Supreme Court of India
Gannon Dunkerlay & Co. Ltd. vs Their Workmen on 4 February, 1971
Equivalent citations: AIR 1971 SC 2567, 1971 (22) FLR 158, 1971 LablC 1507, (1972) 3 SCC 443
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Bench: I.D.Dua, V Bhargava
JUDGMENT V. Bhargava, J

1. These three appeals by special leave arise out. of two Awards by the Industrial Tribunal, Bombay, in two References relating to bonus made by the State Government under Section 10(1)(d) of the Industrial Disputes Act, 1947. The employer is Messrs. Gannon Dunkerlay and Company Ltd. (hereinafter referred to as "the Company"). The workmen of the Company were represented in these industrial disputes by the Gannon Dunkerlay Employees' Union (hereinafter referred to as "the Union"). One reference related to the bonus claimed by the workmen at 50% of their annual wages for the years 1958-59 and 1959-60, while the second reference related to the bonus claimed at the same rate for the year 1960-61. The Tribunal awarded the bonus after calculating surplus available for distribution of bonus in accordance with the Full Bench Formula laid down by the Labour Appellate Tribunal and approved by this Court in the case of Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka v. Its Workmen . Both parties to the appeals are agreed that the Tribunal acted rightly in applying that formula for calculation of bonus payable to the workmen; but both the parties were dissatisfied with the manner in which the calculations were made and with the details of the calculations. When arguments were heard by us in these appeals, we asked learned Counsel for parties and the representative of the Union in the appeal of the Union to give us fresh calculations based on Full Bench Formula as explained by this Court in the cases of National Engineering Industries Ltd. v. Its Workmen and Workmen of Hindustan Motors Ltd. v. Hindustan Motors Ltd. , as the Tribunal had not followed all those principles. Counsel for parties gave us calculations, but it was again found that there was difference of opinion on a number of points arising in connection with these calculations. The points of difference were 10 in number. As a result, we heard detailed arguments on all those 10 points of difference, and we proceed to give our decision on these 10 points of difference. We may add that, on conclusion of the arguments on all these contested points, we indicated to Counsel our decision on 9 of them when reserving the judgment, so that Counsel could work out agreed figures of surplus available for distribution of bonus in each of the three years in accordance with those principles and the other, agreed principles. The figures of available surplus having been supplied by Counsel for parties, we shall proceed in this judgment to allocate the surplus and to declare what is the appropriate amount of bonus payable in respect of each of the three years. We now take up the ten contested points, one at a time.

2. The first dispute related to the question whether the amount shown in the balance-sheet as advances recoverable in cash or in kind or for value to be received, on the assets side is to be treated as part of fixed and capital assets, or is to be treated as part of working capital, in Order to determine on what amount of reserves, utilised as working capital, return should be allowed to the Company in calculation of surplus. The claim of the Company was that these advances should be treated as part of the working capital when working out the figure of working capital in accordance with the principle adopted by this Court in Hindustan Motors case (supra), because these advances were made in accordance with the business transactions of the Company to various constituents etc.

The argument is not supported by any material. There is no evidence on the record that these advances were made in the course of business of the Company to parties from whom the Company was making purchases. In fact, the nature of two of the advances during the year 1958-59 appears to be that these advances were given to officers of the Company, or to a private limited Company wherein two Directors were interested. Such advances recoverable in cash or in kind or for value to be received were treated in the Hindustan Motors case as not forming part of the working capital, but as part of the capital assets. In the absence of any evidence that these advances were made in the course of business transactions of such a nature that they would form part of the working capital these advances have to be treated as part of capital assets following the decision in Hindustan Motors case , (supra).

3. The Second point raised was whether dividends received from trade investments in each of the three years should be deducted from the gross profits for calculation of surplus available for bonus. This is a question that has to be decided against the Company on the ground that no claim was put forward before the Tribunal to treat the income accruing through these dividends as extraneous income earned from activities in which the workmen made no contribution. These trade investments have to be treated as capital assets of the Company forming part of their trading activities. The income accruing from these dividends must, therefore, be related to the business of the Company as a whole and, hence, the income from these dividends has to be Included in income for purposes of calculation of surplus available for bonus. The amount invested in earning these dividends will, however, have to be treated not as part of working capital, but as part of capital assets of the Company.

