MANAGEMENT OF THE KIRLAMPUDI SUGAR MILLS LTD.

v.

INDUSTRIAL TRIBUNAL, A.P. & ANR.

August 26, 1971

[G. K. MITTER, C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

Industrial Dispute—Recommendations of Central Wage Board for sugar whether vitiated by fact that it had fixed uniform wages region wise without further classification within each region—Tribunal's jurisdiction to go into question of financial capacity of company to implement recommendations of Wage Board—Company whether had financial capacity.

The Kirlampudi Sugar Mills Ltd. was started in 1951 as a small unit and later was increased to a larger crushing capacity of 1000 tons. By 1963 the factory got into financial embarrassment. In the middle of that year the present management took over the factory on the specific assurance of the Government that they would provide for and give all facilities to enable them to run the factory. After the management was taken over there were disputes between the management and workers with the result that they referred various matters for adjudication including the claim for implementation of the recommendations of the Central Wage Board for sugar. The disputed items related to categorisation of workers their fitments, fixation of work load, the demand for increase of Rs. 10 to be given to every worker over the basic wage implementation of weightage, dearness allowance. the demand for giving grades and for giving retrospective effect etc. On issue No. 1A the Tribunal held that categorisation of workers and their fitments and work load should be in accordance with the recommendations of the Wage Board; it decided in favour of the management in respect of certain categories of workers but in respect of some others it gave relief to the workers. The Tribunal further held in respect of issue 2 and 5 before it that the financial capacity of the Appellant was not such as to justify an increase of Rs. 10 to all the workers over the basic wage and dearness allowance or the payment of Rs. 5 to workmen for implementation of the weightage recommended by the Wage Board. Appeal No. 1602 of 1966 was filed in this Court by special leave by the management against the Award of the Tribunal in respect of issue 1A in so far as it went against them. Appeal No. 1603 of 1966 was filed by the workers against the Tribunal's decision on issues 2 and 5 and that part of issue 1A which went against them. The questions that fell for consideration were : (i) whether the recommendations of the Wage Board were vitiated by the fact that they had fixed the wages uniformly region-wise without further classification within each region: (ii) If they were valid, whether the Tribunal could go into the question of the financial capacity of the company to implement them; (iii) whether the company had the financial capacity to implement the recommendations.

HELD : The Wage Board following the principles laid down by this Court has considered the capacity of the industry region-wise and has also fixed wages different from region to region having regard to the difference in the capacity of the Industry region-wise. Further it has given good reason for not furnishing a criteria for further classification of the industry within the region. In these circumstances prescribing the same wage for all units of industry in the same region was justified and the fact that the

A industry in the region had not been divided into classes could not vitiate the recommendation of the Wage Board. [441 F—G]

Workmen of Shri Bajrang Jute Mills Ltd. v. *Employers of Shri Bajrang Jute Mills Ltd.*, [1969] 2 S.C.R. 593, explained and distinguished.

Express Newspaper (P) Ltd. v. *Union of India & Ors.*, [1959] S.C.R. 12 and *French Motor Car Co. Ltd.* v. *Workmen*, [1963] Supp. 2 S.C.R. 16,
B referred to

However, notwithstanding the fact that a fair wage has been fixed by the Board which would be applicable to all the units in the region for which wage has been fixed, it may be open to any particular unit to plead that in fact its financial position is not such that it can bear the burden of implementing the recommendations. The justification of the plea of want of financial capacity will depend upon the evidence of its financial position
C over a period of years, to show that it cannot bear the burden or that it is only a temporary or fortuitous situation with every possibility of financial improvement in the immediate future [442 E; 443 C]

Ahmedabad Mill Owners' Association etc. v. *Textile Labour Association*, [1966] 1 S.C.R. 382, relied on.

The Appellant's balance sheets for the years 1960 to 1970 for a period
D of 10 years showed that except for the year ending 30-6-69 the company was not in a position to declare any dividends. Though the factory appeared to have been expanded after 1964 to 300 tons capacity it did not show uniform net profits; on the other hand losses continued. The profits that it made in any year seemed to be consumed by losses of the previous years. Various factors contributed to financial unsteadiness. [448 G—H]

This being the position the Tribunal was justified in holding that the
E Appellant did not have the financial capacity to bear the burden of payment of Rs. 10 increase and Rs. 5 as weightage in accordance with the recommendations of the Wage Board. On this conclusion and also on an examination of the relevant material it was evident that the company was not in a financial position to meet the burden of implementing the recommendations of the Wage Board. Despite this the company had implemented the award in respect of a large number of workers both as to categorisa-
F tion and fitment except in regard to four categories. The claim of the Respondent workmen for categorisation and fitment in accordance with the Award in regard to these could not, in the circumstances, be accepted. [448 H—449 G]

CAVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1602 and 1603 of 1966.

G Appeals by special leave from the Award dated November 19. 1965 of the Industrial Tribunal, Andhra Pradesh, Hyderabad in I.D. No. 23 of 1965.

K. Srinivasamurthy, Naunit Lal and *Swaranjit Sodhi* for the appellant (in C.A. No. 1602 of 1966) and the respondent in C.A. No. 1603 of 1966).

H *M. K. Ramamurthi* and *Vineet Kumar*, for respondent No. 2 (In C.A. No. 1602 of 1966) and the appellant (in C.A. No. 1603 of 1966).

