

(1978) 12 KL CK 0006
In the High Court Of Kerala

Chamber of Commerce

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-12-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A, 2, 39, 40, 8

Citation : (1979) 2 ILR (Ker) 561

Hon'ble Judges : Subramonian Poti, J;S.K. Kader, J

Bench : Division Bench

Judgement

Subramonian Poti, J.

The Government of Kerala in the gazette dated 8th July, 1975 published the Award of Arbitrators in respect of a dispute between the petitioner here, the Chamber of Commerce, Trichur and their workmen represented by Trichur Range Gold Workers Union, and the Trichur District Swarna Thozhilali Union, Trichur. The said dispute had been referred for arbitration to the State Arbitration Board by agreement of parties. This was u/s 10A(3) of the Industrial Disputes Act, 1947. The specific matters in dispute is seen from the charter of demands annexed to the order of reference were the following:

1. Increase of wages and dearness allowance.
2. Bonus.
3. Stoppage of rent and lighting charges for the building where the workmen are working.
4. Claim for tools allowance.
5. Claim for artisans cards for all workmen working in the shops and employers.
6. Special wages for work done under orders.
7. Minimum wages for artisans.

8. Maintenance of Worker's Register by all employers in every establishment.
9. Increase in the rates of wages.
10. Provision of amenities for work.
11. Working hours to be fixed as 8 hours per day.
12. Overtime wages.
13. Holidays with wages.
14. Die work charges to be reduced.
15. Boards to be constituted for fixing die work rates.
16. Application of E.S.I. Scheme for gold workers.
17. Provident Fund.
18. Gratuity.

In the written statement filed by the unions it was contended that there were 22 employers in Trichur dealing in gold and about 700 employees would be entitled to the benefits that may accrue if the demands urged are accepted. The plea of the management was that goldsmiths represented by the unions were not their employees. The case set up in the written statement of the managements who were represented by the Chamber of Commerce was that they never employed any certified gold smiths, that there was no employer-employee relationship between them, and that these persons were independent contractors working on fixed piece-rate for each variety or design of work in their own homes without restriction as to hours of work and without any control or supervision by the gold dealers. Though this contention embraced both goldsmiths and artisans, the case as to artisans was given up before the Arbitrators and before us it was conceded that arisans 18 in number working under the 22 gold dealers were workmen within the meaning of that term in the Industrial Disputes Act. The dispute concerns only the rest who are certified goldsmiths. The validity of the claims urged by the unions depended upon the determination of the question whether there was employer-employee relationship between certified goldsmiths in Trichur own on the one hand and the licensed gold dealers in the Trichur Town on the other.

2. Considering the materials available in the case the Arbitrators came to the conclusion that there can be no manner of doubt that the relation between dealers and the certified goldsmiths was one of employers and employees and that the latter are workmen as defined in the Industrial Disputes Act. After finding this the Arbitrators proceeded to consider the various items of claim. Though 18 items were raised, only 7 seem to have been urged before the Arbitrators. Others were not pressed. Of this the claim relating to Provident Fund Gratuity and Employees State Insurance was not dealt with on the merits by the Arbitrators as these were found to be governed and regulated by special statutes

and hence beyond the purview of the Arbitrators. Regarding the others the claim by the unions were recognised partially.

3. The Chamber of Commerce which is the petitioner in this petition has challenged the Award of the Arbitrators. Earlier there was challenge in this Court to the appointment of a fresh set of Arbitrators when the term of the earlier team of Arbitrators expired and that challenge was at the instance of one of the two unions. This Court directed the Government to constitute the earlier set of Arbitrator so that they may continue in office for dealing with the arbitration and accordingly they have dealt with the matter, Parties also agreed that the evidence taken before the reconstitution of the old set of arbitrators may be treated as binding on the parties. Parties are not at issue here on that question and we need not go into that question here.

4. The basis of the challenge to the Award of the arbitrators is mainly on two counts. First, it is said that the Arbitrators did not consider matters relevant in determining the question of relationship of employer and employees and the decision reached is unsupportable for that reason. It is further said that even if there was relationship of employer and employee, the Award is erroneous on the face of it in as much as the claims urged by the union had not been dealt with on any rational basis.