4. The third point requiring decision relates to the entry in the balance-sheet in respect of loans advanced by the Company on personal security. Interest was earned on these loans. It was urged that this interest on loan investments should be treated as extraneous income which the workmen cannot claim to have been earned with their contribution. This is correct. Income from such loans must be deducted from the gross in come when calculating surplus avail able for bonus. However, on the principle laid down in Hindustan Motors case against this income must first be set off the interest paid on loans by the Company on the principle that the Company has no justification for earning extraneous income by utilising part of its funds for that purpose, while adding to the expenditure in the business by paying interest in respect of loans taken by the Company. It is only if any surplus income Is left after deducting the interest paid on loans that, that amount will be excluded from the calculations. The loans themselves will have to be treated as capital assets for purposes of calculation of the working capital.

5. The next three points all relate to calculation of rehabilitation grant which, in the Formula, is usually the most contentious point. The rehabilitation is claimed in respect of buildings of the Company utilised for its business purposes, plant and machinery belonging to the cylinder factory of the Company, and other plant and machinery of the Company which is primarily used for its business of civil engineering. So far at buildings are concerned, the Company claimed rehabilitation in respect of three sets of buildings, the first set, valued at Rupees 82,000/-, was constructed in the year 1947-48, the second set of buildings worth Rupees 50,000/-was constructed in 1952-53, and the third set claimed to be of the value of Rupees 4,95,648/-was constructed in the year 1958-59

which is the first of the years in respect of which bonus has been claimed in the first reference by the workmen. The argument on behalf of the Union was that the Company has not proved the original cost of these buildings, nor has it proved the multiplier or the divisor, so that no rehabilitation grant should be allowed at all in respect of these buildings. In Order to prove the original cost of the buildings, the Company examined two witnesses, S. K. Guha Thakurta, Engineer, and Har Kishan Lal Gupta, Accountant. The argument was that the evidence of these witnesses as to original cost has not been accepted by the Tribunal and this Court should not interfere with this finding of fact recorded by the Tribunal. It however, appears that, in recording this finding the Tribunal committed a very Serious error in completely ignoring the registers Exhibits C-1 and C-5 which were produced to show the original cost of the buildings. Exhibit C-l contains the entry relating to the buildings constructed in 1958-59, while Ext. C-5 contains entries of the buildings constructed in the years 1947-48 and 1952-53. The Engineer Guha Thakurta, in preparing the statement for rehabilitation grant for the buildings, took the figures from the Accounts Department. Harkishan Lal Gupta, on behalf of the Accounts Department, proved that the figures were given to Guha Thakurta. Gupta states that he had seen these registers Exts. C-1 and C-5 and that, though the figures were supplied by other members of the accounts staff, he had a check made of all the figures. The authenticity of the registers C-1 and C-5 was not challenged before the Tribunal. Some attempt was made by learned Counsel in this Court to show that the register Ext. C-l was not kept in the regular course of business and could not be relied upon. Register Ext. C-1 not only contains entries about the buildings of the cylinder factory of the Company, but also contains entries relating to the machinery and plant of the factory. In challenging the authenticity of this register, Counsel pointed out that the entries were not made in it in respect of plant and machinery in the chronological Order of purchase. Secondly entries up to page 28 and even on page 29 were made in respect of plant and machinery acquired during the years 1958-59 to 1960-61, and then, on page 29 entry is made in respect of buildings. From this it was sought to be inferred that this register was specially prepared for these industrial disputes and was not kept in the regular course of business. It was further pointed out that pages 13 and 15 had been stuck together, so that no page 14 existed in the register. The main objection on which reliance was placed related to the fact that entries were made in respect of plant and machinery up to page 28 and thereafter entries in respect of buildings were made on page 29, even though the entry about buildings related to the year 1958-59, while some of the entries about plant and machinery related to the later years even up to the year 1960-61. An examination of the register, however, explains the manner in which the register had been kept. It appears that the Company envisaged that, during the period that the register will be in use, 28 pages will be needed to make entries in respect of plant and machinery. In the very-beginning, therefore, these pages were kept for that purpose, while 29th page was allotted to buildings. The 30th page was allotted to motor vehicles, and the 31st page to typewriters. However, when entries came to be made from time to time, all the entries relating to plant and machinery could not be made within 28 pages, so that some of the entries were made on page 29 after separating part of that page from the page allotted to buildings by drawing a line across the page. Similarly, entries relating to motor vehicles could not be completed on page 30, so that they were carried over to page 31 where only part of the page was needed for typewriters. On page 31, the heading "Typewriters" was put at the initial stage, but the expression "Motor Vehicles" was added to the heading after the word "Typewriters" when entries in respect of them were required to be made on page 31. These entries, instead of showing that the register was not maintained in the regular course of business, are

