

PETITIONER:
WORKMEN OF SHRI BAJRANG JUTE MILLS LTD.

Vs.

RESPONDENT:
EMPLOYERS OF SHRI BAJRANG JUTE MILLS LTD.

DATE OF JUDGMENT:
31/10/1968

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1970 AIR 878 1969 SCR (2) 593

ACT:
Wage Scale--Determination--Industry-cum-region basis-
Wage Board fixing uniform wage scale irrespective of
differing conditions in different regions-Validity-
Regionwise classification, necessity of.

HEADNOTE:

The Central Wage Board was constituted for devising a wage structure, based on the principle of fair wages payable in the Jute industry. In determining the financial capacity of the industry the Board selected 20 mills from West Bengal and 9 mills from the rest of the region as representing a cross-section of the Industry. The respondent, a fairly small mill in Andhra Pradesh, was considered 'as a comparable unit with two larger mills in the State as also with some of the very big and prosperous mills in West Bengal. The Management of the mill refused to accede to the demand of the workmen to pay wages in accordance with the recommendations of the Board fixing a uniform scale for the entire industry, on the plea that the mill had no financial capacity to bear the burden of the wage scale. The dispute was referred to the Industrial Tribunal. The Tribunal upheld the claim of the management. In appeal to this Court it was contended that the Wage Board recommendations did follow the principles laid down by this Court in the matter of fixation of wages and as such the Tribunal should have implemented its recommendations.

HELD: Dismissing the appeal.

The essential pre-requisite of deciding the wage structure viz., consider the capacity of the industry to pay on the principles laid down by this Court was absent in the recommendation of the Wage Board. This Court has laid down that the capacity of the industry to pay should be gauged on an industry-cum-region basis after taking a fair cross section of the industry and that the cross-section to be truly representative and capable of giving a true picture of the conditions of both industry and labour must be one from each region where establishments of the industry in question are situate. [608 E--F]

In the present case taking 20 mills from West Bengal and 9 mills from outside as forming a representative cross-

section was manifestly incorrect as the West Bengal mills could not be said to be comparable units with the rest of the mills. These mills so clubbed together could not reflect the economic and other conditions prevailing in the mills in different regions with their peculiar problems and differing conditions. The Board ought to have 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. [608 G--H]

Express Newspapers Ltd. v. Union of India, [1959] S.C.R. 12, French Motor Car Co. v. Workmen, [1963] Supp. 2 S.C.R. 16 and Greaves Cotton & Co. v. Workmen, [1964] 5 S.C.R. 362, followed.
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If the wage-scale had been determined by the Board in the manner aforesaid, even though the Board was not a statutory body and decisions were only of a recommendatory character, it would be possible for Industrial Tribunal to give due weight to its recommendations such recommendations would have been in conformity with the principle of industry-cum-region, a principle binding on the tribunals. [609 H]

[The difficulty felt by the Tribunal faced with the dilemma whether not to follow the recommendations of the Wage Board arrived at principles different from those consistently followed in industrial adjudication should have been realised by the Government before accepting the recommendations of the Wage Board.] [609 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 923 , 1966.

Appeal by special leave from the Award dated May 29, 1966 of the Industrial Tribunal, Andhra Pradesh in I.D. No. 12 1964.

M.K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for the appellants.

K. Srinivasamurthy, Naunit Lal and B.P. Singh, for the respondents.

The Judgment of the Court was delivered by

Vaidialingam, J. The workmen of Shri Bajrang Jute Mills Ltd., in this appeal by special leave, attack the correctness of the award dated May 29, 1965 of the Industrial Tribunal, Andhra Pradesh, Hyderabad, in I.D. No. 12 of 1964, by which it held that the demand of the workmen for implementation of the recommendations of the Central Wage Board for Jute Industry (hereinafter referred to as the Wage Board), was not justified.

In view of the fact that the respondent-management decline to accede to the demand of the appellants to pay wages in accordance with the recommendations of the Wage Board, the State of Andhra Pradesh, by its order dated March 21, 1964, refers for adjudication to the Industrial Tribunal, Hyderabad, the following question:

"Whether the demand of the workmen in Sri Bajrang Jute Mills, Limited, Guntur, for implementation of the recommendations of the Central Wage Board for Jute Industry is justified, and if so, to what extent?"

The Wage Board was constituted by the Central Government for determining, among other matters, a wage structure, based on the principles of fair wages payable in the jute

industry. The Wage Board consisted of a Chairnan, two independent Members, two Members representing the employers and two Members representing the workers. It may be noted that the Members

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representing the industry and labour were not chosen by the representative bodies of the industry or the labour but were appointed by Government. In fact, neither the industry nor the labour had any voice in the choice by the Government of any of the members of the Wage Board. The Wage Board submitted its report to the Government, making recommendations about the wage structure and laying down principles for awarding bonus for the year 1962-63 and the subsequent years.

