Supreme Court of India
The New Maneck Chowk Spinning And ... vs The Textile Labour ... on 7 December, 1960
Equivalent citations: 1961 AIR 867, 1961 SCR (3) 1
Author: K Wanchoo
Bench: Gajendragadkar, P.B., Sarkar, A.K., Subbarao, K., Wanchoo, K.N., Mudholkar, J.R.

PETITIONER:
THE NEW MANECK CHOWK SPINNING AND WEAVING CO., LTD.,

Vs.

RESPONDENT:
THE TEXTILE LABOUR ASSOCIATION,AHMEDABAD

DATE OF JUDGMENT:
07/12/1960

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1961 AIR 867 1961 SCR (3) 1
CITATOR INFO :
R 1961 SC 977 (7)
RF 1967 SC 691 (22,64)
R 1967 SC1450 (5)
RF 1972 SC1234 (19)
RF 1972 SC1436 (12)
RF 1972 SC2148 (22)
RF 1986 SC1486 (5)

ACT:
Industrial Dispute-Profit bonus-Agreement between Labour and Mill-owners-Full Bench Formula, whether contravened by Agreement-Tribunal's competence to extend Agreement.

HEADNOTE:
The respondent, the Textile Labour Association at Ahmedabad, entered into a five years pact with the Ahmedabad Mill-Owners' Association, representing the member mills, in regard to payment of bonus to the employees of the mills for the years 1953-57. The Labour Union demanded bonus for the year 1958 on the basis of the pact, but the mill-owners claimed that the pact was contrary to the formula evolved by

the Full Bench in Mill Owners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay, [1950] 2 L.L.J. 247, which was approved by the Supreme Court in The Associated Cement Companies Ltd. v. Its Workmen, [1959] S.C.R. 925, inasmuch as (1) rehabilitation provided in the Agreement differed vitally from rehabilitation as explained in that decision, (2) the Agreement provided for payment of a minimum bonus even though there may be no available surplus and even though the particular mill might have made actual loss, and (3) while the Full Bench Formula, as approved by the Supreme Court treated a particular year as a self-sufficient unit, there was provision for set-off and set-on in the Agreement. The Industrial Tribunal to which the dispute was referred in the. form of sixty-six references, one relating to each mill, took the view that the pact did not in any way run counter to the law laid down by the Supreme Court, and that the extension of the agreement for one more year would help in promoting peace in the industry in Ahmedabad.

Held (Subba Rao, J.-dissenting) that the Agreement in question departed from the Full Bench Formula in the matter of bonus, in certain vital aspects and that the Tribunal when it extended the Agreement for the year 1958 was ignoring the law as laid down by the Supreme Court as, to what profit, bonus,was and how it should be worked out.

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The Tribunal had no power by extending the Agreement to make it possible for payment of a minimum bonus for the year 1958 even when there was either insufficient available surplus to pay bonus or no available surplus at all or even actual loss.

The jurisdiction of the Tribunal was limited by its terms of reference, which was not on industry-cum-region basis, but one for each mill to consider the question of bonus for each mill for the year 1958 and, consequently, it had no jurisdiction to apply the principle of set-off and set-on to be found in the Agreement in respect of payment of bonus or take into account the profits of the industry as a whole in Ahmedabad.

Per Gajendragadkar, Sarkar, Wanchoo and Mudholkar, JJ.It is open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending Agreement or making new one, but this power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would,not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by the Supreme Court.

Western India Automobile Association v. Industrial Tribunal, Bombay, [1949] F.C.R. 321, Rohtas Industries Limited v. Brijnandan Pandey, [1956] S.C.R. 800 and Patna Electricity

Supply Co.v. Patna Electric Supply Workers' Union, [1959] SUPP. 2 S.C.R. 761, relied on.
Per Subba Rao, J.-(1) The impugned five years pact was not contrary to industrial law as laid down by the Supreme Court. (2) The pact also did not infringe the principle that bonus depends upon profits; but it applied the same by evolving a formula of set-off and set-on to a complicated situation of the entire industry in a particular area for a number of years. (3) The Full Bench Formula in regard to rehabilitation was not contravened by the pact. The decisions of the Supreme Court did not preclude employers and employees from agreeing to a particular valuation of the block having regard to the circumstances obtaining at the time of the agreement. (4) Neither the Full Bench Formula nor the decisions of the Supreme Court affirming it precluded the Tribunal from extending the terms of the pact by another year if that was necessary to maintain industrial peace.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 351-356 and 358-369 of 1960.

Appeals by special leave from the Award Part 1 of the Industrial Court, Bombay, in References IC Nos. 261, 297, 238, 241, 248, 263, 266, 271, 301, 302, 257, 237 296: 299, 300, 283 and 284 of 1959.

N. A. Palkhivala, I. M. Nanavati, S. N. Andley J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellants in C. A. No. 351 of 1960.

N. A. Palkhivala, J. B. Mehta, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellant; in C.As. Nos. 352 and 358 of 1960. R. J. Kolah, J. B. Mehta, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellants in C.As. Nos. 353 and 362 of 1960.

I. M. Nanavati, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellants in C. As. Nos. 354, 356, 363-365, 367 and 369 of 1960.

J. B. Mehta, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellants in C. As. Nos. 355, 359-361, 366 and 368 of 1960.

S. R. Vasavada, for the respondent in C. As. Nos. 351, 352, 355, 358, 360-364, and 368 of 1960.

N. H. Shaikh, for the respondent in C. As. Nos. 353 and 365 of 1960.

N. M. Barot, for the respondent in C. As. Nos. 354, 359 and 367 of 1960.

K. L. Hathi, for the respondent in C. As. Nos. 366 and 369 of 1960.

1960. December 7. The Judgment of Gajendragadkar, Sarkar, Wanchoo and Mudholkar, JJ. was delivered by Wanchoo, J. Subba Rao, J. delivered a separate Judgment. WANCHOO, J.-These eighteen appeals by' special leave raise a common question and will be dealt with by this judgment. The appellants are certain cotton textile mills in Ahmedabad while the respondent in each appeal is the Textile Labour Association, Ahmedabad, which is a representative union of the cotton textile workers in Ahmedabad. The total number of cotton textile mills in Ahmedabad is 66; therefore, 66 references under s. 73-A of the Bombay Industrial Relations Act, No. XI of 1947 (hereinafter called the Act), were made to the industrial court for arbitration of disputes arising out of notices of change given by the respondent making a demand for bonus for employees of textile mills in Ahmedabad. It appears that there was an agreement between the Textile Labour Association and the Ahmedabad Mill-owners' Association representing the member-mills on June 27, 1955 (hereinafter referred to as the Agreement), with respect to payment of bonus by the mills to their employees. The Agreement was to remain in force for a period of five years, beginning with January 1, 1953, and ending with December 31, 1957, and related to bonus for the five calendar years from 1953 to 1957 (both inclusive). When the Agreement came to an end disputes arose about bonus for the year 1958. The Agreement was not extended and a notice of change under s. 42 of the Act was given by the Textile Labour Association to the Ahmedabad Mill-owners' Association on July 21, 1959, claiming that all the employees employed during the year 1958 in the member-mills be paid an adequate amount of bonus having regard to the volume of profits, if any, or some bonus irrespective of profits to fill the gap between the existing wage and the living wage so as to avoid unrest among the employees. It further appears that notice in the same terms was given to individual mills about the same time. As no agreement was arrived at between the parties, 66 references with respect to the sixty-six mills were made to the industrial court as already mentioned above. The industrial court considered all the sixty-six references together and came to the conclusion that the Agreement of 1955 had worked fairly to both sides and was substantially in accord with the long-standing practice in the industry in Ahmedabad even before the Agreement and that its extension for one year was essential for keeping industrial peace. It therefore ordered the extension of the Agreement for the year 1958 and directed the parties to file within six weeks from the date of the award calculations of bonus payable for the year 1958 in the light of the decision and thereafter the court would proceed to award appropriate bonus in the case of each individual mill. Thereupon there were fifty- two applications for special leave to appeal to this Court in which special leave was granted. Thirty-four of the appeals arising out of the special leave petitions have been withdrawn and only eighteen now remain for decision. It appears that the remaining fourteen mills accepted the decision of the industrial court, so that now forty-eight mills are out of the picture and only eighteen are before the Court.

