
(1967) 12 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 2151 of 1966

Kolhapur Sugar Mills, Ltd.

APPELLANT

Vs

Syed Taki Bilgrami and Another

RESPONDENT

Date of Decision : 19-12-1967

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 11, 2(4), 3(13), 3(19), 42(2)
Constitution of India, 1950 — Article 226, 227
Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1961 —
Section 21

Citation : (1968) 1 LLJ 800

Hon'ble Judges : Vimadalal, J;A.N. Mody, J

Bench : Division Bench

Judgement

Vimadalal, J.—This is a petition under Arts. 226 and 227 of the Constitution filed by the petitioner-company, which runs a sugar mill at Kolhapur and which also owns 79 acres of land on which, by rotation, sugarcane crop is grown by it, for a writ of certiorari or other appropriate writ or direction against respondent 1, who is the president of the industrial court, Bombay, quashing the award dated 28 October, 1966 made by him in this matter.

2. The facts necessary for the purpose of this judgment are that the petitioner-company originally owned an agricultural estate of 1,135 acres of land on which sugarcane was cultivated by it, but after the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1951, was passed, under the provisions of that Act, a major part of the estate owned by the petitioner-company was taken over by the Government and handed over to the Maharashtra State Farming Corporation, leaving only 79 acres of agricultural land for the petitioner-company itself, as from 1 August, 1963. In pars 5 of the petition, it is stated that the factory of the petitioner-company has a crushing capacity of 2,200 tons per day, and that its total sugarcane requirements during the season are about 350,000 tons. It is further stated in the said paragraph that, on the 79 acres of land now left with the petitioner-company, only about 3,000 tons of sugarcane are grown per

season which is roughly just one and a half day's crushing requirement of the factor of the petitioner-company with the result that the petitioner-company now obtains the entire balance of its supply of sugarcane from private agriculturists under certain agreements which it has entered into in that behalf. It is the case of the petitioner-company that, except for a special arrangement made by it for the year 1964-65 at the instance of the State Government itself, the petitioner-company is not concerned with the harvesting and transport of sugarcane on and from the fields of private cultivators from whom it obtains the bulk of its sugarcane requirements. Respondent 2 to this petition is a trade union which is a representative union of the employees, inter alia, of the petitioner-company's factory. On 13 August, 1964, respondent 2 union served a notice of change under the provisions of S. 42(2) of the Bombay Industrial Relations Act, 1946, making a demand that every cartman and harvester in the harvesting and transport of sugarcane in the petitioner-company should get a daily wage at the rate at which the unskilled employees of the petitioner-company are paid, with effect from the day of the commencement of the season 1964-65, and that the petitioner-company might revise the rates of contract for harvesting and transport suitably, if necessary. The dispute that was raised by the said notice of change was taken to conciliation, but the conciliator ultimately issued a failure certificate under S. 73A(iii) of the Bombay Industrial Relations Act, 1946, and a reference was thereafter made by respondent 2 union to the industrial court on 7 February, 1963. The respondent 2 union filed its statement of claim in that reference, and in that statement of claim it was stated that the complete operation of harvesting and transport of sugarcane was organized by the petitioner-company and that the harvesting programme was fixed by the company and the same was not left to the vagaries of those who sold their sugarcane to the company. It was, therefore, submitted that the harvesting and transport workers and those employed through contractors and whose work was supervised and controlled by the staff of the petitioner-company were the employees of the petitioner-company within the terms of S. 3(13) of the Bombay Industrial Regulations Act, and the petitioner-company was, therefore, their employer and was bound to pay to them wages at the rate at which its unskilled employees were being paid. The petitioner-company filed a written statement in answer to that statement of claim in which it repudiated the demand made by respondent 2 union and contended that the harvesters and cart men engaged on the lands of private cultivators were not the employees of the petitioner-company and that the reference in that behalf was, therefore, not maintainable. In the said reference, which was numbered as Reference No. 25 of 1963 in the industrial court, the Maharashtra State Farming Corporation was made a party, admittedly, at the instance of the petitioner-company. It may be mentioned that the Maharashtra State Farming Corporation had also a reference of its own then pending in the industrial court, viz., Reference No. 2 of 1965. These two references, viz, Reference No. 25 of 1963 and Reference No. 2 of 1965, along with two other references, were heard together, and one composite award was made in regard to the said four references as, in the opinion of the president of