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J. These are two appeals by Special Leave. Civil Appeal No. 1602 of 1966 is by the Management against the Award passed by the Industrial Tribunal on a reference made by the Government for categorisation of workers, their fitments, fixation of work load, the demand for increase of Rs. 10/- to be given to every worker over the basic wage, implementation of weightage, dearness allowance, the demand for giving grades and for giving retrospective effect etc. Civil Appeal No. 1603 of 1966 by the Workmen is against the same Award for disallowing the increase of Rs. 10/- and the weightage of Rs. 5/- and also against the fitment of certain categories of workers. The Tribunal held that the financial capacity of the Appellant was not such as to justify an increase of Rs. 10/- to all the workers over the basic wage and dearness allowance. On the same grounds it also disallowed the payment of Rs. 5/- to workmen for implementation of the weightage recommended by the Wage Board for Sugar Industry. These were the subject matter of issue 2 and 5 of the reference made to the Tribunal. So far as issue 1A is concerned, it held that categorisation of workers and their fitments and work load should be in accordance with the recommendations of the Wage Board for Sugar and even as to these it decided in favour of the management in respect of certain categories of workers but in respect of some others, it gave relief to the workers. The employers appealed against that part of issue 1A which was decided against them, while the Workmen's Appeal is against the finding of issues 2, 5 and part of 1A which was against them. We will first take up the appeal of the Management.

It appears that the Kirlampudi Sugar factory was started in 1951 as a small unit and later was increased to a larger crushing capacity of 1,000 tons which according to the Tariff Commission would not be considered economically profitable, though according to the Sugar Wage Board it would be. By 1963 the factory got into financial embarrassment as it had to pay heavy debts to the Government on account of Sugar cess, cane prices payable to the growers and Income-tax. These demands it is alleged practically brought the factory to a stop, when in the middle of 1963 the present management took over the factory on the specific assurance from the Government that they will provide for and give all facilities to enable them to run the factory. After the management was taken over there were disputes between the Management and workers with the result that they referred various matters for adjudication including the claim for implementation of the wage Board's recommendation which was alleged to have been implemented by the former management as early as 1961-62. It was the case of the workers that that implementa-

A tion was not satisfactory and it was their demand that the sugar wage board's recommendations should be implemented. The management raised a specific objection before the Industrial Tribunal that the reference relates to a wholesale promotion of workers from one grade to the other under the guise of fitment under the Wage Board's recommendations which is illegal and B without jurisdiction; and in any case the question of promotion, categorisation and fitment is a managerial function in which the Tribunal cannot interfere unless it can be established that the management acted *mala fide* or it resorted to unfair practices. It was further pleaded that the factory had not the financial capacity to implement the demand. One of the grievance of the C Appellant was that though the Tribunal found that it had not the financial capacity to meet the additional burden of the demands made by the workmen it granted large scale promotions which it had no jurisdiction to grant. Despite this the management states that it had implemented the Award in most of the cases and challenged it in respect of some only.

D It may be mentioned that the Central Wage Board for Sugar was appointed in terms of paragraph 25 of Chapter XXVII of the Second Five Year Plan. This Wage Board for Sugar Industry divided India into 4 regions and each region included every State containing even a single unit unlike that adopted by the Tariff Commission which in its Report on the cost structure left E out some of the States from the 4 divisions. It then considered the wage structure, categorisation etc. for each of the said regions, in relation to a fair cross-section of the Industry in each of the regions. In comparison with this method, the Jute Wage Board had taken India as a whole and fixed a uniform rate for the Jute industry. The first contention which has been urged is F that the recommendations of the Wage Board were not binding in view of the fact that it was not a statutory board but was only a recommendatory one and the Tribunal could not implement them as a whole because it had recommended that fitments and categorisation should be affected by recourse to Tripartite machinery. The case of *Workmen of Shri Bajrang Jute Mills Ltd.,* v. G *Employees of Shri Bajrang Jute Mills Ltd.*(1), is cited as an authority for the proposition that as the procedure prescribed therein was not valid, the recommendations of the Wage Board were declared to be invalid and inapplicable to the Jute Industry. The learned Advocate on behalf of the Respondents raised a preliminary objection to the maintainability of this contention as this issue had neither been referred to the Tribunal, nor has it H been urged before it nor had a ground been taken in the Special Leave Petition. He seeks to distinguish the case of the Bajrang

(1) [1969] 2 S.C.R. 593.

Mills, as in that case there was a specific issue while there is none in this case. In answer it is pointed out that the contention raised on behalf of the Respondents is implicit in issue 1(a) which is as follows :

> 1(a) "Whether the demand for categorisation of workers and their fitment and work load should be in accordance with the recommendations of the Wage Board for Sugar industry is justified".

The Appellant had in its statement before the Tribunal in para 9 categorically challenged the recommendations of the Wage Board in these words : "It may be noticed even though the Wage Board recommendations are not binding, in spite of huge losses the management went out of the way and implemented the same". In the Special Leave Petition also in paragraph 2 the Appellant had challenged the jurisdiction of the Tribunal "to go into the question of the capacity to pay of an individual unit in respect of one of the recommendations of the Wage Board for Sugar industry when such recommendations had been made for the industry as a whole and agreed to by the Management itsel".

It is therefore contended that if the financial capacity is taken into account for placing fitments on the basis of Bajrang Jute Mills, no other question arises. In the *Bajrang Milis* case(1) it was held that fixation of fair wage depends on the financial capacity but once when the Tribunal had held that the Appellant did not have the financial capacity the categorisation and fitments directed by it in its Award are invalid. The Tribunal is concerned with the implementation of the Wage Board recommendation forgetting that it cannot do so when the implementation of those recommendations relating to categorisation and fitment cannot be effected without recourse to the Tripartite machinery. It is also contended that categorisation and fitment is a managerial function and requires technical knowledge of the various duties and functions which each of the category of workmen have to discharge. The following contentions have been urged, namely :

(1) The Wage Board recommendations having regard to the case of Bajrang Jute Mills are invalid and cannot be enforced, inasmuch as it has fixed a uniform wage for the entire region without further dividing the industry in the region into classes of units according to their capacity namely region-*cum*-industry for fixation of the wage structure for those classes of units. At any rate since what is prescribed in the report is only recommendatory, unless there is a capacity to pay, no one can claim its implementation as of right.

