

(1966) 08 PAT CK 0012

In the Patna High Court

Case No : M.J.C. No's. 1105 and 1106 of 1964

Rohtas Industries Ltd. and Another

APPELLANT

Vs

Workmen of Rohtas Industries Ltd. and Others

RESPONDENT

Date of Decision : 22-08-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A

Citation : AIR 1967 Patna 224 : (1968) 1 LLJ 710

Hon'ble Judges : R.L. Narasimham, C.J;K.K. Dutta, J

Bench : Division Bench

Advocate : Lalnarain Sinha, T.K. Prasad, R.P. Katriar, C.B. Sahay and Nagendra Kumar Roy, for the Appellant; B.C. Ghose, Rama Raman, Indu Shekhar Prasad Sinha and A.D. Roy Choudhary, for the Respondent

Final Decision : Partly Allowed

Judgement

Dutta, J.—These two writ petitions under Article 226 of the Constitution of India have been preferred by two different Concerns, namely, Rohtas Industries Ltd., and Ashoka Cement Ltd., respectively, for quashing an Award given by Shri K. S. V. Raman, who was appointed as an Arbitrator, as a result of the agreements arrived at between the present petitioners and their workmen represented by Rohtas Industries Mazdoor Sangh. As the same Award forms the subject-matter of the dispute in both the cases and some common questions are involved in both, the two cases were heard together and this inclement will govern both.

2. The petitioner in M. J. C. 1105 of 1964, namely, Rohtas Industries Ltd., is a manufacturer of various products, namely, cement, papers, sugar, vanaspati, chemicals etc., having its factories at Dalmianagar. On or about the 25th June, 1960, in course of conciliation proceedings, a memorandum of settlement was arrived at between the petitioner and their workmen at Dalmianagar represented by Rohtas Industries Mazdoor Sangh (respondent No. 1) and Rohtas Industries Staff Union (which Union also has been added as a party in the present proceeding just before the hearing of the writ petitions was taken up). According

to this settlement (Vide Annexure A of the writ petition) the wages and dearness allowance payable to the workmen were revised with effect from 1-4-1980 and it was further provided that if an abnormal change takes place in All India Consumer's Price Index (Base 1949-100) revisions of dearness allowance chart may be negotiated mutually between the management and the Union. The above settlement further provided for payment of certain bonus amounts to the workmen for the period up to 31-3-1960 and so far as the question of future bonus was concerned, it was left for determination in future by negotiation and settlement. We are not concerned with the other terms of the settlement, in the present proceedings, except the terms incorporated in Para 12 which will be referred to at the proper stage.

3. The petitioner in the other case, namely, N. M. J. C. 1106 of 1964, Ashoka Cement Ltd., carries on manufacture of cement in its Cement Factory at Dalmianagar and also of steel materials in its Steel Foundry at the same place. In course of conciliation proceedings between this petitioner and their workmen represented by Rohtas Industries Mazdoor Sangh (Respondent No. 1) and Rohtas Industries Staff Union (which Union has also been added as a party just before the hearing of the case was taken up) a settlement was arrived at on the 22nd August, 1960. Under the terms of this settlement, of which Annexure A to the writ petition is a copy, certain amounts of dearness allowance and bonus were allowed to the workmen for the period up to 31st March, 1960. Paragraph 2 of the settlement further provided as follows:--

"With effect from 1st January, 1960, the recommendations of the Cement Wage Board shall be implemented in respect of Ashoka Cement Ltd., (Excluding Steel Foundry section) for labour as well as staff categories in terms of Government of India Resolution No. R-(57) dated the 29th February, 1960. These recommendations shall apply in respect of all the matters covered by the Cement Wage Board. Bonus is being paid upto 31st March, 1960, for the special reason that the financial year of the Company extends to that date and, in the spirit of the agreement hitherto subsisting between the Company and its workmen, the Company is to pay bonus for the past period on the basis of that paid by Rohtas Industries Ltd., to its workmen. In future, the question of bonus will be dealt with mutually as per observations of the Cement Wage Board. In other matters in future also the Company and the workmen shall follow the principles applicable to the Cement Industry in the country."

Paragraph 4 of the settlement further provided as follows :--

"This settlement settles all matters of general nature and workers shall not raise any demand of general nature involving financial obligation (except that the question of bonus for future, i. e., for financial years commencing from 1st April, 1960 onwards is left open for both parties as per observations of the Cement Wage Board) and any strike or direct action on any terms hereof or any matter covered by this agreement shall be illegal and unjustified."

We are not concerned with the other paragraphs of the settlement.