5. The Gold (Control) Act, 1968 which came into force on 1-9-1968 repealed the Gold (Control) Act, 1965 and the Gold Control Ordinance, 1968. The Gold (Control) Rules, 1968 under the Act of 1968 also came into force on 1-9-1968, The Act defined in Section 2(h) a dealer as meaning any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting gold, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration. Any person who, being the owner, lessee or occupier of a refinery, is engaged in the business of melting, assaying, refining, alloying or extracting gold from any ore, salt or chemicals or subjecting it to any other process is defined as a "refiner" in Section 2(s) of the Act. A certified goldsmith is defined in Section 2(d) as meaning a self-employed goldsmith who holds a valid certificate, referred to in Section 39 of the Act. Artisan is defined in Section 2(c) to mean a person (other than a certified goldsmith) who is employed by a licensed dealer, whether on cash or deferred payment or on commission, remuneration or other valuable consideration, to make, manufacture, prepare, repair, polish or process any article or ornament or to melt, process or convert gold for the purpose of making, manufacturing, preparing, repairing or processing any article or ornament. These definitions indicate that a dealer is a person who deals in the business of making, selling and carrying on other allied activities in regard to gold and other ornaments. An artisan is a person who is a workman on wages or remuneration employed by such dealer. Therefore, it is evident that as between them there is a relationship of master and servant. Section 2(s) of the Industrial Disputes Act, 1947 defines a

workman thus:

Workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person --

(i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Whether a certified goldsmith satisfies the above definition was the matter for decision before the Arbitrators. We have already noticed the definition of certified goldsmith as a person self-employed indicating that in the scheme envisaged in the Gold (Control) Act he is, unlike an artisan, not one employed by another but one who is on his own. He is his own employer. Section 39(1) of the Gold (Control) Act provides that save as otherwise provided in the Act no person shall commence, or carry on, business as a goldsmith after the commencement of the Act, unless he holds a valid certificate recognising him as a goldsmith. This necessarily indicates that a certified goldsmith who is self-employed is one who carries on business as a goldsmith. Section 40 specifies what a certified goldsmith may manufacture. He may manufacture, prepare, repair, polish or process ornaments and may also repair or polish articles but shall not, unless authorised by the Administrator so to do, make, manufacture or prepare any primary gold or article. There is a proviso to this Section to which it may be necessary to advert. That runs thus:

Provided that, subject to the provisions of Section 42, a certified goldsmith may, in the process of making, manufacturing, preparing or repairing ornaments, make, manufacturing or prepared primary gold (other than standard gold bar) by melting, processing or converting any article, ornament or standard gold bar acquired, accepted or received by him in accordance with the provisions of Part XII-A of the Defence of Indian Rules, 1962, or as the case may be, the Gold (Control) Ordinance, 1968 (6 of 1968), or of this Act.

A certified goldsmith may acquire gold by purchasing standard gold bars from

licensed dealer or refiner or by accepting or otherwise receiving any article, ornaments or primary gold from a licensed dealer for the purpose of making, manufacturing, preparing or repairing ornaments for such licensed dealer or by accepting or otherwise receiving subject to the provisions of Section 8, from any other person any article or ornament for the purpose of making, manufacturing or preparing ornament for such person or for the purpose of repairing or polishing such article or ornament. This is the provision in Section 41 of the Act. Sub-section (b) further provides that save as otherwise provided in the Act, a certified goldsmith shall not, buy or agree to buy or sell or agree to sell any primary gold, article ornament. There is a limit to the amount of gold which a certified goldsmith may possess which is mentioned in Section 8 of the Act and the power to accept or otherwise receive gold or ornaments from any person other than a licensed dealer is subject to the provisions in Section 8 of the Act. The scheme in Chapter VIII dealing with certified goldsmiths indicates that they are carrying on business of manufacture, making, preparing, repairing, preparing and polishing of ornaments of their own. They can take orders from the licensed dealers and manufacture according to such orders. They can take orders from other persons and manufacture according to their orders. This is what is indicated in Section 41(a)(ii) and (iii).

