
(1967) 04 MAD CK 0059
In the Madras High Court

Globe Theatres (Private) Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 04-04-1967

Acts Referred:

Constitution of India, 1950 — Article 276
Industrial Disputes Act, 1947 — Section 10, 25FFF

Citation : (1968) 1 LLJ 343

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—The petitioner in this writ petition is the management of the Globe Theatres (Private), Ltd., Madras. Respondent 1 is the presiding officer, labour court, Madras, and respondent 3, the workmen employed in Globe Theater (Private), Ltd., represented by the Secretary the South India Cinema Employees' Association, Madras. The prayer in the writ petition is for the issue of a writ of certiorari or other appropriate writ, under Article 276 of the Constitution, quashing the award made by respondent 1 in industrial Dispute No. 10 of 1962. On the initiative of respondent 2 a reference was made to the labour court, u/s 10(1) of the industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act), for adjudication on the following points:

(1) Whether the non-employment of the following five workman is justified and to what re 13 of each would be entitled ?

(i) C. A. Kesavalu,

(ii) T. N. K. Swami,

(iii) V. R. Munuswami,

(iv) Narasimhalu and

(v) Sundar Rao.

(2) To compute the relief, if any, awarded in terms of money, if it can be computed.

2. We are not now concerned with the second worker T.M.K. Swami, as he subsequently entered into a settlement with the management. At the time when the dispute arose, the aforesaid workmen were employed in different posts in a cinema theatre of the name New Globe Theatres, situated in Mount Road. Madras and of which the proprietor was Globe Talkies (Private), Ltd., the petitioner herein. The petitioner was also exhibiting films in another theatre in Purasawakkam, Madras, known as Roxy Talkies. The theatre New Globe Talkies, belonged to one Varadaraja Pillai from whom the petitioner had taken a lease of it. Varadaraja Pillai by filing a suit succeeded in obtaining possession of the theatre premises from the petitioner and consequently, the petitioner had to close down the exhibition of pictures in Globe Theatres. But the petitioner continued to exhibit pictures as before in Roxy Talkies at Purasawakkam. When the New Globe Theatre was closed, the petitioner gave a notice to about 32 persons and offered closure compensation u/s 25FFF of the Act to them. All except five accepted that compensation. But the five persons mentioned in the reference to the present adjudication, refused to accept closure compensation and they claimed the right to be absorbed in Roxy Talkies on the basis of the rule set out in Section 26G of the Act, a rule compendiously described as the "last come, first go " rule. That section is in the following terms;

25G. Procedure for retrenchment.-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

The claim of the workers was that both the Roxy Talkies and the New Globe Theatre constituted a single industrial establishment of the petitioner-management, and that on the closure of the New Globe Theatre, there was room to absorb them in similar categories in the Roxy Talkies after discharging later recruits employed there on the basis of the "last come, first go " rule. This claim was resisted by the management, and they urged that the two establishments in Roxy and New Globe Theatres were different, and that the workers mentioned above were not entitled to the benefit of the rule in Section 25G of the Act. However, the labour court upheld the claim of the workers, and directed the petitioner to reinstate the workers concerned in the reference, except T.N.K. Swami, in Roxy Talkies with back-wages. The petitioner-management has attacked that finding of the labour court in this writ petition.

3. I am of the opinion that there were adequate data which justified the finding of the labour court, in the light of the relevant principles laid down by various decisions for guidance, when a question of the application of the rule in Section

25G of the Act arises in an industrial dispute. The relevant principles which can be gathered from the several decisions can be summarized in the following way:

(i) To decide the question whether two or more units belonging to the same owner or proprietor constitute a single industrial establishment for the purpose of the rule, one must view the matter in the ordinary industrial or business sense, having regard to the scheme and objects of the Act, vide *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, .

(ii) A single undertaking of one owner may have branches in different localities, and at the same time, the owner can deal with the branches as distinct establishments and staff on an independent basis for those establishments. It cannot be held that such branches constitute one industrial establishment for the purpose of the rule. The existence of or non-existence of a system of " pooled seniority " in respect of the staff of different establishments belonging to the common owner, must be viewed only subject to the principles that are relevant for the application of Section 25G of the Act, when a question of absorption of retrenched personnel on the "last come, first go" rule arises for consideration- vide *India Tyre and Rubber Co. (India) (Private), Ltd. v. their workmen* 1957 II L.L.J. 606. That decision was followed by the Supreme Court in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, where the Supreme Court also observed that having regard to the principles deducible from the language of Section 25G the decisive elements are the location of the establishment and the functional integrity, i.e., the existence of one code relating to the categories of workmen and their scales of wages. In the case which came before the *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, the workmen were recruited for the particular branch, where they were employed. They were not liable to be transferred from one branch to another. There were different categories of workmen on different scales of wages at various branches. In such circumstances, the Supreme Court held that each branch must be regarded as a separate industrial establishment for the purpose of Section 25G of the Act.