4. It appears that subsequently on 20-4-1962, Rohtas Industries Mazdoor Sangh (which Union has been impleaded as Respondent No. 1 in both the present writ petitions) sent a letter (Annexure B in petition No. 1105) to the Works Director, Rohtas Industries Ltd., claiming increased dearness allowance for the years 1961 and 1962 at the rates as mentioned in this letter. This was followed by another letter dated the 21st June 1962, which has been referred to as Charter of Demands and in this letter a claim was made for profit sharing bonus for the years 1960-61 and 1961-62 as well as dearness allowance in terms of the earlier letter of April, 1962 and there were also various other demands with which we are not concerned (Vide Annexure C in Writ Petition 1105 and Annexure B in Writ Petition 1106).

These demands were, later on, followed by strike notices on April, 16, 1963. These strike notices were followed by conciliation proceedings and in course of these conciliation proceedings, two separate settlements were again arrived at on 19-10-1963, one being between the petitioner in Writ Petition 1105 and Respondent No. 1 Rohtas Industries Mazdoor Sangh and the other being between the petitioner in Writ Petition 1106 and the same Union. The terms of the two settlements are, however, exactly the same (Vide Annexure E in Writ Petition 1105 and Annexure D in Writ Petition 1106). Under both these settlements, Shri K. S. V. Raman, Deputy Chairman, Bihar State University Commission, was appointed an Arbitrator to settle the following items of dispute :--

"(i) Whether the workmen are entitled to bonus for the years 1960-61 and 1961-62? if so, what should be the quantum?

(ii) Whether the workmen are entitled to an increase in the dearness allowance as per Memorandum of Settlement dated the 25th June, 1960 (Writ Petition No. 1105) the 22nd August, 1960 (Writ Petition No. 1106)? if so, to what extent?

These settlements further provided that the Arbitrator shall evolve his own rule and procedure which are fair and convenient to the parties and his Award shall be final and binding on the parties. In accordance with these agreements for reference of the above dispute to the arbitration of Shri K. S. V. Raman, the State Government published the arbitration agreements in the Bihar Gazette as per notifications dated the 26th October, 1963 (Vide Annexure F in Writ Petition 1105 and Annexure E in Writ Petition 1106). It is, however, necessary to mention in this connection that there is some difference in the terms of the agreements, as embodied in these notifications and the terms of the original agreements as embodied in Annexures E and D respectively, so far as the dispute regarding bonus is concerned. The references on the subject of bonus as incorporated in the notifications run as follows :--

"Whether the workmen are entitled to profit sharing bonus for the financial years 1960-61 and 1961-62? if so, what should be the quantum of bonus?"

The difference between the agreements, as incorporated in these notifications and the original agreements is that although in the original agreements, the references were on the point whether the workmen were entitled to "bonus", the reference in the agreements as embodied in the notifications were on the point whether they were entitled to "profit sharing bonus".

5. After these references to the Arbitrator, the parties duly filed their respective written statements as well as some documents before the Arbitrator and after hearing them the Arbitrator gave a single Award which, covers the references in both the cases and the same was duly published in the Bihar Gazette as per Government Resolution dated the 9th June, 1964 (Vide Annexure K in Writ Petition 1105 and "I" in Writ Petition 1106). The present writ petitions have been filed for quashing this Award.

6. Mr. Lal Narayan Sinha, appearing on behalf of the petitioners, challenged the Award on the following grounds :--

(i) The Award on the point of bonus is vitiated, as in determining the amount of bonus, the Arbitrator failed to take into account the principles laid down by the Full Bench of the Industrial Tribunal, Bombay, in the year 1950, which subsequently came to be known as the Full Bench Formula and which have been approved by subsequent decision of the Supreme Court also with some slight modifications.

(ii) The Arbitrator failed to give proper reasons for arriving at his decisions both on the points of bonus and dearness allowance and his decisions on both these points are, therefore, vitiated.

(iii) The Arbitrator's Award on the point of dearness allowance so far as it relates to the workmen of the Steel Foundry Section of Ashoka Cement Ltd. (Petition in Writ Petition 1106) is vitiated by the fact that he has determined the amount of dearness allowance for these workers also without deciding in accordance with the references whether these workmen were entitled to any dearness allowance in accordance with the terms of the agreement dated the 22nd August, 1960.

(iv) The Award of the Arbitrator on the point of dearness allowance is further vitiated by the fact that the Arbitrator directed that the dearness allowance should be fixed in accordance with the scale prescribed by the Cement Wage Board not only with respect to the workmen employed in the Cement Factories but also with respect to the workmen employed in other Industries of the petitioners without taking due consideration of the fact that the Government Resolution on the Cement Wage Board's recommendation on this point with respect to the Cement Industry provided for increase in the price of cement also as a consequence of increase in the dearness allowance and there is no provision for any such increase of prices so far as other industries are concerned.

