Premier Automobiles Ltd. & Anr. Etc vs Union Of India on 24 November, 1971

Equivalent citations: 1972 AIR 1690, 1972 SCR (2) 526, AIR 1972 SUPREME COURT 1690

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde, Hans Raj Khanna

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           PETITIONER:
PREMIER AUTOMOBILES LTD. & ANR.  ETC.

        Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT24/11/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.
KHANNA, HANS RAJ

CITATION:
 1972 AIR 1690            1972 SCR  (2) 526
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 RF         1978 SC1296  (34,65,69)
 RF         1986 SC1999  (11)
 F          1987 SC1802  (9)
 R          1990 SC1851  (36)
 RF         1992 SC1033  (33)


ACT:
Motor Car  (Distribution and Sale) Control (Amendment) Order
1969  passed  under  s.  18G  Industries  (Development   and
Regulation)  Act,  1951--Fixation of ex  factory  prices  of
motor  cars produced in India-Recommendations of  Commission
of  Inquiry-Production  capacity  determination  of-Expenses
relating  to warranty and bonus whether to be excluded  from
the   ex-works  cost-Adoption  of  'historical  method'   by
commission for fixing cost for September 1969, propriety of-
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Escalation clause, necessity of-Fair return, what is-Depreciation of plant and machinery whether to be allowed on basis of original cost or replacement, value.

HEADNOTE:

On the basis of the recommendation of the Tariff Commission the Government of India promulgated the Motor Car (Distribution and Sale) Control (Amendment) Order 1969 under s. 18G of the Industries (Development and Regulation) Act, 1951. By this order the Government fixed the exfactory prices of the three cars manufactured in India namely Hindustan Ambassador, Fiat 1100-D and Standard Herald 4 Door. These prices were inclusive of dealers' commission but did not include the excise duties, Central Sales-tax and local taxes, if any, and transport charges. The manufacturers or dealers were prohibited from selling or offering for sale or otherwise transferring or disposing of the motor cars for a price exceeding the price given in the order. The manufacturers of these vehicles and two of their dealers filed writ petitions in this Court under Art. 32 of the Constitution challenging the price fixed. On May 5, 1970 this Court after partly hearing the petitioners recommended to the Government to appoint a commission for the purpose of suggesting a fair price for the three cars by taking into consideration all the relevant matters. The Government accordingly appointed a Commission of three members headed by a retired High Court Judge and by a notification dated June 5, 1970 all the provisions of the Commission of Enquiry Act 1952 were made applicable to the Commission. The Commission, decided to recommend a fair price for two periods, (1) as in September 1969 and (2) as in July 1970. It was considered necessary to determine the price in September 1969 because the impugned order was promulgated at that time. For the September 1969 prices the computation was done according to the 'historical method', which meant that not only the prices in September 1969 were kept in view but also the value of pending stocks of raw materials and the average of the price at which purchases had been effected at that time were taken into account. The prices for July 1970 were computed on the basis of the actual cost obtaining in the month of July 1970. The report of the Commission suggesting fair prices for the three cars in question was filed before the court. The findings of the Commission were criticised by the writ petitioners on the following grounds : (1) That the Commission had taken the production capacity at an excessive figure and had thus artificially reduced the cost; (ii) that cost and expenses on account of warranty and statutory bonus had been wrongly excluded from the ex-works cost; (iii) that in fixing the cost for September 1969 even the actual admitted cost found by the Commission had not been taken into account and the

price had been fixed on the historical cost, whereas in. fixing the price for July 1970 the projected and estimated cost for July 1970 had been ignored; (iv) that no pro-vision had
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been made for an escalation clause in order to ensure that the prices fixed would ensure for a reasonable period of time; (v) that the return which bad been allowed was wholly inadequate on the admitted and proved facts, and (vi) that the depreciation of plant and machinery had been allowed on the basis of original cost whereas it should have been allowed on the replacement value or on the peculiar facts of the case. It was common ground that deviation from the report of the Commission which was an expert body presided over by a former judge of a High Court should be directed only when it was shown that there had been a departure from established principles or the conclusions of the Commission were shown to be demonstrably wrong or erroneous.

HELD : (By the Court) (i) The very concept of fair price vhich can be fixed under s. 18 G of the Act takes in all the elements, which make it 'fair' for the consumer leaving a reasonable margin of profit to the manufacturcr without which no one will engage in any manufacturing activity Capacity utilisation of a manufacturing unit, the quality oil its product, and the maintenance of proper standards at various levels of production are all relevant factors for the determination of the price. Capacity utilisation, has to be on the basis of what can be reasonably achieved keeping in view always the practical side. [549 H-550 A]

Within regard to the Premier Automobiles at no stage except for the second half of the year April 1970 to March 1971 import licences had been granted for production of more than 1200 cars. It was only in that year that for the first half it was granted for 6050 cars and for the second half for 7000 cars. From the practical point of view therefore the achievable capacity for September 1969 could not have been fixed for more than 12000 cars a year The Commission was right in fixing the achievable capacity for July 1970 at the figure of 14000 cats per year. In regard to Standard Motors that Commission was not justified in departing from the recommendations of its technical committee and fixing the production capacity at 4000 cars, and 1000 commercial vehicles per annum. , On an overall consideration the capacity of Standard,, Motors would be 3400. cars and 1000 trucks as found by the technical team. [552 B-C; 553 A-B; 555 G]

As regards Hindustan Motors the production capacity should have been assessed at the figure given by the technical team namely 30000 cars, and 5000 trucks per year. The Commission was wrong in relying on the applications for import licences made by Hindustan Motors and on their basis assessing the production capacity for trucks at 10500. In such applications the estimates given are likely to be Mated.

The technical committee had proceeded on the basis of independent physical checking and verification in all respects. There was no justification for rejecting the opinion of the experts especially when no member of the team was examined as a witness for finding out those facts and data which the Commission had sought to use for rejecting the technical team's report. [557 H-558 D]
(ii) (a) As laid down in the order promulgated by the Government in March 1968 under s. 16 of the Act all defects due to faulty manufacture of workmanship shall be rectified and defective parts replaced during the warranty period without passing any part of the burden including incidental charges to the consumer. The effect of the above direction cannot be ignored although it may not be conclusive in the matter of fixing a fair price. The statement of the Commission that if the warranty was to be made out of the profits every manufacturer would try to minimise warranty cost by improving the quality: of his product was unexceptionable. If it is to be included in the ex-works cost it would
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mean virtually passing it on to the consumer. [538 G-539 Al
(b) The question whether bonus is linked with profit or cost stands concluded by the provisions of the Bonus Act itself as also the decision of this Court in Jalan Trading Co.'s case. The object of the Bonus Act as observed in that case is to make an equitable distribution of the surplus profits of the establishment with a view to maintain peace and harmony between the three agencies (capital, management and labour) which contribute to the earning of profits. The Commission came to the correct conclusion that bonus is connected with profits and it cannot be included in ex-works cost. [540 E; 541 E]
Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union, [1967] 1 S.C.R. 15, referred to.
(iii) There was no authority or principle on which the method of calculating the ex-works cost on historical basis could be justifiably adopted for September 1969 when a different method was adopted for July 1970 cost. The ex-works cost for September 1969 should have been determined according to the current prices as was done with regard to July 1970. [541 H]
(iv) In view of the rising prices of components provision for escalation and de-escalation of car prices was_necessary, [Directions given] [543 A-D; 562 H]
(v) The quantum of return has essentially to vary from industry to industry. The Commission took figures from authentic sources i.e. the report of the Reserve Bank of India and an analysis carried out by the Economic and Scientific Research Foundation with regard to the return which was being earned by the various companies on the capital employed. After taking the maximum return which an investor can expect from fixed deposits and other relevant

factors into consideration the commission was of the view that a dividend of 10% to the equity shareholder after providing for the tax liability of the company and other outgoing would be fair and reasonable.. The outgoing which are to be met out of the return are (1) the actual interest on borrowings; (2) the minimum bonus; (3) other financial charges; (4) warranty charges and in case of Premier Automobiles the guarantee commission paid on loans obtained from foreign sources and differences in exchange. After making provision for these outgoing the dividends on preference shares, if any, the tax liability of the company and a return of 10% on the equity share capital, the total profit of the company as a whole was calculated which when related to the capital employed of the respective companies worked out to 15.43% in the case of Hindustan Motors, 16.22% in that of Premier Automobiles and 17.36% in Standard Motors. Considering the above and taking an over all view of the car industry 16% return on capital employed was considered to give a reasonable return to the car manufacturer. [545 E546 A]

At first sight it may appear that return of 16% on the capital employed is a very large return but this return includes numerous items which reduce the return to the equity shareholder to a percentage which, even according to the Commission, on an average cannot exceed 10%. The plea of the car manufacturers for exclusion of warranty and bonus charges from the return and for their inclusion in the ex-works cost could not be accepted. At the same time the return of 12% recommended by the Tariff Commission was wholly inadequate when all the items that the Car Price Commission had mentioned had to be paid out of it.

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The return of 16% granted by the Commission was a reasonable one keeping in view the entire circumstances. A total return of 16% will leave some margin if proper economies are effected by the manufacturers for replacement and rehabilitation and improvement of the plant and machinery. The main objective is to project the interest of the consumer while at the same time provide a reasonable margin of profit to the producers. The general approach has to be to determine the ex-works cost and then to arrive at the fair price after examining other claims of the industry and providing a reasonable return. There was no principle which had been demonstrated to be wrong in the report of the Commission so far as the fixation of the return was concerned. [546 D-H]

Even though the return to the equity shareholders of all the there companies may not be uniformly 10% it was not possible to make any distinction or discrimination between the three manufacturers. A separate rate of return for each could not be fixed when dealing with the automobile car industry as a whole. [546 B-C]

(vi) The Commission was right in allowing depreciation on

the actual cost and not on the replacement value. The depreciation which is allowed under the tax laws is very liberal and there is no reason to pass on the burden to the present consumer who is not likely to get any benefit out of the replacement proposed to be provided for by the manufacturers. There was no serious infirmity or flaw in the reasoning or the conclusion of the Commission on the question of depreciation. [548 A-C]
ALSO HELD : (1) The amount payable on account of royalty per car in the case of Standard Motors pursuant to the collaboration agreement the renewal of which had been approved by the Government of India must be included in the ex-works cost for July 1970 [562 E-F]
(2) The conclusion of the Commission relating to the percentage of the local steel sheets by the Hindustan Motors was correct. [562 F]
(3) The dealers, shall, for the present, be entitled only to the mark up in terms of the recommendations of the Commission. [562 G]
On the relationship between taxation and the high prices of cars the Court observed : It will not be out of place to notice a few observations of expert bodies about taxation which forms at least one third part of the price of a car. The Tariff Commission in its third report published in 1968 recorded that high prices of the vehicles were due mostly to the existing multiple taxes on the automobiles at different stages of production and sale. It had recommended a reduction in the burden of taxation which would lead to reduction in the prices of cars. The Jha Committee bad emphasized the same in 1960 and had pointed out that taxation was a burden on the consumer rather than on the producer. The Car Price Enquiry Commission has said in its main report at page 292 :"The incidence of tax on a car is very heavy inasmuch as it constitutes46% of the ex-factory price. The car is no longer an item of luxuryand under the existing conditions it is fast becoming an item of necessity. That being so, there is a case for giving some relief out of the excise duties and other levies which are by their nature multi-point taxes causing hardship." [436 F--537 A]
Per Khanna, J. (Partly dissenting)
The production capacity which has to be taken into account is the achievable capacity of a plant run in a reasonably efficient manner. Concerted effort has to be made to attain a high level of production for two obvious reasons : (1) supply of new cars falls considerably short of the demand and the intending purchasers have to be kept on the waiting list
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for inordinate length of time and (2) increased production would bring down the ex-works costs of the car. Although it would not be practicable and realistic to insist upon the highest or absolute efficiency, it would be equally unjust