indicative of the contrary. So far as the Order of entries in respect of plant and machinery of the factory is concerned, it is true that they are not in the Order of date of purchase. The reason why they are not in that Order could have been explained if this register had been challenged by asking specific questions from the Accountant, Harkishan Lal Gupta; but the register was admitted in evidence by the Tribunal without any objection from the Union. It was for the Union to challenge its authenticity by cross-examining Gupta on the points which could throw doubt on its authenticity. It is quite possible that the entries may have been made not in the Order in which the machineries were purchased, but in the Order in which they may have been received in the factory. Some plant and machinery purchased earlier may have been received later. While such possibilities exist, there is no reason to doubt that the register is maintained in the regular course of business. The same argument applies to the circumstance that pages 13 and 15 have been stuck together and no page 14 now exists. There is nothing to show that this sticking together was not necessitated by some error which took place in making entries on that page 14 at the time when occasion arose to make entries on that page. In fact, if the register had been prepared at one sitting for purposes of these cases, the Company would have taken care that no suspicious circumstance comes into existence and, if; by chance, any error was committed, it could have prepared another register in lieu of Ext. C-l. The fact that this was not done shows that this register is the register kept in the course of business and, hence, there is no reason to doubt the entries made in it. This register proves that the buildings for the cylinder factory constructed in the year 1958-59 cost Rs. 4,54,789/-.

6. Then, there is the register Ext. C-5 which contains entries of lots of other buildings owned by the Company, including buildings which are not used for business purposes and are let out for earning extraneous income and in respect of which no rehabilitation grant has been claimed by the Company. This register is the register maintained for the purpose of calculating depreciation in respect of each building. This register was started in the year 1955-56, and the progressive depreciation in respect of each building from that year onwards is entered in this register. The register shows original cost of buildings of the year 1947-48 at Rupees 82,000/-and of the year 1952-53 at Rs. 50,000/-. Thus, there was a proof available in these registers of the original cost of these three blocks of buildings. The claim of the Company for rehabilitation grant for the year 1958-59 was in respect of buildings of the value of Rs. 4,95,648/-. As we have just indicated, the entries in register C-l bear out the construction of buildings for the cylinder factory in 1958-59 of the value of Rs. 4,54,789/-For buildings claimed to have been constructed in that year of the value of the difference between these two amounts no documentary evidence has been produced. Reliance was placed on behalf of the Company on a certificate issued by the Chartered Accountant on 18th April, 1963 in which the total original cost of the buildings used by the Company for its business purposes, after excluding those that were let out, was certified to be Rupees 6,27,648/-. It was urged that, if, from this amount, the three amounts proved as value of buildings entered in the two registers Exs. C-l and C-5 Is deducted, the balance represents the additional buildings that were constructed in 1958-59 and which are used for business purposes by the Company. This certificate cannot be accepted as the basis for proving that buildings of that value were really constructed in the year 1958-59 and form part of the business premises of the Company. The certificate cannot be held to prove the original cost of those buildings. Even the Chartered Accountant, who gave the certificate, did not explain in the affidavit how he had arrived at this figure of Rupees 6,27,648/-.' Consequently, rehabilitation grant can be allowed only in respect of the three sets of buildings,

mentioned above, the original cost of which has been proved by production of registers Exts. C-l and C-5.