The main contention of the appellants before the industrial court was that in view of the law laid down as to bonus by this Court in the Associated Cement Companies Ltd. v. The Workmen (1), it was not open to it to extend the Agreement for the year 1958 as that would be against the concept of bonus as understood in industrial law. The same point is being urged before us and the question that falls for decision is whether the industrial court was right in law in extending the Agreement for another year. In order to appreciate the dispute between the parties with respect to the extension of the Agreement we may refer to the salient terms of the Agreement. Before we do so, we may mention that the Agreement was "without renouncing the general principles enunciated in decisions and awards of the arbitration boards, the industrial court, the Labour Appellate Tribunal and the

Supreme Court in respect of bonus or the rights and privileges created thereunder". It was entered into only with a view to creating goodwill among workers and for the purpose of maintaining peace in the industry and without creating a precedent for the future. The Agreement in the first place provided that the claim of the employees for bonus would only arise if there is an available surplus of profit after making provision for all the prior charges. These prior charges were: (i) statutory depreciation and the development rebate; (ii) taxes; (iii) reserve for rehabilitation, replacement and modernisation of block as calculated by the industrial court (basic year 1947); (iv) six per centum return on paid-up capital including bonus shares; and (v) two per cent. return on reserves employed as working capital. After the available surplus was determined thus, a mill (1) [1959] S.C.R. 925.

having an available surplus of profit had to pay to its employees bonus which would in no case be less than an amount equivalent to 4.8% of basic wages earned during the year; nor was it to exceed an amount equivalent to 25% of the basic wages earned during the year. It was also provided that in case the available surplus was more than sufficient for granting bonus at a higher figure than the ceiling of twenty five per centum of basic wages earned during the year and the maximum bonus of 25 per centum was paid, such a mill would be deemed to have set aside a part of the residue of available surplus after grant of maximum bonus not exceeding 25 per cent. of the basic wages earned during the year as a reserve for bonus for purposes of "set on" (adjustment) in subsequent years. Secondly it was provided that where in the case of a mill, the available surplus was not more than the ceiling of 25 per cent. of basic wages fixed for bonus, the bonus would be fixed after deducting at least Rs. 10,000 from the available surplus. Further it was provided that if a mill had an available surplus of profits which would suffice to pay bonus at a rate lower than the minimum of 4.8 per cent. it would pay the minimum and would be entitled to set off the excess amount thus paid against the available surplus in a subsequent year or years and there were provisions how this set-off would be worked out. Lastly it was provided that if the profits of a mill were not sufficient to provide for all prior charges as mentioned above, though it had made profits, or where the mill had actually suffered a loss, such a mill would a& a special case for creating goodwill among its workers and for continuing peace in the industry but without creating a precedent pay to its employees the minimum bonus equivalent to 4.8 per cent. of the basic wages but would be entitled to set off this amount towards any available surplus in any subsequent years, subject, however, always to a payment of a minimum bonus at the rate of 4.8 per cent. of basic wages earned during the year. It has been contended on behalf of the appellants that the formula under the Agreement departs in some vital aspects from what is known as the Full Bench formula evolved by the Labour Appellate Tribunal in The Mill-owners' Association, Bombay v. The Bashtriya Mill Mazdoor Sangh (1), which has been approved by this Court in the Associated Cement Companies' case (2) and is thus the law of the land so far as bonus is concerned. It is urged therefore that inasmuch as the formula under the Agreement departs from the Full-Bench formula which is now the law of the land, it was not open to the industrial court to extend the Agreement in the face of the decision of this Court in Associated Cement Companies' case(1) and in so far as the industrial court has done so it has gone against the law relating to bonus and therefore the award should be set aside.

Two questions immediately arise in this connection: the first relates to the jurisdiction of the industrial court to impose new obligations upon the parties and the second is whether if the industrial court has jurisdiction to impose new obligations it could do so in a matter of this kind

considering the concept of bonus as laid down by the decisions of this Court.

So far as the first question is concerned (namely, the general power of an industrial court to impose new obligations upon the parties), the matter is now well- settled by the decisions of the Federal Court and also of this Court. It was held by the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay and Others (3) that-

> " adjudication does not in our opinion mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations." The Federal Court also approved the view of Ludwig Teller that-
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> "industrial arbitration may involve the extension of an agreement or the making of a new one, or in (1) [1950] 2 L.L.J. 1247. (2) [1959] S.C.R. 925.
>
> (3) [1949] F.C.R. 321.
>
> general the creation of new obligations or modification of old ones while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements (see p. 345)."
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> This Court also in Rohtas Industries Ltd. v. Brijnandan Pandey (1) held that- " a court of law proceeds on the footing that no power exists in the courts to make contracts for the people; and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made. An industrial tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice and/or victimisation (see p. 810)."
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> In Patna Electric Supply Co. v. Patna Electric Supply Workers' Union (2), this Court held that-
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> "there is no doubt that in appropriate cases industrial adjudication may impose new obligations on the employer in the interest of social justice and with the object of securing peace and harmony between the employer and his workmen and full cooperation between them (see p. 1038)."

and approved of the decision of the Federal Court in Western India Automobile Association's case (3). There is no doubt therefore that it is open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending existing agreement or making a new one. This, however, does not mean than an industrial court can do anything and every- thing when dealing with an industrial dispute. This power is conditioned by the subject-matter with which it is

dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial (1) [1956] S.C.R. 800. (2) [1959] SUPP. 2 S.C.R. 761. (3) [1949] F.C.R. 32.

law relating to that matter as laid down by the legislature or by this Court.

This brings us to the second question, which is the real question in dispute in this case, namely, when dealing with a bonus case, like the present, was it open to the industrial court to overlook the law laid 7 down by this Court in Associated Cement Companies' case (1) and make an award extending the Agreement for a further period of one year?