It appears from the Wage Board's report that, at the very outset, the Wage Board selected 20 mills from West Bengal and 9 reporting mills from outside West Bengal which it considered to form a representative cross-section of the industry for a detailed study. The Wage Board took into account the financial position of the said mills and also collected other data and information not only from the mills concerned but also from other quarters. The Wage Board took into account the growth of paid-up capital, gross block depreciation, profits made and dividends paid by the mills and other allied matters and came to the conclusion that the industry's position was satisfactory and its future was bright. The Wage Board was not required to fix a wage structure on the peculiar financial position of any particular unit, al though it was bound to take a fair cross-section of the industry represented by units reflecting the general conditions prevailing in the industry as a whole. The Wage Board also considered the principles for determination of bonus and recommended payment of bonus for the year 1963 on the basis of the basic wages drawn by the worker for the year 1962. It also recommended that for future years the bonus was to be paid according to the wages drawn in the preceding year. It further recommended certain rules for determination of the quantum of bonus. According to the appellants, the respondent was bound to implement the recommendations of the Wage Board in all respects and its refusal to do so was illegal and unjustified.

The respondent pleaded that the recommendations of the Wage Board could not be implemented as the Mill had no financial capacity to bear the burden of the wage scales recommended by the Wage Board. The respondent made an attempt to implement the Wage Board's recommendations to some extent at least, provided the labour agreed for revision of work loads, but the labour was not willing for such revision. It was further stated that the respondent company, though started in 1907, had been running at a loss for a number of years and its loom-strength was only 120. The mill was located at Guntur, which is not a jutegrowing area, and in consequence almost all raw materials had to be brought from Vijayanagaram, in Visakhapatnam District, and from Calcutta. As the raw materials and other products had to be brought from outside, it involved the mill in considerable

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expense due to freight charges etc. The products manufactured in the mill were only cement bags and twine and cement companies were its only customers. The company had furnished replies to the questionnaire issued by the Wage Board and had made it clear that the wages paid by it were reasonable and it could not bear any additional burden in

that regard. Even the interim relief, recommended by the Wage Board, was implemented with considerable difficulty though it involved the company in an additional revenue expenditure of Rs. 1,53,000 a year.

The Wage Board's recommendations fixed the wage scales, dearness allowance etc., for all the employees working in all the jute mills situated in the country, irrespective of the financial position of individual mills. If the recommendations of the Wage Board were to be implemented, the company would be put to further expenditure of Rs. 2,75,385.60 in the first year, Rs. 3.25 lakhs in the second year and Rs. 3.75 lakhs in the third year in addition to the existing wage bill which the company had to meet. The company has been making only negligible profits and it could not pay any dividend on its equity shares for nearly 7 years. Its reserves also have been dwindling. The financial position of the company, therefore, is such that it is impossible for it to bear the burden of the additional wage structure, dearness allowance etc., as recommended by the Wage Board. The company further pleaded that the Wage Board committed a serious mistake when it compared the financial position of the respondent along with two other large mills in the Andhra area viz., Nellimarla and Chitavalasa Jute Mills. Further the wage scales fixed by the Wage Board are on the basis of the position occupied by big jute mills in West Bengal, having upto 2,561 looms and 13,580 spindles. The Wage Board did not attempt to make any distinction between small and uneconomic mills and large mills, nor was any classification made in that manner.

Regarding payment of bonus, the company pleaded that this was covered by a settlement and the workmen were not entitled to the same in view of the financial position of the company and as there was no available surplus. The wage structure, dearness allowances etc., fixed by the Wage Board were not in accordance with the principles laid down by this Court in several decisions. According to the decisions of this Court, no fair wage can be fixed unless the unit in question has the financial capacity to meet the additional burden; and, in fixing the wage scale and dearness allowance, the principle of industry-cum-region had to be applied. Small and struggling units should not be compared with large, flourishing concerns. The extent of business carried on by them, the labour force, the capital invested, quantum of reserves, dividends declared and profits made, have all to be taken into account to see whether the units could be compared for wage fixation.

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All these circumstances have not been given due weight and consideration by the Wage Board. The respondent mill has only 120 looms and it has been compared with not only the very big mills in West Bengal but also with the Nellimarla and Chittavalasa Jute Mills which have 500 and 316 looms respectively. No classification was made by the Wage Board of the various jute mills as large, medium and small units; and in prescribing uniform scales for all types of units no distinction has been made between economic and uneconomic units. Small and struggling units have been treated in the same way as large and prosperous units. Finally, the respondents pleaded that in view of the circumstances indicated above, the Wage Board's recommendations could not be implemented by it and the labour's claims, on the basis of the Wage Board's recommendations, were not justified.