7. I shall first take up the question whether it was obligatory on the Arbitrator to give reasons for the conclusions arrived at by him. In this connection, it is

necessary to consider first as to what is the status of a private Arbitrator chosen by the parties in accordance with the provision of Section 10A of the Industrial Disputes Act and what is the nature of his decision. In a Division Bench decision of this Court *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, , it was held that the Arbitrators appointed u/s 10A of the Industrial Disputes Act are not private Arbitrators but are the Statutory Arbitrators and a writ in the nature of certiorari lies against the decision of such Arbitrators. This decision however, can no longer be considered to be laying down the correct position in law in view of the decision of the Supreme Court in the case of *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . It was held in this case that the decisions of the Arbitrators to whom industrial disputes are voluntarily referred to u/s 10A of the Industrial Disputes Act are, no doubt, quasi-judicial decisions and amount to a determination or order under Article 138(1) of the Constitution, but an Arbitrator acting u/s 10A is not a Tribunal under Article 136 even though some of the "trappings of a Court" are present in his case. The following observations were made by Court in this connection :

"The Arbitrator u/s 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator, as in a loose sense, a statutory arbitrator and to that extent, the argument of the learned Solicitor General may be rejected. But the fact that the arbitrator u/s 10A is not exactly in the same position as a private arbitrator, does not mean that he is a tribunal under Article 136. Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. As we will presently point out, he is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from no other source. The fact, that his appointment once made by the parties is recognised by Section 10A and after his appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a Court, does not mean that the power of adjudication which he is exercising is derived from the State and so, the main test which this Court has evolved in determining the question about the character of an adjudicating body is not satisfied. He is not a Tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position, thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal".

It would thus appear that according to this decision, although the position of a private Arbitrator appointed u/s 10A, of the Industrial Disputes Act is somewhat higher than that of an ordinary private Arbitrator, he cannot in the strict sense be considered to be a statutory arbitrator, but in view of some of the provisions of the Act he may only be described loosely as a statutory arbitrator. This being the

position of such an arbitrator and his decision being merely a quasi-judicial decision, as held by the Supreme Court, it is necessary to consider now whether the decision of such an arbitrator has to be fortified by reasons or grounds for coming to such a decision. It may be mentioned at the very outset that Sub-section 4 of Section 10A merely provides that the arbitrator or arbitrators to whom a dispute has been referred to u/s 10A shall investigate the dispute and submit to the appropriate Government the arbitration award signed by an arbitrator or all the arbitrators, as the case may be.

Neither this sub-section nor any other provision in the Act provides that the Arbitrator shall incorporate the reasons or grounds of his decision in the Award submitted by him. It is, no doubt true that a reasoned order is a desired condition of judicial disposal as this provides a check upon arbitrary, unscrupulous or slipshod decision and also enables an appellate court to make effective review of the decision by considering whether it is duly supported by the evidence on record. Moreover, this also gives an assurance to the parties that the decision has been arrived at on basis of the evidence adduced by them. This desirability for giving the grounds on which a decision is based does not, ipso facto, lead to the conclusion that such grounds must be given in the quasi-judicial decision of an arbitrator appointed under the Industrial Disputes Act, where there is no specific provision in the law itself to that effect.

It is necessary to bear in mind in this connection that the arbitrator is a person chosen by the parties themselves. It is open to the parties under the provisions of Sub-section (1) of Section 10A to refer a dispute for arbitration to not only a private person but also to the Presiding Officer of a Labour Court or Tribunal or National Tribunal. If the reference is made to a Labour Court or a Tribunal or National Tribunal such court or Tribunal would be bound to give reasons for its findings in accordance with the provisions of law. If, however, instead of making the reference to either a Labour Court or a Tribunal or National Tribunal, the parties voluntarily choose a private person, it cannot necessarily follow that such a person also would be bound to give reasons for the decision arrived at by him. Such a person may be chosen merely because the parties expect him to arrive at a proper decision because of his broad common sense or knowledge of a particular industry or for other reasons and he may not have the requisite qualification to express in writing the processes by which or the grounds on basis of which he arrived at his decision.

8. Mr. Lal Narayan Sinha, however, relied upon a decision of the Punjab High Court reported in *Rohtak Delhi Transport (P) Ltd. v. Ch. Risal Singh*, AIR 1963 Punj 472. In this case, no doubt, certain observations were made regarding the desirability of giving reasons for decision by authorities or tribunals called upon to give judicial or quasi-judicial decision. The Court, however, did not decide the question as to whether it was obligatory on the arbitrator in every case to give reasons for his decision as would appear from the following observations which were made after considering the question of desirability of giving reasons for a

decision by authorities or tribunals called upon to give judicial or quasi-judicial decision:--

"It is altogether unnecessary to express any general view and what has to be seen is whether in the present case the Arbitrator should have given some reason or indication for his conclusion in the matter of assessment of compensation."

