action was in two parts and that what the father gifted was the money and not the property. It would be indeed an artificial way of looking at the transaction as was done by the trial court as being constituted of two parts. The transaction in my judgment is one indivisible whole, and that is, the father provided the money for acquiring the property in the mother's name. Therefore, in effect it was the father who purchased the property with the intention of conferring the beneficial interest solely upon the mother. Such a transaction must therefore amount to a gift. In that view the property would not fall under cl. (d) of s. 10 of the Act but under cl. (b) of that section. Therefore, the appellant would be the sole heir of her mother and the non-joinder of her brothers would not defeat the suit so far as she is concerned. In the result I would set aside the decree of the courts below in so far as the property in question, Beverley Estates, is concerned and decree the appellant's suit with respect to it in addition to the property with respect to which she has already obtained a decree in the courts below. I would further direct that the respondents will pay to the appellant proportionate costs in all the courts.

ORDER BY COURT

In accordance with the opinion of the majority the appeal is dismissed. No order as to costs. Appellant need not pay court fees

---

PODAR PLASTICS(P) LTD

v.

ITS WORKMEN

(P. B. GAJENDRAGADKAR AND K. C. DAS GUPTA JJ.)

Industrial Dispute—Bonus—Deduction according to Full Bench Formula—What principle to be followed—Industrial Disputes Act, 1947 (14 *of* 1947).

An Industrial Dispute arose between the appellant and its workmen in respect of the claim made by the workmen (respondents) for bonus for the year 1959. The respondents claimed that they were entitled to get bonus equivalent to three months' salary including dearness allowance. The appellant claimed deductions on the basis of the Full Bench

1963

Podar Plastics (P) Ltd.
v.
Its Workmen

Formula. The appellant claimed deduction of Rs. 60,000 by way of notional remuneration for Mr. K. R. Podar, one of the Directors of the company. According to the appellant K. R. Podar devoted the whole of his time to the supervision and management of the appellant concern, and so, he was entitled to charge remuneration at the rate of Rs. 5,000 a month. The appellant also made a claim for rehabilitation. On these facts the Tribunal directed the appellant to pay to the respondents bonus at the rate of half month's basic wages excluding allowances and overtime for the said year. It is against this award that the appellant has come to this Court.

Held: (i) that in a concern like the appellant's if one of the Directors spends his time in supervising and managing the affairs of the concern, he would be entitled to charge a reasonable remuneration. But in the present case Mr. Podar did not actually charge any remuneration. The working of the Full Bench Formula is no doubt notional in some respects, but it would not be permissible for the employer to make it still more notional by introducing claims for prior charges on purely hypothetical and almost fictional basis. The Tribunal did not feel justified in allowing the claim for deduction made by the appellant in regard to the notional remuneration of Mr. Podar on the ground that Mr. Podar had not been paid remuneration regularly and it had not been duly shown in the books of account.

Gujarat Engineering Co. v. *Ahmedabad Misc. Industrial Workers' Union*, (1961) II L.L.J. 660 and *Kodaneri Estate* v. *Its Workmen*, (1960) I L.L.J. 273, relied on.

(ii) It is not the correct legal position that a second hand machinery should be rehabilitated only by second hand machinery. But in the present case the finding of the Tribunal in respect of the claim for rehabilitation is based on its appreciation of the evidence led by the appellant and that cannot be disturbed having regard to the material which is available on the record.

South India Millowners' Association v. *Coimbatore District Textile Workers' Union*, (1962) I L.L.J. 223, relied on.

(iii) It would be erroneous to assume that this Court approved of or affirmed the *ad hoc* basis adopted by the Tribunal in the case of South India Millowners' Association.

(iv) It would be unreasonable to suggest that if the employer does not adduce sufficient evidence to justify his claim for rehabilitation and the Tribunal is inclined to reject the evidence which has been adduced, the Tribunal must nevertheless award some rehabilitation on a purely hypothetical and imaginary *ad hoc* basis. In the present case the employer adduced evidence for rehabilitation and that was rejected by the Tribunal.

(v) It has been consistently held by this Court that in bonus calculations the employer is entitled to claim a deduction of the Income-tax as well as wealth tax; but in the present case, there is, no material

to determine what the amount of wealth tax charged or paid is, and so, no relief can be granted to the appellant on that account.

1963

Podar Plastics (P) Ltd. v. Its Workmen

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 496 of 1963.

Appeal by special leave from the Award dated August 26, 1961, of the Industrial Tribunal, Maharashtra in Reference (IT) No. 43 of 1961.

S. V. Gupte, Additional Solicitor-General of India and *I. N. Shroff*, for the appellant.

K. R. Chaudhuri, for the respondents.

December 19, 1963.—The Judgment of the Court was delivered by:—

GAJENDRAGADKAR J.—This appeal arises from an Industrial dispute between the appellant Podar Plastics (P) Ltd. and the respondents, its workmen, and it has reference to the claim made by the respondents for bonus for the year 1959. The respondents claim that for the relevant year they should get bonus equivalent to three months' salary including dearness allowance. On hearing the parties and on considering the evidence adduced by them, the Tribunal has directed that the appellant shall pay to the respondents bonus at the rate of half month's basic wages excluding allowances and overtime for the said year. It is against this award that the appellant has come to this Court by special leave.