(1) [1969] 2 S.C.R. 593.

A (2) The Appellant has not the financial capacity to implement the Award which has been held by the Tribunal to be a fact. On this score itself it cannot implement the Award.

(3) In para 263 of the Wage Board recommendation of 1960 that when there is a difference between management and B labour regarding fitment the Tripartite machinery should be brought into existence. The Tribunal was wrong in thinking that the Wage Board was giving an example of border-lines cases where there may be a difference of opinion and it is only in those cases that the Tripartite machinery in the case of fitment is to be resorted to.

C (4) Fitment is a managerial function and unless the Tribunal finds that the Act of the management is *mala fide* or it has resorted to unfair practices it is not justified in interfering with the fitments effected by the management.

(5) In any case in respect of certain specific fitments the Tribunal was in error and acted without evidence.

D Before dealing with these contentions it is necessary to consider the preliminary objection raised on behalf of the Respondents that before the Tribunal the Appellant did not object to the implementation of the Wage Board on the ground that its recommendations were not industry-*cum*-region wise or that it had not divided the industry into various classes and fixed a wage E for those classes in that region, and in any case no such issue was referred to the Tribunal unlike in the *Bajrang Jute Mills* case(1). In that case what was referred to the Tribunal was whether the demand of the workmen in Shree Bajrang Mills Ltd., for implementation of the recommendations of the Central Wage Board for Jute Industry is justified, and if so, to what extent. In this case issue 1A did not specifically raise an objection to the F implementation of the Sugar Wage Board's recommendations in general terms but issues 1, 2, 4, 5 & 6 did raise the question whether the Board was justified in its recommendations regarding categorisation of workers, fitment, increase of Rs. 10/- to every worker over the basic wage, dearness allowance, the minimum wage, the demand for fixation of work-load and the demand G for implementation of weightage. Apart from this a question seems to have been raised that the Tribunal could not implement the Wage Board recommendations because it had envisaged the implementation of the categorisation etc. through the Tripartite machinery, as such as Tribunal had no jurisdiction to implement it. It would appear from the Award that the learned Advocate H for the Appellant had challenged the jurisdiction of the Tribunal to fix the workload or undertake the fitments in view of the recommendations in paragraph 263 of the Wage Board's report

(1) [1969] 2 S.C.R. 593.

that fitments have to be effected by the Tripartite machinery to be appointed by the Government. Even in the statement of claim filed on behalf of the management it was said that though the Wage Board's recommendations are not binding in spite of the huge losses the management went out of the way and implemented the same. The fact that it was said that the Wage Board recommendations are not binding is pressed into service to support the contentions that the validity of the recommendations of the Wage Board was challenged. While we are inclined to agree with the submission of the learned Advocate for the Respondents that nowhere except in the statement of the case before this Court has a specific plea that the recommendations of the Wage Board not being in accordance with the well accepted principles laid down by this Court in the several cases to which reference has been made cannot be implemented and on that account the Tribunal has no jurisdiction to implement those recommendations it may nonetheless be pointed out that issue 1A and other issues in terms challenge the implementation of the recommendations. Even if we permit the learned Advocate for the Appellant—and we think there is justification for it—to challenge the Wage Board's recommendations generally, for reasons which we will presently give, those recommendations do not suffer from any vice but on the other hand the Board has fixed a fair wage for the industry in accordance with the principles laid down by this Court.

Since a good deal of argument is based on the recommendations of the Wage Board it may be profitable to examine generally the factors which were taken into consideration in fixing the wage structure for the industry. The Wage Board as has already been noticed adopted the method employed by the Tariff Commission by dividing the country into four zones or regions but unlike it included every State in each region which had even one unit. It further took these regions which were considered for fixation of price structure of sugar also for wage structure in this industry. In adopting this course the Wage Board took into consideration the seasonal nature and the duration, the sucrose content of sugar cane and its yield which varies from region to region. It was noticed that the duration of seasons vary somewhat widely from area to area depending on the availability of cane and the year to year variation. As a consequence of some of the factories in the South owning their own sugar-cane farms while this is not so in the North, the Southern factories do not suffer from the handicap of Northern factories which have to get sugar cane from nearby growers depending on the conditions of the crop in the vicinity which is not destroyed by pest or is unsuitable for any other reason. for otherwise to get the sugar-cane from growers from long distance would involve transport

A costs. This disadvantage the Southern factories do not have. The quality of cane as determined by the sucrose content varies from area to area depending on climatic conditions, irrigation facilities and cane development activities. Factories in Maharashtra and to some extent those in the North enjoy these adventages. Their recovery percentage is higher than in the North.
B Thus the average percentage of recovery of sugar in Maharashtra was noted to be the highest as against those in U.P. and Bihar and also as compared with the All India average. The variation in the yield of cane per acre was also taken into consideration; for instance in Bombay it is much higher than in the North. The Board indicated the main factors responsible for variation in
C the yield of sugar cane in different regions due to : (1) Improved variety of cane; (2) irrigation facilities; (3) ecological factors; and (4) improved methods of cultivation. The difference in the case of yield in the various areas has been one of the factors which the Board said had persuaded it to divide the country into four regions.