and inequitable to throw the burden of inefficiency of a manufacturer on the consumer in working out the figure of 'fair price' of the article manufactured. To put it differently, the authority concerned in determining fair price should not demand from the manufacturer the paragon of excellence in the matter of volume of production but at the same time the authority should not make the consumer bear the margin of high cost resulting from avoiding low production. It is, of course, implicit in that that reasonable facilities would be afforded to the manufacturer for procuring material like imported parts and steel which is under the Government control so as to be in a position to manufacture the requisite number of cars. The concept of 'fair price' postulates that the price should be fair not only to the producer but also to the consumer; the goal should be to arrive at just and reasonable rates. [566 E-H]
No case had been made for interfering with the July 1970 price of Standard Herald as found by the Commission on the ground that the production capacity of that company from July onwards was 3400 and riot 4000 cars. The latter estimate made by the Commission was not excessive considering the admissions made by the company in its applications dated 19-6-1968 and 20-12-1969 in which the company had estimated its production at 4200 cars. It is wellknown that admissions constitute a strong piece of evidence against the party making the admissions and it is for that party to show that the admissions are mistaken or are not true. On the material on record the company had failed to discharge that onus. The argument that the petitioner in order to obtain import licence had to give a bloated figure of estimated production did not appear to be convincing because the excess of the imported material had to be adjusted in the subsequent import licences. [570 H-571 D, F]
From the Technical Team's own report it was clear that neither any physical verification could be made by the Tr- ,am nor could it make a systematic study and it had to content itself with the materials supplied by the petitioner-company. The Verghese Committee no doubt dealt with the question of capacity but in a rather general way. There was nothing to indicate that any attempt was made before the Committee to show that the achievable capacity of the petitioner company was more than what was stated on behalf of the petitioner. In these circumstances there was no reason to rely on the recommendations of the Technical Team or the Verghese Committee in preference to the findings of the Commission. [568 E, 569 A-B]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 327, 330, 331, 486 and 487 of 1969.

N. A. Palkhivala, V. M. Tarkunde, B. G. Murdeshwar and A.G. Ratnaparkhi, for the petitioners (in W.P. No. 330 of 1969).

C. R. Pattabhiraman, M. Natesan, B. G. Murdeshwar and A.G. Ratnaparkhi, for the petitioners (in W.P. No. 330 of 1969). A.C. Mitra, Dipankar Gupta, K. Khaitan, N. R. Khaitan, O. P. Khaitan, B. P. Maheshwari and R. K. Maheshwari, for the petitioners (in W.P. No. 331 of 1969).

B.R. L. lyengar and R. B. Datar, for the petitioners (in W.P. No. 486 of 1969).

V.S. Desai and R. B. Datar, for the petitioners (in W.P. No. 487 of 1969).

Niren De, Attorney-General for India, Jagadish Swarup, Solicitor-General of India, G. L. Sanghi, R. N. Sachthey' Ram Panjwani and Sumitra Chakravarty, for the respondent (in W.P. No. 327 of 1969).

Niren De, Attorney-General for India, Jagadish Swarup, Solicitor-General of India, G. L. Sanghi and R. N. Sachthey, for the respondent (in W.Ps. Nos. 330, 331, 386 and 487 of 1969).

Grover, J. These petitions under Art. 32 of the Constitution were filed by Premier Automobiles Ltd., Hindustan Motors Ltd. and Standard Motor Products of India Ltd., manufacturers of Fiat, Ambassador and Standard motor cars respectively and two of the dealers of such cars. The petitioners challenged the fixation of fair price of the said three passenger cars by the Government of India by the Motor Car (Distribution and Sale) Control (Amendment) Order 1969 promulgated under S. 18G of the Industries (Development and Regulation) Act 1951, hereinafter called the "Order" and the "Act" respectively. The ex-factory prices of the three cars were fixedas follows :

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HINDUSTAN AMBASSADOR                    Rs. 15,316.00
FIAT 1100-D                             Rs. 14,325.00
STANDARD HERALD 4 Door                  Rs. 14,003.00
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These prices were inclusive of dealer's commission but did not include the excise duties, Central Sales tax and local taxes, if any, and transport charges. The manufacturers or dealers were prohibited from selling or offering for sale or otherwise transferring or disposing of the motor cars for a price exceeding the price given in the Order. The order was made after taking into consideration the recommendations of the Tariff Commission to whom the question of determination of a fair price of motor cars had been referred by the Central Government under clause (d) of s. 12 of the Tariff Commission Act 1951.

On May 5, 1970 after hearing the, petitions for some days this Court recommended to the Government to appoint a Com- mission for the purpose of suggesting a fair price for the three cars by taking into consideration all relevant matters. On May consisting of Shri Sarjoo Prasad a retired Judge of the Patna High Court as Chairman, Shri R. K. Khanna Chartered Accountant and Brig. V. Minhas Director of Inspection (Vehicles), Department of Defence Production as Members. By a notifica- tion dated June 5, 1970 all the provisions of the Commission of Enquiry Act 1952 were made applicable to the Commission. The Car Price Enquiry Commission, hereinafter called the 'Commission' devoted a good deal of labour and attention to the matter of fixing a fair price of the three cars. Its report consists of two volumes. The first volume contains the main report and the second volume, contains the appendices.

The Commission in its report has adverted to the historical background in which the car industry came to be controlled in our country. it will be useful to notice the salient facts. Till the year 1928 motor vehicles were purchased directly from abroad or through agents and dealers in India. From 1928 till the early forties General Motors India Ltd. and Ford Motor Company of India Ltd. used to assemble trucks and cars from components imported from United States in completely knocked down condition called C.K.D. by way of abbreviation. Hindustan Motors Ltd. Calcutta and the Premier Automobiles Ltd., Bombay, two of the petitioners before us, were established in 1942 and 1944 respectively with a programme for progressive manufacture of complete automobiles. These companies entered into technical collaboration with foreign manufacturers as did the Standard Motor Products of India Ltd. In the industrial Policy Resolution of 1949 of the Government of India automobiles and trucks were classed among industries of importance which would be subject to regulation and control by the Central Government. In 1949 the Government decided that the import of vehicles should be allowed only in C.K.D. condition. In March 1952 the Government asked the Tariff Commission to enquire into the question of grant of protection to the automobile industry in India. The Tariff Commission submitted its report in 1953 recommending that only those companies which had an approved manufacturing programme should be allowed to continue their operations which recommendation was accepted by the Government. In August 1955 the Government of India asked the Tariff Commission to enquire into and recommend the fair ex-works and selling prices of the automobiles. The Tariff Commission submitted its report in October 1956. According to that report the margin between the current net dealer's price and ex-works cost of the cars and trucks produced by the approved manufacturers could not be regarded as excessive. it considered that a rigid system of price control was not likely to have a healthy effect on the development of the industry. The interest of the consumers could be properly protected if investigations were held after certain intervals in order to see that excessive prices were not actually charged although the manufacturers were left free to charge prices at their discretion. The Government took a decision to enforce an "informal price control" on automobiles which was accepted by the manufacturers. The manufacturer was free to revise the price from time to time according to the variation in the cost but had to give a month's notice of any variation to the Government so that if the change proposed was prima facie unreasonable the Government could intervene. The net dealer's price was not to exceed the ex-works cost by more than 10%. Within a few years of the imposition of the informal price control the situation in the country changed owing to the scarcity of foreign exchange. The Government had to curtail foreign exchange allocation for the import of automobile components with the result that only three out of the then existing six models of passenger cars were left in regular production. The Government considered it necessary to introduce a Distribution Control Order which required the dealer to deliver vehicles in the order of registration and without discrimination. A committee was appointed consisting of Shri L. K. Jha as Chairman and other experts to review the progress of the automobile industry and to. recommend measures in the matter of reduction of cost etc. The Jha Committee submitted its report in January 1960. According to the findings of that Committee there had been neglect and inefficiency in production owing to there being hardly any competition. The Committee felt that greater discipline was called for both so far as ancillary and the main producers were concerned. As regards the taxation policy the

Committee felt that "lower level of taxation per vehicle would stimulate more demand for them".

The Government in May 1966 remitted the question of further continuance of protection being accorded to the automobile industry to the Tariff Commission and also directed that Commission to enquire into the cost structure and the fair selling price of different types of automobiles. The Tariff Commission made comprehensive recommendations and it was on the basis of its recommendations that the Order was issued in September 1969 fixing the prices of the three cars. In July 1967 the Government had also directed an investigation under s. 15 of the Act into the quality of the three cars by a Committee headed by Shri G. Pande. The Commission was to look into the complaints relating to deterioration in quality and other allied matters including the part. played by the ancillary and other industries. The Pande Committee submitted its report in December 1967. It recommended inter alia that there should be a separate Quality Control and Inspection Department and that components carrying IST certification marks should be preferred. In November 1968 the Government set up a team of experts headed by Dr. A. N. Ghosh the then Director-General of the Indian Standards Institution.

This team was required to examine the "internal experts organisation" of the three car makers and to make recommendations for strengthening them. The Ghosh Committee endorsed the view of the earlier Pande Committee with regard to the establishment of technical audit cells. These cells were to be established for watching the interest of the consumers and ensuring improvement in quality of cars which were being manufactured by the, three petitioners. The procedure followed by the Commission may be briefly noticed. It invited by means of a detailed questionnaire full information from the car manufacturers, dealers, consumers and others interested in the inquiry. It appointed a team of Cost Accountants and another team of technical experts besides a Chartered Accountant. These teams studied and collected data from each of the three manufacturing units and examined their manufacturing processes. The cost structure and activities of some of the ancillary producers and dealers of automobiles were also studied apart from visits to the manufacturing units. The Commission examined witnesses who were produced by the Union of India, the consumers, the dealers and the manufacturers. We may next refer to the principles and methods of costing which were followed by the Commission. The cost of a commo- dity consists of these elements : direct material, direct wages, services, depreciation and manufacturing, administrative and selling overheads. In case of an automobile a large number of components which undergo different manufacturing processes have also to be taken into account. The Commission decided to recommend a fair price for two periods, (1) as in September 1969 and (2) as in July 1970. It was considered necessary to determine the price in September 1969 because the impugned order was promulgated at that time. It,, however, adopted two different principles in the matter of computing the cost on the aforesaid two dates. For the September 1969 prices the computation was done according to what may be called the historical method. This meant that not only the prices in September 1969 were kept in view but also the value of pending stocks of raw materials and the average of the price at which purchases had been effected at that time were taken into, account. The prices for July 1970 were computed on the basis of the actual cost obtaining in the month of July 1970. The following principal factors were considered relevant for the fixing of a fair selling price :

(1) capacity of production.

(2) quality.

(3) norms of rejection.

(4) depreciation.

(5) bonus.

(6) warranty.

(7) interest on borrowings.

(8) return.

The Commission finally came to the conclusion that the fair prices of the three cars should be the following.

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      FIAT
                             September 1969       July 1970
      Ex-works cost          Rs.12,283.00        13,564.00
      Return                 Rs.1,168.00          Rs.1,223.00

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      Ex-factory             Rs.13,451.00     Rs.14,787.00
      Price
      STANDARD HERALD
                            September 1969         July 1970
      Ex-works cost          Rs.13,236.00     Rs.13,989.00
      Return                 Rs.1,274.00          Rs.1,231.00

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      ex-factory             Rs.14,510.00     Rs.15,220.00
      price
      AMBASSADOR.
                            September 1969         July 1970
      Ex-works cost          Rs.12,152.00     Rs.14,299 00
      return                 Rs.1,364.00          Rs.1,470.00

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      Total
      ex-factory
      price                  Rs.13,516 .00         Rs. 15,769 .00
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We may at this stage state certain preliminary matters which will facilitate the comprehension of our discussion on various points. Firstly, certain terms may be explained. 'Ex-workS' cost means the cost incurred in the factory of the manufacturer including all materials, parts and components. 'Return' means the total return to the manufacturer on the capital employed. 'Ex-factory Price' consists of the ex-works cost plus the return. 'Retail Price' would be the price arrived at by adding the dealer's commission or what is called 'mark up'. The consumer has further to pay excise duty, surcharge and sales tax. Counsel for all the parties and the learned Attorney General are agreed that irrespective of the technical or leGal points that may be involved we should base our judgment on examination of correct and rational principles and should direct deviation from the report of the Commission which was an expert body presided over by a former judge of a High Court only when it is, shown that there has been a departure from established principles or the conclusions of the Commission are shown to be demonstrably wrong or erroneous.