6. An artisan, as already noticed, is one who works for remuneration for the licensed dealer. He may be a whole -time or part-time employee working on receipt of daily wages or other remuneration. He is to have an identity card given by the licensed dealer which is duly counter-signed by the Gold Control Officer. His functions are to make, manufacture, prepare, repair or polish ornaments for the dealer by whom he is employed. Section 48 of Act prohibits an artisan from doing any work at any place other than the premises specified in the licence issued to the dealer by whom he is employed. Thus, in short, it may be said that artisan carries on more or less the same work of the certified goldsmith but in the case of an artisan he works for the licensed dealer in his premises as his employee while the certified goldsmith is self-employed and carries on the business in his own premises. The above-said scheme of the Act is relevant in appreciating the question of the nature of the employment of a certified goldsmith. It may be useful to advert to X. 44(7) of the Gold (Control) Act. That provides that no licensed dealer or certified goldsmith shall accept employment as an artisan unless he has, before commencing work as an artisan, surrendered his licence or certificate, as the case may be, to the Gold Control Officer. When a certified goldsmith seeks to resume business as certified goldsmith the certificate surrendered by him will be restored to him on an application being submitted by him. Thus there is no question of any certified goldsmith at any time working as artisan unless he surrenders his certificate and he can resume his business as certified goldsmith only with the certificate restored to him. At no time he can function both as artisan and a certified goldsmith.

7. It would appear from the above discussion that certified goldsmiths are not persons working as employees of the licensed dealers. All the same it was

contended by the unions that whatever may be their position under the Gold (Control) Act, as a matter of fact they are working as employees and that should be recognised in any adjudication under the Industrial Disputes Act. The fact that their rights and obligations are defined by the statute, the Gold Control Act, and they are obliged to act in accordance with the statute does not mean that as a matter of fact their relation is in accordance with the provisions of such statute. Though it is not stated so in categorical terms, it would appear from the approach of the unions to this matter that their case is that despite their being certified goldsmiths with duly obtained certificates and are governed by the provisions of the Gold (Control) Act they are actually doing work which is expected of workmen and their relationship is in fact one of workmen vis-a-vis employers. We should assume that if the statute defines their rights and obligations and prohibits them from acting in certain manner their rights are normally to be determined on the basis of the statute which confers rights and imposes duties on them. To understand the relationship of parties it may be necessary, in this context, to advert to the nature of the dealings between them. It is the case of the unions that they are engaged in the work of manufacture of gold ornaments out of gold supplied to them by the licensed dealers and supply of the gold ornaments so manufactured by them out of such gold to the licensed dealers in which process they get the remuneration at rates agreed to. It is further the case of the unions that each of the certified goldsmiths works for one employer and continues to work for him. In other words, any specific certified goldsmith is not employed by more than one licensed dealer. That gold for manufacture of ornaments is supplied to the certified goldsmith from time to time is conceded by the licensed dealers also. According to them the work is entrusted for remuneration on piece rate basis and different rates are adopted by different dealers. The work is carried on by goldsmiths admittedly in their own premises and not in the premises of the licensed dealers. Materials necessary for manufacture excepting gold are not being supplied by the licensed dealers but are collected by the certified goldsmiths themselves. This includes charcoal, saw, leather, mercury, hammer and other instruments. For these the monthly expenditure for a certified goldsmith would be, it is said, about Rs. 25. This is what is spoken to by WW1. It is also spoken to by WW7, the Secretary of one of the unions that the manufacturing expenses had gone up in recent times four or five times and that was the reason why the payment for tools allowance was urged by the unions. It is also not disputed that in case the ornament manufactured is not according to the specifications there is the likelihood of rejection by the licensed dealers. Evidently that is the only sort of control that seems to be exercised by the licensed dealers over the certified goldsmiths. The remuneration received by the certified gold smiths are the amounts paid to them by the licensed dealers at the rate agreed upon and there is no scope of profit or loss on the part of the certified goldsmiths. These are the main facts said to be relevant and adverted to by both sides to determine the nature of the relationship between the parties. The Arbitrators, on the basis of the materials before them, dealt with the question. At the outset they have set out the

principles deducible from the decisions on the question in paragraph 15 of the Award. That reads:

(a) The control and supervision test which at one time held the field, is no longer a sole or conclusive test.

(b) The test of being a servant does not rest now-a-days on submission to orders. It depends on whether the person is part and parcel of the organisation.

(c) The essence of the enquiry should be whether the men were employees as a matter of economic reality or whether the person who has been engaged to do the work, is doing it as a person in business on his own account.