In order to determine this question, we have to look at the concept of bonus as evolved in the industrial law of this country by industrial tribunals and now by the decision of this Court. So far as we can see, there are four types of bonus which have been evolved under the industrial law as laid down by this Court. Firstly, there is what is called a production bonus or incentive wage (see Titaghur Paper Mills V. Its Workmen (2)); the second is bonus as an implied term of contract between the parties (see Messrs. Ispahani Ltd. v. Ispahani Employees' Union (3)); the third is customary bonus in connection with some festival (see The Graham Trading Co. v. Its Workmen (4)) and the fourth is profit bonus which was evolved by the Labour Appellate Tribunal in The Mill-owners' Association Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay (5), and which has been considered by this Court fully in two cases. We are in the present case dealing with bonus of the fourth kind, namely, profit bonus and what we say subsequently refers only to this kind of bonus.

What is the concept of profit bonus with which we are concerned in this case, for it is this concept which will determine whether it was open to the industrial court in this case to extend the Agreement for 1958? In Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union (6), this Court pointed out that-

> "There are two conditions, which have to be satisfied before a demand for bonus can be justified and (1) [1959] S.C.R. 925.(2) [1959] SUPP. 2 S.C.R. 1012.
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> (3) [1960] 1 S.C.R. 24.(4) [1960] 1 S.C.R.
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> 107. (5) [1950] 2 L.L.J. 1247.(6) [1955] 1 S.C.R.
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> 991.

they are: (1) when wages fall short of the living standard, and (2) industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim..... The basis for the claim is that labour and capital both contribute to the earning of the industrial concern and it is fair that labour should' derive some benefit, if there is a surplus after meeting prior or necessary charges..... The surplus that remained after meeting the aforesaid prior charges would be available for distribution as bonus."

The matter was again considered by this Court in the Associated Cement Companies' case (1) where the Full Bench formula evolved by the Labour Appellate Tribunal was gone into at length. The workmen contended in that case that the formula required revision as the employers were becoming increasingly more rehabilitation-conscious and their appetite for the provision for rehabilitation was fast growing with the result that in most cases, after allowing for rehabilitation, there was no surplus left for the purpose of bonus and the main object of the formula was thus frustrated. It was further contended for the workmen that the whole of rehabilitation expenses should not be provided for out of trading profits and that the claim for rehabilitation should be fixed at a reasonable amount and the industry should be required to find the balance from other sources. It was there held that"though there may be some force in the plea made for the revision of the Full Bench formula, the problem raised by the said plea is of such a character that it can appropriately be considered only by a high-powered commission and not by this Court, while hearing the present group of appeals."This Court also held that-

> "the Full Bench formula had on the whole work- ed fairly satisfactorily in a large number of industries all over the country, and the claim for bonus should be decided by the Tribunals on the basis of this formula without attempting to revise it. The (1) [1959] S.C.R. 925.
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> formula was elastic enough to meet reasonably the claims of the industry and labour for fair-play and justice..... It was based on two considerations: first, that labour was entitled to claim a share in the trading profits of the industry, because it had parti- ally contributed to the same; and second, that labour was entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up."

The Full Bench formula provided for arriving at the available surplus after meeting prior charges, namely, (i) depreciation, (ii) taxes, (iii) return on paid-up capital,

(iv) return on working capital and (v) rehabilitation. The formula further dealt with the claim for bonus on the basis that the relevant year is a selfsufficient unit and appropriate accounts have to be made in respect of the said year. Finally, it was pointed out that it was only after all the prior charges had thus been determined and deducted from the gross profits that the available surplus could be ascertained for payment of bonus, and that when the available surplus had been ascertained, there were three parties entitled to claim shares therein, namely, (i) labour's claim for bonus, (ii) industry's claim for the purpose of expansion and other needs, and (iii) the shareholders' claim for additional return on the capital invested by them; the ratio of distribution would neces- sarily depend on several factors. It would thus be clear that the essential concept of profit bonus is that there should be an available surplus determined according to the principles laid down in the cases mentioned above for distribution. If there is no such available surplus for distribution, there can be no case for payment of profit bonus. This is the industrial law as laid down by this Court with respect to this kind of bonus in Associated Cement Companies' case (1). It would in our opinion be not open to an industrial court or tribunal to ignore this law as to bonus and to extend an agreement for payment of bonus, which is against the basic concept of bonus as laid down by the decisions of

this Court on the ground that an (1) [1959] S.C.R. 925.

industrial court has power generally to extend agreements or to create new obligations. As already pointed out, that power has to be exercised keeping in view the subject-matter before the tribunal and the law laid down by the legislature or by the decisions of this Court, with respect to that subject-matter. The industrial court in this case was not unaware of this position, viz., that it *as departing from the law laid down in the Associated Cement Companies' case (1) and other bonus cases; but it held that this Court was dealing in those cases with individual units, and not with a case where there were numerous concerns in an industry at one centre, with its particular historical back-ground, where previous awards had been on an industry-wise basis. It therefore held that the decisions of this Court could not apply in their entirety to the dispute before it and that this Court could not have intended that in a case where there was the additional circumstance that the parties had themselves voluntarily modified the bonus formula in some respects by a long term agreement, that could not be extended by an industrial court. It is the correctness of this view which has been strongly disputed before us by the appellants.

Before deal with this matter, we should like to point out that the fact that there are numerous concerns in a particular place can have no relevance in considering the question whether the Full Bench formula can apply to cases like the present. Even though this Court was dealing with the case of one concern, namely, the Associated Cement Companies, it pointed out that the Full Bench formula had worked fairly satisfactorily all over the country and should continue to be applied without revision till such time as a high-powered commission went into the question. There is in our opinion no question of industry-cum-region approach in the matter of a bonus dispute of this kind. There is no doubt that in many matters, like wages, conditions of service, over-time allowance, dearness allowance, gratuity, and so on, industry- cum-region approach has been made by industrial courts (1) [1959] S.C.R. 925.

in this country and, rightly so. But there is, in our opinion, no scope for an approach of this kind in the case of bonus, the basic concept of which is that payment depends on surplus of profits available according to some formula in the case of each industrial concern. Nor can it be said that the Agreement in this case is dealing with bonus in what is known as industry-cumregion basis. Its salient terms as set out above will show that it deals with bonus according to available surplus of each mill, so that bonus paid by each mill depends on its own available surplus and the sixty-six mills situate in Ahmedabad may pay different amounts of bonus varying from a minimum of 4-8 per cent. of the basic wages to 25 per cent. of the basic wages. Similar differences will arise if the Full Bench formula is applied to the sixty-six mills in Ahmedabad. Thus the Agreement which has been extended, is not based on industry-cum-region approach, as it is understood. That approach, say, with respect to wages means that wages of all concerns situate in a particular area engaged in a particular industry should be the same. On that approach the bonus of all these sixty-six mills should also be the same percentage for each mill in that area; but that is not the basis on which the Agreement was arrived at. The basis of the Agreement is that each individual mill is treated as a separate unit and its available surplus worked out according to the formula in the Agreement itself. This is also the basis of the Full Bench formula and the available surplus of each unit is worked out according to that formula, though the result of the application of the two formulae in each case may

not be the same. There is in our opinion therefore no justification for the view that the Full Bench formula approved by this Court in the Associated Cement Companies' case (1) can have no application where there are numerous concerns of one nature at one centre. Some bonus awards were brought to our notice to show that they were on industry-cum-region basis, namely, The Sugar Mills of Bihar v. Their Workmen (2) and The Sugar Mills, Uttar Pradesh v.