The following table will illustrate the price of Fiat car in Bombay based on July 1970 figure payable by a consumer as also the comparison with the prices contended for by Premier Automobiles and the government.

-- Description As recommen- As per As contended ded by the submissions by the Commission made by the government Petitioner Premier Automobiles)

Ex-factory price	Rs.14,787.00	Rs.15,793.00	Rs.14,017.00
dealer's mark-up	Rs.900.00	Rs.900.00	Rs.900.00
Retail price	Rs.15,687.00	Rs.16,693.00	Rs.14,917.00
excise duty on built-up car	Rs.1,478.70	Rs.1,579.00	Rs.1,401.70
Surcharge on excise duty	Rs.492.90	Rs.526.00	Rs.467.23
Maharashtra sales tax on built-up car	Rs.2,011.03	Rs.2,147.84	Rs.1,906.31

-------------------------------------- PRICE TO THE CONSUMER Rs.19,669.63 Rs.20,946.57 Rs.18,692.24

--- It has not been disputed that 46% of the ex-works (ex- factory, according to the Commission) cost payable by the consumer is accounted for by excise duties and taxes levied by the Central and the State Governments including those on the components. Out of the total price payable by the consumer 30% goes into duties and taxes.

There is also a general impression that it is the car manu- facturers that are responsible for the seemingly exorbitant prices of the cars. It will not be out of place to notice a few observations of expert bodies about taxation which, as noticed above, forms at least one third part of the price of a car. The Tariff Commission in its third report published in 1968 recorded that high prices of the vehicles were due mostly to the existing multiple taxes on the automobiles at different stages of production and sale. It had recommended a reduction in the burden of taxation which would lead to reduction in the prices of cars. The Jha Committee had emphasized the same in 1960 and had pointed out that taxation was a burden on the consumer rather than on the producer. The Commission has said in its main report at page 292 :

> "The incidence of tax on a car is very heavy inasmuch as it constitutes 46% of the ex-factory price. The car is no longer an item of luxury and under the existing conditions it is fast becoming an item of necessity.
>
> That being so, there is a case for giving some relief out of the excise duties and other levies which are by their nature, multi-point taxes causing hardship".

The following main points have been raised by Mr. N. A. Palkhivala and have been adopted by the counsel for the other petitioners. The figures etc. as given by the Commission have not been disputed.

1.The Commission has taken the production capacity at an excessive figure and has thus artificially reduced the cost.

2. Cost and expenses on account of warranty and statutory bonus have been wrongly excluded from the ex-works cost.

3. In fixing the cost for September 1969 even the actual admitted cost found by the Commission has not been taken into account and the price has been fixed on the historical cost. In fixing the price for July 1970 the projected and estimated cost for the future has been ignored.

4. No provision has been made for an escalation clause in order to ensure that the prices fixed will ensure for a reasonable period of time.

5.The return which has been allowed is wholly inadequate on the admitted and proved facts.

6. Depreciation of plant and machinery has been allowed on the basis of original cost whereas it should have been allowed on the replacement value or on the peculiar facts of the case.

We propose to deal with the first point relating to produc- tion capacity last. On point no. 2 the Commission was of the view that warranty expenses and bonus should appropriately be included in the return and not in the ex- works cost. It is well known that the car manufacturers in India as elsewhere furnish a warranty covering the cars sold. Under the warranty all defects on account of faulty manufacture in workmanship have to be set right and the defective parts have to be replaced, free of cost by the manufacturer or his dealer Within a specified period or a given distance traveled by the car. During the period of warranty which is now for one year three free services have to be rendered. The car owner has to pay the cost of consumable items like oil, grease, packing etc. during those free services. The car manufacturers enter into an agreement with the manufacturers of components providing for a warranty so far as the components 538 .

supplied are concerned. As has been rightly observed by the Commission the whole object behind the warranty is that the consumer who has to make a heavy investment should be assured of a proper performance of the vehicle "in a trouble-free manner for a reasonable length of time." On behalf of the petitioners it has been urged that according to various experts on costing including the Costing team appointed by the Commission the expenses which 'are to be incurred on account of the warranty should appropriately be included in the ex-works cost. (Vide Rufus Wixon, Professor and Chairman of the Accounting Department, Wharton School of Finance and Commerce, University of Pennsylvania in "The Accountants' Hand Book', and N. K. Prasad in "Principles and Practice of Cost Accounting" as also B. K. Bhar, Lecturer in Cost Accountancy, the Institute of Cost & Works Accounts of India in "Cost Accounting Methods & Problems").

The Commission was of the view that many of the ancillary manufacturers cover their supplies to the car manufacturers with a warranty and are liable to replace the defective parts free of cost. The manufacturers are expected to use only those components which are of a standard quality. By improving the method of quality control and incidence of expense on account of warranty can be reduced and. can, be absorbed in the return. According to the learned Attorney General the matter relating to inclusion of warranty charges in the ex-works cost is no longer res-integra. The report, of the Motor Car Quality Inquiry Committee (known as the Pande Committee), made a recommendation that the warranty should be made uniform for all the three motor cars and no cost of replacement including incidentals should be passed on to the customer. This Committee was appointed by a resolution of the Government of India dated February 12, 1968 in exercise of the powers conferred by s. 15 of the Act. Pursuant to the recommendation of this Committee an order was promulgated by the Central Government in March 1968 under S. 16 of the Act which was to the following effect "The warranty with which cars are sold shall be, uniformly valid for a- period of, 12, months or, a distance covered. of 16,000 kms., whichever occurs earlier. All defects, due to faulty manufacture of workmanship shall be rectified and defective parts replaced during this period without passing any part of the burden including incident charges to the customer".

The effect of the above direction cannot be ignored although it may not be conclusive in the matter of fixing a fair price. We find the statement of the Commission unexceptionable that if the warranty is to be made out of the profits every manufacturer will try to minimise warranty cost by improving the quality of his product. If it is to be included in the ex-works cost it means virtually passing it on to the consumer. A good deal has been said on behalf of the Premier Auto- mobiles with regard to figures taken by the Commission as warranty charges. It has been pointed out that although the cost of parts amounting to Rs. 80/- or 81/- per car has been taken into account in the return but the labour charges which would amount to Rs. 120/- per car and which, according to the Commission's report, have to be borne by the manufacturer have not been taken into account even in the return. It has been urged that if the manufacturers have to bear the labour charges the amount of Rs, 120/- per car should have. been taken into account. The position is much simpler about the Standard Motors because there the cost as well as the labour charges amount to Rs. 80/-per car. As regards the Ambassador it was claimed that a sum of Rs. 176/- per car was the cost of the parts alone but the was being supplied by the dealers. As we agree, with the Commission that the entire cost on account of warranty in. elusive of labour charges should be borne by the manufacturers, it is wholly unnecessary for us to refer to any specific figures except that while considering the question of return the general idea relating to cost to the manufacturers would certainly be borne in mind and taken into consideration.

We shall next deal with the, question of bonus payable to the employees which has been included in the return by the Commission. The case of the manufacturers is that bonus is an expense which is necessarily incurred in the manufacture and it should be treated as part of, the ex-works cost. It has been so treated under the Income tax Act 1961 as well as under the Companies Act 1956. Even if the 'entire amount of bonus is not allowed as part of the cost the manufacturers' claim that the minimum bonus which, at present, is compulsorily payable at the rate of 4% under s. 10 of the Payment of Bonus Act 1965 should be allowed as a part of the cost because the manufacturers have to pay the same even when they do not make any profits. The Tariff Commission in its recent report on the Price Structure of Man-Made Fibre and Yarn Industry has accepted the view that entire bonus upto the limits prescribed should form part of the ex-works cost.

The Hindustan Motors have made a settlement with the workmen regarding the payment of bonus for the years 1969- 70, 1970-71. In the year 1969-70 the amount payable to the workmen under that settlement comes: to 8 % of the wages and salaries and for the year 1970-71 it works out to 9%.The bonus, it has been pointed out, in the present context is an integral part of the wage structure and must be treated as part of the cost of production. Reliance has been placed on the working of the Commission's Cost Accounting Team itself according to which bonus was included as item no. 7 in the various items which made up the ex-works cost. In the study prepared in collaboration with the Institute of Chartered Accountants of India called "Price Fixation In Indian Industry" it is stated that bonus to employees is in practice regarded both by them and by the Adjudicating Tribunal as additional emoluments legitimately forming part of the wage structure.

According to the Government in the past bonus was never Allowed as a part of the cost of manufacture. In the previous Tariff Commission Report on the Fair Selling Price of Automobiles 1968, bonus was included in the return. The Tariff Commission has been dealing with various industries according to the circumstances peculiar to that industry. It accepted minimum bonus as part of cost in the Fibre and Rayon industry. But it included it in the return in its report on alcohol and catguts. It is said that if bonus is added to the cost it will be a part of the working capital and so the manufacturer will get the benefit twice over. In our judgment the question whether bonus is linked with profits or cost stands concluded by the, provisions of the Bonus Act itself as also the decision of this court in Jalan Trading Co (P) Ltd. v. Mill Mazdoor Union(1). According to s. 10 of that Act every employer shall be bound to pay to every employee in an accounting year a minimum bonus which shall be 4 % of the .salary or the wage earned by the employee during the accounting year or forty rupees whichever is higher whether there are profits in the accounting year or not. Under s. 1 1 where allocable surplus exceeds the minimum amount payable under s. 10 it is payable in proportion to the salary or wage earned by the employee during the accounting- year, the maximum limit being 20%. In computing the allocable surplus the amount set on ,or the amount set off under the provisions of s. 15 has to be taken into account. According to s. 2(b) 60% of the available .surplus falls within the allocable surplus. Available surplus has to be computed under s. 5. Under that section the available surplus in respect of any accounting year shall be the gross profit for that year after deducting therefrom the sums referred to in s. 6. Section 6 provides for the deduction from the gross profits as prior charges. These deductions consist mainly of depreciation, development rebate and such. sums as are specified in respect of the employer in the third schedule. The companies are further entitled to deduct dividends payable to preference (1) [1967] 1 S.C.R. 15.

shareholders and a specified percentage of reserves from the gross profits. Section 15 deals with set off and set on. Where allocable surplus exceeds the maximum amount payable under s. 11 the excess has to be carried forward for being set on in the succeeding year upto the fourth accounting year. Where there is no available surplus in an accounting year or the allocable surplus falls short of the minimum bonus payable (4%) and there is no sufficient amount carried forward and set on from which minimum bonus can be paid, the same shall be carried forward for being set off in the succeeding year according to the fourth schedule. Section 10 of the Bonus Act at first sight may appear to be a provision for granting additional wage to employees but that section is an integral part of a scheme for payment of bonus at rates which do not widely fluctuate from year to year. This Act has thus provided that bonus in a given year shall not exceed one-fifth and shall not be less than 1/25th of the total earning of an employee. It has been ensured that the excess share shall be carried forward to the next year and that the amount paid by way of minimum bonus not absorbed by the available profits shall be carried to the next year and shall be set off against the profits of the succeeding year. The object of the Bonus Act is to make an equitable distribution of the surplus profits of the establishment with a view to maintain peace and harmony bet- ween the three agencies, (capital management and labour) which contribute to the earning of profits (See Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union(1). The Commission came to the correct conclusion that bonus is connected with profits and it cannot be included in the ex- works cost.