The Industrial Tribunal, in its award under attack,

accepted the pleas taken by the management. While recognising the fact that the Wage Board's recommendations were made, after collecting considerable data, the Tribunal was of the view that the Wage Board committed an error in comparing the respondent mill with other big mills, not only in Andhra Pradesh but also outside that State. The Tribunal was also of the view that the principles laid down by this Court that the fixation of wage scales should be on an industry-cum-region basis and that small units should not be compared with large and flourishing concerns, were not given due regard by the Wage Board. On the materials placed before it, the Tribunal accepted the claim of the respondent that it was a small concern considered from any point of view, viz., of looms, paid up capital, reserves, or the profits. In respect of the capacity to pay, the Tribunal was of the view that the Wage Board had not approached the question in the light of the principles laid down by this Court. The Tribunal came to the conclusion that the respondent, which is a fairly small unit, has not the financial capacity to adopt the wage-structure fixed by the Wage Board. The Tribunal accepted the claim of the respondent regarding the additional financial burden it would have to bear, even according to the phased programme fixed by the Wage Board and has held that the financial position of the company is such that it cannot bear this burden. The Tribunal also came to the conclusion that as the Wage Board was devising a fair-wage, the capacity of the particular industry to bear the additional burden-which is one of the essential circumstances to be taken into consideration--has not been taken into account. On the other hand, all jute mills, wherever situate, big or small, prosperous or struggling, economic or uneconomic, have all been treated alike and a uniform wage structure applicable to all mills has been fixed. There has been no attempt at classification of small and uneconomic mills for the purpose of finding out their financial capacity. The Tribunal finally came to the conclusion

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that the demand of the workmen for implementation of the recommendations of the Wage Board was not justified.

The same stand, taken before the Tribunal by the management and the workmen, as mentioned earlier, have been reiterated before us by Mr. M.K. Ramamurthy, learned counsel for the Union, attacking the award and Mr. K. Srinivasamurthy, learned counsel for the management, in support of the award. Before we refer to the circumstances under which the Wage Board was constituted, as well as the approach made by it in the fixation of wage-scales and other matters, it is necessary to refer to the principles laid down by this Court in that regard and to examine whether the Wage Board has properly applied those principles. Mr. Ramamurthy, learned counsel for the appellant, has accepted the position that there is an obligation on the Wage Board to follow correctly and apply the principles laid down by this Court in the matter of fixation of wages and dearness allowance. But his contention is that the Wage Board has, in its recommendations, followed those principles.

In *Express Newspapers (Private) Ltd. v. The Union of India*(1) this Court has elaborately considered the concept of (i) living wage; (ii) fair wage; and (iii) minimum wage, as well as the machinery for fixation of wages, adopted in various countries. So it is not necessary to cover the ground over again. So far as fair wage is concerned, this Court has stated that while the lower limit must obviously

be the minimum wage, the upper limit is equally said to be what may broadly be called the 'capacity of the industry to pay'. It has further been stated that the capacity of the industry to pay should be gauged on an industry-cum-region basis, after taking a fair cross-section of that industry and that 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. This Court further laid down the principles in that regard as follows, at p. 92:

"The principles which emerge from the above discussion are:

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after

taking a fair cross section of the industry; and

(1) [1959] S.C.R. 12.
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(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product--no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business."

The discussion on the question of capacity of an industry to pay is wound-up at p. 191 with the following observations:

"Industrial adjudication is familiar with the method which is usually adopted to determine the capacity of the employer to pay the burden sought to be imposed on him. If the industry is divided into different classes, it may not be necessary to consider the capacity of each individual unit to pay but it would certainly be necessary to consider the capacity of the respective classes to bear the burden imposed on them. A cross section of these respective classes may have to be taken for careful examination and all relevant factors may have to be borne in mind in deciding what b

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class considered as a whole can bear. If possible, an attempt can also be made, and is often made, to project the burden of the wage structure into two or three succeeding years and determine how it affects the financial position of the employer."

In French Motor Car Co. Ltd. v. Workmen(1) this Court observed at p. 20:

"It is now well settled that the principle-of industry cum-region has to be applied by an industrial court, when it proceeds to consider questions like wage structure, dearness allowance and similar conditions of service. In applying that principle industrial courts have to compare wage scales prevailing in similar concerns in the region with which it is dealing, and generally speaking similar concerns would be those in the same line of business as the concern with respect to which the dispute is under consideration. Further, even in the same line of business, it would not be proper to compare (for example) a small struggling concern with a large flourishing concern."

[1963] Spp. 2 S.C.R. 16.

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The principle that the basis of fixation of wages and dearness allowance is industry-cum-region was reiterated in Greaves Cotton & Co. v. Their Workmen(1).

According to Mr. Ramamurthy, the learned counsel for the appellant, the principles laid down by the decisions, referred to above have been borne in mind by the Wage Board when it fixed the wage structure and dearness allowance. Learned counsel also urged that when a wage structure was fixed for the industry as such, it is not necessary that the capacity of individual units should also be considered and that on the other hand it would be enough if a fair cross-section of the industry was taken into account for this purpose as was done by the Wage Board in the present case.

On the other hand, according to Mr. Srinivasamurthy, the learned counsel for the management, inasmuch as a fair wage was being fixed, the Wage Board was bound to apply the principle of industry-cum-region in fixing the wage structure and dearness allowance and the Wage Board has committed an error in not classifying the various units as large, medium and small units and prescribing different scales for different types of units.