7. The multiplier in respect of the buildings has been proved by the Engineer Guha Thakurta. This multiplier was given in the statement prepared by him for purposes of calculation of rehabilitation grant. According to the figures given by him, the cost of replacement of buildings of 1947 would be 250 per cent of the original cost in the year 1963. Similarly, the buildings of 1952-53 reconstructed in 1963 would cost 200 per cent of the original cost, while buildings of 1958-59 reconstructed would cost 120 per cent, thus giving multipliers of 2.50, 2 and 1.20. He has stated that he has given these multipliers on the basis of his experience and on the basis of his technical knowledge. There is no such cross-examination as would justify rejecting his evidence. He stated that he has documents to show that his judgment is correct, and added that these documents included the formulated schedules of rates of the Railway, M.E.S. and P. W. D. Departments. In that connection, he also produced an agreement of 1955-56 for M. E. S. work for this very Company in which the rate was 201 per cent as compared with the rate of 1947. He was not specifically asked to produce those schedules. In these circumstances, there is no reason to disregard his evidence and the multipliers given by him must, therefore, be accepted.

8. As regards the divisor, it has been worked out by the Engineer Guha Thakurta on the basis of average life of 35 years of these buildings. There is nothing either in his cross-examination or in other evidence to show that this estimate of the age of buildings given by Guha Thakurta on the basis of his experience and technical knowledge is in any way incorrect. The Tribunal, in fact, did not specifically deal with the multiplier and the divisor, and rejected the case of the Company primarily because the Tribunal thought that the original cost had not been satisfactorily established. In this connection, another point raised on behalf of the Union was that the figure of depreciation of Rs. 12,614/-in respect of the buildings of the year 1958-59 required for being deducted from the rehabilitation grant 'claimed has not been properly proved. This is the amount which was shown as the depreciation of the year in the statement prepared on behalf of the Company by the Engineer Guha Thakurta. This figure is partly supported by the register Ext. C-5 in respect of the buildings of the years 1947-48 and 1952-53. In a consolidated statement showing the fixed assets of the Company marked Annexure A, a sum of Rs. 56,534/-has been shown as the depreciation for the year 1958-59 in respect of land and buildings owned by the Company. This depreciation relates not only to the buildings in respect of which rehabilitation grant has been claimed, but also depreciation on buildings which are let out and in respect of which no rehabilitation grant has been claimed, as the income from them is treated as extraneous income. This explains why only a sum of Rs. 12,614/-has been shown as the depreciation in this year which has to be confined to the buildings used for business purposes and in respect of which the Company is entitled to claim rehabilitation grant. The certificate given by the Chartered Accountant, referred to above, gives an indication of this break-up. It appears that Rs. 12,614/-was the total depreciation in respect of business buildings, while the rest was depreciation in respect of other buildings which are let out. Referring to the decision of this Court in Petlad Turkey Red Dye Works Co. Ltd. v. Dyes and Chemical Workers Union the Counsel urged that this certificate should not be accepted as proof. We are not accepting the certificate as proof of the depreciation on the buildings for this year. The proof is partly in the register Ext C-5 and partly in the evidence of the witnesses. The certificate only confirms that this calculation is

correct. In these circumstances, this figure must be held to be acceptable and, on this ground, the claim for rehabilitation grant cannot be rejected. Of course, in making the calculation, this amount of depreciation will be deducted out of the rehabilitation amount calculated in accordance with the principles laid down in the Full Bench Formula. It may be mentioned that, even according to the Company, no rehabilitation grant is claimable in respect of the buildings, except for one single year 1958-59 out of the years in dispute. In the years 1959-60 and 1960-61, the amount of depreciation available in each year exceeds the amount required for rehabilitation of the buildings in those years, so that no rehabilitation grant will be taken into account in those two years.