(1) [1959] S.C.R. 925.

(2) [1951] I. L. L. J. 469.

Their Workmen(1). These awards related to sugar industry in Uttar Pradesh and in Bihar. As we read these decisions, we do not find real industry-cumregion approach which would result in uniform bonus for all the mills dealt with by these two awards. What we find is that a different formula was worked out for awarding profit bonus linked with production on the basis that there were profits; but when the formula is worked for each mill the bonus would differ from mill to mill according to its production. Further, we find that in the Uttar Pradesh case there were certain exemptions granted to certain factories, presumably on the ground that they were not in a position to pay bonus for want of sufficient profits. It is true that in the Bihar case it was said that the question of bonus could be considered on industry-wise and not on unit wise basis, but that only meant that one formula was evolved for the whole of Bihar and applied to every mill in that area. That is what exactly the Full Bench formula also has done, for it is the same formula which applies to all industrial concerns all over the country now after the decision of this Court. In the Bihar case, an argument was addressed to apply the Full Bench formula, but that was not accepted on the ground that balance sheets and profit and loss accounts were not reliable and therefore bonus was linked with production. In the Bihar case also some factories were exempted from paying bonus presumably on the ground that they were unable to do so not having made profits. These cases therefore are not instances of real industry-cum-region approach. Reference was also made to The, Textile Mills in Coimbatore District v. Their Workmen (2) relating to Coimbatore textile mills. In that case the industrial court considered whether bonus at a flat rate for all the mills should be awarded or whether a distinction should be made between mills and mills. It held that the mills themselves when they paid bonus observed or maintained no distinction; therefore in the peculiar circumstances of that case a uniform rate of 33-1/3 per cent. was awarded for all the mills as specially all the mills had (1) [1952] 1 L. L. J. 615.

(2) [1950] 2 L. L. J. 203.

without exception 'made unique profits. As we have said already the basic concept of profit bonus, as it appears from the judgments of this Court, is that there should be an available surplus of profits in a particular concern in a particular year, to which the bonus relates and on this basic concept there is no scope for an approach on the basis of industry-cum-region in the matter of bonus in the sense that every mill in a region should pay the same bonus. There is therefore no question of industry-cum-region approach in the present case, and even the formula in the Agreement is not on a real industry-cum-region approach and has to be worked out from mill to mill, which is like the Full Bench formula. The reasons therefore which led the industrial court in this case to distinguish and

depart from the decision of this Court in The Associated Cement Companies' case (1) do not appear to us to be substantial and there was therefore no ground for departing from that decision for those reasons.

This brings us to a consideration of the formula as provided in the Agreement and the Full Bench formula as approved by this Court. It was urged on behalf of the respondent that the two formulae were basically the same; both provided for prior charges and in both bonus was to be paid on the availability of surplus profits, though it was admitted that in certain respects there were differences. Now if these differences were merely of detail and did not affect some of the vital aspects of the Full Bench formula it might be said that there was no ignoring of the law as laid down by this Court and therefore the tribunal was not unjustified in extending the Agreement for a year. But a comparison of the formula in the Agreement with the Full Bench formula shows differences in three vital aspects. In the first place, rehabilitation provided in the Agreement differs vitally from rehabilitation as explained in The Associated Cement Companies case (1). In the second place, the formula in the Agreement provides for payment of a minimum bonus even though there may be no available surplus and even though the particular mill might have made actual (1) [1959] S.C.R. 925.

loss. Thirdly, while the Full-Bench formula as approved by this Court treats a particular year as a selfsufficient unit, there is provision for set-off and set-on in the formula in the Agreement. Can it therefore be said that the formula in the Agreement which departs in these vital particulars from the Full Bench formula in the matter of bonus could be extended for another year by the industrial court in the face of the decisions of this Court laying down the law as to what profit bonus is and how it should be worked out? The tribunal therefore when it extended the formula in the Agreement which departed from the Full Bench formula in certain vital aspects was undoubtedly ignoring the industrial law as laid down by this Court and going against it. It was its duty when dealing with the question of profit bonus to apply the Full Bench formula, as approved by this Court and then arrive at the quantum of bonus to be awarded in the case of each mill. In particular by extending the Agreement the tribunal made it possible for payment of a minimum bonus even when there was either insufficient available surplus to pay bonus or no available surplus at all or even actual loss; the tribunal was thus definitely going against the industrial law relating to bonus as laid down by this Court. It had in our opinion no power to do so and the reasons which it gave for departing from the law laid down by this Court are unsubstantial and do not commend themselves to us. In these circumstances the order of the tribunal extending the Agreement for a year cannot be upheld.

Further it was urged that in any case the Agreement contemplates payment of bonus out of profits of the industry at Ahmedabad as a whole and that is why it has provided for set-off and set-on. Whatever may be said about this provision on a long term basis, the tribunal's jurisdiction was limited by its terms of reference. There was not one reference before the tribunal on industry-cum-region basis but sixty-six separate references, one relating to each mill. It was required to consider the question of bonus for each mill for the year 1958 only and thus had nothing to do with set-off and set-on or the profits of the industry as a whole at Ahmedabad. The tribunal was only concerned with 1958 and no consideration as to what happened before that year or what may happen after 1958 could enter into its decision of the question of bonus for the year 1958. The principle of set-off and set-on therefore to be found in the Agreement could not convert payment of

bonus for 1958, say, by a loss making mill into profit bonus as laid down by the decisions of this Court. The tribunal's award in this case therefore would clearly be against the law as to bonus laid down by this Court, for its jurisdiction was confined only to the year 1958 and no more.

It was however urged on behalf of the respondent that there is a fifth kind of bonus, namely, goodwill bonus and that the Agreement when it provides for a minimum bonus irrespective of availability of profits provides for such bonus in the interest of industrial peace. It is enough to say that so far as what is called goodwill bonus is concerned it pre-supposes that it is given by the employer out of his own free will without any compulsion by an industrial court. As its very name implies it is a bonus which is given by the employer out of his free consent in order that there may be goodwill between him and his workmen; but there can be no question of imposing a goodwill bonus by industrial courts, as imposition of such a bonus is a contradiction of its very concept. We have already referred to four kinds of bonus which prevail in the industrial law in India and which can in certain circumstances be imposed by industrial tribunals; but there can be no question of the imposition of the so-called goodwill bonus, for that bonus depends upon the goodwill of the parties and on their free consent. In the absence of such free consent, there can be no question of any goodwill bonus.