the industrial Court, who made that award, the facts, the evidence as well as the legal points that arose, and the conditions of service and nature of the work of the employees concerned, were the same in all the references. It may, however, be mentioned that Paras. 2, 3, 5, 10, 11, 12 and 13 of the award relate to the claim made by respondent 2 union against the petitioner-company. In the said award, the industrial court rejected the contention of the petitioner-company that harvesting and transport workers in respect of the sugarcane obtained by the petitioner-company from the lands of private cultivators were not the employees of the petitioner-company, and it proceeded to make an award whereby it granted an increase of 50 per cent over the wages which were being earned by each koyta of harvesters, and the rate per mile payable to cart men was also increased by 50 per cent. The petitioner-company has thereafter filed the present petition on 29 November, 1965 for the relief already set out by us above.

3. Four preliminary objections were raised by Sri Kulkarni who appeared for respondent 2 union to the present petition, and they were :

(1) that the present petition was not maintainable by reason of non-joinder of the Maharashtra State Farming Corporation;

(2) that the question of master and servant was a question of fact which could not be gone into on a writ petition;

(3) that the award of the industrial court being based in this case on certain admissions made by the petitioner-company on affidavit before the industrial court, this Court should not interfere with the same; and

(4) that this petition is not maintainable, as there is no error apparent on the face of the record.

4. In our opinion, there is, no substance in any of these preliminary objections raised by Sri Kulkarni to the maintainability of this petition.

5. As far as the first preliminary objection raised by Sri Kulkarni is concerned it overlooks the well-established distinction between a proper party and a necessary party. It is, no doubt, admitted on behalf of the petitioner-company that the Maharashtra State Farming Corporation was joined in the reference before the industrial court at the instance of the petitioner-company, itself but merely because the State Farming Corporation was joined in the reference as a proper party, it cannot be said that it should necessarily have been made a party to the present petition also. In our opinion, it was not a necessary party to the reference, though it may have been a proper party thereto, and, under the circumstances, the contention of Sri Kulkarni that the petition must fall by reason of the non-joinder of the State Farming Corporation must be rejected. As far as the second preliminary objection raised by Sri Kulkarni is concerned, in support of the same, he has relied on an observation made in the judgment of a Division Bench of our High Court in the case of Manager, Ramkrishna Ramnath Bidi Factory Vs. Small Cause Court, Nagpur and Another, . In that judgment, it was

observed that the finding as to whether in the particular circumstances a person is a worker within the meaning of the law is a pure finding of fact. An observation of this nature must, however, be read in the context of the facts of the particular case in which the question arose. As far as the present case is concerned, there can be no doubt that the question as to whether the harvesters and cart men employed for the purpose of bringing sugarcane to the petitioner-company's factory from the lands of private cultivators are not the employees of the petitioner-company itself, and the corresponding question as to whether the petitioner-company can be said to be the employer of those workmen, are mixed questions of law and fact that would have to be decided in the context of the statutory definitions which occur in the Bombay Industrial Relations Act, 1946, and the notification issued thereunder. We, therefore, reject this preliminary objection of Sri Kulkarni also. As far as the third preliminary objection raised by Sri Kulkarni is concerned, we are afraid, it is not really a preliminary objection at all. It may be that the petitioner-company has made certain admissions on affidavit in the course of the proceedings before the industrial court, and it may also be that the award is based, to some extent, on those admissions, but ever so, the conclusions that have to be drawn from those admissions are a matter that arises in the petition, on the merits, and, in our opinion, it would be a misnomer to call it a preliminary objection, for it does not go to maintainability of the petition as such. As far as the fourth preliminary objection raised by Sri Kulkarni is concerned, the same would be applicable only to a writ of certiorari which is not the only relief which the petitioner-company has claimed in the present petition. It cannot, therefore, go to the maintainability of the petition as a whole. Moreover, merely because the petition has been argued before us at considerable length, it cannot be said that there is no error apparent on the face of the record, as Sri Kulkarni has sought to contend. The length of the time taken in the arguments of a case cannot be decisive on that point. In the result, we reject all the four preliminary objections raised by Sri Kulkarni to this petition.