9. The next claim in respect of rehabilitation for plant and machinery of the cylinder factory has also to be allowed, though in a modified form. In respect of this claim also, it was urged on behalf of the Union that all the three necessary factors had not been satisfactorily proved. So far as the original cost is concerned, that has been established by production of the register Ext. C-l. We have already dealt with the objections against this register and have held that it can be relied upon. It shows the original cost of all the plant and machinery of the cylinder factory. With regard to the second factor required to be established, viz., the multiplier, the evidence given on behalf of the Company is certainly very unsatisfactory. There were 45 machines in the factory, while quotations were produced only in respect of 7 machines. Even though Rajendra Nath, the Factory Manager, came to prove the multiplier worked out for all the machines on the basis of these few quotations, he did not specifically give evidence to show that all the 45 machines were comparable with these 6 or 7 in respect of which estimates of price at the time of the reference to the Tribunal were obtained. Further, the correspondence and the evidence of the witnesses also shows that, in fact, no attempt at all was made to obtain quotations for actual replacement of even these 7 machines. In each case, an inquiry was made as to what would be the price of the machines which were supplied earlier from the suppliers. The suppliers, thus, merely gave estimates of the price and did not give any quotations. As held by this Court in Aluminium Corporation of India v. Their Workmen such estimates, which were not intended to be quotations by the senders themselves, could not be held to represent the replacement value of the machines. In these circumstances, the multiplier of 1.15 claimed by the Company in the evidence of Rajendra Nath cannot be accepted. At the same time, there is the circumstance that all these machines were purchased in the year 1958-59. While the rehabilitation grant had to be calculated in 1963. There was no indication at all that there had been any fall in prices during this period: if at all, there may have been a rise in prices which is also borne out by the 7 estimates sent by suppliers who were contacted by the Company. Consequently, it seems to us to be fair that rehabilitation in respect of that plant and machinery should be allowed to the Company after treating the prices as constant which will give a multiplier of 1 only. For the failure to prove the multiplier, we do not think that the claim for rehabilitation should be rejected altogether.

10. So far as the life of machinery for purposes of the divisor is concerned, Rajendra Nath has stated that the average life of the machinery would be 17 years. He has given this estimate of life on the basis of his experience and technical knowledge. On behalf of the Union, it was urged that the life should be taken to be at least 25 years. The Tribunal did not accept the evidence of Rajendra Nath on the ground that he was unable to cite any authority in support of his opinions; but it is significant that he was not asked to cite the authorities. The Union relied on the decision of this Court in

Hindustan Motors case (supra) to urge that, in the absence of any evidence, the Court should accept the life of a machinery to be 25 years. The remark in that case related to machinery used in textile mills when it was envisaged that 25 years would be the normal life of the machinery. The machinery in the cylinder factory is being used for working not on soft material like cotton or yarn, but for working on iron and steel. On behalf of the Company, therefore, it was urged that the estimate of 17 years made by Rajendra Nath should not be rejected, as in the Hindusthan Motors case (supra) itself where the machinery was required to work on similar raw material, was taken to ave a life of 15 years if the work was carried on in two shifts, and 10 years if it was carried on in three shifts. In this connection, reliance was also placed on behalf of the Company on the remarks of this Court in the case of National Engineering Industries Ltd. (supra) where 25 years life fixed for textile machinery was not accepted as comparable with the life of machinery of the National Engineering Industries. In the present case, however, there is no evidence at all that the work was being carried on even in two shifts, so that the life of 15 years accepted in the case of Hindustan Motors case, be equated with the life of the machinery in question. It appears to us that, considering all the circumstances and on the basis that, in the absence of proof, it must be assumed that the work is being done in only one shift, the life of the machinery should be appropriately fixed at 20 years. It is on this basis that the divisor has to be calculated.