Before we part with these appeals, however, we must briefly advert to the general considerations which have been pressed before us very strongly by Mr. Vasavada for the respondents and Mr. Ambekar for the intervening parties. It has been urged before us that we should be reluctant to interfere with the agreement because it has worked satisfactorily in Ahmedabad, and the reversal of the award under appeal may lead to discontent in a very important centre of.textile industry in this country. It has also been strenuously argued that the Agreement offers a very reasonable solution to the vexed problem of bonus and the pattern set by it has been copied in Bombay, Madhya Pradesh and Coimbatore. If the pattern thus set for determining the textile employees' claim for bonus has been adopted by a substantial part of the textile industry in this country, the Court should desist from disturbing the smooth working of the said pattern unless it is com-pelled to do so. It may be conceded that some features of the Agreement are undoubtedly very reasonable and in the interest of the industry as a whole. The agreement has put a ceiling on bonus and that is a term very much in favour of the employer, because in some cases where the available surplus is very large, then under the working of the Full Bench formula the employees are tempted to claim, and industrial tribunals are justified in awarding, a pro- portionately substantial amount as bonus reaching or even exceeding in some cases the level of basic wages of even 8 or 9 months. This trend has been controlled by the Agreement. It is true that the Agreement requires the payment of the minimum bonus but this provision is intended to work as a part of the larger agreement spreading over some years and the employer has agreed to pay the minimum bonus even though in a particular year he may have no available surplus, because he and his employees expect or anticipate that the employer may have available surplus in the succeeding year. The working of the Agreement is really intended to spread over a number of years and the account between the employers and the employees in that behalf is conceived as a continuing and running account. These features of the Agreement may be regarded as commendable. The problem of rehabilitation which has assumed a complex form has also been attempted to be solved by the Agreement in a practical way. The solution adopted by the Agreement in that behalf, it is claimed, is based on the historical and factual genesis of the original

formula evolved by the Full Bench of the Labour Appellate Tribunal when it dealt with the problem of the textile industry in Bombay. The argument is that until 1962, the Agreement should be allowed to work when the position may be reviewed at length. Since this Court delivered its judgment in the case of The Associated Cement Companies (1) it has come to our notice that in cases where the employer claims an exaggerated amount for rehabilitation, or where a reasonable claim made by the employer in that behalf is unreasonably challenged by the employees, the dispute is protracted. The trial of the issue tends to become complicated, and that leads to bitterness between the parties. It has been urged before us that time has now come when the industrial courts will have to face the problem of radically changing the formula. It is argued that modern economic thought does not encourage the theory that the whole of the rehabilitation amount must come from the current profits of the industry, and it was stated before us that Government may have gradually to step in to assist the industry by advancing sufficient loans on reasonable terms to enable the industry to meet the demand of its rehabilitation. However, as we pointed out in our decision in the case of The Associated Cement Companies (1) these matters can be properly and effectively decided by an industrial court if the major representative industries in the country and their employees are brought before it with a proper reference, or it can be tackled more appropriately by a high-power commission appointed in that behalf. We were told that the Government of India has taken a decision to appoint such a commission, and that it would soon resolve this problem on a more rational and scientific basis. During the course of the hearing of these appeals we suggested to the parties that in view of the pending appointment of the commission, parties may settle the present dispute amicably and that the appellant-mills may fall in line with the rest (1) [1959] S.C.R. 925.

of the mills in Ahmedabad, but despite their best efforts the parties could not settle the dispute and wanted a decision from this Court on the points of law raised in the present appeals; that is why we have had to decide the points of law, and in doing so inevitably general considerations to which we have just adverted cannot play a material part.

In the course of the argument reference was made by Mr. Ambekar to the concept of goodwill bonus; that again is a matter which may be evolved by agreement between the parties or decided by a highpower commission. If the matter has to be decided according to law as has been laid down by this Court then the conclusion would be inevitable that on essential points the Agreement departs from the Full Bench formula, and however commendable it may be on the whole it can continue only by agreement and cannot be enforced by industrial adjudication against the will of any of the parties; that is why we have come to the conclusion, though not without regret, that the appeals must be allowed and the matter must be sent back to the tribunal for disposing of the issue before it in accordance with law. We direct that the tribunal should proceed to try the question whether any bonus should be awarded to the employees of the eighteen mills before us on the basis of the Full Bench formula as interpreted by this Court in the case of The Associated Cement Companies (1).

In the circumstances there will be no order as to costs. SUBBA RAO, J.-I have had the advantage of perusing the judgment prepared by my learned brother, Wanchoo, J. I regret my inability to agree. As mine is a solitary dissent, it may not serve any useful purpose to elaborate on the question raised at great length. I would, therefore, briefly refer to the relevant facts which have already been fully stated by my learned brother and express my views concisely on the question. presented before us.

These appeals raise a dispute between the Textile Labour Association,, Ahmedabad, the representative (1) [1959] S.C.R. 925.

union of the textile industry in Ahmedabad, and the various textile mills in that area in respect of the bonus payable for the year 1958. The said Labour Union entered into a five-year pact with the Ahmedabad Mill-Owners' Association, representing the member mills, in regard to payment of bonus for the years 1953 to 1957. The Labour Union demanded bonus for the year 1958 on the basis of the said pact. The mill- owners claimed that the said pact was contrary to the law laid down by the decision of this Court in the case of The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka v. Its Workmen (1) and that, if the rehabilitation cost was calculated on the basis of the principles laid down therein, there would not be any "available surplus" to sustain the claim for bonus. The Industrial Court to which the dispute was referred elaborately. considered the arguments advanced and came to the conclusion that the five- year pact which originated in Ahmedabad was not only fair in itself but also an important contribution to industrial peace, and that it did not in any way run counter to the law laid down by the Supreme Court. On that finding it extended the operation of the pact for one more year and directed the parties to file within six weeks from the date of the award calculations in respect of the bonus payable for the year 1958, in the light of its decision and on the footing that the five-year pact was for six years.

The main question in the appeals is whether the said pact violates the law laid down by this Court. Before considering this contention it would be convenient to notice the terms of the said pact. The said pact is a lengthy document, though precisely drawn, and to read it in full is to unnecessarily burden the judgment. I shall, therefore, briefly summarize its terms.

The contracting parties were the Textile Labour Association of Ahmedabad, a representative union for the local area of Ahmedabad on the one part, and the Ahmedabad Mill-Owners' Association, Ahmedabad, representing its local member mills, on the other part.

(1) [1959] S.C.R. 925.

It was executed on June 27, 1955, to cover a period of five years from 1953 to 1957, inclusive of both years, for grant of bonus to the employees of the Cotton Textile Mills of Ahmedabad. The object of the agreement was to create good will among the workers and for the purpose of maintaining peace in the industry. The basis of the agreement was that it applied for the entire Ahmedabad Textile Industry and for a period of five years. The "available surplus" of each mill was ascertained in accordance with the Full Bench Formula laid down by the Labour Appellate Tribunal in Mill-Owners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay (1). The maximum bonus payable by every mill of the said area was fixed at 25 per cent. of the total basic wages earned during the year, and the minimum was fixed at 4.8 per cent. of the said basic wages. If in a particular year a mill had an "available surplus" adequate for granting bonus at a higher quantum than the ceiling of 25 per cent. of the basic wages. it would nationally set aside the part of the residue of the "available surplus" after the grant of the maximum bonus not exceeding an amount equivalent to 25 per cent. of the basic wages earned during that year as a reserve for bonus for the purpose of "set-on" (adjustment) in subsequent years. If the "available surplus" was adequate only to grant

bonus at a rate lower than the ceiling, the quantum of bonus would be fixed in such a manner that there would remain with the mill at least a minimum of Rs. 10,000. If in respect of any year a mill had an "available surplus" adequate to pay bonus at a rate lower than the minimum rate, it would be entitled to "set- off" the excess amount of bonus that would be payable in a subsequent year or years. In setting off the said amount of bonus that, would be payable against subsequent year or years, if the surplus was adequate only to grant bonus at a rate lower than the maximum rate, the mill would first set aside out of the "available surplus" an amount of Rs. 10,000 and, then out of the balance, it would further take out the excess amount paid by it as bonus in the previous (1) [1950] 2 L.L.J. 247.