Gajendragadkar J.

The appellant is a private company and its registered office is situated at Podar Chambers, Parsee Bazar Street, Fort, Bombay. It owns a factory at Supari Baug Road where it manufactures plastic products. The appellant's case before the Tribunal was that if proper accounts are made in accordance with the Full Bench Formula, it would be found that there is no available surplus from which any bonus can be paid to the respondents. On the other hand, the respondents urged that the working of the Formula would show a substantial available surplus from which three months' wages as bonus can be easily paid. As usual, the controversy between the parties centered round prior charges which the appellant claimed ought to be deducted from the gross profits. One of the points of dispute between the

1963

Podar Plastics (P) Ltd. v. Its Workmen

Gajendragadkar J.

parties was whether depreciation which has to be deducted as a prior charge should be statutory depreciation or notional normal depreciation. The figure of the profit was admitted at Rs. 2·70 lacs. The Tribunal made alternative calculations, one on the basis that statutory depreciation alone should be deducted, while the other was prepared on the basis that notional normal depreciation as claimed by the appellant should be deducted. On the first calculation the available surplus was found to be Rs. 0·44 lac. On the alternative calculation, it was found to be Rs. 0·33 lac. For the purpose of this appeal we will accept the latter calculation which is made on the basis that the notional normal depreciation has to be deducted.

It has been conceded before us by the learned Addl. Solicitor-General for the appellant that there are two mistakes in this calculation. The amount of notional normal depreciation which has been shown as Rs. 0·78 lac ought to be Rs. 0·73 lac. Similarly the amount of income-tax which is shown as Rs. 0·96 lac ought to be Rs. 0·95 lac. Thus, the two mistakes accounting for nearly Rs. 6,000 have been made in favour of the appellant by the Tribunal in making this calculation, and that would make the available surplus as Rs. 0·39 lac; that is one aspect of the matter which has to be borne in mind in dealing with the appeal before us.

The main point which has been urged before us by the learned Addl. Solicitor-General relates to the claim made by the appellant for the deduction as a prior charge of Rs. 60,000 by way of notional remuneration for Mr. K. R. Podar, one of the Directors of the Company. We have already seen that the appellant is a Private Ltd. Co. and four of the major shareholders are members of the Podar family; they are: R.A. Podar, G.R. Podar, K.R. Podar and B.J. Podar; the 5th shareholder is M/s. Podar Trading Co. Private Ltd., 6th is Jay Agents Private Ltd., 7th is the National Traders Private Ltd. and the 8th is Ratilal B. Desai. According to the appellant, K.R. Podar devoted the whole of his time to the supervision and management of the appellant concern, and so, he was entitled to charge remuneration at the rate of Rs. 5,000 a month. In sup-

port of this claim, Mr. Gupta, the Manager of the concern, made an affidavit and offered himself for cross-examination. He stated that Mr. Podar attends the factory from 9 A.M. to 1 P.M. and 2-30 P.M. to 6-30 P.M. In his cross-examination, it was brought out that when the previous Director was paid Rs. 1000 per month as remuneration, a resolution had been passed by the Board of Directors in that behalf; but no such resolution has been passed in regard to the remuneration of Mr. K. R. Podar. Besides, the appellant itself has urged that Mr. Podar did not actually charge any remuneration because it was thought that the financial position of the appellant was not very satisfactory, and so, Mr. Podar wanted to save expenditure on account of his remuneration. It may be conceded that in a concern like the appellant's if one of the Directors spends his time in supervising and managing the affairs of the concern, he would be entitled to charge a reasonable remuneration. This position has not been and cannot be disputed in view of the decisions of this Court in *Gujarat Engineering Company* v. *Ahmedabad Misc. Industrial Workers' Union*(1), and *Kodaneri Estate* v. *Its Workmen and Another*(2). Relying on these decisions, it is urged on behalf of the appellant that the Tribunal was in error in not allowing any deduction on account of remuneration to Mr. Podar.

In our opinion, the appellant cannot seriously quarrel with the finding of the Tribunal, because it is conceded that Mr. Podar in fact has not charged any remuneration. The working of the Formula is no doubt notional in some respects, but we think it would not be permissible for the employer to make it still more notional by introducing claims for prior charges on purely hypothetical and almost fictional basis. If Mr. Podar had been paid remuneration regularly and it had been duly shown in the books of account, a claim in that behalf could have been made by the appellant, and subject to the scrutiny by the Industrial Tribunal as to reasonableness of the said payment, such a claim would have been allowed; but if for any reasons Mr. Podar did not charge any remuneration, it would be unfair to allow a deduction on that account to be made notionally

(1) [1961] II L.L.J. 660. (2) [1960] I L.L.J. 273.