(d) If the employer has the right to reject the end product if it does not conform to his specifications, the element of supervision and control must be deemed to be present.

(e) A person can be a servant of more than one employer. A servant need not be under the exclusive control of one master.

(f) Under a contract of service, a man is employed as a part of the business, and his work is done as an integral part of the business, whereas, under a contract for service, his work although done for the business, is not integrated into it but it only necessary to it.

Purporting to apply these principles to the facts of the case the Arbitrators have dealt with the question in paragraphs 16, 17 and 18 which may be extracted here:

16. Applying the above principles to the facts of the instant case, there can be no manner of doubt that the relationship between the dealers and the certified goldsmiths is one of employer and employee. The business of the dealers is to purchase gold and get it converted into ornaments. The goldsmiths constitute an integral part of the business of the dealers as a matter of economic reality. The capital necessary for the business is gold and it is wholly provided by the dealers. The profit and the risk of loss are all the concern of the dealers. The goldsmiths work only for wages. True, they provide themselves with the tools and accessories which are needed for the manufacturing process but that is only of insignificant value compared to the essential raw material which is gold supplied by the dealers. It is again true that these goldsmiths sometimes engage helpers on their own, but that also can have no bearing on the nature of the relationship between the principal parties. So, too, double or multiple employment. The control test is also satisfied in this case in as much as the dealer can reject the end product if it does not conform to his specifications.

17. Learned Counsel for the Management, while conceding that the artisans involved in this case would be "Workmen as defined in the Industrial Disputes Act, strenuously argued that the same cannot be said of the certified goldsmiths in view of the special provisions of the Gold Control Act relating to them. In this

connection, he places strong reliance on the definition of "certified goldsmiths" in Section 2(d) of the Act which describe him as a self-employed person and on Section 44(7) which expressly prohibits him from accepting employment under another. It is further argued that in matters concerning certified goldsmiths, the Gold Control Act alone can apply, being a special Act. We are unable to accede to these arguments. In the matter of Industrial or labour relations, it seems to us, that it is the Industrial Disputes Act which must have unrestricted sway, being a piece of social legislation. It may also be noted that the field of operation of the two Acts is entirely different and there is no inherent conflict between them. The decisions relied on by learned Counsel for the management adopt the control and supervision test to the exclusion of all other considerations. They can no longer be considered as good law in view of the later decisions.

18. The foregoing discussion leads us to the conclusion that the relationship between the dealers and the certified goldsmiths in this case is that of employer and employee and that the latter are "workmen" as defined in the Industrial Disputes Act. There is no controversy as regards the Artisans. They are admittedly "workmen". It follows that the reference is competent and that we are entitled to go into the merits of the claims put forward by the unions. We find accordingly.

Though there is a statement of the principles which statement in paragraph 15 is unobjectionable, we do not find an application of the principles to the facts before the Arbitrators. The question whether a person is part and parcel of an organisation and whether such person is an employee as a matter of economic reality are certainly relevant aspects. But we find no consideration of the question or a proper approach to the question in the impugned Award. It is said that the goldsmiths constitute an integral part of the business. Merely because the goldsmiths manufacture and supply gold ornaments to the licensed dealers they would not form an integral part of the business and that again as observed, as a matter of economic reality. It is noticed by the Arbitrators that the capital necessary for the business is gold and it is wholly provided by the dealers and profit and the risk of loss are all the concern of the dealers. The goldsmiths are said to work only for wages. Profit and loss of the dealers is in their business and the capital they invest is for their business. That is not the capital of the goldsmith's business. Capital needed for any business will depend upon the nature of the business and the profit and loss will also depend upon the nature of the business. There may be business for which very little capital is needed; there may be business in which margin of profit or loss would not be considerable. In the case of business of goldsmiths it is not one which needs any considerable capital unless he decides to buy gold from a licensed dealer or refiner. If he is to supply ornaments out of gold entrusted to him by licensed dealers or others such work may not need much capital. The risk of loss or the prospect of worthwhile profit is also very little when he accepts items of work on fixed piece rates. But it cannot be said that no capital is employed or that there is no profit.

