate staff at the Head Office. Without adding further details it is sufficient to state that a general problem like imposition of ceiling on D.A. in a company cannot be treated on the statistical burden relevant only to a section of the employees. Both the parties realise the importance of this aspect and produced before us a large number of documents containing various details including balance-sheets of the company upto 1973 to enable us to have a complete picture of the entire matter. The management has produced a statement showing the comparison of total emoluments of clerical and supervisory staff after implementation of the award and those of the junior executive staff. We have quoted therefrom showing the figures in April 1973 and July 1974 with the respective index at 924 and 1194.

It will be seen that the minimum basic salary of a junior executive is Rs. 400 and maximum is Rs. 1000'. With allowances the junior executive at the minimum gets a total of Rs. 700 and at intermediate stages, namely, of Rs. 530 and 800, he gets a total of Rs. 830 and Rs. 1150 respectively. When he reaches the maximum the total with allowance is Rs. 1350. The clerical staff at the maximum grade which is Rs. 500 gets a total amount of Rs. 1230 inclusive of D.A. of Rs. 730 after removal of the ceiling at the C.P.I. 924. At the intermediate stage a clerk gets Rs. 874 in the same index (Rs. 300 basic salary plus Rs. 574 D.A.). At the minimum he gets Rs. 70 basic pay plus Rs. 340 D.A. totaling Rs. 410 in the same index 924. The position is worse when the consumer price index touches 1194 as, seen above. The absence of ceiling on D.A. can result in curious anomalous situations where in the pay packet of clerical staff would exceed the pay packet of junior executive staff. This is hardly conducive to discipline, efficiency and effective exercise of control.

KILLIK NIXON LIMITED BOMBAY.

COMPARISON OF TOTAL EMOLUMENTS OF CLERICAL SUPERVISORY AND JUNIOR EXECUTIVE STAFF.

Salary	CLERICAL	
	Basic	
	D.A.	Total

Rs	.Rs.	Rs.

APRIL 1973	Minimum	70	340	410	Min
(Feb. CPI	Middle	300	574	874	Mid
924)	Maximum	500	730	1230	Mid
					Max.
JULY 1974	Minimum	70	475	545	Min
(May CPI	Middle	300	790	1090	Mid
1194).	Maximum	500	1000	1500	Mid
					Max
SUPERVISORY			JUNIOR EXECUTIVE		
Basic			Basic House	Travel-	
Salary	D.A. Total		Salary Rent Al-	ling Al-	total
			lowcante	lowance	

===== Rs. Rs.
Rs. Rs. Rs. Rs. Rs.

275	555	830	400	150	150	700
520	730	1250	530	150	150	830
800	730	1530	800	200	150	1150
1200	730	1930	1000	200	150	1350
275	764	1039	400	150	150	700
520	1000	1520	530	150	150	830
800	1000	1800	800	200	1501	150
1200	1200	2200	1000	200	150	1350

Although the change in the D.A. scheme imposing the ceiling was notified in May 1966, it could not have been then contemplated that the index would touch such a high mark; yet within these nearly nine years that the dispute unfortunately has dragged on, it has given the court an idea of the effect of removal of the ceiling.

The management has submitted statements showing the actual working of the D.A. formula without the ceiling and tried to show that it would not be possible for it to bear the financial burden. The Tribunal went into this aspect, although at that time the figures of the actual working could not be there, and refused to accept the plea of incapacity to bear the burden. The main argument of the management was about the loss of Managing Agency which, according to it, resulted in shrinkage of income. The Tribunal went into the matter and came to the conclusion and, according to us, rightly, that the said plea had no substance.

The company is one of the twenty big industrial houses in the country. Originally there were two companies, one Killick Industries Limited and another Killick Nixon & Co. Private Limited. Killick Industries Limited was incorporated as a Public Limited Company on November 14, 1947 and Killick Nixon & Co. Private Limited was incorporated as a Private Company on January 23, 1948. Some time in 1957 the Killick Industries Limited purchased all the shares of Killick Nixon & Co. Private Limited with the result that Killick Nixon & Co. Private Limited became a wholly owned subsidiary of Killick Industries Limited. Under section 43A of the Companies Act, 1956, Killick Nixon & Co. Private Limited became a Public Limited Company with effect from March 28, 1961 and by an order of the Bombay High Court of March 24, 1970, was amalgamated with Killick Industries Limited with

effect from August 1, 1969. Following the amalgamation and with the approval of the Central Government the name of Killick Industries Limited was changed to Killick Nixon Limited (the appellant). The activities of the company are : manufacturing of engineering products, namely, Jhonson Vibrators, dall Pressing equipments and E.F.C.C. Furnaces; Selling agency of engineering products such as Vibrators, drilling equipment, electric meters and dredgers, general selling agency in respect of snowcem cement print and allied products, carbon papers; slotted angles, Hawkins pressure cookers; export of piece goods; and agency of City Line and Hall Line of U.K. and clearing and forwarding work.