6. As far as the merits of the case are concerned, Sri Narayanaswami has, at the very outset of his argument, formulated the case of the petitioner-company in the form of four propositions which are as follows :

(1) that the notice of change dated 15 August, 1964 served by respondent 2 union on the petitioner-company making the demands in question is lawful only with regard to the workers employed on lands owned by the petitioner-company itself, but not with regard to the workers employed on lands owned by private cultivators;

(2) that the industrial court had no jurisdiction to entertain a reference on behalf of the contractors employed on the lands of order private cultivators;

(3) that notification No. 1131-45, dated 4 October, 1952 [as amended by notification No. 3463/101488/LAB. (I), dated 30 April, 1963], has not been correctly construed by the industrial court; and

(4) that, assuming that the said notification is applicable, the award fixing the method of payment of wages is contrary to the demands.

7. Though Sri Narayanaswami has formulated his clients' case in the form of the above four propositions, in our opinion, the first three of them relate to the same question, and may, therefore, be conveniently dealt with together, namely, the question as to whether the award of the industrial court is bad because it sought to apply the Bombay Industrial Relations Act, 1946, to harvesting and transport operations carried on on the lands which do not belong to the petitioner-company, but which belong to private cultivators with whom the petitioner-company has only made certain arrangements for the supply of sugarcane.

8. Before we proceed to deal with these four propositions formulated by Sri Narayanaswami which have been set out above, it would be convenient to refer to the relevant statutory provisions with which we are concerned in the present case. Section 42(2) of the Bombay Industrial Relations Act, 1946, provides that an employee desiring a change in respect of an industrial matter must give a notice in the prescribed form to the employer who is to forward a copy of the same to the conciliator for the industry concerned for that local area. Section 2(4) of the said Act lays down that the State Government may by a notification in the official gazette apply all or any of the provisions of the said Act to the industries specified therein. Section 3(13) of the said Act defines an "employee," and Clause (a), with which we are concerned in the present case, includes within that term a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of Sub-section (e) of Clause (14) of the said section. Section 3(14) of the said Act defines the term "employer," and includes within it the following :

"(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or and part of any work which is ordinarily part of the undertaking, the owner of the undertaking."

9. We are not concerned in the present case with any of the other clauses of the definition of the term "employer" in S. 3(14). The term "undertaking" which is used in S. 3(14)(e) quoted above is defined in S. 3(37) as meaning each concern in any industry as is recognized by the Registrar under S. 11 of the said Act, and the term "industry" is itself defined in S. 3(19) of the Act as meaning, inter alia, any business, manufacture or undertaking, as well as any service, employment or industrial occupation, and as including agriculture and agricultural operations and any branch of an industry.

10. In exercise of the powers conferred by Sub-section (4) of S. 2 of the said Act, the State Government has issued a notification, dated 4 October, 1952, applying the said Act to the manufacture of sugar and its by products. As this notification is of considerable importance for the purpose of deciding the present case, it is necessary to quote the same in extenso. It runs as follows :

"No. 1131-46. - In exercise of the powers conferred by Sub-section (4) of S. 2 of the Bombay Industrial Relations Act, 1946 (11 of 1946), and in supersession of Government notification in the Labour and Housing Department No. 1131-46, dated 19 January, 1952, the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the following industry, namely :

The manufacture of sugar and its by products, including

(i) the growing of sugarcane on farms belonging to or attached to concerns engaged in the said manufacture (or on farms which immediately before the date on which the canals comprised in such farms, are taken possession of and vest in the State Government under S. 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, belonged to or were attached to such concerns, and which from that date are run or managed by a corporation (including a company) owned or controlled by the State under that Act; and

(ii) all agricultural and industrial operations connected with the said manufacture or with the growing of sugarcane on the said farms.

Note. - For the purposes of this notification all service or employment connected with the conduct of the above industry shall be deemed to be part of the industry when engaged in or by an employer engaged in that industry."

11. It may, however, be mentioned that Sri Kulkarni, who appears on behalf of respondent 2 union, has relied only on the first part of Clause (ii) of the said notification read with the note appended thereto.