8. It appears that the. certified goldsmiths employ assistants to help them in the work and WW1 himself admits that he has employed 3 such persons (no doubt Gold Control Act envisages certified goldsmiths employing not more than one person). He further admits that he pays wages to these 3 persons and even pays bonus to them. May be that out of the charges that he receives from the licensed dealer he may make a profit after accounting for what would be the wages if he has himself done the work. But possibly the margin may not be that which is normally made by licensed dealers. The quantum of profit or loss would depend upon the extent of a person's business. The Arbitrators noticed that the tools and accessories which are needed for the manufacturing process is provided by the certified goldsmiths themselves, but also noticed that it is only or insignificant value compared to the essentially raw material, namely, the gold supplied by the licensed dealers. There is no reason to compare with the raw material supplied by the dealers. The comparison ought to have been with the remuneration for the work undertaken by the certified goldsmiths. The fact that the gold on which the certified goldsmith works is costly raw material when compared to the materials used by the goldsmith in the manufacture is not relevant. The Arbitrators also noticed that certified goldsmiths sometime engage helpers on their own, but observe that this has no relevance. They refer to double or multiple employment. That also is said to be not relevant and it is said that the control test is satisfied since the dealer can reject the end product if it does not conform to specifications. Though it was pointed out that the Gold (Control) Act envisages a certified goldsmith to act as self-employed person that has not been considered as of any significance by the Arbitrators.

9. Before we consider the facts of the case we may notice that at one time the sole or main test applied to determine whether persons claiming to be workmen were really workmen within the definition of the term in the Industrial Disputes Act was the test of supervision or control. That test was being applied in the cases which arose before the Industrial Tribunals of the land and the Courts also had occasion to apply the test of control or supervision to determine, whether on the facts of each case the employees claiming to be workmen fell within the scope of the term in the Industrial Disputes Act. The decision of the Supreme Court in D.C. Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal, Madras, , considered the nature of the control which would satisfy the test. It was said by the Court that what was to be considered was, whether, having regard to the nature of the work, there was due control and supervision by the employer. The nature of the control required to make a person a servant of the master would depend upon the facts of each case. Applying the test in that case the Court was not prepared to agree with the contention of the management that since the workmen were said to be controlled by independent contractors they were not workers of the management. It was found that the sale of raw materials to so-called independent contractor and resale by him of the manufactured bidis was a mere comouflage, and the nature of the relationship was apparent from the fact that the so-called contractor never paid for the materials. It was also

said that the independent contractors were mere agents or managers. They were indigent persons. The workmen were really those employed by the management through their agents or servants whom they chose to call by the name independent contractors. Referring to this case a Division Bench of this Court in O.P. No. 1010 of 1972 observed that there may be genuine independent contractors and bogus independent contractors, the former being those who are employers in their own right and who engage labour and are capable of carrying on the business by themselves and the latter being employers only in name, persons not having enough financial resources to start a business of their own but who lend their name as independent contractors to help a big manufacturer. Merely because there is a veil or camouflage a Tribunal is not precluded from looking into the real state of affairs and in doing so the test to be applied is to see whether legitimate control was exercised over the workmen. It may not be necessary to refer to the cases on this question in view of what was said by the Supreme Court in a recent decision in *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, . That the right to control the manner of work is not the exclusive test for determining the relationship of employer and employee was the principle that was enunciated by the Supreme Court in that decision. Many other matters may be of relevance such as the question as to who provides the equipment, the right to reject the end product, the test as to whether a person who claims to be workman is really part of the organisation and further, whether, as an economic reality, he is really workmen of the management.

10. Ultimately the question whether on the facts of a case person claiming to be workmen fall within Section 2(s) of the Industrial Disputes Act is a question of fact which calls for decision on consideration of several factors. It would not be possible to define matters which are of relevance in the determination. Only broad guidelines could be indicated as to what may be relevant and even the relevancy of this will differ from case to case.

