

(1960) 10 BOM CK 0002

In the Bombay High Court

Case No : Reference (I.T.) No. 26 of 1959

Elphinstone Spinning and Weaving Mills Company Ltd.

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 26-10-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1961) 1 LLJ 141 : (1960) 1 LLJ 381

Hon'ble Judges : P.D. Sawarkar, J

Bench : Single Bench

Judgement

1. This industrial dispute was referred to me under S. 10(1)(d) of the Industrial Disputes Act, 1947, by the Labour and Social Welfare Department, under its No. AJE. 1758, dated 2 February, 1959. The demands pertained to wage-scales for clerical and technical staff, adjustment, uniforms and gratuity. I made an award on 22 June, 1959. The company preferred in the Bombay High Court Special Civil Application No. 1255 of 1959 under Arts. 226 and 227 of the Constitution of India. There the parties arrived at a settlement and the High Court passed the following order :

"By consent the industrial dispute referred to the respondent 1 by the Labour and Social Welfare Department, order No. AJC (it should be AJE) 1758 dated 2 February, 1959 be heard afresh by the respondent 1. The respondent 2 agree that they will not contend at the hearing of the dispute referred to in Clause 2 above before the respondent 1 that any of the issues that arise for consideration therein are barred by res judicata or principles analogous to res judicata by reason of the decision on any of the issue decided in I.T. Reference No. 217 of 1957."

It has so happened that in Reference (I.T.) No. 217 of 1957 I had held that the leather cloth division of the Elphinstone Spinning and Weaving Mills was part and parcel of the mills itself. Having given that decision, I had held in the present case that that point could not be reopened and decided afresh again in the

present case because such a procedure would be barred by the principle of res judicata. The High Court has now directed me to try the present reference afresh including obviously the question whether the leather cloth division is or is not part and parcel of the Elphinstone Spinning and Weaving Mills. The union has agreed before the High Court not to raise the legal objection based on the principle of res judicata.

2. When the case was called out before me, Sri M. L. Bhakta, advocate for the company, and Sri K. P. Sachindranath for the union, filed a joint pursis which is in the following terms :

"That it has been agreed between the parties that if the tribunal arrives at the conclusion that the leather cloth division is part and parcel of the textile mills, the award dated 22 June, 1959 be made applicable to the parties in the above reference with the following exception. If on the other hand it is decided by the tribunal that the leather cloth division is separate from and unconnected with the textile mills, the parties may be allowed to make their submissions afresh.

The award may be amended to the extent that all watchmen shall be paid washing allowance for the period from 1 July, 1959 to 30 September, 1960 at the rate of Rs. 2 per month and henceforth the employers shall get the uniforms washed regularly."

I must therefore first decide whether the leather cloth division is part and parcel of the mills company or whether it is a separate business. Sri Bhakta examined the labour and welfare officer of the company, Sri Lilaoowala. He has stated that whereas the textile mill was started in 1897 the leather cloth division was started in 1951; that the leather cloth division is situated two furlongs away from the textile mill; that the two units have two separate managers; that the textile mill is governed by the Bombay Industrial Relations act whereas the leather cloth division is governed by the Industrial Disputes Act; that the workers of the two units are represented by two separate trade unions; that the capital for the leather cloth division came from the capital of the Elphinstone Spinning and Weaving Mills; that although the two units have separate account books, the balance sheet and profit and loss account of the two units are common; that the workmen of the leather cloth division receive the same amount of bonus which the workmen of the mills get under the five-year bonus pact between the Millowners' Association and the Rashtriya Mill Mazdoor Sangh; that members of the clerical staff of the leather cloth division are occasionally transferred to the mills, and vice versa. Then in his cross-examination Sri Lilaoowala has stated that more than 80 per cent of the raw material for the manufacture of leather cloth is supplied by the textile mill; that the workers of the leather cloth division except the watch and ward department get the textile dearness allowance; that the leather cloth division have separate sales book, stores book, ledgers, petty cash book, etc.; that the company has never prepared separate balance sheet and profit and loss account of the leather cloth division except for the purpose of the present case.

3. In the case of the The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, the Supreme Court had to deal with the question whether the limestone quarry and the cement manufacturing plant which was some distance away from the quarry were part and parcel of one and the same enterprise. The quarry was governed by the Mines Act and the cement manufacturing plant was governed by the Industrial Disputes Act. The quarry supplied to the factory the limestone. There was a strike in the quarry. As a result of the strike the work in the factory was considerably reduced and the management laid off the workmen in the factory. Their lordships observed :

Page 5 : "Now the relation between the limestone quarry and the factory can be considered from several points of view, such as

- (1) ownership,
- (2) control and supervision,
- (3) finance,
- (4) management and employment,
- (5) geographical proximity, and
- (6) general unity of purpose and functional integrity, with particular reference to industrial process of making cement."

Their lordships then considered each of these point of view and came to conclusion that the quarry and the factory formed one establishment. Now let us apply these tests to the facts of our case. The ownership of the two businesses is admittedly the same. As regards control and supervision Sri Lilaoowala has admitted that the two managers ultimately report to one director. Therefore the control and supervision of the two businesses is vested in one man. As regards finance Sri Lilaoowala has admitted that the capital for the leather cloth division has come from the capital of the textile mill. The witness who was examined by Sri K. P. Sachindranath on behalf of the workers has stated that the time-keeper brings money from the mills and distributes the wages of the workers of the leather cloth division. There is one balance sheet and profit and loss account for the two businesses. As regards management and employment there is not much evidence; but it is clear that since the control of the two businesses vests in one man, the management and employment also is controlled by one officer. As regards geographical proximity it is admitted that only a road intervenes the two units. And finally as regards general unity of purpose and functional integrity it is clear that the leather cloth division depends almost entirely on the supply of cloth by the mills. No doubt, the division could but cloth from the open market, but the division would have to pay a much higher price for it with the result that the price of the leather cloth would shoot up thus making the business uneconomical. Under these circumstances it can safely be said that the very existence of the leather cloth division depends upon the textile mill. All the six tests prescribed by the Supreme Court are seen satisfactorily to apply to our

case and therefore I hold that the leather cloth division is part and parcel of the Elphinstone Spinning and Weaving Mills Company, Ltd.

4. Having come to that conclusion, nothing remains to be done except to say that the award regarding pay scales, adjustments, uniforms and washing allowance and gratuity which I made on 22 June, 1959 will govern the parties with a slight modification. I have directed that the company should pay to its watchmen a washing allowance of Rs. 2 per month per employee as from 1 July, 1959 payable in August 1959. Now the parties have agreed that the company should get the uniforms washed without charging the employees anything for the same. It is admitted that the company has not paid the washing allowance as directed by me. The parties have agreed that the company should pay arrears of this allowance from 1 July, 1959 to 30 September, 1960 to those entitled to it. I therefore direct that within fifteen days of the date of the publication of this award the company should pay these arrears and that as from 1 October, 1960 the company should get the uniforms washed for the watchmen free of cost.