This decision, therefore, cannot be considered to have laid down that it is obligatory on the Arbitrator appointed u/s 10A of the Industrial Disputes Act to give the reasons for his decision. Reference may in this connection be made to the case of *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . It was contended, inter alia, in this case that the decision of the Wage Board constituted under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955 was illegal and void in the absence of reasons to support the decision. The Court rejected the contention on the basis that the statute did not require reasons but it made some observations about the desirability and utility of giving reasons. The relevant portion of the observations made in this connection is as follows:--

"This ground is urged because no reasons were given by the Wage Board for its decision. As a matter of fact, the Wage Board at its meeting dated April 22, 1957 agreed that reasons need not be given for each of the decisions and it was only sufficient to record the same and accordingly it did not give any reasons for the decision which it published. In the absence of any such reasons, however, it was difficult to divide what considerations, if any, prevailed with the Wage Board in arriving at its decision on the various points involved therein. It was no doubt not incumbent on the Wage Board to give any reasons for its decision. The Act made no provision in this behalf and the Board was perfectly within its rights if it chose not to give any reasons for its decision. Prudence should, however, have dictated that it gave reasons for the decision which it ultimately reached because if it had done so, we would have been spared the necessity of trying to probe into its mind and find out whether any particular circumstance received due consideration at its hands in arriving at its decision. The fact that no reasons are thus given, however, would not vitiate the decision in any manner.

It may be added, however, that in this case the Wage Board's decisions were quashed on some other grounds. The principles as laid down in the above case are equally applicable to the case of an Arbitrator appointed u/s 10A of the Industrial Disputes Act as there are no statutory provisions requiring such an Arbitrator to give reasons for his decisions. On consideration of all the above aspects, it would appear that the contention that a private arbitrator appointed u/s 10A of the Industrial Disputes Act is bound to give reasons for his decision cannot be accepted and as such, the validity of the Award in question cannot be assailed on this ground.

9. I next take up the question as to whether the Award of the Arbitrator on the

point of bonus if vitiated on account of the fact that the Arbitrator failed to take into account the principles laid down by the Full Bench of the Industrial Tribunal Bombay, which came to be known as the Full Bench Formula and because he took into account some factors which were quite irrelevant. In this connection, reference was made to certain decisions reported in AIR 1957 SC 184 Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay, ; Dhiraj Lal Girdhari Lal v. Commissioner of Income Tax, Bombay, and AIR 1957 Pat 617 Sukhnandan Thakur v. State of Bihar. The principles laid down in Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay, were that if a Court of fact arrives at a decision on a fact by considering materials which are irrelevant to the enquiry or by considering materials partly relevant or partly irrelevant or bases his decision on conjectures, surmises and suspicions and partly on evidence, in such a situation an issue of law arises.

In the later case, reported in AIR 1957 SC 184 it was held that if some of the grounds for passing any order by a statutory authority are found to be non-existent or irrelevant, the court cannot predicate what the subjective satisfaction of the said authority would have been, on exclusion of these grounds and to uphold the validity of such an order would be to uphold and establish the objective standard of the court for the subjective satisfaction of the statutory authority. In view of these principles, it would follow that the Award cannot be allowed to stand if the Arbitrator is found to have based his decision on irrelevant materials. In this connection, it was contended that the decision of the Arbitrator on the point of bonus is based merely on consideration of the amount of dividend paid by the petitioners in previous years and this material is altogether irrelevant in determining the question of bonus.

10. At this stage, it is necessary to mention that there is some controversy between the parties as to whether the dispute referred to the Arbitrator related to merely "bonus" without any qualifying clause or to "profit sharing bonus". As already mentioned, there is some difference between the terms of the agreements, as incorporated in the original agreements of which Annexure E in Writ petition 1105 and Annexure D in Writ petition 1106 are copies, and the terms as incorporated in the Government Notifications. According to the former, the Arbitrator was called upon to decide whether the workmen were entitled to "bonus" whereas, according to the latter, he was called upon to decide whether they were entitled to "profit sharing bonus". The contention of the petitioners in this connection was that the notifications embody the agreements as made in the prescribed form, namely, form "C", and, as such, these must prevail over the other agreements, as Sub-section 2 of Section 10A provides that an arbitration agreement, referred to in Sub-section (1), shall be in such form as may be prescribed.

It appears that under the rules framed by the State Government in accordance with Section 38 of the Act, a form "C" has been prescribed for the above purpose and the agreements, as incorporated in the Government notifications appear to

have been made in this form and these were also signed on behalf of the petitioners as well as the workmen by the same persons who signed the original agreements and the signatures were also made on the same date on which the original agreements were signed. The original agreements were, however, also signed by the Deputy Commissioner of Labour and Conciliation Officer as the agreements were arrived at in course of conciliation proceedings. There is thus some apparent discrepancy in the agreements as to whether the reference to the Arbitrator was on the question of bonus without any qualification or profit sharing bonus.