We shall now proceed to consider the circumstances under which the Wage Board was constituted, its composition and the approach made by it in fixing the wage structure and dearness allowance.

In Chapter XXVII, paragraph 25, of the Second Five Year Plan of the Government of India, it is stated that statistics of industrial disputes show that wages and allied matters are the major source of friction between employers and workers and that an acceptable machinery for settling wage disputes will be one which gives the parties themselves a more responsible role in reaching decisions. It is further stated that an authority like a tripartite wage board, consisting of equal representatives of employers and workers and an independent chairman would probably ensure more acceptable decisions and that such wage boards should be constituted for individual industries in different areas. In pursuance of this recommendation, the Government of India, by its Resolution No. WB-5(1)60, dated August 25, 1960, set up a Central Wage Board for Jute Industry. The Board consisted of a Chairman, two independent Members and two Members representing employers and two Members representing employees. The terms of reference of the Board were:

"(a) to determine the categories of

employees (manual, clerical, supervisory, etc)
who should be

(8) [1964] 5 S.C.R. 362.

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brought within the scope of the proposed wage
fixation;

(b) to work out a wage structure based
on the principles of fair wages as set forth
in the report of the Committee on Fair Wages."

In evolving a wage structure, the Board was also required to take into account the needs of the industry in a developing economy, the special features of the jute industry as an export industry, the requirements of social justice and the need for adjusting wage differentials in such a manner as to provide incentives to workers for advancing their skill'. The Wage Board was also required, within two months from the date of its starting work, to submit its recommendations regarding the demands of labour in respect of interim relief, pending its final report.

The Wage Board recommended to the Central Government the grant of interim relief of Rs. 2.85 from October 1 to December 31, 1960 and Rs. 3.42 from January 1, 1961 in respect of all jute mills in India, excepting the Katihar Jute Mill in respect of which the interim relief at the rate of Rs. 3.42 was granted from September 1, 1961. The Central Government accepted this recommendation, by its Resolution No. WB-5(3)/61, dated January 25, 1961 and requested the jute mills to implement the same as soon as possible. There is no controversy that the respondent mill complied with this request though it involved the company in an additional expenditure of Rs. 1,53,000. This claim of the company has been accepted by the Industrial Tribunal. The Wage Board submitted to the Central Government, on September 4, 1963 its final recommendations dated August 31, 1963 and recommended that the new wage structure should be given effect to. from July 1, 1963. The Central Government, by its Resolution No. WB-5(16)/63 dated September 27, 1963 accepted the report and made a request to the employers, the workers and the State Governments to implement the same expeditiously. The standardised basic wages of various categories of workers of jute mills for a month of 26 days or 208 hours are specified in Appendix XI of the Report; and there is no controversy that the basic wages of all categories of workers in the employ of the respondent jute mill is the same as the standardised basic wage contained in Appendix XI. But, there is a further recommendation that so far as the appellant jute mill and another jute mill, viz., Sri Krishna Jute Mill, were concerned, the wage increase was to be on a phased basis.

We may refer now to the various aspects dealt with by the Wage Board in its report. Chapter III deals generally with the Industry. In para 3.5 it is stated that there is an overwhelming concentration of jute industry in West Bengal and only a sprink-

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ling of it is to be found elsewhere in India. It is also noted that the loomage at the time of the report in the whole of India stood at 72,916 looms. The reasons for the heavy concentration in West Bengal of jute mills are stated to be factors like abundant supply of raw material, proximity of coal fields in Ranigunge, navigability of the Hooghly and the availability of the required type of labour in the neighborhood. So far as jute mills at other places in India are concerned, in para 3.6 of the Report it is stated that small jute mills have come up in other States,

including Andhra Pradesh, but the total loomage of all such mills outside West Bengal is only 3,242 looms, and the mills are distributed in various places.

Appendix VII of the Report contains a statement showing the mills operating, number of looms and spindles in the whole of India. So far as West Bengal is concerned, the total number of looms is given as 65,383; in Andhra Pradesh as 1,072; in Bihar 1,059; Uttar Pradesh 891 and Madhya Pradesh 220. It will be noted from Appendix VII that in Andhra Pradesh there are two fairly big units, the Nellimarla and Chitavalsa having 316 and 500 looms respectively, whereas the respondent mill has only 120 looms. We are particularly referring to this aspect because it is the grievance of the respondent that the Wage Board has compared it with the Nellimarla and Chitavalsa and other big units in West Bengal. A perusal of Appendix VII shows that there are several jute mills having more than 1,000 looms and some having more than 2,000 looms, in West Bengal.

Chapter IV deals with the scope of enquiry. In para 4.1 it is stated that the Board's recommendations will apply to all the jute mills then existing and also to those that might be started thereafter, and a list of all mills then in existence is given in Appendix VII.