The question, however, in this case may not be simply the financial capacity of the company alone. Ordinarily the capacity to bear the additional burden would certainly be a relevant factor. We are, however, not considering the matter from that aspect in the present case. We will assume that the company will be able to bear the additional financial burden if the ceiling is removed. We do not agree with the Tribunal that it is only if the company would be required to close down that such a demand should be rejected. That is an incorrect view to take in dealing, with the problem with which we are concerned.

We have, therefore, a company which is prosperous. The consumer price index has been soaring higher and higher. The employees have to get protection of their real wages. It is well settled that complete neutralisation of the rise of cost of living cannot be allowed except to the lowest category of employees. In the view of the National Commission on Labour "the only purpose of dearness allowance is to enable a worker in the event of a rise in cost of living to purchase the same amount of goods of basic necessity as before. This purpose would be served by an equal amount of dearness allowance to all employees irrespective of differences in their emoluments" (page 243). It was strenuously submitted that this view of the Commission should be accepted by us. In other words we should first ascertain what is the minimum wage in this company at which a worker would require complete neutralisation of the cost of living and whatever amount is found to be necessary for him as a protection against his real wages should only be available to all other employees. We are not required to give our opinion about this sub- mission for the simple reason that the management here has already introduced a scheme in which there is percentage system on salary slabs linked with the consumer price index and there is no dispute about it.

All that the management wants in this case is that D.A. must not go on rising with the scaring price index and a limit should be imposed. We have already observed that in view of the status of the company the capacity to pay will not alone be of moment in favour of removal of the ceiling. The problem will have to be viewed from the following important aspects :-

- (1) Condition of the wage scale prevalent in the comnpany.
- (2) Condition of the wage level prevalent in the industry and the region.
- (3) The wage packet as a whole of each earner in the company with all amenities and benefits and it-, ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and

industrial peace.

(4) The position of the company viewed in relation to other comparable concerns in the industry and the region.

(5) Peremptive necessity for full neutralisation of the cost of living at the rock-bottom of wage scale if at or just above the subsistence level.

(6) The rate of neutralisation which is being given to the employees in each salary slab.

(7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.

(8) Degree of sacrifice necessary even on the part of workers in general interest. (9) The compulsive necessity of securing social and distributive justice to the workmen.

(10) Capacity of the company to bear the additional burden.

(11) Interest of national economy.

(12) Repercussions in other industries and society as a whole.

(13) The state of the consumer price, index at the time of decision.

(14) Forebodings and possibilities in the foreseeable future as far as can be envisaged.

We should also Add that revision of D.A. is not the same thing as revision of wages.

Having given our anxious thought to all the above aspects, which are not exhaustive, we are unable to come to the conclusion that removal of the ceiling in the present context will be justified. The company has been able to make out a case for imposition of a ceiling. At what particular amount there should be a ceiling on D.A. is a matter which will have to be gone into by the Tribunal keeping in view the above principles. The financial capacity will have to be judged with regard to the commitment of the company as a whole towards all its employees.

We are unable to agree with the contention of the workers that unless there is a ceiling on profits there cannot be a ceiling on D.A. The question of D.A. being intimately connected with the cost of living, the matter cannot be judged by the test of the aforesaid submission of the workmen.

There is, however, one thing which we must point out, lest there should be some misconception about it and that is that so far as the lowest paid employees at or just above the subsistence level are concerned, they are entitled to 100 per cent or at any rate not less than 95 per cent neutralisation of the rise in the cost of living and hence there should be no ceiling on dearness allowance payable to employees within the slab of first Rs. 100, unless it can be shown by the management that the rate of

neutralisation in their case is more than 100 per cent. So far as the employees in the higher slabs are concerned, it would be for the Tribunal to consider, having regard to the aforesaid principles, whether a ceiling should, be imposed at the second slab of Rs. 100 or only at the last slab of Rs. 201 to Rs. 500. The manner in which the ceiling may be imposed would also have to be decided by the Tribunal in the exercise of its judicial discretion keeping in view the aforesaid principles. The ceiling may be fixed either by prescribing a certain amount as the outside limit of the dearness allowance or by reference to the quantum of dearness allowance payable at a certain wage level. We do not wish to lay down as an invariable rule that in all cases there should be ceiling on D.A. Whenever a case of this nature comes for industrial adjudication it will always be a delicate task for the Tribunal to strike a balance keeping in view the above principles, weightage of each one of which being variable according to conditions obtaining. Whether or not there should be a ceiling on dearness allowance in a given case must depend on the facts and circumstances of that case. There can be no inexorable rule in that respect. We have formulated the various principles which must be taken into account by the Tribunal in determining this question but the most dominant of these must always be that of social justice, for that is the ideal which we have resolved to achieve when we framed our Constitution.

In the result the award is set aside with regard to demand No. 2(a) relating to ceiling. The reference stands restored with regard to that specific matter and will be disposed of by the Tribunal as early as possible after giving opportunity to the parties. The appeals are partly allowed without costs.

Appeals partly allowed. V.P.S.