(iii) A single concern of a single proprietor may have different departments. Each department may constitute a separate Industrial establishment for the purpose of Section 25G, unless functional integrity has been found to exist between the different departments. The decision of the Bombay High Court in *Tulsidas Khimji Vs. Jeejeebhoy (F.)*, , dealt with this question and observed that the different departments of the business firm in that case could not be regarded as constituting a single industrial establishment for the purpose of Section 25G, but were distinct; and completes units carrying on different lines of business and there was no functional integrity existing between them and that there was no unity of employment and conditions of service between the different departments.

(iv) The above propositions are subject to the broad qualification that no single test can be viewed as complete or exhaustive, and for each particular case appropriate tests have to be evolved bearing in mind the broad principles stated above. The Supreme Court in *The Associated Cement Companies Limited*,

Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, observed on this aspect of the matter as follows (at p. 8):

...It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of those tests is to find out the true relation between the parts, branches, units, etc if in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unife.... Thus, in one case, the unity of ownership, management and control may be the important test; in smother case functional integrality or general unity may be the important test; and in still another case, the important teat may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time....

4. The facts of the present case, as found by the labour court, reveal the following.

5. Both the New Globe Theatre and the Roxy Talkies are situated in Madras City at places not far away from each other, namely, Mount Road and Pursawakkam, respectively, and they belong to a single concern, Globe Theatre, Ltd. They are engaged in an identical bussiness, namely, exhibition of pictures. The four workers whose claims remain to be considered, were employed at the time of their retrenchment, in the New Globs Theatre as chief booking clerk, theatre boy, sweeper and chief operator, respectively. It is not in dispute that identical categories of staff exist in Roxy Talkies and that the categories are granted the same Scales of pay, dearness allowance and other privileges. It is urged by the management that the identity of the pay-scales and other allowances was due to the intervention of a suttlement which fixed common wage-scales for theatres in the Madras City according to the specified schedule. But from this point of view of the workers it is of little significance whether the management gave uniform scales of pay in the two units voluntarily or by reason of the fact that it had to respect a settlement affecting all the theatre employees and their workmen in Madras City. But the existence of uniformity in the scale of pay and similarity in the nature of employment, satisfied the important test of functional integrality between the corresponding categories of posts in the two units. All the workers have been given orders of appointment at different times by the same proprietor, namely, the petitioner. There is the signi-ficant fact that all the four workers were originally recruited and appointed in Roxy Talkies, and they were transferred to the New Globe Theatre only on subsequent dates, sometimes with thier consent and sometimes under their protest. T.N.K., Swami, ticket collector (the worker who had compromised subsequently with the management), who was employed is Roxy Talkies, was told by the management) on 18 August 1959, that he was transferred to the New Globe Theatre. Narassimhalu, No. 4, was transferred similarly on 21 July 1958, from Roxy to New Globe Theatre as sweeper. But subsequently in 1959 he was transferred to Roxy, and again he was informed that the transfer to Roxy was suspended and he would continue at New Globe. In

facts during the aforesaid correspondence Narasimbalu complained that he started service as sweeper in Roxy Theatre twenty years previously, and it was only much later in 1958 that he was transferred to New Globe to give place to one Venkayya because his behaviour was not satisfactory. Sundar Rao, No. 5, claimed that he was first employed at Roxy and had done nearly 29 years of Service and this has not been disputed by the management. is the case of Kesavalu, No. 1, the labour court found that he was first appointed in Roxy in 1955 and transferred to New Globe in 1957. In the above circumstances of this case, there can be no doubt that there was exchangeability between the different categories of workers in New Globe Theatre and the corresponding categories in Roxy Talkies. There was unity of management, The difference in the location of the two theatres was only within the same city and this difference in location in not sufficient to render the two units different in the sense of constituting two industrial establishments. The prior history of the service of the workers already out-lined above, shows that the management treated the workers employed in the two theatres as interchangeable, according to the exigencies of service.

6. Learned Counsel appearing for the petitioner-management, Sri Narayanaswami, urged that the labour court found that there was no "pooled seniority" between the employees in the two theatres, and that this would be a strong piece of circumstance for inferring that the two establishments were different. But I have already referred to the fact that this principle of "pooled seniority" must give way to the broad principles mentioned above, when it comes to a question of applying Section 25G of the Act in a given case. The existence or absence of a system of "pooled seniority" among the workers of the two units will not be conclusive for deciding the question.

7. I am of the opinion that the finding of the labour court in the circumstances of this case was amply justified on the evidence and there is no room for interfering with it in the writ petition. The writ petition is, therefore, dismissed with costs. Advocate's fee Rs. 160.

8. This petition having been set down this Tuesday, 4 April 1967, for being mentioned in the presence of the said advocate for the parties, the Court; made the following order.

9. In view of the request made by the learned Counsel for the management for clarification of the above order, it is made clear that the above order in this petition upholding the direction of the labour court for reinstatement of the workers was passed on the basis of the "last come, first go" rule enunciated in Section 25G of the Act, and after viewing the New Globe Theatre and Roxy Talkies as a single industrial establishment for the purpose of that rule.