D Though the industry is rural based, it was stated the price of essential commodities in townships where sugar factories are located, did not vary appreciably from the urban areas. In spite of the urban amenities not being available in these factory areas, the Board noted that while the impact of the wages it worked out, on the economy of the country has been taken into account,
E it was not proper to take agricultural wages as the prevailing rate of wages for comparison. Further it appeared to the Board that the Sugar industry was a highly regulated industry where the minimum cane price is fixed by the State and higher price depending upon the quality of the cane is to be paid according to the price linking formula laid down by the State and that even
F the ex-factory price for the finished product is fixed by the State in the North and some other States have fixed prices at least for one of its by-products and molasses. The price 'fixation in the North it is observed has its effect on the price of sugar in the South where normally sugar cannot be sold for a price higher than fixed in the North plus the freight.

G The Board also set out the procedure followed by it in ascertaining the financial capacity and profitability of the industry region-wise by calling for the balance-sheets of all the factories for a period of 10 years and undertook detailed studies for 8 years beginning from 1951 which corresponds to the beginning of the First Five Year Plan. However, out of the balance-sheets
H of 118 Companies, balance-sheets for 8 years were available in respect of 87, 8 Companies supplied balance-sheets for 7 out of 8 years and among the rest balance-sheets were available for one or more years. The Board thought that this data is fairly

well, if not absolutely, comparable from year to year. Where a Company owned two or more factories in the same State or region it was decided to consider only the combined balance-sheets for the number of factories covered, because splitting the combined balance-sheets over the number of factories did not serve the end in view. However, where a Company had under its management two or more factories in different States but in the same region, it was decided to exclude it from State-wise study and include it in the regional total. It also took into consideration some of the Companies which along with the sugar manufacture carried other manufacturing activities. Then it also applied the dividend tests, examined the main profitable ratio, considered the total dividend as coverage by paid up capital, compared gross profits and total capital employed and profits and profitability in relation to per day crushing capacity from 1955-58. A region-wise analysis of financial data was made and the same was also distributed in different ranges of daily crushing capacity. In so far as South region is concerned in which the Appellant's unit is located it was observed that "the factories seem to have been more or less evenly distributed among all the regions". Analysis of financial data region-wise was also made according to different crushing capacity ranges for each of the years 1955 to 1958 under different heads namely, gross profits, sales, total capital employed, profits after tax, ordinary dividend, ordinary paid up capital total dividends, total paid up capital, profits before tax, taxation provision, retained profits and net worth.

A B C D E

After taking into consideration the several factors in detail the conclusions of the Tribunal are summed up as under :

(a) "the profit margin whether on sales or on total capital employed, or on the net worth does not appear to bear any set relationship increase or decrease consistently—with the size of the Company. The trends are mixed and irregular. This observation is equally applicable to other ratios and also to the allocation of profits. It does not seem possible from these studies to locate any optimum size of the factory in respect of any region. The reason probably is that profits depend not only on the size of the factory but on various other factors *e.g.* efficiency of management, condition of machinery, availability of raw materials and efficiency of workers;

F G

(b) However, considering the overall position it is evident that with no outside competitor in the field, with a consuming public increasing and with national income which is rising, the industry has a good future.

H

A 'In spite of high taxation, high Government imposts by way of cess rise in price of raw material rise in freight charges and in some regions higher labour charges owing to recent revision of wages the demand for white sugar has been increasing and most of the existing sugar mills have been fairing well. Many of them have ex-
B panded their capacity and new units are fast coming into operation. Progress of the industry has been rapid.... but the increase in taxes has hit the retained earnings particularly in the case of North and Central region companies.

C (c) Taken region-wise, the financial position of Maharashtra is the best. It has natural advantages. The yield of cane per acre is higher. Its quality is better. A large number of the factories have their own farms. The cooperative have also assured supply of cane. The cane growers are the share-holders. Then comes the South region. North region occupies the
D third position and Central region the last. In cess Punjab, West Bengal, Madhya Pradesh, Rajasthan, Madras and Kerala enjoy some advantage with no or lower rates per maund of cane.... It may be added here that recovery in some of these States is lower than the average of the country'.

E It would appear therefore that the Board took into consideration the special features of the sugar industry and all the relevant factors with great care and perspicuity and fixed a fair wage for the industry in each of the regions. What is was called on to assess is the fair wage which as it may be noticed according to the Report of the fair wage Committee was that which while
F determining the capacity of an industry to pay, it considered it to be wrong to take the capacity of a particular unit or the capacity of all industries in the country, into account. The relative criterion should be the capacity of a particular industry in a specified region and as far as possible same wages should be prescribed for all units in that region. It will obviously not be possi-
G ble for the wage fixation Board to measure the capacity of each of the units of an industry in a region, as such the only practical method is to take into consideration a fair cross section of that industry. This is what in fact the Board has done. The minimum wage that has to be paid is as interpreted by this Court in *Express Newspapers (Pvt.) Ltd.* v. *the Union of India & Ors.*(1)
H different from the subsistence wage "which has got to be paid to the workers irrespective of the capacity of the industry to pay while the minimum wage is something more than the bare mini-

(1) [1959] S.C.R. 12.

mum or subsistence wage. It further observed "The minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported". In that case the Court also observed at page 90 : "that the capacity of an industry to pay should be gauged on an industry-*cum*-region basis after taking a fair cross section of that industry. In a given case it may be even permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay class-wise". The classification into classes, it will be seen is not an obligatory one but is required only in cases where otherwise a fair wage cannot be determined. Any injunction that the industry in a region should in all cases be divided into classes in determining a fair wage for that industry would on the other hand likely to introduce greater disparity.