A good deal of criticism has been levelled on behalf of the manufacturers on the method followed by the Commission for determining the ex-works cost in September 1969 and July 1970. It has been submitted that for September 1969 the cost has been worked out on what may be called the historical method and for July 1970 the actual prices have been taken into account but the projected and estimated cost for the future has been ignored. It has been pointed out that historical costs are determined on the basis of the material which is already in the pipeline and which has been acquired at cheaper rates. Such a method has never been adopted and there is absolutely no justification for making a discrimination between the methods to be adopted for ascertaining the ex-works cost in September 1969 and in July 1970. The method which has always been adopted is of either taking the current prices or the projected prices. We have not been shown any authority or principle on which the method of calculating the ex-works cost on historical basis could be justifiably adopted for September 1969 when a different method was adopted for July (1) [1967] 1 S.C.R. 15.

L643SupCI/72 1970 cost. We are of the view that the ex-works cost for September 1969 should have, been determined according to the current prices as was done with regard to July 1970. As regards the projected cost which means a reasonable esti- mate of the rising cost in the minimum future (roughly 3 to 6 months) over and above the cost existing on a certain date a lot of criticism has been made on behalf of the manufacturers with regard to the Commission having totally ignored this principle. We have not been shown anything from the reports of the Tariff Commission nor does it appear that it was seriously pressed before the Commission itself that the principle of projected costs should be applied while determining the ex-works cost of the cars in question. In view of the provisions which we shall be making for fixing the price and also for escalation the principle canvassed for on the basis of the projected cost becomes immaterial and even otherwise in the circumstances of the case it cannot be applied.

We shall now deal with the necessity for an escalation clause. It has been pointed out by Mr. Palkhivala that the prices of direct materials alone rose by Rs. 140/- per Fiat car in a couple of months. A comparison of the prices fixed for September 1969 and July 1970 further reveal how steeply the prices rose during the short period of nine months. According to Mr. Palkhivala price fixation of the cars will be wholly futile unless there is a provision for escalation which means that the prices should be increased or decreased periodically according to the rise or decrease in the cost as also the various other factors which enter into price fixation. For instance, in the Tariff Commission report 1965 on the revision of ceiling price of alcohol it has been observed that future estimates of costs of receified spirit has been prepared for a period of the next three years on the basis of the actual cost. In the Tariff Commission report on the fair selling price on Antimony provision was stated to have been made for enhancement in respect of wages and salary as also for anticipated increase in Dearness Allowance. Similar provision for escalation was made in the Tariff Commission report 1966 on the price structure of catgut ball bearing and several other industries. There are a number of increases, according to the manufacturer,,;, over which they have absolutely no control. Mostly these consist of increases in excise duties, taxes, increase in the cost of imported and indigenous steel, in wages, dearness allowance, contributions to the provident fund, gratuity, employees State insurance and other emoluments to the employees who are governed by the Industrial law. In addition to the increases in the cost of materials the cost of bought out components electricity, income tax etc. have also to be taken into consideration. The manufacturers have pointed out with a good deal of force that they have -no control whatsoever over the increase in the prices of components which they have to buy from the ancillary manufacturers as the same are not subject to price control. The Verghese Committee which was appointed under s. 15 of the Act for investigation into the working of the Standard Motors observed in its report that general price level has been increasing in recent years and therefore the control of car prices without a matching control of the prices of the components would squeeze the manufacturers out unless they are compensated substantially by an enhancement of the car price. Indeed it has not been disputed on behalf of the Government and the Attorney General quite properly and fairly accepts that some proper method should be devised for escalation or de-escalation, as the case may be. We have been suggested a number of formulae on behalf of the manufacturers as also the government but we shall indicate at a later stage what, in our opinion, is the best and the simplest method of providing for escalation and de- escalation. We are satisfied, however, that a provision should be made and ought to have been made by the Commission in this behalf.

The next point which is fairly controversial relates to the return which has been allowed by the Commission. The manu- facturers are unanimous in saying that the return suggested by the Commission is wholly inadequate for the survival of the industry leaving aside its development. The case of the Premier Automobiles is that the return does not permit any margin for repaying the heavy indebtedness of the company. Owing to the inadequate price fixed by the government even under the informal price control the company has been running into losses. Its total indebtedness on June 30. 1970 came to Rs. 7.29 crores. This indebtedness has to be paid or at least provision made for it by the creation of reserves. Unless reserves are created and the financial position of the company improves it may not be possible for it to get any further loans because up till now it has been carrying on its business mainly on the borrowings. The return leaves no margin for wiping out the depreciation which comes to Rs. 750.74 lakhs according to income tax rates and Rs. 583.64 lakhs according to book depreciation. The Commission has not taken into consideration any provision for a cushion for the proposed increase in the rate of minimum bonus for which a persistent dialogue is going on all the time between the trade unions and the government. This will leave no return on the equity capital and would result in the company getting a net dealer price which would be less than its actual cost of production. Since the Premier Automobiles will have to pay the warranty charges there will be an additional liability of Rs. 120/- per car on account of labour charges which when taken out of the return will reduce it substantially. The calculation made, according to the company on the figures worked out by the Commission, was that the surplus left will provide a dividend of approximately 7% on the equity capital.

The additional argument on behalf of the Hindustan Motors is that in computing the return the Commission has accepted the position that the following outgoing should go out therefrom : (a) interest on borrowings; (b) minimum bonus of 4%; (c) other financial charges; (d) warranty claims; (e) dividend on preference shares; (f) tax liability. According to the Commission if a return of 16% on the capital employed is given the corresponding dividend to the equity shareholders will work out at 10%. The Hindustan Motors has to pay total bonus for the years 1969-70 at the rate of 8%. It is essential that the company sets aside a minimum of 3% on the capital employed for the purpose of replacement and rehabilitation for which no provision has been made. After taking out all these items it will be impossible to give a 10% dividend to the equity shareholders.

The Standard Motors have put in a chart showing that after ,deducting all the items in accordance with the method laid down by the Commission for working out the return only such amount will be left as will enable the payment of dividend at the rate of 9.2% on the equity capital allocable to the car activity. This statement, however, has been arrived at on the basis of the capacity of 4,000 cars and 1,000 trucks as determined by the Commission. If, however, the capacity is reduced to 3,400 cars and 1,000 trucks as claimed by the company the dividend payable to the equity shareholder will be at the rate of 12% but then there will be no provision for development and future expansion or for wiping off the arrears of depreciation which amount to Rs. 42.32 lacs. The learned Attorney General while agreeing that a reason- able return must be allowed to the manufacturers has submitted that the entire background in which the automobile industry in India came to receive protection and the way it has developed as also the defects which have been found in its working together with the unsatisfactory nature of the quality of cars produced and the gradual deterioration of their performance must be taken into account while fixing the return. The main outlines of the special historical background are : (a) protection-external and internal resulting in monopoly of the three cars manufacturers; (b) government policy to develop the automobile industry as a whole relating to the three car manufacturers including cars, trucks, components and spare parts. All these involve large outlay of 5 45 foreign exchange and the object must be to conserve the same in the interest of the country; (c) necessity of efficiency and economy in the production and control over prices in that behalf; (d) necessity of improvement of the quality of product and of services to the consumers. According to the informal price control the factory price charged to the dealers could not exceed the ex-works cost by more than 10%. This necessarily included all the items which are to be found as constituting the return in the report of the Commission. Our attention has been drawn to reports of various Commissions according to which there were defects in production and there was neglect of economy and efficiency. The accounts were also not being maintained by all the manufacturers on a proper basis from which costs could be worked out satisfactorily. A large number of unskilled workers were being employed. The Tariff Commission in its report of 1968 in respect of fair selling price of automobiles considered that a return of 12% of the capital employed would be reasonable and fair. The Commission was of the view that profit margin to be allowed to an industry has little or no direct relation to the cost of the product. If the profit is determined as a percentage on the ex-works cost the higher the cost the higher will be the profit. This will leave little or no incentive to manufacturer to effect economies in the cost of production or exercise control over the manufacturer's expense. In determining a fair margin of profit consideration has to be given to the capital employed and a fair return for such capital including a provision for outgoing like interest on loans, minimum bonus etc. must be assured. The quantum of return has essentially to vary from industry to industry. This would require ascertainment of capital employed with regard to production of cars. The Commission took the figures from authentic sources i.e. the report of the Reserve Bank of India and an analysis carried out by the Economic and Scientific Research Foundation with regard to the return which was being earned by the various public companies on the capital employed. After taking the maximum return which an investor can expect from fixed deposits and other relevant factors into consideration the Commission was of the view that a dividend of 10% to the equity shareholder after providing for the tax liability of the company and other outgoing would be fair and reasonable. The outgoing which are to be met out of the return are (1) the actual interest on borrowings; (2) the minimum bonus; (3) other financial charges; (4) warranty charges and in case of Premier Automobiles the guarantee commission paid on loans obtained from foreign sources and difference in exchange. After making provision for these outgoing, the dividends on preference shares, if any the tax liability of the company and a return of 10% on equity share capital, the total profit of the company as a whole was calculated which when related to the capital employed of the respective companies worked out to 15.43% in the case of Hindustan Motors, 16.22% in that of Premier Automobiles and 17-36% in Standard Motors. Considering the above and taking an over all view of the car industry 16% return on capital employed was considered to give a reasonable return to the car manufacturer.

We have already referred to the criticism of the car manu- facturers with regard to the manner in which the return has been worked out. It is true that the return to the equity shareholders of all the three companies may not be uniformally 10% and may be considerably less in the case of Premier Automobiles but it is not possible to make any distinction or discrimination between the three manufacturers. We do not consider that a separate rate of return should be fixed when dealing with the automobile car industry as a whole.

At first sight it may appear that a return of 16% on the capital employed is a very large return but as we have pointed out, this return includes numerous items which reduce the ultimate return to the equity shareholder to a percentage which, even according to the Commission, on an average cannot exceed 10%. Learned counsel appearing for the car manufacturers have vehemently pressed for exclusion of warranty and bonus charges from the return and for their inclusion in the ex-works cost. It was ultimately stated at the bar that if that was done the return as fixed by the Commission would be acceptable. We are, however, unable to accede to this submission. We have given our careful thought to the principles which the Commission has followed in fixing the return and in our judgment the return granted is a reasonable one keeping in view the entire circums- tances. At the same time we consider return at 12% wholly inadequate when all the items that the Commission has mentioned have to be paid out of it. Moreover a total return at 16% will leave some margin if proper economies are effected by the manufacturers for replacement and rehabilitation and improvement of the plant and machinery. According to the principles discussed or to be discussed in the matter of fixing of a fair price the main objective is to protect the interest of the consumer while at the same time provide a reasonable margin of profit to the producer. The general approach has to be to determine the ex-works cost and then to arrive at the fair price after examining other claims of the industry and providing a reasonable return. We, therefore, find no such principle which has been demonstrated to be wrong in the report of the Commission so far as the fixation of the return is concerned.