11. Coming to the facts of the case before us it is admitted that all those claiming to be goldsmiths are certified goldsmiths who, under the Gold (Control) Act carry on business and are disabled from working as artisans. Their conduct is consistent with their character as certified goldsmiths. Taking gold from the licensed dealer, manufacturing ornaments out of it employing their own labour when found necessary, receiving remuneration for the work at rates agreed upon are all incidents of contract for service. Whether it is done as an employee or as one who is a contracting party is the only relevant question. That will have to be decided in a case where there is no contract or record in writing defining the status, on an assessment of the circumstances of the case. We have already pointed out that nothing was brought out in the evidence which is inconsistent with the character of certified goldsmith as defined under the Gold (Control) Act and despite this why we should assume that persons who are certified goldsmiths are not certified goldsmiths but are really workmen is a question in regard to which we fail to find an answer in the Award. There are various factors

which had not been noticed and even if noticed not properly assessed by the Arbitrators. That the certified goldsmiths work in their own premises and at their own leisure without any question of actual supervision by the licensed dealer is a fact relevant in determining the nature of the control. May be the end product is rejected when this is not in accordance with the specification. If the goods manufactured are not according to the specifications the contracting party may reject it and ask the other party to redo." That does not in any way reflect on the degree or nature of control. The question whether one works in the premises of the employer, though not a very decisive test, has been noticed as a relevant factor in many cases. Equally important is the fact that the certified goldsmith engages workmen on his own, pays them remuneration which is not passed on to the licensed dealer, pays them even bonus on occasions are also relevant facts. On the question whether certified goldsmiths work for more than one dealer there is dispute. It is admitted at least a few of them work for more than one dealer. This is what is said by WW7 on behalf of the workers. If that be the case it would indicate that they are not the workmen of one employer. This need not be a decisive test since even in cases where a person works for more than one employer he may have to be held to be a workman. Another important test the significance of which has been lost sight of though it has been adverted to by the Arbitrators is the fact that considerable amount of money is spent by the certified goldsmith for purchasing the materials required for the manufacture and for tools. That it is considerable is evident from the testimony of WW7. According to WW7 demand for tools allowance was urged only because it had increased four or five times. If that be the case the fact that it has not been passed on to the licensed dealers but all along it has been borne by the certified goldsmith is also a fact which is of relevance. We have already dealt with another relevant fact, the scope for profit and the risk of loss. In the decision in *Montreal v. Montreal Locomotive Works* [1947] 1 DLR 161, Lord Wright said that a single test such as the presence or absence of control, was often relied on to determine whether the case was one of master and servant, mostly in order to decide issues of tortious liability on the part of the master or superior and that in the more complex conditions of modern industry more complicated tests have often to be applied. It is said that it would be more appropriate to apply a complex test involving (i) control (ii) ownership of the tools (iii) chance of profit (iv) risk of loss. In *Bank Voor Handel en Scheepvaart N.V. v. Slatford* [1952] 2 AFR 956, Lord Denning, L.J. suggested the test to be the determination of the question whether the person is a part and parcel of the organisation. In *U.S. v. Silk* [1947] 331 U.S. 704, the Court agreed upon the test to be applied as determination of the question whether the workmen were employees "as matter of economic reality." No doubt there is advertance to these principles in the Arbitrators' Award but there has been no application of these principles to the facts of the case. There is no circumstance disclosed in the case sufficient to infer that the certified goldsmiths have given up their character as such and had become artisans. In fact that would be possible only by a long course of conduct acquiesced in by the licensed dealers and not against their will. In the counter-

affidavit filed by the General Secretary of the 5th respondent-union it is said in paragraph 13 thus:

The question before the Arbitrators was whether these 700 persons were really employed by the dealers. Were these persons self-employed goldsmiths, or were they in the employment of the dealers, notwithstanding the fact the dealers were not prepared to treat them as employees?"

(Underlining is ours).

This would indicate that the dealers were not prepared to treat the certified goldsmiths as their employees and therefore there is no question of any relationship having taken shape despite Gold (Control) Act either by mutual agreement or by course of conduct over the years. We are now concerned only with the correctness of the approach by the Arbitrators to the question of relationship between the certified goldsmiths on the one hand and the licensed dealers on the other and we have pointed out that matters which are relevant have been lost sight of and matters which are not relevant have been noticed and there has not been a proper assessment in accordance with the principles laid down by Courts. In this view the Award is vacated and the dispute is remitted to the State Arbitration Board. It is expressly agreed to before us by both sides that in the event we set aside the Award the matter may be remitted to the State Arbitration Board functioning at present.

12. Though we were addressed on the question of irrational approach by the Arbitrators in regard to the demands made we do not think that we should go into this since we have vacated the Award. The Original Petition is disposed of as above. No costs.