A reference has been made to the case of *French Motor Car Co. Ltd.* v. *Workmen*(1) for the proposition that large units ought not be compared with small units even where the Board is considering the wage structure on industry-*cum*-region basis. No doubt in that case the Tribunal had gone into the history of the wage revision in the undertaking and having regard to a large increase in the cost of living found that a case for further revision was made out notwithstanding the fact that wage scales were the highest in the industry. In Appeal this Court held that it was settled law that in fixation of wage scales, dearness allowance and similar conditions of servic an industrial Court has to proceed on industry-*cum*-region basis and compare similar concerns in the region which would be those in the same line of business as the concern in dispute. But such comparison must not be between a small struggling concern and a large flourishing one.

These cases were considered in *Workmen* v. *Bajrang Jute Mills*(2) to which one of us was a party (Vaidialingam, J.). That case was considering the Report of the Jute Wage Board which in making recommendations for the industry adopted a different approach. The Wage Board took the whole of India as one unit while in fact almost all the Jute Mills were situated in West Bengal and a few in Bihar and still fewer in Andhra Pradesh. What the Wage Board did was to compare 20 Mills from West Bengal and 9 mills from the rest of India as representing a fair cross section of the industry. The Respondents have a fairly small unit in Andhra Pradesh which was considered as a comparable unit with two larger mills in the State and with some of the prosperous Mills in West Bengal. The management of the Mill refused to accede to the demand of the workman

(1) [1963] Supp. 2 S.C.R. 16. (2) [1969] 2 S.C.R. 593.

A to pay the wages in accordance with the recommendations of the Wage Board, fixing uniform wage scale for the industry on the plea that the Mill had no financial capacity to bear the burden of the wage scale. On the dispute being referred to the Tribunal it upheld the claim of the management. This Court in Appeal sustained the Award of the Tribunal that the payment of the B workmen for implementation of the recommendation of the Wage Board is not justified. In this connection at page 609-610 it was observed by reference to the manner in which the Wage Board had laid down uniform scales for the entire industry irrespective of where its several units were situate and of the different conditions prevailing in various areas, that it would have been better C if it had "considered the units in each area separately and determined the wage-scales for each such area by taking from that area a representative cross-section of the industry where possible or where that was not possible by taking comparable units from other industries within that area, thus following the principle of industry-*cum*-region". It was further observed :

D "It is true that in doing so uniformity of wage scales for the entire industry would not have been attained. But in a vast country like ours, where conditions differ often radically from region to region and even the index of living differs within a fairly wide range, such a target cannot always be just or equitable. If the wage-E scales had been determined by the Board in the manner aforesaid, even though the Board is not a statutory body and consequently its decision are of a recommendatory character, it would be possible for industrial tribunals to give due weight to its recommendations as such recommendations would have been in conformity with the principle of industry-*cum*-region, a principle F binding on the tribunals. It would be difficult in that event for any unit in the industry in that region to propound a grievance that its capacity to pay was not taken into account as the scales so framed would have been determined after taking into consideration scales prevailing in comparable units, whether in that indus-G try or other industries in that region depending on whether in a particular area the accent was on the industry part or the region part of the principle of industry-*cum*-region".

The learned Advocate for the Appellant lays stress upon the observation contained at page 607 where while dealing with the H Express Newspapers case, this Court had observed :

"... the requirement of considering the capacity of each individual unit to pay may not become neces-

sary if the industry is divided into different classes. Even if the industry is divided into different classes it will still be necessary to consider the capacity of the respective classes to bear the burden imposed on them. For this purpose a cross-section of these respective classes may have to be taken for careful consideration for deciding what burden the class considered as a whole can bear".

These observations must be read in the light of what was earlier stated namely "as the Wage Board was fixing a fair wage for the entire jute industry it may not have been strictly necessary to consider the financial capacity of each individual unit". There is nothing in the *Bajrang Jute Mills* case(1) which makes it obligatory on a Wage Board to divide the industry into regions as well as classes or to examine the financial capacity of every unit in that industry in the region, irrespective of the conditions prevailing in the different regions of that industry. As long as all relevant factors appertaining to that industry, industry-wise and region-wise have been considered and the capacity of a fair cross section of that industry to pay in that region has been ascertained, the recommendations of the Wage Board cannot be held to be invalid. It is not in every case that a division into classes in the same region, on a unit-wise capacity should be made before recommendations of the Wage structure, dearness allowance or other conditions of service in that industry could be held to be fair and within the financial capacity of the industry in that region. The criteria on which the recommendations of the Jute Wage Board were held not to be in accordance with the principle laid down by this Court in *Bajrang Mills* case do not form the basis of the recommendations of the Sugar Wage Board. The Sugar Wage Board not only divided the industry into regions as already pointed out but on the other hand found that there was no great disparity in the region nor did the size of the unit make any difference. It standardised the wage structure, it adopted a standardisation of nomenclature by taking note of the various nomenclatures used in the industry and defined the qualification for each of the categories. The pre-dominant conditions for wage structure which weighed with the Board were that firstly in view of the great unemployment nothing should be done to reduce the existing employment but on the other hand efforts should be made to increase it. Secondly the need for increase in production was paramount and any action likely to reduce it should be studeously avoided as far as possible. Thirdly the capital should not be idle for if a wage structure is evolved which leads to the closure of any unit or units, a number of persons will be thrown out of employment, production will be

(1) [1969] 2 S.C.R. 593.