The next question is whether the Commission has erred in allowing depreciation on the actual cost and not on the replace-

ment value. Depreciation, it has been pointed out, has been allowed in accordance with the formula laid down in the Indian Income tax Act 1961 but the provisions of the Act are inadequate to provide funds for replacement of the assets. Since the provision of depreciation is intended to enable replacement of the worn out assets it is argued on behalf of the car manufacturers that the Commission ought to have allowed depreciation at the rate which would have enabled the replacement of the assets. This is particularly so when prices are rising. The Tariff Commission has in certain cases allowed special depreciation in lieu of replacement cost. In "Price Fixation in Indian Industry" to which reference has already been made at an earlier stage it has been mentioned that special depreciation was allowed in addition to the normal depreciation in case of pig iron, steel, cement and rubber tyre and tubes by the Tariff Commission; (see pages 179, 180, 183 and 190). The Tariff Commission Review Committee in its report made in August 1967 dealt with the topic of calculation of deprecia- tion on the basis of replacement cost particularly in view of the rising prices. It was pointed out that there are practical difficulties in adopting the principle of replacement cost. One of these is the absence of reliable and accurate indices of changes in the replacement cost of machinery and plant. That Commission, therefore, generally did not favour deviating from the practice adopted by the. income tax authorities in calculation of depreciation. The Commission was of the view that depreciation on account of the use of the assets in any undertaking is quite distinct and separate from rehabilitation replacement. The whole question, according to the Commission, has to be determined with reference to the context or the purpose for which the deprecation is being computed. For working out the fair price of the car the expenses incurred by the manufacturers in producing their products have to be taken into account and therefore only the actual cost and not the estimated replacement cost can be considered. The Commission was not satisfied that on account of rise in the prices of assets the manufacturers would not be in a position to replace the plant and machinery with funds available to them. The Commission said "if the manufacturers were to keep apart not only the amount of depreciation but also the development rebate and other reserves to which they are entitled under the various tax and other laws and invest them separately or even in their business the question of there being any difficulty later on does not arise. Depreciation funds with the amount thus provided for can be built up and these can be invested whether inside or outside the business"; (main report p. 65). The Commission referred to the opinion of the Institute of Chartered Accountants in England which was against the proposal to base the charge for depreciation on replacement cost. The Tariff Commission had also not accepted the contention of the manufacturers that depreciation allowance should be calculated on replacement cost. The depreciation which is allowed under the tax laws is very liberal and we see no reason to pass on the burden to the present consumer who is not likely to get any benefit out of the replacement proposed to be provided for by the manufacturers. Moreover capital reserves with the Hindustan Motors and the Standard Motors are substantial. Although the position of the Premier Automobiles is different and it can hardly draw upon its reserves but the Commission was an expert body and it did not choose rightly to make any distinction between the three manufacturers as the principles should be such as are applicable to the car industry as a whole. We are unable to find any serious infirmity or flaw in the reasoning or the conclusion of the Commission on the question of depreciation. We shall now proceed to consider the question of the capacity of production. Two rival views have been put forward on this point. On behalf of the car manufacturers it has been maintained that for the purpose of fixing the fair price under s. 18G of the Act the actual figures of production should alone be taken into consideration and the optimum capacity for production must be disregarded as an irrelevant factor. On the other hand it has been maintained on behalf of the government that it is always essential in the matter of fixation of fair price to determine the capacity of production which must mean at least achievable capacity even if not the maximum capacity. Section 15 of the Act empowers the Central Government to cause investigation to be made into the scheduled industries, automobile industry being one of them. Clause (a) (i) of s. 15 provides for full investigation to be made where the Central Government is of the opinion that there has been or is likely to be a substantial fall in the volume of production for which, having regard to the economic conditions prevailing, there is no justification. Under s. 16 the Central Government on completion of investigation under s. 15 can issue such directions to the industrial undertakings as may be appropriate in the circumstances. Clause (a) of sub-s. (1) relates to directions which can be issued for regulating the production of any article or class of articles by the industrial undertaking and fixing the standard of production. According to Mr. Palkhivala if the Central Government was of the view that there has been substantial fall in the volume of production investigation could be caused to be made under s. 15 and directions could be issued under s. 16. Section 18G confers power in the matter of control, supply, distribution, fair price etc. of articles relatable to any scheduled industry. Under sub-s. (2) a notified order may provide for controlling the price at which any such article or class thereof may be bought or sold. While fixing a fair price under S. 18G no question can arise about the optimum or achievable capacity of production which would be relevant only for the purpose of ss. 15 and 16 of the Act. A lot of emphasis has been placed on the different objects and purposes for which ss. 15, 16 and 18G respectively have been enacted. This provision, it is said, is meant to prevent profiteering and what is intended is that the actual production and the quality of articles which are being produced have alone to be taken into consideration and a fair price has to be fixed accordingly. The learned Attorney General says that s. 18G does not contain any limitations which have been suggested on behalf of the car manufacturers. It is to be found as the first section in Chapter III-B which is headed "control of supply, distribution, price etc. of certain articles". In a free market the position is quite different but when fair price has to be fixed the cost of production has to be taken into account and the price should be such that a fair return is provided for. The cost of production must be with a view to economy and efficiency. Moreover the non-obstante clause in s. 18G(1) shows that this section stands by itself. The history of price fixation in India is now new. The Defence of India Rules provided for it Rule 8 1 (2) (b) as far back as 1939. These rules ceased to have effect on September 30, 1946. The Essential Supplies (Temporary powers) Ordinance 1946 was enacted on September 25, 1946 which was followed by the Act of 1946. There are numerous Acts which were enacted for the purpose of fixation of prices, e.g., Supply and Prices of Goods Act 1950, Tariff Commission Act 1951 and the Act. The Essential Commodities Act 1955 was enacted containing the provisions in which under s. 3(2) the prices of essential commodities could be controlled. The function of ss. 15 and 16 of the Act is different from that of s. 18G. Those sections deal with specific matters on which the government can cause investigation to be made for the purpose of issuing appropriate directions including control of prices and those two sections are meant primarily for development and regulation of an industry. There is a good deal of force in what the Attorney General says. But in our opinion it is unnecessary to express our view in any great detail in the matter. In our judgment the very concept of fair price which can be fixed under s. 18G takes in all the elements which make it 'fair' for the consumer leaving a reasonable margin of profit to the manufacturer without which no one will engage in any manufacturing activity. Capacity utilisation of a manufacturing unit, the quality of its product and the maintenance of proper standards at various levels of production are all relevant factors for the determination of the price. Capacity utilisation, however, has to be on the basis of what can be reasonably achieved keeping in view always the practical side. it is common ground that the achievable capacity for production will be an important factor in the matter of fixation of fair price. The larger the production the less the cost and vice versa. We shall, therefore, have to determine whether the conclusions of the Commission with regard to the capacity of the three manu- facturing units for production are based on a correct appraisal of material facts and principles. As regards the Premier Automobiles the Commission has assumed, erroneously, accordingly to Mr. Palkhivala, an achievable capacity for production of 13,300 cars per year in September 1969 and 14,000 cars in July 1970. It is claimed that the cost has been reduced by the above process by Rs. 301/- per car for July 1970. On behalf of the Premier Automobiles it had been urged before the Commission that its average level of production per year was 12,000 cars and 5,000 commercial vehicles and this was likely to be the future capacity so long as there was no expansion of plant and machinery. According to the government, however, the existing capacity of Premier Automobiles was not less than 15,000 to 16,000 cars and 7,000 commercial vehicles per year. The Commission relied mainly on certain letters and applications addressed by the Premier Automobiles in the matter of obtaining licenses for import etc. from September 1969 to October 1970 as also the evidence of Brigadier Subramaniam the General Manager of the Company. The Commis- sion fixed the capacity of production of commercial vehicles at 6,000 and that of cars at 14,000 for July 1970. As regards September 1969 it considered that the capacity should be fixed at the level which was 5% less than the level determined for July 1970. The figures thus came to 13,300 cars and 5.700 commercial vehicles per annum. It appears to us that the Commission ignored material facts and circumstances in arriving at the conclusion relating to the capacity for September 1969. In matters of such nature the figures given in the applications for grant of import licence etc. can hardly be decisive. There is a good deal of force in the suggestion of Mr. Palkhivala that when such applications are made the applicant is prone to give higher figures in order to obtain the maximum permissible quantity of the material sought to be imported. The figures are sometimes exaggerated as it is anticipated that they are not likely to be accepted and the license would be issued only for a lesser quantity. For the purpose of determining the capacity it is essential that for the material period it should be ascertained for how many cars import licenses were granted. If they were granted for only 12,000 cars per year it will be futile to assess the capacity at a higher figure because in the very nature of things it would be impossible for the manufacturer to produce more cars. From the statements which have been produced under our directions relating to the applications which were made and the import licenses which were granted the position appears to be as follows :

> The Premier Automobiles asked for the material on the basis of production of 4,500 cars for the first half year from April 1966 March 1967. This application was made on May 13, 1966. Later on in the course of correspondence the Director General, Transport Department, was informed that it was pro- posed to raise the production of cars to 1,000 per month from February 1967. The import licenses are admittedly granted on the basis of the recommendation made by the Development Wing of the aforesaid department. The recommendation by the Development Wing was that the license should be granted for production of a minimum of 4,500 cars in six months. On July 14, 1967 an application was submitted for grant of certain components for production of 18,000 cars. This was for the second half year 1966-67. It has been submitted and that explanation in the circumstances appears to be correct that the Italian collaborators had offered a special credit and in order to avail of that credit licence for import had been sought for 18,000 cars. But it was stated in the application that production was being planned at 1,000 cars per month. This application was granted. During the first half of April 1968 to March 1969 an application was made on July 23, 1968. It was confined only to those components and raw materials which were not covered by the components imported for 18,000 cars under the special credit scheme. The production, it was stated, was again being planned at 1,000 cars per month. This application was also granted. On February 28, 1969 an application was made for the second half of the year April 1968 to March 1969 for 7,200 cars on the basis of 1,200 cars per month. The Development Wing recommended grant for 6,000 cars only, the total minimum being 12,000 cars. On November 28, 1969 an application was made for the first half of the year April 1969 to March 1970. This is stated to be a balancing application for 6,000 cars. On July 28, 1970 an application was made for the production of 7,000 cars in six months for the first half year April 1970 to March 1971. The recommendation of the Development Wing was only for 6,050 cars and the license was apparently granted for the same. On October 28, 1970 an application was made for the second half of the year April 1970 to March 1971 for produc-
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> tion of 7,000 cars in six months. This time the recommenda- tion was accepted for 7,000 cars and licence for components was granted on August 28, 1971.

It is quite apparent from the above statement of facts and figures that at no stage except for the second half of the year April 1970 to March 1971 import license had been granted for production of more than 12,000 cars. It was only in that year that for the first half it was granted for 6,050 cars and for the second half for 7,000 cars. In this situation it is wholly incomprehensible how the Premier Automobiles could have actually produced more than 12,000 cars per year even if the achievable capacity was more. As has been observed before the achievable capacity does not mean a capacity which should be completely divorced from existing and admitted facts. It has to be achievable from the practical point of view. We have no manner of doubt that for the above reason alone the achievable capacity for September 1969 could not have been fixed for more than 12,000 cars per year.

In para 3 of the affidavit of Mr. S. R. Kapur, Under Secre- tary to the Government of India, made on June 27, 1970 it was stated that in the report of the Tariff Commission on the fair selling prices of automobiles it had originally recommended prices on the basis of annual production of 9,000 cars by Premier Automobiles. In May 1969, however, the Government requested the Tariff Commission to rework the prices on the basis of annual production of 12,000 Fiat Cars. The technical team appointed by the Car Prices Commission had come to the conclusion that the company had an annual potential capacity to manufacture 12,300 cars and 5,000 commercial vehicles. As we have already held that the Premier Automobiles were not in a position to manufacture more than 12,000 cars owing to the grant of import licence being confined to that figure we do not consider that it would be fair to take the capacity for production for the purpose of working out the ex-works cost in September 1969 at a figure higher than 12,000 cars per year. The next question is the capacity for the production for computing the ex-works cost in July 1970. According to the technical team the achievable capacity was 12,300 cars per year. But as pointed out by the Commission the latest figures given by the company in October 1970 were for production of 7,000 cars in six months and these figures were accepted as correct by the Development Wing and licence for components was admittedly granted on that basis. The license for steel has still not been issued and we are informed that it is likely to be issued very shortly. These figures were furnished by the company at a time when hearing of the proceedings before the Commission was taking place and all relevant matters including the question of capacity were under active consideration. It is difficult to understand why its achievable capacity for July 1970 should not be fixed at the figure of 14,000 cars per year. Even if the license for steel had not yet been issued the Premier Automobiles had enough stock. As we stated in the application dated October 28, 1970 the stock position on the date of the application was for production of 4,000 cars. The firm principle which we have all along followed is that the report of an expert body like the Commission should be accepted except where it has been shown to have demonstrably fallen in err-or on a question of principle or has completely ignored vital and material facts which, if taken into consideration, would have led to a different conclusion. We are not satisfied that with regard to July 1970 taking an over all and general view apart from the material on the record the Commission was wrong in assessing the capacity of production with regard to July 1970 although its conclusion in respect of production for the purpose of assessing ex-works cost in September 1969 has been shown to be demonstrably erroneous and cannot be accepted. We shall next deal with the capacity of production of the Standard Motors and Hindustan Motors. It is common ground that so far as these two manufacturers are concerned the prices for September 1969 need not have been determined. The case of Premier Automobiles stands on a different footing because it had taken certain undertakings from the dealers and the customers with regard to the payment of the difference in price which will be determined after the judgment of this Court and the one fixed in the order. The other two manufacturers have not taken any such undertakings. It is common ground that it is wholly unnecessary to determine the price for September 1969 in their case. The price fixed in July 1970, however, will form the base for fixing a fair price by the Government by a fresh order after our judgment.