The contention of the petitioners that the agreements as incorporated in the Government notifications should prevail, does not appear to be acceptable in view of the fact that according to the case of the petitioners themselves, as made out in paragraph 6 of the two writ petitions, the terms of the agreements arrived at between the parties were those incorporated in Annexures E and D respectively. Hence, in view of the above apparent discrepancy in the two documents executed by the parties on the same day, the question arises as to what was the nature of the bonus which the parties actually referred to the Arbitration for decision. In this connection, it will be relevant to consider what was the nature of the bonus as claimed by the workmen in the disputes which led to the conciliation proceedings in which the above agreements had arrived at.

The claim made by the workmen in this connection is embodied in the letter dated 21-6-1962 which contains a "charter of demands" of the workmen (Vide Annexure C of Writ petition 1105 and Annexure B of Writ petition 1106). In this, the bonus as claimed has been described as profit sharing bonus and the workmen claimed an amount equally to four months' salaries and wages for each of the years 1960-61 and 1961-62 on this account. Thus, the dispute between the parties in the conciliation proceedings actually related to the demand of profit sharing bonus, as made by the workmen. This being the subject of dispute between the parties in the conciliation proceedings and the agreements, referred to above, having been arrived at in course of these conciliation proceedings, it would appear that the word "bonus" was used loosely in the agreements as incorporated in Annexures E and D respectively and what the parties really intended to refer to the arbitration was the claim of the workmen for profit sharing bonus. In this connection, I may also refer to the following observations made in the report of the Bonus Commissioner for 1964:

"The concept of bonus is difficult to define in rigid terms but it is possible to urge that once profits exceed a certain base, labour should legitimately have a share in them. In other words, we think it proper to construe the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed." (Vide p. 19, Para 321).

The following observations made by the Full Bench of the Industrial Court, Bombay, are also relevant in this connection:--

"Labour as well as the working capital employed in the industry both contribute to the profit made and both are, therefore, entitled to claim a legitimate return out of the profit and such legitimate return, so far as labour is concerned must be based on the living wage standard. It is, however, to be remembered that a claim to bonus might be admissible even if the living wage standard were completely attained. It may, therefore, be stated that so long as the living wage standard has not been attained the bonus partakes primarily of the character of the satisfaction, often partial and temporary, of the deficiency in the legitimate income of the average worker in an industry and that once such income has been attained it would also partake of the character of profit sharing. Owing to this dual character of bonus it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple." (1949 ICR Supplement P. 173).

11. It would thus appear that the term bonus unless it is used with some qualifying word, such as, festival or customary, really implies the concept of giving to the workmen some share in the prosperity of the industry in which they are employed by giving them a share out of profits earned by the industry. Considering all the above aspects, it would appear that in the present cases the reference as made to the Arbitrator on the subject was really on the question as to what bonus the workmen are entitled to as a share out of the profits earned by the industry.

12. Bearing these aspects in mind, let us turn to the decision of the Arbitrator in the matter of bonus. The relevant portions of the Award run as follows:--

"With regard to the bonus the management filed their accounts to show that in view of the very low net profit and large prior commitments e. g. taxation, depreciation etc. they have no bonus to declare for the years 1960-61 and 1961-62 for the industrial complex as a whole. They also maintained that the Sugar Wage Board's recommendations are applicable as far as the Sugar Industry is concerned, and the bonus, if any, to be declared will be in accordance with those recommendations. Whether any bonus is admissible and if so what amount has not been calculated and communicated to the employees.

The position of the Labour Unions in regard to the bonus is that from 1947-48 to 1961-62 the Rohtas Industries have paid bonus varying from half-a-month to four months. This included the 1948-49 when the industry incurred a net loss of over 23 lacs. Also the quantum of the bonus had no relationship to the quantum of the net profit shown. The industry admittedly has made a profit of 66 lacs and 49 lacs in 1960-81 and 1961-62 respectively. They questioned the accuracy of the accounts furnished in a general manner.

I have heard the parties at length over several hearings and also the various definitions and descriptions of bonus. The concept obviously is yet to be clarified. These industries have been paying a dividend of between 8 and 10 per cent all these years to the shareholders and it cannot be said that the dividends have gone down during these two years. Taking into account all the facts, I would

award a bonus of one month to workers of Rohtas Industries and the Ashoka Cement Ltd. for the years 1960-61 and 1961-62.

The question arises whether in view of the anticipated acceptance of the Sugar Wage Board's recommendations this award should apply to the Sugar industry also. It is obviously applicable to the cement as well as the other industries. Clause 18 of the agreement permits the employees to raise the demand of bonus during the term of agreement. The bonus, in accordance with the Sugar Wage Board, has not been communicated to the employees yet. In view of the interrelated nature of the various industries and the fact that labour is exchangeable, the employees press that they should get the benefit of the general award of bonus for the workers in the sugar industry also. The employees' case is based on the unified accounts of the industrial complex as a whole. I am, therefore, inclined to extend the same general bonus to the employees of the sugar industry also unless the bonus calculated of the separate working of the sugar industry indicates that a higher bonus will accrue, which to my mind seems unlikely."