Chapter V deals with minimum wages in the jute industry. In para 5.4 the Wage Board takes note of the fact that the minimum wages in Nellimarla and Chitavalsa jute mills in Andhra Pradesh are found to be the highest in the jute industry. In para 5.26, the minimum wages in West Bengal jute mills from 1948 and as obtaining from January 1, 1961 has been referred to. Such minimum wages from January 1, 1961 including Rs. 3.42 granted as interim relief by the Wage Board and the dearness allowance, is stated to be Rs. 70.59, comprised of basic wages of Rs. 34.67--Rs. 3.42 (interim relief)+Rs. 32.50 (dearness allowance). Regarding the jute mills in Andhra Pradesh, it is stated in para 5.35 that Nellimarla and Chitavalsa jute mills were paying from January 1, 1961 the total emoluments of Rs. 81.21 per month to the

lowest category of workers for 208 working hours, inclusive of Rs. 3.42 interim relief granted by the Wage Board.

In para 5.38, it is stated that the respondent mill, from January 1, 1961, is paying total emoluments of Rs. 52.17 per month, comprised of Rs. 19.50 (basic)+Rs. 3.42 (interim relief)+Rs. 29.25 (dearness allowance). The jute mills in Bihar State, as will be seen from para 5.43 were paying total monthly emoluments ranging from Rs. 69.98 to Rs. 70.59.

Chapter VI deals with the industry's capacity to pay. In para 6.1 it is stated that two matters which received the highest consideration in the course of the deliberations of the Wage Board were the needs of the workers and the capacity of the industry to pay those needs. It is further stated that the consequences of a fair wage upon the employer or the capacity of the industry to maintain production efficiently, have received the special attention of the Wage Board. In para 6.8, reference is made to the Fair-Wages Committee's Report that in determining the capacity of the industry to pay, it is wrong to take the capacity of a particular unit or the capacity of the entire industry in the country and that the practical method is to take a fair cross-section of the jute industry. In this connection the Wage Board refers to the claims advanced by the workers and the industry. The workers appear to have suggested the names of mills which were well-

established and whose financial position was never in doubt, whereas the industry urged that the capacity of the weaker and marginal units should not be ignored as the wages that are to be fixed by the Wage Board should be such as could be paid without difficulty by all units of the industry.

In para 6.9 it is stated that the Wage Board was of the view that the only proper and practical method was to take a cross-section of the industry which could be considered as fair in its view. Accordingly, twenty jute mills in West Bengal were selected by it as representing a fair cross-section of the industry in that region. The Wage Board also decided to make a census survey of 9 reporting mills outside the West Bengal region. Accordingly it selected all the three in Andhra Pradesh, two in Bihar, three in Uttar Pradesh and one in Madhya Pradesh. A list of the jute mills in West Bengal and outside West Bengal region considered as forming a representative cross-section of the jute mills is given in Annexure A to the Report. So far as Andhra Pradesh is concerned, all the three mills situate in the State have been taken into account, being Nellimarla, Chitavalsa and the respondent. The Wage Board then considers the capital formation, bonus issue, total paid up capital, reserves and surplus, percentage of dividend declared, profits made; but, under each of these heads, the Wage Board grouped together all the mills in West Bengal, Andhra Pradesh, Bihar, Uttar Pradesh and Madhya Pradesh.

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In para 6.44, the Wage Board expresses the view that it would be possible for the industry to bear the extra burden arising from the new wage structure recommended by it without much difficulty and without affecting the economy of the industry adversely.

In Chapter VII the Wage Board considers the principles by which the Tribunal and other wage-fixing authorities were guided in fixation of wages in West Bengal and outside that State. In para 7.19 the Wage Board proceeds to state that it has to devise a fair wage structure. It refers to the report of the Committee on Fair Wages that with regard to a fair wage, the lower limit must obviously be the minimum wage and the upper limit is equally set by what may broadly be called the capacity of the industry to pay. In para 7.25 the Wage Board refers to the claim of the workers that the minimum wages at Calcutta, at prices prevailing in 1960 should be Rs. 125 and that the minimum wage at Kanpur, in Uttar Pradesh, should be Rs. 140 per month; while, on the other hand, the Indian Jute Mills Association appears to have pressed that the then existing wages in the jute industry for all categories of workers were fair.

In para 7.34 the Wage Board refers to the fact that the wages in the jute industry had not kept pace with wages in cotton textile and engineering industries in West Bengal, as would be seen from the fact that in 1959, while in the jute industry the minimum wages had gone up by 46% over the 1946 wages, it had gone up in cotton textile and engineering industries by 69.71% and 77.50% respectively. It further notes the fact that the minimum wages in cotton textile mills in West Bengal on April 1, 1963 were Rs. 83.50 and in the engineering industry Rs. 82 per month. On the other hand, the wages in the jute industry on April 1, 1963 were Rs. 70.59. On this reasoning the Wage Board comes to the conclusion in para 7.35 that there was a prima facie case for increase in the wages of the jute workers. The Wage Board expresses the opinion that the concept of the paying capacity of the jute industry is not the same as it is

generally understood in the case of other industries, in view of the fact that the jute industry is principally an export-oriented industry, depending upon the fluctuating foreign markets.