1963

Podar Plastics (P) Ltd. v. Its Workmen

Gajendragadkar J.

because the working of the Formula is sometimes described as notional. The inclusion of such an item solely for the purpose of depressing the available surplus cannot, in our opinion, be allowed. Besides, the Tribunal does not appear to have accepted the evidence for Mr. Gupta and it has made a significant comment that Mr. K. R. Podar has himself not stepped into the witness-box to make a claim for his remuneration. Mr. Gupta was asked whether Mr. Podar was going to give evidence, and he answered the question in the negative. Therefore, if in the circumstances proved in this case, the Tribunal did not feel justified in allowing the claim for deduction made by the appellant in regard to the notional remuneration of Mr. Podar, the appellant cannot make a serious grievance.

The other point in controversy is in regard to the direction of the Tribunal that the appellant was not entitled to make any claim for rehabilitation. It appears that the Tribunal was inclined to take the view that since the appellant had begun its business with second-hand machinery, it was not entitled to make a claim for rehabilitation on the basis of replacement of the said machinery by brand new machinery. In other words, the Tribunal seems to be of the opinion that in cases where an employer is carrying on his business with second-hand machinery, rehabilitation should be calculated on the basis that the said second-hand machinery would be replaced by second-hand machinery and not by new machinery. This view has been rejected by this Court in the case of *South India Millowners' Association and Ors.* v. *Coimbatore District Textile Workers' Union and Ors*(1). Therefore, the appellant is right in contending that the approach adopted by the Tribunal in dealing with the question of rehabilitation is erroneous.

That, however, does not help the appellant because in the present case the Tribunal has considered the evidence given by Mr. Dinshaw on behalf of the appellant in support of its claim that the rehabilitation requirement of the appellant would be of the order of Rs. 8,84,629. It is true that one of the reasons given by the Tribunal is that the

(1) [1962] II L.L.J. 223.

appellant is not justified in making a claim for rehabilitation on the basis that new machinery would be purchased by him for rehabilitating his old one; but there are several other reasons which the Tribunal has discussed and these reasons indicate that the Tribunal was not satisfied with the accuracy of the statements made by Mr. Dinshaw and their reliability. Incidentally, it appears that the appellant made a novel claim for rehabilitating his dead stock as one of the items under rehabilitation, and the Tribunal has rejected that claim. In the result, the finding of the Tribunal is based on its appreciation of the evidence led by the appellant and that cannot be disturbed having regard to the material which is available on the record. The Tribunal has taken the precaution of adding that if the appellant leads better evidence in future, its claim for rehabilitation would have to be judged on the merits and the present decision will not create any bar against it. In our opinion, that is all that can be done in the present appeal.

The learned Addl. Solicitor-General, however, attempted to argue that the Tribunal should have made some allowance for rehabilitation on an *ad hoc* basis and in support of this contention, he has referred us to some of the observations made in the case of *South India Millowners' Association*(1). It appears that in that case, the appellant Mills had not adduced relevant evidence about the original price and subsequent depreciation of the machinery prior to its purchase by the appellant, and so, acting on the evidence available on the record, the Tribunal adopted some *ad hoc* basis. No grievance was made about the *ad hoc* basis adopted by the Tribunal; the only grievance made was against certain observations made by the Tribunal that if the existing machinery is second hand, it should be rehabilitated only by second hand machinery, and this Court held that the said observations did not represent the true legal position in the matter. It would, we think, be erroneous to assume that this Court approved of or affirmed the *ad hoc* basis adopted by the Tribunal in that particular case. On what material the said *ad hoc* basis was adopted is not known, and it would, we think, be unreasonable to suggest that if the employer does not adduce sufficient evidence to

(1) [1962] I L.L.J. 223.

1963

Podar Plastics (P) Ltd. v. Its Workmen

Gajendragadkar J.

justify his claim for rehabilitation and the Tribunal is inclined to reject the evidence which has been adduced, the Tribunal must nevertheless award some rehabilitation on a purely hypothetical and imaginary *ad hoc* basis. In such a case all that the Tribunal can do is to safeguard the position of the employer by giving him opportunity to adduce better evidence in future, and that is what the Tribunal has done in the present case.

An attempt was then made by the learned Addl. Solicitor-General to make a claim for the deduction of the wealth tax. It has been consistently held by this Court that in bonus calculations the employer is entitled to claim a deduction of the income-tax as well as wealth tax; but, in the present case, there is no material to determine what the amount of wealth tax charged or paid is, and so, no relief can be granted to the appellant on that account.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

BOMBAY UNION OF JOURNALISTS & ORS.

v.

THE STATE OF BOMBAY & ANR.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO AND K. C. DAS GUPTA JJ.)

Industrial Dispute—Reference by Government—Discretion of Government—Industrial Disputes Act (XIV of 1947), s. 25F—Scope of—Duty of Government to make a reference.

The appellants 2 and 3 were working journalists and they were retrenched on payment of three months salary in lieu of notice. The first appellant took up their case and alleged that the retrenchment was not *bona fide* and they were in fact victimised. On the failure of conciliation proceedings a report was submitted to the State Government (respondent No. 1). After hearing the parties concerned the Government passed an order refusing to refer the dispute. The reasons given