As regards the Standard Motors it has been submitted by Mr. Natesan, learned counsel for that company that upto the beginning of 1968 it was manufacturing a two door saloon. It suffered losses from 1968 onwards and no dividend was paid even to the preference shareholders. There was a strike from September 12, 1969 to November 6, 1969 which was declared illegal, followed by a tool-down strike in February 1970. The factory had to be closed down on May 22, 1970. It was reopened on February 22, 1971. When the factory was closed a committee which we have already called the Verghese Committee was appointed under s. 15 of the Act for investigation. It submitted its report on October 16, 1970. It made a full investigation and also looked into the complaint that the associated concerns of this company which were producing the components had been shown undue favour at the expense of the parent firm. According to the Verghese Committee the transactions with the subsidiaries appeared to be in the normal course of business and the allegation of unfairness was not justified. The Verghese Committee while considering the question of viability of the company had made a detailed examination of the capacity and had held that the maximum capacity of the plant was for production of 3,000 Herald cars apart from 1,000 trucks based on six days working week. The technical committee of the Commission found that based on a six day working week of two shifts of 8 hours each the capacity of the factory at the present level of indigenisation was 3,400 cars and 1,000 trucks. In the matter of assessing capacity it has been pointed out that the car production is bound to be less if the production of other parts is increased and that is what has been done from 1965 onwards. According to the observations of the technical team of the Commission the drop in the installed capacity from 1968 (3400 cars to 2500 cars) in 1970 was due to the increased depletion in the Press Shops. After going into the matter fully the technical team indicated its revised calculations which were that working on a two shift 5 day working week (nine hours per shift) the machine shop had an annual capacity for 3400 Herald cars and 1,000 trucks. It was suggested that the company should operate on a six day working week with daily shifts of 8 hours each.

In that way it was concluded that the capacity of Standard Motors would be 3,400 cars and 1,000 trucks. Mr. Natesan has emphasised that if the production has to be achieved at the figure suggested by the technical team it would be necessary to import certain machinery which will involve, an additional cost and for which import licence would be necessary. It must not also be overlooked, according to Mr. Natesan, that the car which is now being produced is no longer a two door model and that also involves a decrease in the rate of production. The Commission relied mostly on the letters which the Standard Motors had been writing claiming that its production capacity was for 4,000 cars or more. Before the Commission it had been contended on behalf of the Government that the capacity of the company on a five day working week should be taken at 3,400 cars and 1,000 trucks and if this capacity was converted to a six day working week the company's capacity could be rounded off at the level of 4,000 cars and 1,000 trucks. The Commission was inclined to accept this contention broadly and observed that since the company had decided on a six day working week the figures on that basis would work out to 3,630 cars and 1070 trucks annually. There was some scope for an increase which could be estimated at 5% and after allowing a capital addition of 2.5 lacs towards tooling it was reasonable to assume that the company could easily reach the level of production of 4,000 cars and 1,000 commercial vehicles per annum. The report of the technical team was not accepted on the ground that when the technical team made the assessment the factory was closed and all the relevant data were not available.

There is an obvious error in the working out of the figures by the Commission. It is not disputed that a five day working week meant 45 hours at the rate of 9 hours per day; whereas six day working week meant 48 hours per week at the rate of 8 hours a day. The increase would be of 3 hours only during the week. It has not been demonstrated how this would justify the conclusion of the Commission. The Verghese Committee in its report was of the view that with a 48 hours week, the capacity of the heat treatment shops would go upto 3200 cars and 1062 trucks. But the Press Shop with a limited capacity of 3000 cars and 1000 trucks would still be a limiting factor. If some of the pressed components were farmed out to the ancillaries an extra capacity of 200 cars could be realised in the press shop. But as Standard 20 trucks are not being manufactured in U.K. the imported components would have to be progressively indigenised. This is what the Verghese Committee finally concluded "On an overall assessment we felt it safe to estimate the installed capacity of the factory at 3000 Herald and 1000 Standard 20s". (pages 76-77 of the Verghese Committee Report dated 16th October 1970) It is true that owing to the closure of the factory the technical team could not make verification on the spot and tried to depend largely on the data supplied by the Company. But in the background of the report of the Verghese Committee which had made full and thorough investigation we are unable to uphold the Commission's view. On an overall consideration, however, we would hold that the capacity of Standard Motors would be 3400 cars and 1000 trucks as found by the technical team.

The Car Prices Inquiry Commission has excluded the incidence of Royalty from July 1970 cost in view of the fact that the collaboration agreement between the company and its foreign collaborators expired in 1970. It has been brought to our notice by Mr. Natesan that since then the Government of India have given their approval to renew the collaboration agreement on the basis of Royalty at pound 6.00 per car (i.e. Rs. 112 per car at the current rate of exchange). It is submitted that this amount of Rs. 112/- being royalty payable per vehicle which has been recognised by the Commission as an element of cost, be ordered to be included while computing the cost of the vehicle for future price fixation." This is correct and the amount on account of royalty must be included in the ex-works cost for July 1970.

As regards Hindustan Motors it was stated on its behalf before the Commission that the present installed capacity was for 38,400 cars and 10,500 commercial vehicles per year. In respect of cars, however, it was stated that due to rapid indigenisation undertaken by the company its original installed capacity had become imbalanced and at present it could not manufacture more than 24,000 cars per annum. In order to balance this capacity once again at the level of 38,400 cars per annum it would require additional plant and machinery costing 5.75 crores and replacement of existing dies at the cost of Rs. 4.05 crores. The Commission referred to the estimates furnished by the Hindustan Motors and the Tariff Commission in 1966 and to the evidence of Shri Lahuty who was produced as witness no. 7 by it. According to him the company expected to produce 30,000 cars in 1967-68, 36,000 cars in 1968-69 and 40,000 cars in 1969-

70. The technical officers of the Director General of Technical Development, namely N. T. Gopala Iyengar and B. S. V. Rao, Development Officer had also visited the plant of Hindustan Motors from time to time between February 1969 and January 1970 and during this period various data were furnished by the Hindustan Motors relating to its capacity which were contained in a "Brown Folder". From the information given to these experts the manufacturing capacity came to 38,400 cars per year. The letters and applications which were written in the matter of licenses also unmistakably pointed to the conclusion that the achievable capacity was not less than 30,000 cars. The technical team had made an assessment on the spot and according to it the existing capacity was 30,000 cars and 5,000 commercial vehicles after providing some balancing equipment worth about Rs. 74 lakhs. The Commission was of the view that the data regarding the standard timing furnished to technical team was different from that provided to the experts, namely, Messrs. Iyengar and Rao. The Commission felt it was safer to rely on the manufacturer's own statement made from time to time. It was considered fair and equitable to fix the production capacity at 30,000 cars per annum and that of trucks at 10,500 per annum. Mr. Mitra on behalf of the Hindustan Motors has rightly stressed the point that in a matter of technical assessment the report of the technical team and the experts should be accepted and should not be rejected unless the members of the technical team had been examined by the Commission and called upon to explain any facts or circumstances which have been used by the Commission for rejecting their report. It is pointed out that the Third Tariff Commission in its report on August 1968 came to the conclusion that the costing in respect of the company should be done on the basis of 22,000 and 13,600 trucks per year. This estimate of capacity was not accepted by the government who, by a letter dated May 12, 1969 suggested to the Tariff Commission to rework the ex-works cost of Ambassador cars on the basis of an annual production figure of 24,000 cars and 12,000 trucks. The Tariff Commission then reworked the cost on that basis. Messrs. Iyengar and Rao had visited the plant of the company in view of the observations of the Tariff Commission in its report in 1968 on the continuance of protection to the automobile industry that it was necessary that the company's capacity should be technically assessed. It is submitted by Mr. Mitra that although the Commission took into consideration the information and data supplied by the Hindustan Motors contained in what is called the "Brown Folder" but the Commission failed to ask the Government to produce the report made by those

experts. The Attorney General has produced that report before us which is dated January 29, 1970. It was mentioned in that report or note that the capacity of Hindustan Motors for production of passenger cars might be assessed at the level of about 25,000 per annum on double shift working which was based on the norms and the standard referred to in the note. There were certain factors by which the position could be improved and a higher order of production could be reached by about 10 to 15%.

The technical team went into the matter in great detail and its findings were:

> (a) The capacity of the company's plant was 24,000 cars and 14,400 trucks subject to installation of new equipment then being done.
>
> (b) for the purpose of costing the number of trucks might be taken at 5,000 trucks per annum.
>
> (c) some of the spare capacity, due to non-production, of the plant 9,400 trucks could be diverted for car production.
>
> (d) by acquiring certain machine tools and jigs (of the value of 81 lakhs) and by working the third shift for a few operations the production could be increased to 30,000 cars and 5,000 trucks per year. The technical team had proceeded on the basis of the independent physical checking and verification in all respects. It has been stated and that statement has not been challenged that the technical team stayed in the company's plant for L4543 Sup CI/72 a little over two months. With regard to the Standard timing required for various parts which were directly relevant to the question of capacity the technical team is stated to have made actual test checks and their findings are to be found in its report.

We are unable to concur in the reasoning or the approach of the Commission in the matter of assessing capacity. We have already observed that much reliance cannot be placed on any figures supplied for applications for the import licence or mentioned in letters to the government for the purpose of obtaining additional facilities because the estimates which are given are likely to be inflated. We see no reason or justification for rejecting the opinion of the experts, namely, M/s Iyengar and Rao and the technical team especially when no member of that team was examined as a witness for finding out those facts and data which the Commission has sought to use for rejecting the technical team's report. We are, therefore satisfied that the capacity for production of Hindustan Motors should have been assessed at the figure given by the technical team, namely, 30,000 cars and 5,000 trucks per year. Import licenses, which were granted have also not been shown to have been given on the basis of the figures of production determined by the Commission. For the first half year 1970-71 the recommendation was for the grant of 11,075 cars although in the application the estimated production was stated to be 15,000 cars. It was only for the second half year 1970-71 that the import license was recommended and granted for 15,000 cars. There is no difficulty, therefore, in arriving at the figure of production of cars, namely, 30,000 cars but the departure which the Commission made in the matter of production of trucks has been seriously disputed on behalf of the

Hindustan Motors. For the reasons that have been stated the correct figures would be those- which were determined by the technical team of the Commission, namely, 30,000 cars and 5,000 trucks.

There are a few minor matters which Mr. Mitra has argued relating to Hindustan Motors. The only one worth considering relates to the consumption of local steel sheets. The Commission in its report has taken that consumption at 20% as against 6% by reason of the total requirements adopted earlier by the Commission's Costing Team and has thereby deducted a sum of Rs. 88/- per car for July 1970 cost. It is stated the company had informed the Commission's Cost Accounting Team that the consumption of local steel sheets purchases could be taken at 50 kg. per car. This figure which works out to a total of 12,000 tons in a year had been rejected by the Commission on the ground that the company had, in the year 1968-69, purchased 4149 tons of steel locally and that Shri Lahuty, who appeared as one of its, witnesses, could not give any satisfactory explanation regarding the same. According to Mr. Mitra this finding of the Commission is based on no evidence and has been arrived at in disregard of material evidence placed by the company before the Commission. It is pointed out that Shri Lahuty had stated in his deposition that the figure of 4149 tons might include locally purchased imported steel and this had to be checked up. On checking it found that the said quantity included 1954 tons of imported steel purchased locally. A statement showing reconciliation of figures is said to have been submitted by the company to the Commission as also the original documents relating to imported steel purchased locally. It is submitted that the Commission's conclusions taking 20% as utilisation of local steel merely on the basis that this is utilised in the case of Fiat cars is arbitrary. The Commission has pointed out that Hindustan Motors had neither kept any regular day to day record of issue of its raw material nor had any quality wise record in this regard been kept. In fact steel, both imported as well as locally purchased, had been put under one category and consumption had been shown on the standard adopted by the company. In view of the fact that the company had not kept any regular record of data it was not possible to determine accurately the use of locally purchased and imported steel separately. In these circumstances we do not consider that the conclusion arrived at by the Commission has been shown to be demonstrably erroneous or wrong.