In para 7.40 the Wage Board states that in fixing the wage structure for the jute industry it has taken into consideration the prevailing wage structure in the cotton textile industry and the engineering industry in West Bengal. It has noted that in West Bengal, as on April 1, 1963, the minimum wage in the cotton textile industry was Rs. 84.10 per month and in engineering industry Rs. 82 per month. As in the opinion of the Wage Board there is a great similarity in the nature and condition of work between cotton textile industry and jute industry, in para 7.43 it

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decides to devise a wage structure in the jute industry keeping in wages existing in the cotton textile industry in West Bengal.

Regarding dearness allowance, the Wage Board in para 7.44 decides to introduce a system of variable dearness allowance linked with the consumer price index.

In para 7.45 the Wage Board refers to the special representations made by the jute mills outside West Bengal that in comparison with the mills in West Bengal they have to pay higher freight charges on coal, batching oil and that mill stores and electricity charges are higher for them, that their productivity is low and that most of them have no export trade. The Wage Board states that it has considered these problems and though there are these locational difficulties for individual jute mills, it has decided that the wage level in the jute industry should as far as possible be uniform throughout the country. The Wage Board further states that the wages in some of these jute mills were very low and in order to obviate their financial difficulties in consequence of the raising of wage level, it has decided that the wage level in these mills should be raised in a phased manner.

Having decided that the wage level in the Jute Industry should be uniform throughout the country, the Wage Board, in para 7.52 decides that the total minimum wage in West Bengal should be fixed at Rs. 81 per month, consisting of (i) basic wage; (ii) Wage Board increment; and (iii) variable dearness allowance. The Wage Board further, in para 7.56, states that in addition to basic wages, all categories of workers should be paid an increase of Rs. 8.33 per month inclusive of interim relief of Rs. 3.42 already granted by it and accepted by the Central Government. This increment of Rs. 8.33 per month is desired to be shown as a separate item under the heading 'Wage Board increment' in the case of all categories of workers and that increment should be treated as part of the basic wages for all purposes like bonus, provident fund, etc.

In para 7.57 the Wage Board states that the dearness allowance of Rs. 32.50 that was being paid then should be considered as the dearness allowance fixed at the working class consumer price index number of 425, for Calcutta with base year 1939 as 100. It is further stated that the dearness allowance should be a variable one and the rate of increase or decrease should be at 0.20 nP. per point rise or fall in the average working class consumer price index number for Calcutta. The dearness allowance is also directed to be revised every six months in the months of February and August of each year.

On the basis of these calculations, in para 7.58 the Wage Board fixes the total monthly minimum wage payable at

Rs. 84 sup.

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comprised of (a) Rs. 40.17 basic wage; (b) Rs. 8.33 Wage Board increment; and (c) Rs. 32.50 being variable dearness allowance. In para 7.59, the Wage Board states that the standardised basic wages of various categories of workers of a jute mill for a month of 26 days or 208 hours are enumerated in Appendix XI to the Report.

When considering the wage structure for jute mills outside West Bengal, in para 7.65(a) the Wage Board states that the basic wages of all categories of workers in the jute mills mentioned by it, outside West Bengal, which includes the respondent mill, should be the same as those in jute mills in West Bengal mentioned in Appendix XI. Therefore, it is clear that the minimum basic wage fixed for the mills in West Bengal has been applied to all the mills outside West Bengal, including the respondent. But, so far as the respondent mill is concerned, the Wage Board, in the same paragraph, gives a direction that the Standardised basic wages mentioned in Appendix XI of the Report is to be adopted in a phased manner as follows:

During the first 24 months Basic wages of all categories of workers should be 20 per cent less than the standardised wages shown in Appendix XI

During the next 12 months Basic wages of all categories should be 10 percent less than the standardised wages shown in Appendix XI

During the next 12 months Basic wages of all categories should be 5 percent less than the standardised wages shown in Appendix XI

Thereafter Basic wages of all categories of workers should be the same as standardised wages shown in Appendix XI

In paragraph 7.66 the Wage Board directs that all categories of workers in jute mills situated outside West Bengal should also be paid the Wage Board increment of Rs. 8.33 per month, inclusive of interim relief of Rs. 3.42 already granted.

In para 7.67(c) it is stated that the rates of dearness allowance of all categories of workers in the respondent mill and in Sri Krishna Mill is fixed at Rs. 32.50 at the average working class consumer price index number of 560 for Eluru for the last six months in 1962 with base year 1935-36 as 100. It is further stated that the dearness allowance should be a variable dearness allowance and the rate of increase or decrease should be 0.20 NP per point of rise or fall in the average working class consumer price index number for Eluru and that it should be revised every six months in the months of February and August.

Chapter VIII deals with bonus in jute industry and in para 8.18, the Wage Board makes a recommendation that in the jute

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industry the payment of bonus should be governed by the rules mentioned therein.

Lastly, in para 10.8 of Chapter X, the Wage Board states that the new wage structure recommended by it should come into force from July 1, 1963; and it is provided in para 10.9 that the payment of wages at the new rates should start in any case not later than the week ending November 2,

1963.