A reduced and capital invested in them will become idle. Keeping these considerations in view the Board determined the wage structure which it recognised may be lower than norms laid down by the Fifteenth Labour Conference but the fact that there is a tremendous rush for employment in factories is proof that the wages recommended by it are higher than the rates fixed under B the minimum Wages Act in industries to which that Act applies or those prevailing in the open market. It also took into consideration the economic units in the regions which as accepted by it is a unit having a crushing capacity of atleast 800 to 1000 tons thought it has noted that the majority of sugar factories have a crushing capacity higher than this and several of those C having uneconomic size have already applied for expansion. According to the Board there were only 38 factories which were below 800 tons crushing capacity but a good many of them were making profits. However, there are some which are running at loss and for them the Board recommended that some consideration should be given to adjust themselves which should be the D same as these given to new factories. This is what the Board stated in Chapter XIII at page 111 :

> "The conclusion is that except some cases other units below 800 tons are making profits. The examination is set out in the Annexure to this Chapter. The Board is of the view that relaxation in wages is not the E real remedy for those un-economic units. They will have to fall in line with the scheme of wages recommended by the Board. The real remedy for them is to expand themselves into economic units".

It would therefore appear that the Wage Board following the principles laid down by this Court has considered the capacity F of the industry region-wise and has also fixed wages different from region to region having regard to the difference in the capacity of the industry region-wise. Further it has given good reason for not furnishing a criteria for further classification of the industry within the region. In these circumstances prescribing the same wage for all units of industry in the same region is in our view justified and the fact that the industry in the region G has not been divided into classes cannot vitiate the recommendations of the Wage Board.

It is contended on behalf of the Appellant that while this is so and the wage fixed is a fair wage for the industry in that region and cannot be challenged nonetheless the Tribunal is not precluded from considering a plea by any particular unit that in fact its H financial position is such that it cannot bear the burden of implementing the recommendations of the Wage Board. The learned Advocate for the Respondents however, counters this on

the ground that once a wage has been fixed by the Board as a fair wage on industry-cum-region basis, whether those recommendations are statutory or otherwise, no plea by any individual unit that it has not the capacity to implement the recommendations, can be entertained. He asks whether an Industrial Tribunal to which a dispute regarding the fixation of wage is referred fixes a wage structure, is it open to any particular unit to say that it is unable to pay ? If this is not so, on the same parity of reasoning it is contended that no unit in a region can be permitted to plead that it has not the financial capacity to implement the Wage Board's recommendations. It appears to us that if in law it, is open to the unit to plead financial inability to implement the recommendations of the Wage Board the hypothesis on which the question has been posed will not be relevant because in such a contingency as is envisaged there would be a specific issue and a determination of the wage structure by the Tribunal will be on the evidence produced before it according to the financial capacity of the unit. Once this is finally determined, the unit cannot continue to assert that it has no financial capacity to implement the Award.

In our view there is warrant for the submission of the learned Advocate for the Appellant that notwithstanding the fact that a fair wage has been fixed by the Board which would be applicable to all the units in the region for which wage has been fixed, it may be open to any particular unit to plead that in fact its financial position is not such that it can bear the burden of implementing the recommendations. In *Ahmedabad Mill Owners' Association etc.* v. *The Textile Labour Association*(1), the observations of this Court at page 421 lend support to our conclusions. Gajendragadkar J, delivering the Judgment of this Court observed at page 421 :

> "The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication, and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should, revise the wage structure, though such revision may result in the reduction of the wages paid to the employees. It is true that normally, once a wage structure is fixed, employees are reluctant to face a reduction in the content of their wage packet. but like all major problems associated with industrial adjudication, the decision of this problem must also be based on the major consideration that

(1) [1966] 1 S.C.R. 392

A the conflicting claims of labour and capital must be harmonised on a reasonable basis; and so, if appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief, if it B is satisfied that if such relief is not given the employer may have to close down his business. It is unlikely that such situation would frequently arise but, on principle, if such situations arise, a claim by the employer for the reduction of the wage structure cannot be rejected summarily".

C Of course the justification of the plea of want of financial capacity will depend upon the evidence of its financial position over a period of years, to show that it cannot bear the burden or that it is only a temporary or fortutous situation with every possibility of financial improvement in the immediate future.

D It is accordingly contended that an examination of the financial position would show that the Appellant is not in a position to implement the recommendations and that even the Tribunal had recognised this position when it refused to implement an increase of Rs. 10/- to all the workers over the basic wage and dearness allowance, and Rs. 5/- as weightage to certain categories of workers. It would appear from the statement of the E Company as evidenced by Ex. M. 51 that it had secured and unsecured debts for each of the four years as follows :

	Debts secured	Debts unsecured
	Rs.	Rs.
F 1960-61	73,59,344	8,13,263
1961-62	67,78,270	2,64,982
1962-63	32,31,438	28,06,000
1963-64	32,99,599	18,71,522
	207,68,651	57,55,767

G The details of debts would show that they are far in excess of the paid up share capital and even taking the profit and development rebate reserves and other reserves into account the financial position of the Company is certainly bad. A reference has also been made to the notices issued by the Revenue Divisional Officer, Ex. M. 53 for showing that on 30th December 1962, a sum H of Rs. 15,91,777.11 ps. was due towards Sugar cane cess for 1958-62 and a sum of Rs. 11.66, 718.37 ps. towards cane price in accordance with the details given thereunder. Subsequently it would appear from Ex. M. 53/1 that notices under Sec. 53 of

the Revenue Recovery Act were also issued by the Revenue Divisional Officer, Kakinada for the recovery of these amounts. There were also other notices and a press note published in the Indian Express showing that the Government was going to auction the Sugar Mills for recovering its dues. The Minister concerned is reported to have said that its Department was taking action to collect its dues as arrears of land revenue.