year, and then it would distribute the remainder as bonus. Even if a mill had made a loss in a particular year, it had to pay the minimum bonus, but it would be entitled to "set- off" the amount thus paid against the amount of bonus that would be payable in the subsequent year or years, in the same manner as in the case of a surplus adequate to grant bonus only at a rate lower than 25 per cent. of the basic wages. In short, when the surplus was adequate to pay bonus at 25 per cent. of the basic wages earned during the year, a mill had to pay the maximum of 25 per cent. of the basic wages. When it was adequate only to grant bonus of less than 25 per cent. of the basic wages, it would pay the said bonus after reserving a sum of Rs. 10,000 for itself. If there was loss, it would pay the minimum bonus. Whatever amounts were paid were adjusted on the principle of "set-on" and "set-off" in the subsequent years. There was also a provision that after the prescribed period all the outstanding liabilities under the formula of "set-on" and "set-off" would come to an end. Three principles clearly underlie the entire scheme, namely, (i) that though for the purpose of ascertaining the surplus, the profits of a particular mill were taken as the criterion, the position of the entire Ahmedabad Textile Industry was taken into consideration; (ii) that the beneficent features of the scheme could be gathered only by its long term operation; and (iii) that though in a particular year in the case of a particular mill there might not be "available surplus", the principles of "set-on" and "set-off" indicate that the bonus was linked with profits. As reasonable men trying to settle their disputes, both the parties, representing their respective associations, adopted an optimistic attitude and proceeded on the basis that the entire industry would make a profit and that every mill could be expected to make reasonable profits in at least some of the five years, though it might incur loss in other years. The validity of the agreement should be judged on the basis adopted. In the Ahmedabad Textile Industry, it is in evidence, the average monthly wage for workers in 1957 was Rs. 54. Fifteen days' basic wages, i.e., the minimum bonus prescribed under the pact, would come to an average total wages for 5 days; and 3 months' basic wages would come to 19 days' total wages on the average. Prima facie the bonus fixed is very reasonable and cannot be said to be oppressive to the mill-owners.

The said bonus agreement, by its reasonableness and beneficent effects on the industry, attracted the attention of other mills throughout India. Exhibit U-2 shows the particulars of other mills which have adopted the agreement. The Bombay Textile Industry, The Madhya Bharat Mill-owners' Association, The Modi Spinning & Weaving Mills, Modinagar, and the cotton mills at Surendranagar (Saurashtra)' Sidhpur, Viramgam Nadiad and Petlad, Cambay Baroda, Surat adopted the said scheme with suitable modifications. The silk industry in Bombay and the plantation industry in Madras also accepted the principles underlying the said agreement. We are told that even the Coimbatore area has recently adopted a similar agreement.

The fact that the said five year pact was followed by so many other mills is a fair indication that it was basically sound and capable of yielding good results. Experienced members of the Industrial Courts spoke highly of the pact. Late Shri S. H. Naik, a Member of the Industrial Court, adopted the pact in a dispute between the Bombay Mill- Owners' Association and the Rashtriya Mill Mazdoor Sangh, and in making an award in terms of a similar pact, made the following observations:

> "This award, based upon an agreement arrived at as a result of persistent and continued efforts on the part of both the parties, keeping in view the prosperity of the employers as well as the well-being of the employees, will go down in history as a significant landmark in collective bargaining. It augurs well for the future of the industry, as well as those employed therein, particularly in view of the ambitious Second Five Year Plan on which the country will shortly launch. It also avoids, for some time, and let us hope for all time to come, the bonus dispute which cropped up every year since 1947. I congratulate both the parties and compliment them on the successful termination of their efforts to bring peace to the industry and set an example to the employers and employees in the country."

The said weighty observations apply mutatis mutandis to the agreement in question. Shri H. V. Divatia, another experienced Member of the Industrial Court, in his award on the bonus dispute of the Ahmedabad Textile Mills for 1952 observed:

> "Ever since the former practice of taking all the textile mills in one centre as one unit for the purpose of determining the bonus was given up, there has been dissatisfaction on both sides on the bonus question every year and in my view this change as well as the formula set up by the Labour Appellate Tribunal have made the bonus issue a very complicated one resulting in bitterness on both the sides instead of promoting peace and harmony between the employers and workers. I hope the whole matter is reconsidered at the highest level. If bonus is to be given, it must be awarded in such a way that it does not defeat its purpose."

The agreement did nothing more than reverting to the former practice of taking all the textile mills in one centre as one unit for the purpose of determining. the bonus, though for ascertaining the quantum of bonus payable the balance- sheets of individual units were taken into consideration. In making the present award the Industrial Court on a consideration of the entire material placed before it came to a definite finding that on the. whole the five-year pact had worked fairly for both the parties and that the extension of the said agreement for one more year would help in promoting peace in that industry in Ahmedabad and that owing to the goodwill created by the five- year bonus pact, the industry also benefited by schemes of rationalization. It was also brought to our notice that in the textile industry in Ahmedabad area there were never any strike and the disputes in the recent years were settled amicably across the table.In such a situation this Court was asked under Art. 136 of the Constitution to set aside the award and to bring about chaos where peace existed and to introduce unrest and disharmony where stability and harmony prevailed. It was said that this Court had no option but to do so as the agreement was contrary to law as laid down by this Court. I shall now examine briefly the relevant decisions laying down the principle governing bonus to ascertain

whether the impugned agreement is in any way inconsistent with them.

In Muir Mills Co. Limited v. Suti Mills Mazdoor Union, Kanpur (1) this Court defined the term "bonus" and laid down the conditions which would give rise to the claim for bonus. Bhagwati, J., after considering the relevant decisions and text books on the subject, accepted the following definition of "bonus" given by the Textile Labour Inquiry Committee:

> "The term bonus is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained." The learned Judge then proceeded to state at p. 998 thus:
>
> "There are however two conditions which have to be satisfied before a demand for bonus can be justified and they are: (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied."

The learned Judge then referred to the formula evolved by the Full Bench of the Labour Appellate Tribunal in the Mill- Owners' Association, Bombay v. Rashtreeya Mill Mazdoor Sangh, Bombay (2) and narrated the first charges on the gross profits as laid. down by (1) [1955] 1 S.C.R. 991.

(2) [1950] 2 L.L.J. 247.

that decision. The learned Judge then expressed his view thus at p. 999:

> "It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage."