Writ petitions 486 and 487 of 1969 have been filed by the Delhi Automobiles and the Bombay Cycle & Motor Co. respec- tively. They are dealers of the cars the prices of which are under consideration. The case of the dealers is that before 1955 the dealer's margin was 20 to 25% of the ex- factory price. In 1956 the First Tariff Commission recommended a reduction i.e., Rs. 1,000 per car or 10% of the ex-factory price whichever was less. In 1957 the Government accepted that the dealer's margin should be on the basis of 10% ex-factory price. This has remained unchanged during all these, years whereas the operational costs have increased. The existing mark-up or margin of profit of the dealer on ex-factory price of cars is as follows Fiat : Rs. 891.00 Standard : Rs. 859.00 Ambassador : Rs. 1044.00 The various duties and responsibilities of the dealers are

(a) to promote sales of vehicles concerned; (b) to arrange for after-sale service; (e) to arrange for the stocking of spare parts; (d) to arrange for periodical service and maintenance. Apart from these a dealer has to make advance payment for the cars before taking them over at the factory and make his own arrangement for transporting them. He is to carry out a detailed pre- delivery inspection before handing over the car to the customer. The agreement between the car manufacturer and the dealer is such that any part needing replacement during the warranty period due to manufacturing defect will be changed by the dealer. The car manufacturer reimburses the dealer's cost of the component but the labour cost for replacement of the part is borne by the dealer except in the case of Standard Motors. It is submitted that the dealer's cost of operation has also increased owing to higher wages, salaries and other contributions, increase in rents, bank charges, power and water rates and higher outlay on equip- ment.

The, Commission referred to all the above facts and the evidence of a number of witnesses examined on behalf of the consumers according to whom the service and repair facilities offered by the present day dealers were not satisfactory. The Commission examined the profit and loss account of a few dealers to see the trading results of passenger cars. It found it impossible to segregate the automobile account as the trading accounts covered other activities also. In certain cases, however, where analysis was made it appeared that no one had suffered any loss. The Commission has observed that spare parts are not stocked in adequate quantities in various places by the dealers with the result that the customers have sometimes to wait for long period for replacement. The Pande Committee in 1967 had deprecated the fall in the standard of after-sale service. The Tariff Commission in its third Report published in 1968 did not accept the dealers' claim for an upward revision of profit margin. The Commission felt that the workshops of the dealers of Fiat cars, namely, one in South (Sundaram Motors P. Ltd.), one in Bombay (Bombay Cycle and Motor Agency Ltd.) and another in Delhi (Prem Nath Motors) had well equipped workshops with requisite type of plant and machinery but there was nothing to indicate that they were suffering any loss. The evidence of Sagar Suri the Managing Director of Delhi Automobiles (P) Ltd., was not accepted. The Commission considered the desirability of classifying dealers in 2 or 3 categories according to the standard of equipment and service facilities and fixing the amount of mark-up accordingly but it was realised that in the very nature of things this was not feasible. It was, however, noticed that the Hindustan Motors charged a sum of Rs. 50/- out of the latter's commission on account of advertising charges and the Premier Automobiles also charged Rs. 10/- from each dealer for service facilities. These deductions, in the opinion of the Commission, were un- warranted and should not be allowed to continue. The other additional factors that have been brought to our notice are that the Commission has now held that the labour charges borne by the dealers in doing warranty jobs should be met by the manufacturer. This will give an additional benefit to the dealers. Taking into consideration all these facts the Commission was of the view that the existing margin should remain at the existing level except for marginal adjustment.It arrived at the following figures for the dealer's mark-up Fiat : Rs. 900.00 Standard Herald : Rs. 860.00 Ambassador : Rs. 1050.00 On behalf of the dealers it has been stressed that for each car the cost of pre-delivery inspection is Rs. 50/- of three free services Rs. 125/- and the interest on investment would roughly come to Rs. 150/-. We are, however, unable to take these figures into account because from the data supplied to the Commission and the evidence that was produced before it there is nothing to indicate that the dealers are suffering any loss and are not making a reasonable margin of profit. The responsibility of the manufacturers to reimburse the dealers for the labour charges on account of warranty is an additional benefit which would be derived by them now apart from the directions of the Commission relating to the advertisement and service charges. In our opinion the conclusion of the Commission with regard to the dealer's margin or mark up has not been shown to be demonstrably wrong.

The result of the discussion on the six points on which arguments had taken place before us may now be summarised :--

> (1) the production capacity of the three car manufacturers per annum for the purpose of working out the ex-works cost will be as follows:-
>
> (a) Premier Automobiles September 1969 July 1970 12,000 cars 14,000 cars. 5,700 commercial vehicles 6,000 commercial vehicles.
>
> (b) Standard Motors.

July 1970 3,400 cars.

1,000 commercial vehicles.

(c) HindustanMotors.

July 1970.

30,000 cars.

5,000 commercial vehicles.

.lm15 (2) Cost and expenses on account of warranty and bonus have been rightly included in the return and could not be included in the ex-works cost.

(3) In fixing the cost for September 1969 which will now be relevant only in the case of Premier Automobiles the same basis should have been adopted as for July 1970. In other words the actual cost and not the historical cost should have been taken into account. It was, however, unnecessary to take the projected and estimated cost for the future.

(4) A provision should be made for an escalation clause. The lines on which such a clause should be formulated will be indicated hereafter.

(5) The return which has been allowed is adequate on the facts proved before the Commission.

(6) Depreciation on account of plant and machinery has been allowed on correct basis but for the purpose of allocation the capacities indicated above will be taken into account. As regards the individual points raised on behalf of the Standard Motors, Hindustan Motors and the dealers our decision is as follows :-

> (i) The amount payable on account of royalty per car in the case of Standard Motors pursuant to the collaboration agreement the renewal of which has been approved by the Government of India will be included in the ex-works cost for July 1970.

(ii) The conclusion of the Commission relating to the percentage of the local steel sheets by the Hindustan Motors is correct.

(iii) The dealers shall, for the present, be entitled only to the mark-up in terms of the recommendation of the Commission.

We consider that the provision for the future relating to escalation and de-escalation should be in these terms. The position will be reviewed by the government every six months in the beginning of the months of January and July. Six weeks prior to first January and first July the car manufacturers shall submit all the necessary data and proof for determining the increases claimed. The, government shall decide about the matter promptly by the first of January and first of July respectively and allow the increases, if found to be genuine and correct provided the total amount of such increases exceeds Rs. 100/- per car in ex-works cost since the last fixation. If the government fails to do so the car manufacturers will be entitled to increase the prices to the extent of the actual increase if the total increase. is more than Rs. 100/- per car in the ex-works cost comprising all the items mentioned in the Commission's report which make up the ex-works cost since the last fixation.

As regards the outgoings from the return which will be con- fined to the minimum bonus payable under the Bonus Act 1965, interest on borrowings and income tax if there is a significant increase in these items, the car manufacturers can submit their case with all the relevant data as well as proof to the government for claiming a corresponding increase in the return. The government shall give its decision within 10 weeks from the date the required data and proof are supplied. The government will also be entitled to take into account any decreases which take place either in the items which make up the ex-works cost or the aforesaid outgoings from the return and the prices can be refixed accordingly.

All the car manufacturers have undertaken to furnish the necessary details and the relevant data to the government within a fortnight after the announcement of this judgment to enable it to promulgate a fresh Order under s. 18G of the Act refixing the prices of all the three cars in accordance with the recommendations of the Commission as modified by this Court. The Order should indicate that the prices as fixed are liable to be increased ,or decreased in accordance with the provision relating to escalation and de-escalation contained in our judgment. The goverment will take the cost as in July 1970 as the base and will take into account all increases and decreases since July 1970 upto the date, of the judgment in the ex-works cost and the three outgoings from the return mentioned above. Learned Attorney General on behalf of the Central Government has agreed to this course. It may be added that while furnishing the relevant information and data to the government the car manufacturers will give copies of the relevant purchase contracts including the escalation clause,if any.

The car manufacturers have given an undertaking that during the period of two months from the date of the announcement of this judgment they shall continue to charge the interim prices which were fixed by our Order dated April 16, 1971 which were the same as have been recommended by the Commission. For the period September 1969 to the date of the interim order Premier Automobiles have agreed that the maximum prices will be those which have been stipulated in the undertakings obtained by them from the dealers but these shall, in no case, exceed the price to be computed by the manufacturers in accordance with the Commission's report as modified by our decision for the period September 1969 to the end of June 1970 and the price recommended for July 1970 by the Commission (this is same as fixed by our interim order) from first July 1970 till April 16, 1971 (the date of our interim order).

It is common ground and counsel for all the parties are agreed that as a result of our decision the impugned Order of September 1969 shall be inoperative and ineffective to the extent the prices fixed by it are not in accordance with our decision.

All the writ petitions shall stand disposed of accordingly. The parties shall be left to bear their own costs. Khanna, J. I agree except in two matters. One relates to the production capacity of Standard Motors. The other relates to the value to be attached to the admissions regarding the production capacity contained in the manufacturers' applications for import licences. So far as the Standard Motors are concerned, I have dealt with the second matter in, the discussion relating to production capacity. As regards the other two manufacturing companies, I need not dilate upon the question of admissions because there was sufficient other material, which has been referred to in the main judgment, in support of our conclusion regarding production capacity.

Controversy has arisen about the July 1970 price of the Standard Herald (four door model) car. The Tarrif Commis- sion in its Report submitted in August 1968 recommended the net dealer's price of the Standard Herald (two door model) as Rs. 12,485/-. The Central Government in the impugned notification dated 21st of September, 1969 fixed the price of the Standard Herald (four door model) at Rs. 14,003/--. The above, according to the notification, was ex-factory price inclusive of dealer's commission but did not include excise duty, central sales tax and local taxes, if any and transportation charges. The Car Prices Inquiry Commission (hereinafter referred to as the Commission) worked out the ex-works cost for September 1969 of Standard Herald to be Rs. 13.236/-. Adding a return of Rs. 1,274/- to that amount, the ex-factory price of the Standard Herald was found to be Rs. 14,510/-. For July 1970, the Commission worked out the ex-works cost of Standard Herald to be Rs. 13,989/-. Adding a return of Rs. 1,231/- to the above amount, the ex-factory price of Standard Herald for July 1970 was found by the Commission to be Rs. 15,220/-. Rs. 860/- were added on account of dealer's commission to the prices found for September 1969 and July 1970. Fair selling price of the Standard Herald for September 1969 was found by the Commission to be Rs. 15,373/- and for July 1970 to be Rs. 16,080/-. In working out the above prices for September 1969 and July 1970, the Commission took the production for September 1969 to be 3,400 cars and 1,000 commercial vehicles and for July 1970 to be 4,000 cars and 1,000 commercial vehicles. So far as the price fixed for September 1969 is concerned, the matter is now purely academic, as the Standard Herald cars after September 1969 till April 1971 were sold at the prices fixed in the Government notification and no bonds were got executed from the purchasers of the said cars. The controversy has centered on the point as to whether the Court should accept or not the price found by the Commission for the Standard Herald for July 1970.