It is on the other hand contended that the Appellant's unit is an economic unit and has been expanded into a 1000 ton unit in 1956 and there is nothing to show thereafter what its financial position was. In any case the profit and loss figures for the four years starting with 1960 would indicate that there was loss only in one year whereas in all the other three years there was profit and from this we are asked to conclude that the Appellant company was in a sound financial position. No doubt any unusual profits or losses in any year due to advantageous circumstances should not be allowed to cloud the decision one way or the other. In Ahmedabad Mill Owners Association case it was observed at page 420-421 as follows :

> "It is a long-range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face ? These and similar other considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial adjudication, vide Express Newspapers *(Private) Ltd., and Another* v. Union of India & Others. Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would make in regard to the construction of a wage structure. A broad and overall view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it; and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit".

Bearing these observations in mind, it is necessary to determine what the position of the Appellant is ? The conclusion of the Tribunal in respect of the claim for increase of Rs. 10/- is that having regard to the balance-sheets "the profits made in the 4 years are about Rs. 4 lakhs and the loss sustained in 1962-63 is of Rs. 16 lakhs and after wiping it off to some extent by sale of debentures it is about Rs. 9 lakhs. This will show that the financial position of the concern is not satisfactory". After noting that except for this one year the concern has always been making profits, it went on to observe : "Still, to judge the financial position of a concern, it is always relevant to see what are its reserves. It appears from the balance-sheet that the reserves have never risen beyond Rs. 8 lakhs or so. In the circumstances, it appears to me that it will be difficult to hold that the financial position of the Company is sound. I, therefore, agree with learned Advocate that it has not the financial capacity to implement this increase of Rs. 10/- over and above the fitment in the grade recommended by the Board. I hold accordingly". The comment of the learned Advocate for the Respondent is that these losses did not preclude the management from accepting the recommendations of the Wage Board and willingly agreeing to its implementation. In a letter dated the 18th December '61 to the President of the Workers Union, the Management stated that as per their talks on 10th December '61, it accepts the implementation of the Wage Board recommendations and will pay from December '61 onwards salary as per fitments made by it. Final figures and fitments will be made after the Government Tripartite Committee comes and discusses with it and the Union and arrives at a decision. It also promised to pay the difference in the wage as per wages paid till the month of November 1961 and the Wage Board fitments as made by them will be paid to the workers before the end of March 1962. Again in the agreement between the Management and the employees under sec. 18(1) of the Industrial Disputes Act dated 19-9-63 it was specifically stated that "the question of fitments will be taken up as per the Sugar Board's recommendations in the month of January 1964 and finalise before the end of the 1963-64". Even at that stage it was never the case of the Management that the Wage Board's recommendations could not be implemented. Even the new management in its letter of September 5, 1964 addressed to the Union (Ex. W. 36) stated :

> "With a view to arrive at an amicable settlement with regard to fitments a discussion had taken place between the members of the Tripartite Committee constituted by the Commissioner of Labour and it was agreed during the discussions among other matters, that :

(1) Wherever there is a standard nomenclature in the Wage Board Report corresponding to the previous designation held by an individual before November 1960, he will be given that designation provided the duties and responsibilities of the individual are similar to the duties assigned by the Wage Board.

(2) In other cases, where no standard nomenclature can be applied to the existing cadre, the cadre will be fixed with reference to duties and responsibilities and the time scale of pay attached to the cadre in factory before November 1960".

From the several exhibits it would appear that both old and the new management were anxious to implement the Wage Board's recommendation but according to the fitments made by it. But the employees as represented by the Workers Union were not prepared to accept those fitments and wanted fitments in a higher cadre and other advantages according to their reading of the Wage Board's recommendations which the management felt, it is not able to accommodate not only because those recommendations did not justify it but on the ground of financial incapacity.

No doubt it is for the management to show what its financial position is and how it is going to place undue or impossible burden upon it to implement the recommendations. That burden it seeks to discharge by production of the balance-sheets which have not been challenged and the contents of which are, therefore deemed to have been accepted. We find from the balance-sheet and the Directors Report for the period ending 30-6-60 that a sum of Rs. 6,15,254/- had to be written off against the old losses leaving a balance of Rs. 40,774/- in the profit and loss account. The Directors thought that the Company's financial position has now been stabilised and all the old losses have been wiped off but that hope was only short lived as the subsequent balance-sheets for the period ending 30th June '61 would show. According to the report for 1961 though there was a net profit of Rs. 1,08,005/- which together with the carry forward profit of the previous year of Rs. 40,774/- amounted to Rs. 1,48,779/- and after making provision for reserve for development rebate of Rs. 38,788/- a balance of Rs. 1,09,991/- was carried forward to next year's account. For that year no dividends were declared and the Managing Agents also waived their remuneration. For the year ending 30th June 1962, the position is more or less the same—the net profit for the year amounted to Rs. 30,616/- which together with the profits of the previous year of Rs. 1,09,991/- amounted to Rs. 1,40,607/-. This

A amount was again recommended by the Directors to be carried forward for the next year. No dividend was declared and the Managing Agents also waived their remuneration. In 1963 the position had become critical the loss incurred was Rs. 16,12,196 which wiped out the previous year's profits. There was no question of declaration of any dividends but Managing Agent's re-
B muneration of Rs. 30,000/- (minimum) was drawn. These losses would have the effect of eating into the capital of the Company, unless it could borrow and tide over them. In the year ending 30th June '64 a loss of Rs. 6,61,386/- was carried forward to next year. It may be noted that in that year in June 1964 the Government of India had approved the change in the
C Constitution of the Managing Agency of the Company and it is stated that because of the efforts of the new Management who borrowed large sums on their personal security for putting the Appellant in better shape, large sums were in fact advanced to the Appellant.