This decision lays down in clear terms that the payment of bonus is linked with profits. But this decision was given in a dispute between one specified mill, namely, Muir Mills Co. Limited and the Union, representing its employees. This Court was not considering a case of a bonus claim on industry-cum-region basis. The principle of the decision, namely, that the claim for bonus is linked with profits, may equally apply to such a case; but the working of the principle must necessarily depend upon the peculiarities of such a claim. Industrial law is in the process of evolution and it cannot be put in a straight jacket, but must be allowed to grow to meet varying situations that present themselves to industrial tribunals, subject of course to the statutory provisions and the general principles laid down by courts. The application of the principles laid down by this decision to a bonus claim on industry-cum-region basis

-would, to some extent, be different from its application to a single unit. I shall consider this aspect at a later stage of the judgment. It is unnecessary to consider the other decisions on this subject except the recent decision of this Court in The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka v. Its Workmen That decision reviewed the entire law on the subject vis-a-vis the profit bonus. It accepted the principles laid down by the said Full Bench Formula and elaborately considered the mode of application of the prin. ciples for ascertaining the "available surplus." Gajendragadkar, J., who spoke for the Court, referred to the earlier decision and restated the basis for awarding bonus thus at p. 995:

(1) [1959] S.C.R. 925.

> "We have already noticed that the formula for awarding bonus to workmen is based on two considerations: first, that labour is entitled to claim a share in the trading profits of the industry because it has partially contributed to the same; and second, that labour is entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up."

Then the learned Judge, after referring to the earlier decisions, gave the various amounts that should be deducted from the bonus-year's profits and the 'manner in which they should be done to ascertain the "available surplus." According to the learned Judge the following items have to be deducted:

> "(1) Depreciation, which should be the notional normal depreciation. (2) Income-tax.
>
> (3) A return on paid-up capital as well as working capital. Though the usual rates were mentioned, it was made clear that the rates were not inflexible but would vary according to the circumstances of each case. (4) Rehabilitation: For ascertaining the amount necessary for rehabilitation, it was pointed out that a multiplier and divisor should be adopted; the former to ascertain the probable price which may have to be paid for the rehabilitation, replacement or modernization of machinery, and the latter in order to ascertain the annual requirement of the employer in that behalf year by year."

Out of the balance, which was described as "available surplus", it was stated that three parties, namely, the labour, the industry and the shareholders, were entitled to

-claim shares. This is the broad picture drawn by that decision for fixing the bonus. That decision, therefore, restated the pre-existing law and reaffirmed the doctrine that bonus is linked with profits and also the Full Bench Formula for ascertaining the "available surplus". That decision was also not concerned with a claim for bonus on industry-cum-region basis, but only with a claim in regard to a particular unit. It also did not lay down that employer and employee could not agree in regard to the distribution of the available surplus or in respect of the amount required for rehabilitation. It also did not purport to prevent the parties from agreeing on the payment of bonus linked with profits on industry-cum-region basis spread over a number of years. Some of the observations in the judgment

indicate the consciousness of the court that the formula accepted or the directions given therein could not meet every conceiv- able situation that might arise in the complicated field of industrial relations.

Does the impugned pact contravene the law laid down by this Court? It is contended that it infringes the law mainly in three respects, namely, (i) bonus was payable thereunder by a mill incurring loss; (ii) the pact did not provide for rehabilitation of the post-1947 block; and (iii) the depreciation and the interest on the reserves allowed were not in accordance with the formula.

The first objection appears to be plausible and has also been upheld by my learned brethren. But, in my view, there is a fallacy underlying it. The contention invokes the law of bonus laid down in respect of an industrial claim for bonus for a particular year made by the employees of a single mill and seeks to apply it to a case of an agreement evolving a scheme of bonus on the basis of industry-cum- region spread over a reasonable period of time. Though the fundamental principle, namely, that bonus is linked with profits, applies to both, the application of the same to two different situations must necessarily differ. The short question is whether under the impugned agreement the claim for bonus was not based on profits. The agreement was a multilateral one involving mutual obligations. It was on industry-cum-region basis, that is, it was entered into between the employers of the entire industry and the employees thereof. The basis of the agreement was that the entire industry would make a profit. For the purpose of convenient payment of bonus it was worked out on the unit basis. All the parties to the agreement, the employers and the employees of different mills in Ahmedabad, desired in- dustrial peace in order to build up the textile industry. The industry comprised many units with varying prospects and different strata of financial stability and prosperity. Some mills may earn profits throughout the period, some may earn profits in some years and incur loss in other years and under extremely unfortunate and unexpected circumstances, a mill may incur loss throughout. Though a,particular mill may earn abnormal profits, another mill may be just able to make its both ends meet and another may have a narrow margin of profits or even incur loss. But all of them were sincerely interested in the general prosperity of the industry as a whole in the said area which would have its repercussions on individual units. A mill which earns large profits may have to pay more than 25 per cent. of basic wages for the year as bonus and a mill which incurs loss may not have to pay bonus at all. The employees of a particular mill may be entitled in a particular year, having regard to the profits, to get bonus far in excess of 25 per cent. of the basic wages. But in the general interest of all concerned, they were all willing to make a little sacrifice for the common good. Each mill undertook the liability to pay bonus to its employees with a minimum and maximum limits in consideration of a similar undertaking of liability by other mills. So too, the employees, in consideration of a minimum bonus being guaranteed to them, agreed not to claim more than the maximum fixed and the mills as a whole guaranteed payment of the minimum bonus. But what is important to remember is that the entire scheme of payment of bonus was linked with profits. It would be paid on the basis of profits earned or to be earned by a mill. If a mill did not make profits in a particular year, bonus would be paid on account to be adjusted in subsequent years. The formula of "set-on" and "set-off" emphasizes the integral connection between bonus and profits, and the fact that the total loss incurred by a particular mill during the entire period may break that formula does not affect the basis of the agreement. In effect and substance, under the agreement, each of the mills agreed for a consideration on the happening of a contingency

to treat certain amounts as notional profits adequate to pay the minimum bonus with a right to "set-off" in subsequent years against larger profits, if any, earned by them. In the premises, it is not correct to state that bonus is not linked with profits for four reasons, namely, (i) the agreement was between the employers and employees of the entire textile industry in Ahmedabad; (ii) the basis of the agreement was that the industry as a whole would make a profit; there is nothing illegal in parties to the agreement, who had ,intimate knowledge of the financial position of the entire industry, from accepting that position; (iii) instead of the profits of the entire industry being ascertained and bonus paid to all the employees, under the agreement, each mill for a consideration, namely, obligations undertaken by other parties, agreed to pay bonus ranging between a maximum and a minimum; and (iv) each mill also agreed for a consideration, even if in fact it incurred a loss in a particular year., to set apart a notional amount as profits adequate to pay the minimum bonus with a right to readjust its bonus account in subsequent years. In this view the impugned pact does not contravene the law of the land for the simple reason that there is no decision of this Court which prevents the making of ouch agreements so long as the fundamental principle is not violated; and in this case, for the reason given by me, I am of the view that the said principle, viz., that bonus should be linked with profits has been adhered to in the agreement.