On a perusal of the above extracts from the Award, it would appear that the contention of the petitioners that the Arbitrator has altogether ignored the principles laid down in the Full Bench Formula and has come to his finding merely on basis of the dividend declared by the petitioners in previous years does not appear to be tenable. He has distinctly referred to the claim made by the petitioners about no bonus being payable, as according to the accounts, as filed by the petitioners, the net profits in the years in question are very low, after allowing for the taxation etc. This contention of the petitioners was evidently based on the Full Bench Formula of the Industrial Tribunal. The Arbitrator also referred to the fact that the correctness of the accounts furnished by the petitioners was challenged by the Labour Union.

He further referred to the fact that the Industries had admittedly made a profit of Rs. 66 lacs and Rs. 49 lacs in 1960-61 and 1961-62 respectively and the further fact that the industries have been paying dividends of 8 to 10 per cent to the share-holders in each year and that the same had not gone down during the years in question. Thereafter, his observation was that after taking into account all the facts he thought it proper to allow bonus equivalent to one month's salary in each of the years in question. It would thus appear that the reference about payment of dividend at the rate of 8 to 10 per cent in previous years was made by the Arbitrator merely for showing the general prosperous condition of the industries and the payment of dividends at the same rate during the years in question also was referred to with the same object

This had evidently some bearing in showing how much profits the industries were earning. As such, it cannot be said that these considerations were altogether irrelevant. In this connection, it may be mentioned that according to the Full Bench Formula, a dividend of 6 per cent only on the paid up capital would be reasonable and proper and the dividend actually paid to the share-holders in the

years in question was far in excess of this rate. I may add that it was mentioned in paragraph 4 of Annexure H in writ petition 1105, namely, the written statement filed before the Arbitration by the workmen, the management had paid dividend at the rate of 8 per cent in 1961-62 and 10 per cent in 1960-61 and this was not disputed in the Rejoinder (Annexure I) which the petitioners filed before the Arbitrator.

In para 15 of the Rejoinder it was merely mentioned that the rates of dividend as mentioned in para 4 of the workmen's written statement referred to the dividend on ordinary shares only and the rates of dividend of preferential shares were much lower. The Arbitrator, no doubt has not given any date as to how he arrived at the figure of one month's wages, as being the proper amount of bonus for the years in question, but as I have already mentioned, it was not necessary for the Arbitrator to specify in his Award the reasons and grounds on basis of which his conclusions were drawn or the process by which the same was arrived at. In view of all the aspects considered above, it would appear that the contention of the petitioners that the Arbitrator has based his decision on the question of bonus by considering Irrelevant materials and ignoring the accepted principles on basis of which bonus is to be determined is not tenable and the Award is not liable to be quashed on this ground.

13. I next turn to the objections urged by the petitioners in connection with the Award of the Arbitrator on the point of dearness allowance. The relevant portion of the Award runs as follows:--

"The agreement mentions that only in the case of abnormal increase in the all-India consumers" price index revision of dearness allowance arises and that should be negotiated mutually between the management and the Union. This issue covers all the years from 1960-81 to 1963-84. The Index of figures has been more or less stationary at about 124 from June to December, 1960. It has steadily risen from 123 to 129 in 1961, from 127 to 131 in 1962 with the maximum of 134 and from 130 to 140 in 1963. Detailed recommendations have been made by the Cement and Sugar Wage Boards as to the adjustments that should be made in the dearness allowance with variations of all-India consumers" price index. This should continue to be applicable respectively to these industries but there are several other industries which are not governed by any agreed set of recommendations. For the employees of such other industries of the Rohtas Industries Ltd., and the Ashoka Cement Ltd., my award would be that their dearness allowance should be fixed in accordance with the scale prescribed by the Cement Wage Board. These industries work all the year round like the Cement Industry and unlike the sugar industry."

The contention of the petitioners is that under the terms of the reference in both the cases, the Arbitrator had to determine whether the workmen were entitled to dearness allowance in accordance with the Memorandum of Settlement dated 25th June, 1960 with respect to the workmen of Rohtas Industries Ltd. and the Memorandum of Settlement dated the 22nd August, 1960, with respect to the

workmen of Ashoka Cement Ltd. Although the terms of the Memorandum of Agreement dated the 25th June, 1960, as incorporated in Para 15 of the Memo applicable in case of workmen of Rohtas Industries Ltd., specifically provided for the revision of dearness allowance only in case of an abnormal change in the All India Consumer's Price Index (Base 1949-100), the Arbitrator has allowed an increase in the dearness allowance without determining whether there has been any abnormal increase in the aforesaid price index.