12. For the purpose of attracting the applicability of the Bombay Industrial Relations Act and invoking the provisions of S. 42 thereof, as was sought to be done in the reference field in the industrial court, it is necessary first, that the operation in question should be an industry to which the Act has been applied by a notification under S. 2(4) thereof, and, secondly, that the question that arises for determination under S. 42 should be a question as between an employer as defined in S. 2(14) of the Act and an employee as defined in S. 2(13) thereof. Though this petition has been argued before us at considerable length, the questions that arise for our determination in connection with the first three propositions formulated by Sri Narayanaswami actually fall within a fairly narrow compass. Those questions are :

(a) whether harvesting and transport operations carried on through contractors and their teams of workers can be said to be "connected with" the manufacture of sugar and its by products by the petitioner-company within the terms of Clause (ii) of the notification bearing No. 1131-46, dated 4 October, 1952, issued under S. 2(4) of the Bombay Industrial Relations Act;

(b) whether the employment of the contractors and their teams of workers in connection with the obtaining of sugarcane from the lands of private cultivators can be said to be "part of the undertaking" of the petitioners-company within the terms of S. 3(14)(e) of the said Act, read with the said notification, dated 4

October, 1952; and

(c) whether the work done by the contractors and their teams of workers in the matter of harvesting and transport of sugarcane from the lands of private cultivators to the mills of the petitioner-company can be said to be work which is "ordinarily" part of the undertaking of the petitioner-company within the terms of S. 3(14)(e) of the said Act.

13. Having analysed the three questions that arise for our determination, we will proceed to consider each one of them in the order mentioned above. As far as the first question mentioned by us in the preceding paragraph is concerned, it was sought to be contended by Sri Narayanaswami that the connexion which is required for the purpose of Clause (ii) of the said notification dated 4 October, 1952 must be a physical connection with the mill-premises of the petitioner-company, or, in other words, that there should be some physical contiguity or proximity with the mill-premises of the petitioner-company. Sri Narayanaswami further argued that, in order to constitute such connection, the operations in question must be carried on, on premises owned by the petitioner-company and, in fact that was the entire backbone of the argument which Sri Narayanaswami has submitted before us in this case. We have no hesitation in rejecting both these contentions of Sri Narayanaswami as neither physical connection nor unity of ownership is what is required by the said notification dated 4 October, 1952, by which alone, in the ultimate analysis, this question must be decided. In our opinion, what is the nature of the connexion that is required by Clause (ii) of the said notification must depend on a construction of the plain language of the notification itself. It is in the light of its language that we must proceed to consider with what are the agricultural or industrial operations which are mentioned in Clause (ii) of the said notification, required to be connected. In our opinion, the answer to that question, which appears from the very language of the said clause, is, that the connexion that should be established must be with the manufacture of sugar and its by-products, which is what is referred to as "the said manufacture" in that clause. Obtaining raw materials is a vital and essential part of the business aspect of any industry, and, in the present case, it is obvious that unless the petitioner-company could obtain sugarcane it could not crush it or manufacture sugar therefrom. It may be mentioned that difficulties have arisen in procuring sugarcane as a result of the bringing into force of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as well as by the emergence of the co-operative sector in the industry. The petitioner-company has, therefore, in order to ensure the regular supply of sugarcane to keep its mills going, entered into certain arrangements with private cultivators, the sugarcane grown on its own land of only 79 acres being barely sufficient to constitute one and a half days' crushing requirements of its own mills. Copy translations of those agreements have been annexed to the affidavit of Bhalchandra Mahadev Hajarnis is dated 19 January, 1966 filed on behalf of the petitioner-company in the proceedings in the reference before the industrial court. It is pertinent to note that the form which the arrangements effected in