Now let us see whether the Full Bench Formula in regard to rehabilitation has been contravened by the impugned pact. The main emphasis is on the want of a provision in the agreement in regard to valuation of the block subsequent to 1947. In The Associated Cement Companies' case (1) this Court observed at p. 971 thus:

> "it has also been observed by the Labour Appellate Tribunal that if an appropriate multiplier and (1) [1959] S.C.R. 925.
>
> divisor are determined they are generally used because the tribunals take the view that the reconsideration of the said multiplier and divisor should not be hastily undertaken and could be justified only on the basis of a stable character extending or likely to extend over a sufficient number of years so as to make a definite and appreciable difference in the cost of replacement."

The Industrial Court in the bonus. case of the textile industry at Ahmedabad for the year 1949 fixed the cost of replacement of the block of the entire industry at Ahmedabad at Rs. 33.89 crores spread over 15 years from 1947. The Industrial Court, on the material placed before it, fixed the multiplier at 2.7 and the divisor at 15. The result is that the cost of the machinery and building as it existed in 1947 was multiplied by 2.7 and after making the necessary deduction therefrom, such as that of depreciation and reserves available and the breakdown value of machinery, divided the surplus by 15 years. Ordinarily, change in the said multiplier and divisor, as laid down by this Court, should not be hastily undertaken and could be justified only on the basis of a substantial change of a stable character extending or likely to extend over a sufficient number of years. In the impugned pact the parties agreed to abide by the said multiplier and divisor and they did not think fit to revise the same. The decisions of this Court do not preclude employers and employees from agreeing to a particular valuation of the block or to their agreeing to a particular multiplier and 'divisor having regard to the circumstances obtaining at the time of the agreement. Nor does the agreement infringe

any of the principles laid down by the Full Bench Formula in the matter of fixing the prior charges. A perusal of paragraph 2(a) of the agreement shows that the prior charges mentioned therein are only those that are stated in the Full Bench Formula, though there is certainly a difference in the particulars under different heads, such as, interest, etc. Certainly the decisions of this Court do not preclude the parties from agreeing to certain amounts or to certain rates under different heads of prior charges.

As the agreement does not infringe the law laid down by this Court, it cannot be contended that the Industrial Court could not extend the said agreement, if it is necessary to secure industrial peace for another year. In effect and substance, the Industrial Court adopted the said agreement as a part of the award by giving it a span of six years instead of five years; with the result that the entire formula of "set-on" and "set-off" would automatically apply in the sixth year. Courts have held that Industrial Courts have power to extend agreements in appropriate circum- stances.

The Federal Court of India in Western India Automobile Association v. Industrial Tribunal, Bombay (1) explained the scope of industrial adjudication and the functions of an industrial tribunal in labour disputes thus at p. 345:

> "Adjudication does not, in our opinion, mean adjudication according to the strict law of master and servant. The award of the Tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. In Volume 1 of 'Labour Disputes and Collectiv e Bargaining' by Ludwig Teller, it is said at page 536, 'that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements'. In our opinion, it is a true statement about the functions of an Industrial Tribunal in labour disputes."

The same view in different phraseology has been expressed by this Court in Bohtas Industries Limited v. Brijnandan Pandey (2), S. K. Das, J., speaking for the Court, observed at p. 810 thus:

(1) [1949] F.C.R- 321. (2) [1956] S.C.R. 800.

> "A Court of law proceeds on the footing that no power exists in the courts to make contracts for people; and the parties must make their own contracts. The courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimization. We cannot, however, accept the extreme position canvassed before us that an Industrial Tribunal can ignore altogether an existing agreement or existing obligations for no rhyme or reason whatsoever."

This Court again reiterated the same principle in the case of Patna Electricity Supply Co. Limited (1) thus at p. 1038:

> "There is no doubt that in appropriate cases industrial adjudication may impose new obligations on the employer in the interest of social justice and with the object of securing peace and harmony between the employer and his workmen and full cooperation between them. This view about the jurisdiction and power of Industrial Tribunals has been consistently recognized in this country since the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay (2)".

These authorities clearly establish the proposition that an Industrial Tribunal can extend an existing agreement or make a new one if, for good reasons, it comes to the conclusion that such extension promotes industrial peace. If, as I have held, the impugned pact was lawful and did not contravene the law laid down by this Court, the Industrial Court in the present case was certainly within its rights to extend that pact for another year for the very good reasons given by it for doing so.

I shall now state my view in the form of the following propositions: (1) Neither the Full Bench Formula nor the decisions of this Court affirming it preclude an (1) [1959] SUPP. 2 S.C.R. 76r.

(2) [1949] F.C.R. 321.

Industrial Court in appropriate cases from extending the terms of a pact by another year if that was necessary to maintain industrial peace. (2) The law laid down by the Federal Court and the Supreme Court recognizes such a power in an Industrial Court. (3) The fact that the subsequent block has not been valued does not affect the question, for the parties can certainly agree, for various reasons, that the value of the existing block should govern the situation for a specified period. (4) The impugned five-year pact is not contrary to industrial law as laid down by this Court; indeed, it expressly followed the principles laid down in the Full Bench Formula which was subsequently affirmed by this Court in the case of Associated Cement Companies (1). (5) The impugned pact also does not infringe the principle that bonus depends upon profits; but it applied the same by evolving a formula of "set-on" and "set-off" to a complicated situation of the entire industry in a particular area for a number of years.

For the foregoing reasons, and in view of the aforesaid definite findings of the Industrial Court, I hold that this is eminently a fit case for extending the agreement for the bonus year 1958.

Before closing I must express my appreciation of the way in which the impugned pact was brought about between the parties. It is in the interest of both the employers and the employees-while the employees of every mill are assured of payment of a minimum bonus, the employers of every mill also are assured protection against extravagant claims. The agreement avoided complicated and acrimonious disputes in courts every year in regard to bonus. The working of this agreement certainly helped the mills to achieve the introduction of schemes of rationalization. The agreement has become a model one for other mills. Ironically the Full Bench Formula, affirmed by this Court in

the case of Associated Cement Companies Limited (1), mainly evolved to fix the amount required for rehabilitation in the interest of industrial peace, turned out to be the sheet-anchor for (1) [1959] S.C.R. 925.

the employers to depart from the path of negotiation and agreement which they were following all these years and to enter the arena of open fight with the employees. It may be, though it may turn out to be wrong, that they are under the belief that the Full Bench Formula, if strictly followed, would not leave any surplus and that they need not pay any bonus to the employees.

This attitude is neither reasonable nor in the interest of industrial peace. I hope and trust that the parties, in spite of the temporary success in these appeals, would see better light and settle their disputes as they had been doing all these years.

In the result, the appeals fail and are dismissed with costs.

By COURT : In accordance with the opinion of the majority, the appeals are allowed and the matter sent back to the Tribunal for disposing of the issue before it in accordance with law. We direct that the Tribunal should proceed to try the question whether any bonus should be awarded to the employees of the eighteen mills before us on the basis of the Full Bench Formula as interpreted by this Court in the case of The Associated Cement Companies (1). In the circumstances, there will be no order as to costs. Appeals allowed.

Cases remanded to the Tribunal.

(1) [1959] S.C.R. 925.