11. The last claim in respect of rehabilitation grant relates to the plant and machinery other than that of the cylinder factory. This claim, in our opinion, has to be rejected altogether, because no evidence worth the name has been given to prove the life of that plant and machinery so that a divisor may be worked out. The only witness examined by the Company is Bhupendra Natwarlal Dalai, Engineer incharge of the Mechanical Engineering Workshop of the Company. In his affidavit and in his evidence, he did not make any statement as to the life of this plant, machinery, etc. All he stated in the affidavit was that he had adopted divisors, and the divisors had been adopted by him on the basis of his experience in this industry and technical knowledge of the same. It, however, appears to us that, in trying to give the divisor instead of the life of the machinery, he got into difficulties, because he did not understand how a divisor has to be worked out. If the life of the machinery is worked out on the basis of the divisors adopted by him in respect of machinery purchased in different years, it appears that some machinery would have a life of as little as 10 years, while some machinery would have a life of as much as 27 years depending on the year of purchase. He has not stated that the machinery purchased in one year was so different from the machinery purchased in another year that the life could vary between 10 to 27 years. It seems to be obvious that he has arbitrarily put down the divisors, and that he did not realise that the divisors should be worked out after estimating correctly the life of the machinery. In such a case, the claim for rehabilitation has to be rejected altogether in accordance with the principles already laid down by this Court in Aluminium Corporation v. Their Workmen and Workmen of National Tobacco Co. Ltd. v. National Tobacco Co. Ltd. (1966) 2 Lab LJ 200. Following these decisions, the claim for re habilitation in respect of this plant and machinery, other than that belonging to the cylinder factory rejected.

12. The seventh point raised related to the rate at which the Company should be allowed to deduct interest on subscribed capital. The Tribunal has fixed the rates in the three years, after taking into account the circumstances in each year. Nothing has been shown to us which would justify a finding that the Tribunal, in adopting these rates, committed any error in principle. Consequently, there is

no reason to interfere with the rates allowed by the Tribunal.

13. The eighth point is a gene ral one relating to the calculation of rehabilitation grant. One of the principles laid down by this Court is that, in calculation of rehabilitation grant, the depreciation reserve must always be deducted, irrespective of the fact whether it is available or not as a liquid asset. In addition, other reserves, like general reserve, are also liable to be deducted if they are available as liquid reserve and are not ear marked for any specific purpose. Learned Counsel for the Union claimed that there were three reserves which should have been deducted when calculating the rehabilitation grant required for the buildings and the plant and machinery of the cylinder factory The first item claimed is capital reserve and the second is development reserve There is, however, no material at all on the record to show that these two reserves existed in the form of liquid assets or cash so as to be available for rehabilitation. The balance-sheet does not indicate that these amounts existed as separate amounts. It was urged that the development reserve may be held to form part of the cash available to the Company in its current account with banks or the cash in hand. That cash, however, formed part of the working capital and was specifically earmarked for that purpose. The Company had to pay a monthly wage bill of about Rs. 84,000/-for its entire staff. In addition, it had a turnover of more than 13 lakhs in each month. In Order to carry on the business in such circumstances, ready cash was required in the bank all the time and this cash, thus earmarked for the purpose of working capital, cannot be treated as representing any reserve kept in the form of a liquid asset. The third Item, which Counsel for the Union claimed could be treated as liquid reserve, was trade investments which, at the beginning of the year 1958-59, were of the value of Rs. 63,132/-. These trade investments, we have already held earlier, were part of the capital assets of the Company kept in that form in the course of its business. They have not been treated as investments outside the business for purposes of earning extraneous income in the calculation for bonus. In such circumstances, these trade investments cannot be treated as forming part of the reserve available for rehabilitation.