It would appear from the above that as against the price of Rs. 14,003 notified in September 1969 by the Central Govern- ment for Standard Herald, the Commission worked out the price of that car to be Rs. 15,373/- for September 1969 and Rs. 16,080/- for July 1970. Before arriving at the above conclusion, the Commission which had been appointed by the Government under the Commissions of Inquiry Act at the instance of this Court and which included a retired High Court Judge, a chartered accountant and an automobile engineer visited the different manufacturing units. The Commission took into account various factors like manufacturing capacity, quality, norms of rejection, bonus, warranty, interest and return and expressed its view with regard to each of them. The Commission also took note of the various items of expenditure which have to be incurred by the manufacturer in the production of the car. In view of the detailed inquiry made by the Commission, the approachadopted by this Court, as mentioned in the main judgment, has been that we should direct deviation from the report of the Commission only when it is shown that there has been a departurefrom the established principles or the conclusions of the Commission are shown to be demonstrably wrong or erroneous.

The main ground which has been taken on behalf of the- Standard Motor Products of India Ltd, hereinafter referred to as the petitioner-company, in assailing the findings of the Commission in regard to the July 1970 price of the Standard Herald car is that the Commission has worked out the price on the basis that the petitioner-company would be manufacturing 4,000 cars a year from July 1970. It is urged that the manufacturing capacity of the Standard Herald car since July 1970 by the petitioner's factory cannot be more than 3,400 cars a year. The report of the Commission in this respect is stated to be vitiated by the above mentioned wrong assumption.

It cannot be disputed that in working out the fair price of a motor car, we have to take into account the manufacturing capacity or output of those cars by the manufacturer. As observed by Hanson in Dictionary of Economics and Commerce, the term cost of production has meaning only when it is related to output. The cost of producing a motor car depends on whether the manufacturer is turning out 50, 100, 500 cars per week. The term "cost" is ambiguous since it has several different meanings. For a given output it may be total cost, whereas for one unit of output-a single motor car, for example-it is clearly average cost that is being considered. If a firm is already producing 500 motor cars per week and it decides to increase its weekly output to 501, the cost of producing one more motor car per week will probably be much less than the average cost, though in other ,cases it might be more than the average cost. It is also manifest that the capacity which has to be taken into account is the achievable capacity of a plant run in a reasonably efficient manner. Concerted effort has to be made to attain a high level of production for two obvious reasons : (1) supply of new cars falls considerably short of the demand and the intending purchasers have to be kept on the waiting list for inordinate length of time and (ii) increased production would bring down the exworks costs of the car. Although it would not be practicable and realistic to insist upon the highest or absolute efficiency, it would be equally unjust and inequitable to throw the burden of inefficiency of a manufacturer on the consumer in working out the figure of 'fair price' of the article manufactured. To put it differently, the authority concerned in determining fair price should not demand from the manufacturer the paragon of excellence in the matter of volume of production but at the same time the authority should not make the consumer bear the margin of high cost resulting from avoidable low production. It is, of course, implicit in that reasonable facilities would be afforded to the manufacturer for procuring material like imported parts and steel which is under the Government control so as to be in a position to manufacture the requisite number of cars. The ,-concept of 'fair price' postulates that the price should be fair not only to the producer but also to the consumer; the goal should be to arrive at just and reasonable rates. To quote from Hanson's book referred to above :

> "There is a popular idea that the price of a commodity should be fair, but to whom? to consumers or producers ? It is very difficult to define the meaning of fair in this connection. If a service is deliberately run at a loss, it is clearly to the advantage of everyone making use of the service, but those who do not use it are having to subsidise those who do. The free working of the price mechanism, with sufficient restrictions on it as are in the interest of the whole community, has even so its disadvantages, but these are outweighed by the advantages where the State watches the interests of the community as a whole. It has been suggested that if the State intervenes in the market it should be to make a price as near as possible to the long-run normal price in a perfect market."

According to the case of the petitioner-company, the original installed capacity of the petitioner's factory was for the manufacture of 5,000 Herald cars and 1,500 one-ton commercial vehicles. As a result of gradual deletions of imported components, there has been a steady decline in the petitioner-company's capacity with the result that the installed capacity has come down to 2,500 cars and 1,000 commercial vehicles annually. It was also maintained on behalf of the petitioner-company that it was not possible to increase the capacity for the manufacture of Standard Herald as the Press Shop was a limiting factor. It may be noted that the petitioner-company was previously working for 5 days in a week. In the course of the arguments before the Commission, the counsel for the petitioner-company stated that it could achieve a capacity of 3,400 cars and 1,000 commercial vehicles on a six day working week provided some components were transferred from one unit to the other and the petitioner company was allowed an additional tooling cost of Rs. 2.5 lakhs. As against the above, the case set up on behalf of the respondent before the Commission was that the capacity of the petitioner company should be fixed at a level of 4,000 to 5,000 cars and 1,000 to 1,500 commercial trucks.

The Commission took into account the statements made by the petitioner-company in its various communications and appli- cations to the Government regarding its manufacturing capacity. It was observed that the decision of the petitioner-company to work for 6 days in a week would result in increased production. The Commission also expressed the view that in the factory of the petitioner-company, there was scope for increasing productivity to the extent of 5%. The Commission accordingly concluded :

> "Thus giving an allowance for this increase and after taking into account the transfer of some capacity from the commercial vehicles side to the car side, and after allowing a capital addition of Rs. 2.5 lakhs towards tooling, it is reasonable to assume that the Company can easily reach the level of production of 4,000 cars and 1,000 commercial vehicles per annum."

Regarding the assessment made by the technical team, the Commission observed as under :-

> "The Technical team of the Commission had assessed the capacity of the Company at 3,400 cars and 1,000 commercial vehicles per year on a six-day week but the assessment of the Technical Team in case of this unit was made when the factory was closed and all the relevant data were not available. The Commis- sion has, therefore, tried to rely more on the assessment made by the Company itself rather than on the estimates of the team."

It has been argued on behalf of the petitioner that the Com- mission should have accepted the report of its Technical Team and not excluded it from consideration. In this respect, I find that according to the report of the Technical Team, it felt handicapped because it found at the time of its visit that the production in the petitioner's company had virtually come to a standstill on account of the complete closure of the factory and the discharge of the factory employees. The Team consequently carried out the investigations on the basis of available records. Here too, the Team faced considerable difficulties since due to the non-availability of the concerned staff, even relevant records could not be quickly traced and made available. The visits to, the factory for study and collection of data were also rendered difficult because of demonstrations. The Team consequently found it welling impossible to make a systematic study and on the spot physical verification as is normally done in the case of a functioning plant. The Team also mentioned that the matters had not been simplified because the petitioner-company had furnished its replies to the Questionnaire issued by the Commission at a very late stage when the Team was due to complete its work. The Team in conclusion observed that its findings were based Purely on the records made available and the discussions with the petitioner-company's officers.

It would follow from the above that neither any physical verification could be made by the Technical Team nor could it make a systematic study and it had to content itself with the material supplied by the petitioner-company. It, therefore, cannot be said that any satisfactory technical assessment regarding the production capacity of the petitioner-factory was made by the Technical Team. In the circumstances, there was nothing wrong in the approach of the Commission which included a chartered accountant and an automobile engineer in relying upon its own assessment rather than that of the Technical Team.

The other assessment of the manufacturing capacity of the petitioner-company upon which reliance has been placed on its behalf is that made by the Varghese Committee. The said Committee in its Report observed as under -

> "The plant capacity as a whole could be balanced for a production of 3,200 Heralds and 1,000 Standard 20 trucks. Standard 20 trucks is not being manufactured in U.K. now and therefore the imported components will have to be progressively indigenised. The Management felt that some capacity should be earmarked for this purpose. On an overall assessment of all these factors, we felt it safe to estimate the installed capacity of the Factory at 3,000 Heralds and 1,000 Standard 20 Trucks."

The above Committee presided over by Shri T.V. Varghese, Ex- Chief Secretary of the Government of Tamil Nadu was appointed by the Central Government in exercise of the powers conferred by section 15 of the Industries (Development and Regulation) Act, 1951. The material part of the order regarding the appointment of that Committee reads as under :-

> "And whereas it has come to the notice of the Central Government that the volume, of production of the articles manufactured in the said industrial undertaking had been gradually going down and the production has now come to a standstill consequent upon the closure of the said industrial undertaking by the management;
>
> And whereas the Central Government is of opinion that it is expedient to take urgent measures to remedy the situation arising out of the closure of the said industrial undertaking and to ensure that production in the said scheduled industry does not suffer to the detriment of the public interest;
>
> Now, therefore, in exercise of the powers conferred by section 15 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby appoints for the purpose of making a full and complete investigation into the circumstances of the case, a body of persons.......... ....

It would thus appear that though the Varghese Committee was asked to inquire into the gradual fall in production in the petitioner's factory and its ultimate closure and to suggest remedial measures in that connection, the said Committee was not called upon to determine the achievable capacity of the factory of the petitioner-company. The Committee, no doubt, dealt with the question of capacity but it was rather in a general way. There is nothing to indicate that any attempt was made before the Committee to show that the achievable capacity of the petitioner company was more than what was stated on behalf of the petitioner.

As the fair selling price is linked with the achievable capacity of the manufacturer's factory, the Tariff Commission while submitting its 1968 Report considered the question of production capacity of the petitioner-company for three years from 1968 to 1970 and came to the conclusion that the production capacity of the petitioner-company for Standard Herald cars was 5,000 and of commercial vehicles was 1,500. The Report of the Tariff Commission shows that in arriving at the above figures, it got the matter adjudged by its Cost Accounts Officer and held discussions with the individual units and with the Directorate General of Technical Development. The Tariff Commission also took into account the information conveyed to it at the public inquiry. The above estimate of the production capacity of the petitioner company made by the Tariff Commission as a result of inquiry and discussions with the Accounts Officer and technical officials, in my opinion, has a direct bearing on the case and would go to show that the conclusion of the Inquiry Commission that the petitioner-company's production capacity was 4,000 cars and 1,000 commercial vehicles was by no means vitiated by an excessive estimate. Nothing on the record has been pointed out to indicate that there would be a fall in production capacity of the petitioner-company because of the manufacture of four door car as against the previous two door car.

There are a number of communications and applications addressed by the petitioner-company which also go to show that the estimate formed by the Commission regarding the production capacity of the petitioner-company did not lean on the side of being excessive. In its application dated 19-6-1968 addressed by the petitioner-company to the Directorate General of Technical Development, the petitioner-company estimated its production for 1968 at 4,200 cars. Again in its application dated 20th December, 1968, the petitioner-company estimated its production for 1969 at 4,200 cars. The petitioner- company no doubt, showed its production capacity of cars as 3,400 in its letter dated 13-12-1969 but that was after the issue of the impugned notification and during the pendency of the present petition. 1, thus, find that even if the production figure as admitted in the applications dated 19-6-1968 and 20-12-1968 were to be taken into account, the estimate of the Commission regarding the production capacity of the petitioner-company cannot be considered to be excessive. It is well known that admissions constitute a strong piece of evidence against the party making the admissions and it is for that party to show that the admissions are mistaken or are not true. On the material on record, the petitioner-company, in my opinion, has failed to discharge that onus. The argument that the petitioner in order to obtain import licence had to give a bloated figure of estimated production does not appear to be convincing because the excess of the imported material had to be adjusted in the subsequent import licences. The learned Solicitor General has argued that if the July 1970 price of Standard Herald were to be worked out on the basis of a production capacity of 3,400 cars instead of 4,000 cars, the price of the Standard Herald would be almost the same as that of the Ambassador. The price of the Standard Herald in the past has been considerably lower than that of Ambassador and any fixation of price of the Standard Herald which would make it to be almost the same as that of Ambassador would, in my opinion, be unrealistic. I, therefore, am of the view that no case has been made for interfering with the July 1970 price of Standard Herald as found by the Commission on the ground that the production capacity of the petitioner-company from July 1970 onwards was 3,400 and not 4,000 cars.

ORDER In all matters excepting the production capacity of the Standard Motors Products of India Ltd. the conclusions and the decision of the Court are unanimous. In the matter of production by the Standard Motor Products of India Ltd. of the Herald cars the majority decision is the decision of the Court.

G.C.