that behalf by the petitioner-company took was that in the first instance, it entered into a long-term arrangement for seven years which was to be carried out by means of annual agreements to be executed each year, stating therein the area of cane cultivation on the lands, the date when the plantation was done, the quantum of cane planted and other details in regard to that particular year. The petitioner-company also entered into direct agreements with contractors for the harvesting and transport of sugarcane by bullock-carts from the lands of private cultivators to its own mills. A copy-translation of such an agreement is annexed to the said affidavit of Hajarnis and marked Ex. I. In the view which we take of the matter, it is unnecessary for us to refer to the various clauses or provisions of the said agreements in detail, but suffice it to say that the procedure which the petitioner-company followed by means of those agreements for the purpose of procuring sugarcane from the lands of private cultivators shows that there was a nexus or connection between the harvesting and transport of sugarcane from the lands of those private cultivators and the manufacture of sugar and its by products by the petitioner-company. Reference may also be made in this connection to the statements contained in Paras. 7, 8, 9, and 10 of the affidavit of Shivappa Pirappa Chougula dated 23 November, 1965 filed on behalf of respondent 2 union in the course of the proceedings in the industrial court. In Para. 7 of the said affidavit, it has been stated that the contractor has to complete the work of harvesting and transport of cane according to the instructions issued by the cane development department of the petitioner-company through its harvesting mukadam, and this statement contained in Para. 7 of the affidavit of Chougula has been admitted in Para. 9 of the affidavit of Bhalchandra Mahadev Hajarnis filed in reply to the same in those very proceedings, to which affidavit we have already had occasion to refer earlier in this judgment. In Paras. 8, 9 and 10 of the affidavit of the said Chougula, it has further been stated that the complete operation of harvesting and transport of sugarcane is organized by the petitioner-company, as also the allocation of vehicles for that purpose. It is further stated that the allocation of harvesting teams in the respective fields is decided by the petitioner-company, that the operation of harvesting is supervised by the harvesting mukadam of the petitioner-company who have to ensure that the cane is properly dressed before loading, and that the superstructure of the supervisory staff which controls the complete operation of harvesting and transport is that of the petitioner-company itself, the contractors only serving the purpose of agencies to collect workers for the work of harvesting and transport, which it would be difficult for the company to get done departmentally. These statements are also not denied in the affidavit filed by Hajarnis in reply to the same, and, in fact, it is expressly admitted as true, in Para. 11 of the affidavit of the said Hajarnis, that the company's supervisory staff supervises the work of harvesting and carting of sugarcane so as to see that the work in the season may not be upset and the continuity of the supply of sugarcane maintained for the smooth working of the factory for all 24 hours. In this connexion Sri Kulkarni has relied upon a decision of a Special Bench of this Court in the case of Koynabai v. Bombay Municipal Corporation 40

B.L.R. 12 but we do not think it is necessary to refer to that decision which is of no assistance for the purpose of deciding the question which we are now considering. The observations made by Sir John Beaumont in the course of the judgment in the said case (at foot of p. 17) show clearly that the question with regard to the meaning of the expression "incidental to or connected with" was not considered in the said case. As stated by us earlier in this judgment, the question which we are now considering is to be decided on a construction of Clause (ii) of the said notification dated 4 October, 1952, and we must, therefore, deal with the same. Sri Kulkarni has not relied at all on Clause (i) of the said notification, and it is, therefore, unnecessary for us to refer to the same. In one analysis of Clause (ii) of the said notification, it is quite clear that it deals -

- (a) with all agricultural operations, or
- (b) with all industrial operations,
- (c) which are connected with the manufacture of sugar and its by products, or
- (d) which are connected with the growing of sugarcane on farms belonging to or attached to concerns engaged in the manufacture of sugar and its by products.

14. Sri Kulkarni has made it quite clear that it is unnecessary for him to rely on the last part of that clause which is comprised in the words "or with the growing of sugarcane on the said farms," and we must therefore not take into account that part of Clause (ii) which we have indicated with the letter (d). Of the possible permutations and combinations that could arise on an analysis of the said clause, we are therefore, left only with two, namely, that the manufacture of sugar and its by products includes all agricultural operations connected with that manufacture, and also includes all industrial operations connected with that manufacture. As a matter of construction, there can be no doubt that the words "on the said farms" which occur at the end of Clause (ii) cannot govern either of those operations. So construed, the manufacture of sugar and its by products, which would include them even if those would so include them even if those operations are carried out on lands of others and not on the lands of the manufacturer himself, and that is quite clear from the fact that the notification has been expressly drafted in that manner. As a matter of construction of the plain language of the said notification, we, therefore, hold that harvesting and carting operations carried on for the purpose of procuring sugarcane for the petitioner-company's mills were "connected with" the manufacture of sugar and its by products therein, and the mere fact that they were not carried out on the petitioner-company's own lands makes no difference in the matter.