As for the workmen of Ashoka Cement Ltd., the contention is that the terms of the Memorandum of Settlement dated the 22nd August, 1960, do not provide for any increase in the dearness allowance so far as the workers employed in the Steel Foundry Section of these petitioners are concerned and the Arbitrator has allowed an increase in the dearness allowance with respect to them also without deciding the question as to if these workmen are entitled to an increase in the dearness allowance in accordance with the above Memorandum of Settlement. The other objection in both the cases on the point of dearness allowance is that the Arbitrator has allowed an increase in the dearness allowance on the scale prescribed by the Cement Wage Board with respect to the Industries of the petitioners other than the cement and sugar industries also without due consideration of the fact that so far as the cement industries are concerned, there is provision for an Increase in the price of cement in accordance with the Increase in the wages of the workmen, but there is no such corresponding provision with respect to the products of other industries.

I may mention here that Para 12 of the Memorandum of Settlement dated 25th June, 1960, so far as the Rohtas Industries and their workmen are concerned, provided that the recommendations of the Cement Wage Board shall be implemented with respect to the workmen of the Cement Factory in terms of the Government of India Resolution No. WB-(57) dated the 29th February, 1960 and, similarly, the decision of the Government on the expected recommendations of the Central Wage Board for Sugar Industry shall apply to the employees of the Sugar Factory and, as such, the provisions of Para 15 (as well as some other paras of the Memorandum of Settlement) do not apply to workmen of Cement and Sugar Industries.

So far as the Memorandum of Settlement between Ashoka Cement Ltd., and their workmen is concerned, I have already referred to the relevant terms of the Memorandum of Settlement in Para 3 of this Judgment and there cannot be any doubt in view of these terms that according to the agreement as arrived at on 22nd August, 1960, the recommendations of the Cement Wage Board are to be Implemented in all matters including dearness allowance, so far as the cement factory is concerned. It was because of this that the validity of the Award on the point of dearness allowance has not been challenged so far as the workmen employed in the Cement Factory of Ashoka Cement Ltd., and the Cement and Sugar Factories of Rohtas Industries Ltd., are concerned.

14. The question whether the workmen employed in the Steel Foundry section of

the Ashoka Cement Ltd., were also entitled to an increase in the dearness allowance in accordance with the terms of the agreement incorporated in the Memorandum of Settlement dated the 22nd August, 1960 really depends upon the interpretation of the terms of Paras 2 and 4 of the Memorandum of Settlement which have already been quoted in Para 3 of that Judgment. The contention on behalf of the petitioners is that in view of the words "excluding Steel Foundry Section" as incorporated within brackets in the first sentence of Para 2, all the terms as incorporated in this para must be deemed to be applicable to the workmen other than those employed in the Steel Foundry Section.

It is further contended that as there is no other term in the above Memorandum of Settlement on the point of any increase in the dearness allowance in future and, on the contrary, para 4 provides that the workmen shall not make any demand involving financial obligation excepting future bonus, the workmen of the Steel Foundry Section were not entitled to any increase in the dearness allowance at all during the period of four years during which the above Memorandum of Settlement was to remain in force. On the other hand, the contention of the workmen is that the provisions in para 2 should be considered as a whole in determining the question and on proper interpretation of this para the workmen of the Steel Foundry Section of the Ashoka Cement Ltd., are also entitled to increase in the dearness allowance.

Now whatever might be the actual position on this point, it is clear from the Award made by the Arbitrator that he has allowed an increase in the dearness allowance with respect to the workmen employed in the Steel Foundry Section also of the Ashoka Cement Ltd., without deciding the question whether they also were entitled to any increase in the dearness allowance in accordance with the Memorandum of Settlement dated the 22nd August, 1960. In view of the controversy as to whether these workmen were entitled to an increase in the dearness allowance in accordance with the terms of Memorandum of Settlement dated the 22nd August, 1960 and in view of the fact that under the terms of the reference to the Arbitrator he had to decide whether the workmen were entitled to any increase in the dearness allowance in accordance with the Memorandum of Agreement before deciding the extent of such increase, the Arbitrator was bound to decide this question before determining the quantum of increase in the dearness allowance.

As he failed to decide this preliminary question, his Award relating to the increase of dearness allowance cannot be sustained so far as the workmen employed in the Steel Foundry Section of the Ashoka Cement Ltd., are concerned and has thus got to be quashed to this extent. As already mentioned, the validity of the Award on the point of dearness allowance so far as the workmen of the Cement Factory of Ashoka Cement Ltd., are concerned, was not disputed.