14. The ninth point that needs to be dealt with is the claim by the Company that, in allocation of surplus between the Company and the workmen, the Court should take into account the bonus that is payable to officers and not merely the bonus pay able to the workmen. It was urged that the Company has always paid bonus to the officers at the same rate at which bonus is given to the work men. The balance-sheets produced, no doubt, show that, in those years, the bonus paid voluntarily by the Company to the workmen and the officers was at a uniform rate. There is, how ever, no evidence to show that there is any specific agreement that the bonus must be paid to the officers at the same rate as the workmen. The workmen are being awarded bonus under an industrial dispute. The officers cannot put forward a claim on the same basis as the workmen. There is no certainty that, if, in calculating the bonus for the workmen, allowance is made for additional bonus to be paid to the officers, the Company will necessarily make that payment or is bound to make that payment. In these circumstances, this claim of the Company is also rejected.

15. The decisions on the nine points of dispute, dealt with by us above, were communicated to Counsel for parties, who were requested to make fresh calculations on the basis of these principles and give us figures of available surplus. Counsel for parties have filed statements accordingly, and it appears that, in the first two years 1958-59 and 1959-60, the figures arrived at by Counsel for both

the parties are identical. There is a slight difference in the year 1960-61 which is so small that it can be ignored. The difference is of a sum of Rs. 216/-in a total figure of more than Rs. 5,87,000/-. In round figures, the amount of surplus available in each of the three years is as follows: 1958-59 ... Rs. 3,63,500/-1959-60 ... Rs. 4,00,300/-1960-61 ... Rs. 5,87,800/-

16. At this stage, we may deal with the tenth point argued by the representative of, the workmen in Civil Appeal No. 1951 of 1966. It was urged that, in allocating the surplus available according to the Full Bench Formula, the Court may take into account the fact that the basic wages in this Company are on the low side. This point does not seem to have been pressed before the Tribunal as it has not been dealt with in the award. Further, our attention has been drawn by learned Counsel for the Company to the fact that basic wages being paid by the Company were arrived at in an Agreement dated 4th July, 1958 which date falls within the first of the three years in dispute. The wages having been fixed so recently by agreement cannot be held to be low. Then, there is the consideration that the surplus has to be allocated equitably between the workmen and the Company so as to protect the interests of the work men as well as to make funds available for the Company for its expansion, development, etc. In these circumstances, no such consideration about wage scales can be taken into account when, allocating the surplus.

17. In allocating the surplus between the two, we consider that it will be equitable if roughly 60 per cent of the surplus is distributed as bonus to the workmen, while the Company is left with the remaining 40 per cent and gets, in addition, the benefit of the income-tax rebate on the 60 per cent amount payable as bonus to the workmen. On this basis, we have found that, so far as two of the three years in dispute are concerned, if the bonus is paid in accordance with the direction of the Tribunal, the surplus allocation will be very nearly in that proportion. These two years are 1958-59 and 1960-61. In 1958-59, the Tribunal has awarded bonus to the extent of 4 months' basic wages, and in 19.60-61, to the extent of 4 1/2 months' basic wages. If this Order Is upheld, the amount payable in these two years as bonus to the workmen will be Rupees 2,24,000/-and Rs. 3,44,250/-, while the balance left with the Company together with the income-tax rebate will be Rs. 2,62,700/-and Rs. 4,32,887/-. In these two years, therefore, we do not consider that there is any need to vary the Order of the Tribunal. In the year 1959-60, however, the amount awarded by the Tribunal leaves a smaller balance with the Company; and we consider that it will be equitable if the bonus awarded for that year is reduced to the extent of 3 1/2 months' basic wages. Thereupon, the amount awarded to the workmen as bonus will be Rs. 2,35,900/-while the amount available to the Company including income tax rebate will be Rs. 2,94,145/-. In these circumstances, the final Order passed by the Tribunal needs amendment in respect of the year 1959-60 only in which year the bonus awarded is reduced from 4 months to 3 1/2 months' basic wages. The bonus to be paid in accordance with these directions will be the amount after setting off the bonus already paid by the Company to the workmen. With this variation, all the three appeals are dismissed. In the circumstances of this case, parties are directed to bear their own costs in all the appeals.