15. That brings us to the next question that arises for our determination, and that is whether the employment of contractors and their teams of workers for the purpose of procuring sugarcane from the lands of private cultivators could be said to be "part of the undertaking" of the petitioner-company within the terms of S. 3(14)(e) of the Bombay Industrial Relations Act, 1946. In order to determine that question, we must first turn to what, strangely enough, has been

called the "note" to the said notification dated 4 October, 1952 which has already been quoted above. It is necessary to analyse the various ingredients of that note carefully for the purpose of deciding this question, and, when so analysed, the note should be read as follows :

"All service/employment connected with the conduct of "the above industry" shall be deemed "part of the industry" when engaged in that industry/by an employer engaged in that industry."

16. It may be mentioned that the word "industry" has been defined in S. 3(19) of the Act as already stated earlier in this judgment. The expression "the above industry" in the note to the notification dated 4 October, 1952 must, by reference to the context, include the relevant portions of Clause (ii) of that notification to which we have already referred, namely, "all agricultural operations connected with the manufacture of sugar and its by products, and all industrial operations connected with the manufacture of sugar and its by products. Sri Kulkarni sought to rely on both parts of the concluding portion of the said note. He contended that the case of the contractor and his teams of workers was covered not only by the words "engaged in that industry," but also by the words "engaged by an employer engaged in that industry," in so far as the petitioner-company had sought to enter into direct agreements with the contractors and their teams of workers, a copy-translation of one of which is to be found annexed as annexure I to the affidavit of the said Hajarnis already referred to earlier. These two parts of the concluding portion of the said note are, however, expressed in the alternative, and, in the view that we take of the matter, namely, that the case of the contractors and their teams of workers falls within the first alternative regarding persons who are engaged in the industry, it is not necessary for us to consider the second alternative. The second alternative would involve consideration of the question as to whether the contracts in the form of annexure I to the affidavit of Hajarnis, which were entered into by the petitioner-company, with the contractors and their teams of workers, were direct contracts as between principal and principal, as Sri Kulkarni has contended, or whether the petitioner-company entered into those contracts merely for the purpose of assisting the cultivators in carrying out their obligations to supply sugarcane as Sri Narayanaswami has contended, and were merely acting as the agents of the cultivators themselves. Turning to the first alternative in the concluding portion of the note, it is significant that the antithesis is between the words "engaged in" without anything more to qualify those words, and the words "engaged by an employer engaged in that industry." In our opinion, this antithesis shows that the words "engaged in" that industry should be construed to apply, no matter by whom the employee has been engaged. In that view of the matter, the contractors and teams of workers would be a "part of the industry" within the note to the notification, dated 4 October, 1952, and we hold accordingly. Sri Kulkarni has, in support of the contentions of respondent 2 union on this point, cited the decisions in the cases of K. Ramaswami Mudaliar v. Poongavanam 1953 I L.L.J. 735 and The Associated Cement Companies Limited, Chaibassa Cement

Works, Jhinkpani Vs. Their Workmen, , but we think it unnecessary to deal with those authorities because they refer to different statutes. We are concerned in the present case with the interpretation of the notification dated 4 October, 1952 which creates, what may be called, a statutory nexus, making the operations in question part of the industry with which we are concerned in the present case. Moreover, as Sri Kulkarni has rightly contended, in Para. 11 of the affidavit of the said Hajarnis filed on behalf of the petitioner-company itself, it has been stated in unambiguous terms that the harvesting and carting of sugarcane from the lands of private cultivators for the purpose of ensuring continuity of the supply of sugarcane to the mills of the petitioner-company "is very essential" during the crushing season for the purpose of the smooth working of the said mills for all 24 hours. This would also show that those operations are part, and indeed a very essential part, of the undertaking of the petitioner-company. We, therefore, hold that the harvesting and transport operations carried on for the purpose of procuring sugarcane from the lands of private cultivators are part of the undertaking of the petitioner-company within the terms of S. 3(14)(e) of the Bombay Industrial Relations Act, 1946.