We have fairly exhaustively dealt with the various matters considered by the Wage Board in its Report. It is no doubt true that the Wage Board has gone elaborately in the matter of fixing of the wage structure in the jute industry. We have earlier referred to the various principles laid down by this Court which should govern the fixing of wages and dearness allowance. The Board itself states that it was fixing a fair wage for the industry. We have adverted to the fact that in the Express Newspapers Case(1) this Court has held that in the case of fixation of fair wage, the upper limit may broadly be stated to be the capacity of the industry to pay. It has been further laid down that the capacity of the industry to pay should be gauged on an industry-cureregion basis, after taking 'a fair cross-section of that industry and that, 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. 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. But, as pointed out in the Express Newspapers Case(1), the requirement of considering the capacity of each individual unit to pay may not become necessary 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.

The question is whether the Wage Board has adopted these principles when it fixed the wage structure for the entire jute industry- From the various matters dealt with by the Wage Board and the manner of approach made by it, as referred to above, we are satisfied that no attempt has been made by the Wage Board to divide the industry into classes. It is also clear that no cross-section of such classes has been taken for investigation to decide what burden the units in each class can bear.

The approach of the Wage Board to determine uniform wage scales for the entire industry must suffer from an inherent weakness. Conditions, such as easy access to raw materials, transport, nearness of market for disposal of the manufactured pro-

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

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duct, availability of labour, the type of market whether within or outside the country for which the manufactured articles are intended and diverse other factors must vary from region to region. Likewise, economic conditions affecting the consumer prices must and do differ, as is well-known, from region to region, depending largely upon whether a particular region is self sufficient or not in the elemental needs of its citizens and these in turn are bound to affect living standards. It would therefore be too artificial and unrealistic an approach to be oblivious of these differences and to attempt to group together all establishments and factories and devise common wage-scales applicable to all of them disregarding the peculiar features of the industry in a particular region. Favourable conditions prevailing in one region would place industrial concerns there in a position better than those in other regions where such conditions do not occur. Similarly, in regions where consumer prices are lower, labour would be

better off than in the rest of the regions where the living index is higher; yet, the wage scales would be the same in all the regions. Uniformity of wage-scales, irrespective of differences in conditions would place both the employees and the employers in regions where such favourable conditions prevail in an unfairly advantageous position over the employees and employers in the other regions. Instead of attaining harmony there would as a result arise inevitably a feeling of discrimination. Though, as stated by this Court in *Express Newspapers' Case*(1), it may not be possible or even necessary for a Wage Board to scrutinise all the establishments separately and it would be enough to take a representative cross-section of the industry for assessment, the cross-section to be a truly representative one and capable of giving a true picture of the conditions of both the industry and labour must be one from each region where establishments of the industry in question are situate.

What the Wage Board, however, did was that instead of proceeding region-wise and selecting a representative cross-section from each region, it selected 20 mills from West Bengal and clubbed them with 9 reporting mills from the rest of the regions, viz., Bih'ar, U.P., Madhya Pradesh and Andhra Pradesh where a few mills are scattered. The Board considered these 29 mills as representing a cross-section of the industry. It is obvious that these mills so clubbed together could not truly reflect the economic and other conditions prevailing in the mills in different regions with their peculiar problems and differing conditions. That in our view was not a proper approach and was bound to result in injustice especially in view of the peculiar feature of the jute industry that it is predominantly concentrated in West Bengal and is export-oriented. Besides, the jute industry in the

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

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other regions suffers from a distinct disadvantage as the raw materials have to be transported from a distance at considerable cost. Taking the 20 mills from West Bengal and the 9 mills from outside as forming a representative cross-section was manifestly incorrect as the West Bengal Mills cannot truly be said to be comparable units for the rest of the mills.

Another difficulty in accepting the Wage Board's recommendations arises from the fact that the Board equated the cotton textile industry in West Bengal with the jute industry there and finding the wage-scales in the jute industry lower than those in the cotton textile industry the Board raised the scales in the jute industry so as to bring them to the level of the cotton textile industry. Having so done, the next step which the Wage Board took was to raise also the wage-scales in mills outside West Bengal to bring them in line with the scales proposed by it for the mills in West Bengal. This process gave rise to two infirmities: (i) that the Board treated cotton textile concerns in West Bengal as comparable to those in jute industry; and (ii) it treated the jute mills in West Bengal as comparable to those outside, although conditions in the different regions where they were situate were obviously different. This meant that the Board gave a go-by to the well established principle of industry-cum-region consistently applied by Industrial Tribunals whenever wage-scales had to be determined.