15. Coming now to the Award on the point of dearness allowance with respect to the workmen of Rohtas Industries Ltd., it is clear from the relevant portion of the

Award, quoted above, that the Arbitrator was fully conscious of the position that under the terms of the Memorandum of Settlement dated 25th June, 1960, an increase in the dearness allowance was to be allowed only if there was an abnormal change in the All India Consumer's Price Index (Base 1949-100). In view of the terms incorporated in para 15 of the Memorandum of Settlement dated the 25th June, 1960, this was to be the determining factor in considering whether the workmen were entitled to any increase in the dearness allowance.

The Arbitrator referred to the fact that the index of the price figures has been more or less stationary at about 124 from June to December, 1960 and it has steadily risen from 123 to 129 in 1961, from 127 to 131 in 1962 with the maximum of 134 and from 130 to 140 in 1963. On basis of these figures he found that the workmen were entitled to an increase in the dearness allowance. It was contended that the Arbitrator merely found that there has been a steady rise in the price index and not that there has been any abnormal rise therein and as such, he was not entitled to allow any increase in the dearness allowance in view of the terms of the Memorandum of Settlement dated the 25th June, 1960.

A careful perusal of the relevant portion of the Award, however, shows that the reference by the Arbitrator about the steady rise in the index of prices was made not in comparison with the figures that prevailed in 1960, but in connection with the increases that took place during each of the years 1961, 1962 and 1963, there having been a steady rise during 1961 from 123 to 129, during 1962 from 127 to 131 and during 1963 from 130 to 140. That does not mean that the Arbitrator did not consider the increases during these years as being abnormal in reference to the price index prevailing in June, 1960, when the aforesaid Memorandum of Settlement was executed. It was open to the Arbitrator to hold that the increases in the figures of price index by 5 during 1961, by 7 during 1962 and by as much as 16 during 1963 over the figure 124 prevailing in June, 1960 were abnormal.

Although the Arbitrator has not expressly stated in his Award that such increases were Abnormal, the very fact that he was fully Aware of the position that the increase in dearness allowance could be allowed only in case of abnormal increase in the price index would clearly indicate that he had allowed the increase in the dearness allowance because he considered the above increases in the price index to be abnormal. Hence the contention about the invalidity of the Award on the point of dearness allowance payable to the workmen of the Rohtas Industries Ltd., on this score cannot be sustained.

16. As to the other objection, namely, the objection relating to the quantum of the increase in the dearness allowance, it must be pointed out that although the recommendations of the Cement Wage Board on this point applied only to the Cement Industries, the hands of the Arbitrator were not fettered in any manner in deciding as to at what rate the increase in the dearness allowance should be allowed by him. It was evidently open to him to allow an increase in the dearness allowance with respect to the workmen employed in the industries other than

cement industries also on the same scale as allowed by the Cement Wage Board for the workmen in the cement industry.

The mere fact that there is some provision for increase in the price of cement in accordance with the increase in the wages of the workmen employed in this industry and there is no corresponding provision so far as the other industries are concerned, did not in any way debar the Arbitrator from allowing the same scale of dearness allowance, as prescribed by the Cement Wage Board for the cement industry, if he considered this to be proper. That evidently is no ground whatsoever for holding that the decision of the Arbitrator on this point is illegal or ultra vires. There is thus no merit in this objection also on behalf of the petitioners.

17. In view of the findings above, it follows that there is no merit in the present petitions except with respect to the objection relating to the increase in the dearness allowance regarding workmen employed in the Steel Foundry Section of the Ashoka Cement Ltd. I may also mention here that during the pendency of the present writ petitions, there was some controversy between the Rohtas Staff Union and the petitioners as to the applicability of the aforesaid Award to the workmen of the staff category. This controversy has, however, been set at rest by a Memorandum of Settlement arrived at between the petitioners and the workmen of the staff category on 15-2-1965 under the terms of which the parties agreed that the final outcome of the present writ petitions shall be acceptable and applicable to the workmen of the staff category also. In view of this agreement, it is quite unnecessary to enter into the question of applicability of the terms of the Award to the workmen of the staff category of the present petitioners.

18. In the result, M- I. C. 1105 of 1964 is dismissed with costs of Rs. 200/- only payable to Respondent No. 1. M. J. C. 1106 of 1964 is allowed in part and the Award of the Arbitrator is hereby quashed only as regards the applicability of the decision regarding the increase in the dearness allowance with respect to the workmen employed in the Steel Foundry Section of Ashoka Cement Ltd. It will be open to the Arbitrator to give a fresh decision regarding the question of dearness allowance, so far as the workmen employed in the Steel Foundry Section of the Ashoka Cement Ltd., are concerned, in accordance with the terms of the reference under which the Arbitrator was appointed. As this case has succeeded only in part, it is ordered that the petitioner in this case shall pay Rs. 100/- as cost to respondent No. 1.

Narasimham, C.J.

19. I agree.