D As could be seen from the statement M. 51 that for the years 1960-61, 1961-62, 1962-63 and 1963-64 the secured and unsecured debts were approximately Rs. 81 lakhs, Rs. 70 lakhs, Rs. 61 lakhs and Rs. 51 lakhs respectively. It is stated that the losses were coming down and therefore the financial position is getting better but in our view this by itself does not mean that the Company is in a sound financial position. What was hap-
E pening evidently is as suggested by the learned Advocate for the Appellant that the Sugar stocks pledged were being sold and therefore the debts were getting less. It is no doubt true that attachment orders which were made in 1962 must have been paid off and the attachment withdrawn. That again is not an indication of the soundness of its financial position because there
F is evidence to show that the new management had to secure a large loan of about Rs. 30 lakhs on its personal security to pay these demands and that is why Rs. 16 lakhs loss is paid off and hence in the year 1962-63 the unsecured debt is shown as Rs. 28 lakhs. The Tribunal was therefore justified in coming to the conclusion that the Company was not in a sound financial posi-
G tion to implement the recommendations of the Wage Board to increase Rs. 10/- on the basic wage and the dearness allowance or Rs. 5/- as weightage. Apart from these losses the general reserves are very negligible. Each year about Rs. 3,000/- is being provided for. In all Rs. 8 lakhs reserves were accumulated from its inception which is not very encouraging.

H While this is so having regard to its working we had called for the balance-sheets subsequent to 1964-65 to assess the financial prospects of the Appellant during this period. These reveal the following position :

The balance-sheet for the year ending 30-6-65 showed a profit of Rs. 12,72,126/- before depreciation. After deducting Rs. 5,25,545/- towards depreciation and Rs. 1,16,138/- as reserve towards development rebate and after adjusting the loss brought forward from last year, a loss of Rs. 30,943/- was carried forward to the next year.

The balance-sheet for the year ending 30-6-66 showed a profit of Rs. 3,23,789/-. After setting apart depreciation a sum of Rs. 2,27,942/- was the loss carried forward and in the balance-sheet for the period ending 30-6-67 there was shown a loss of Rs. 5,10,771/- and after providing for depreciation there was a loss of Rs. 9,90,526/-. It may also be noticed that in the year of account the Company had to provide a sum of Rs. 2,16,353/- towards additional cane price payable to the cane growers for the seasons 1958-59 and 1959-60. After allowing for this there was a total loss of Rs. 14,23,505/- which was carried forward to the next year. In the balance-sheet for the year ending 30-6-68 there was a gross profit of Rs. 13,22,932/- and after providing for depreciation and adjustment of loss brought forward there was a balance of loss of Rs. 5,93,620/- carried forward to the next year. The year ending 30-6-69 was one year in which dividend of 7.15% was paid on the 5½% income-tax Free Cumulative Preference shares. The profits for the year after adjusting all the losses and providing for depreciation, payment of bonus to staff and taxation it showed a balance of Rs. 2,27,430/- out of which dividend was declared as aforesaid. For the year ending June '70 there was again a loss of Rs. 5,96,913/- after providing for depreciation. The Directors explained this loss due mainly to high rates of interest charges, provision for depreciation and the passing on of the entire realisable profit on 1968-69 season production for the benefit of the cane growers in that year.

The balance-sheets for the years 1960 to 1970—for a period of 10 years show that except for the year ending 30-6-69 the Company was not in a position to declare any dividends. Though the factory appears to have been expanded after 1964 to 1300 tons capacity it did not show uniform net profits; on the other hand losses continued. The profits that it made in any year seem to be consumed by losses of the previous years. In some years the yield of cane seem to be slightly over 10% the average being a little over 9% which no doubt is encouraging but in spite of it there are various factors which seem to contribute to its financial unsteadiness.

This being the position we think that the Tribunal was justified in holding that the Appellant did not have the financial

A capacity to bear the burden of payment of Rs. 10/- increase and Rs. 5/- as weightage in accordance with the recommendations of the Sugar Wage Board. On this conclusion and also on an examination of the relevant material it is evident that the Company is not in a financial position to meet the burden of implementing the recommendations of the Wage Board. The B claim of the Respondent for categorisation and fitment in accordance therewith cannot in the circumstances be accepted. The Appeal of the Respondents which challenges the Award of the Tribunal rejecting their claim, for an increase of Rs. 10/- and a weightage of Rs. 5/- and for the categorisation and fitments in respect of the heirarchy of supervising category namely C Assistant Cane Organisers, Liaison Field Supervisors and Field Supervisors as also in respect of Head Panman, and Panman Incharge of shift, Panman, Asstt. Panman, Bench Chemists and Cane analysists and Canteen Supervisor are all dependent upon the financial capacity of the Respondent Company to implement the Wage Board's recommendations which we have held it has D not. As stated earlier the Company which is the Appellant in Civil Appeal No. 1602 of 1966 has already implemented the Award of the Tribunal in respect of a large number of workers both as to categorisation and fitment. It is in respect of fitment of only four categories that it has not implemented, namely Welders, Turbine Engine Drivers, Switch Board Attendants and Boiler Mason's that the Appellant has objected to the Award on E the ground that the Tribunal has acted without evidence and in some cases contrary to the recommendations. The learned Advocate for the Respondents felt that he could not really challenge the contention in respect of the Switch Board Attendants and Turbine Engine Driver, as it would appear that the Tribunal has acted without any evidence. Why we have referred F to these specific cases objected to by the Company in their Appeal is to indicate that, notwithstanding the finding that the Wage Board's recommendations in the circumstances, cannot be implemented, the Company has given effect to the Tribunals Award, which will remain in force till a revision takes place. In the view we have taken the Appeal of the Appellant is allowed sub- G ject to the above directions and that of the Respondents dismissed. We make no order as to costs.

G.C. *Appeal No.* 1602 *of* 1966 *allowed;*
Appeal No. 1603 *of* 1966 *dismissed.*