Such a disharmony in the approach to the problem of determination of wage-scales by a Wage Board on the one hand

and an Industrial Tribunal on the other must inevitably occur because whereas the attempt of a Board would be to uniformise wage-scales for the entire industry, though it is spread over different parts of the country where conditions can rarely be expected to be similar or the same, the concern of a Tribunal would principally be to determine equitably the wage-scales of a single unit with which it is for the time being concerned. The difficulty would be all the more felt by such a Tribunal where it is faced with the dilemma whether or not it should follow the Board's recommendations arrived at on principles different from (as in the present case) those consistently followed in industrial adjudication. One should have thought that this difficulty would have been realised before the recommendations of the Wage Board were accepted by Government.

The difficulty referred to above arising from the difference in the functions of the two bodies could well have been obviated if the Wage Board instead of laying down uniform scales for the entire industry irrespective of where its several units were situate and of the different conditions prevailing in various areas, had considered the units in each area separately and determined the

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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 is true that in doing so uniformity of wagescales 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-scales had been determined by the Board in the manner aforesaid, even though the Board is not a statutory body and consequently its decisions 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 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 industry 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 Board, therefore, ought to have selected comparable units from each of the regions where the lute mills are situate and after their examination arrive at common wagescales for each of those regions instead 'of grouping together 20 mills from West Bengal and 9 mills from the other regions and treating them as constituting a cross-section representing the industry. The position in which a Tribunal called upon to fix wage-scales would be placed would not be an enviable one for it would find itself in an embarrassing situation where it had either to accept the wage-scales fixed by the Board though they were fixed in contravention of the principle of industry-cum-region, or discard them and proceed to fix them on its own on the principle of industry-cum-region, a principle which, as the industrial law stands today, it is bound to follow.

We have already pointed out that the Wage Board has taken the view that the wage level in the entire jute industry should be uniform throughout the country. It has also stated that the wage structure for the jute industry in West Bengal has to be devised having regard to the pattern of wage-structure existing in the cotton textile industry in that area. It is on this basis, and after a comparison of the wage structure prevailing in the cotton textile industry in that area, that the Wage Board has come to the conclusion that the minimum monthly emoluments of a worker in West Bengal must be fixed at Rs. 81 taking in the basic wages, the Wage Board increment and the variable dearness allowance.

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The standardised basic wages enumerated in Appendix XI has been made applicable to all the jute mills outside West Bengal also, including the respondent mill. We have already referred to the recommendation of the Wage Board in para 7.65 (c) that the respondent jute mill should adopt the standardised basic wages axed in Appendix XI, in a phased manner. Over and above that basic wage, the Wage Board has given an increase of Rs. 8.33 per month, as Wage Board increment and a variable dearness allowance of Rs. 32.50 per month. Though it had been pressed by the jute mills outside West Bengal, that they had to pay higher freight charges on coal, batching oil etc., and that mill stores and electricity charges were higher for them, the Wage Board insisted that the wage level in the jute industry should be uniform throughout the country. The result of the Wage Board's recommendations, if they are to be given affect to by the respondent mill, will be that as against the minimum monthly wage of Rs. 52.17 that was being paid by the respondent there is a very sharp rise in its wage bill. The claim of the respondent that the recurring expenditure for implementation of the recommendation of the Wage Board is over Rs. 3,75,000, and that it has not the financial capacity to bear this burden, has been accepted by the Industrial Tribunal and that finding has not been challenged before us by the appellant. The respondent mill, which has only 120 looms, has been compared with the two big mills in Andhra Pradesh, viz., Nellimarla and Chitavalsa, having 326 and 500 looms respectively, as also with very large mills in West Bengal, some of whose loom capacity is more than 2,000. That clearly shows that all mills, small as well as large, economic as well as uneconomic, have been clubbed together and treated alike by the Wage Board. In considering the capacity, the Wage Board has taken 20 jute mills in West Bengal as representing a fair cross-section of the industry in that region and it has taken 9 reporting mills outside West Bengal for this purpose. Three mills selected in Andhra Pradesh were the Nellimarla, Chitavalsa and the respondent mills. We have already shown the large disparity that exists between the mills in West Bengal as also between the Nellimarla and Chitavalsa and the respondent mill. We have also referred to the decisions of this Court that to compare wage scales comparable establishments in the region would be taken into account and that a small, struggling concern should not be compared with a large, flourishing one. But this is exactly what has happened, when the Wage Board treated alike the respondent mill not only with Nellimarla and Chitavalsa jute mills but also with some of the very big and prosperous mills in West Bengal.

The various aspects, dealt with above, establish that the essential prerequisite of deciding the wage structure.

viz., to consider the capacity of the industry to pay on the principles laid down by

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this Court, is absent in the recommendations of the wage Board and that introduces a fatal infirmity in its decision.

The question of bonus does not arise for our consideration as the respondent has stated that the management has entered into a settlement with its workmen and that they will be entitled for bonus only if the net profits exceed Rs. 75,000. It has further been stated that there is no available surplus to warrant the payment of bonus. These statements have not been controverted on behalf of the appellant.

To conclude, the award of the Industrial Tribunal that the demand of the workmen for implementation of the recommendations of the Wage Board is not justified, is correct. The appeal fails and is dismissed. In the circumstances of the case, there will be no order as to costs.

Y.P.

Appeal dismissed.

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