17. In order to constitute the petitioner-company, an employer within the terms of the definition in S. 3(14)(e) of the Bombay Industrial Relations Act, 1946, it is, however, further necessary to show that the contractors were engaged by the petitioner-company for work which was "ordinarily" part of the undertaking, the term "undertaking" meaning the petitioner concern. In this connection it is pertinent to note that the said definition does not use the expression "ordinary part of the undertaking," but uses the expression "ordinarily part of the undertaking." This in our opinion, makes a difference as far as the intendment of that definition is concerned. A deference to the Oxford English Dictionary shows that one of the primary meanings of the word "ordinarily" is, "according to settled method; as a matter of regular practice or occurrence." The practice or the method or the system followed by the petitioner-company, in so far as the work of harvesting and carting sugarcane from the fields of private cultivators is concerned, therefore, becomes material for the purpose of deciding the point which we are not considering. Sri Narayanaswami draw our attention to a decision of a Full Bench of our High Court in the case of Bai Kokllabai v. Keshavlal Mangaldas & Co. 43 Bom.L.R. 985 , but the facts of that case were so clear that we do not think it necessary to discuss what is laid down in that case. Suffice it to say that Sir John Beaumont in his judgment (at p. 990) stated that the question which arose before him under S. 12(1) of the Workmen's Compensation Act, 1923, was a pure question of fact, and he proceeded to decide the same on the basis of the business of the particular principal in that case, as he has stated in clear terms in his judgment. The real question which we must, therefore, consider is what has been the practice followed by the petitioner-company in the matter of harvesting and carting of sugarcane from the fields of private cultivators. Reference may be made in this connection to the statements contained in Para. 5 of the petition itself which make it clear that, at any rate,

ever since the surplus lands of the petitioner-company were taken away under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the petitioner-company had to procure its requirements of sugarcane, for keeping its mills going from private cultivators. What is more important, however, is the admission that appears in the affidavit of the said Hajarnis which was filed in the reference in the industrial court on behalf of the petitioner-company, in Para. 5 of which there is a categorical statement that the procedure adopted by the company in procuring its sugarcane supply from cultivators has been the same "from the very beginning." It is also an admitted position that the petitioner-company entered into long-term contracts for periods of seven years for that purpose. These admitted facts leave no room for doubt whatsoever that the work in question was work which was ordinarily part of the undertaking of the petitioner-company, and we hold accordingly. In view of these conclusions at which we have arrived, the questions which were formulated by Sri Narayanaswami in the form of propositions (1), (2) and (3) stated at the beginning of this judgment must all be decided against the petitioner-company and it must be held that the contractors and their teams of workers, who were engaged in the harvesting and transport of sugarcane to the mills of the petitioner-company from the lands of private cultivators, were employees of the petitioner-company, that the petitioner-company was their employer, and that those operations are included within the industry of manufacture of sugar and its by products, by virtue of the notification dated 4 October, 1952. In that view of the matter, the further contention of Sri Narayanaswami that the Bombay Industrial Relations Act had no application to the matter and that the industrial court had no jurisdiction to deal with the reference before it, must also stand rejected.

18. The only other question that survives for our consideration is the one that was formulated as proposition (4) by Sri Narayanaswami at the outset of his arguments in the case, which is based on Para. 12(g) of the petition. Sri Narayanaswami has made it clear in the course of his arguments before us that his contention with regard to the same is that wages are being paid to harvesters and cart men by the petitioner-company at a composite rate per metric tonne for harvesting and carting as stated in annexure F to the petition and, though that point does not appear clearly in Para. 12(g) or any other part of the petition, it has been the contention of Sri Narayanaswami before us that the industrial court should not have proceeded to split the fixing of wages as between harvesting and carting operations. Sri Narayanaswami has also contended that the industrial court fell into a further error in thereafter proceeding to apply the koyta system to harvesting operations. The argument of Sri Narayanaswami on this point was that, in doing so, the industrial court has deviated from the demands of respondent 2 union, in so far as the statement of claim filed before it only sought to demand daily wage at the rate payable to unskilled employees of the petitioner-company, whereas the award proceeded to fix the daily wage for harvesters engaged in the operations in question according to the koyta system

which, the petitioner-company has contended, was never followed by it. A koyta consists of a team of one man and two women assisting him. It is, no doubt, true that the president of the industrial court has, in Para. 12 of his award, proceeded to fix the wages for harvesters engaged in operations on the lands of private cultivators from whom the petitioner-company obtained its supply of sugarcane according to the koyta system. It has not been disputed by Sri Kulkarni on behalf of respondent 2 union that that system is not the system followed by the petitioner-company but what Sri Kulkarni has argued is that that is a mere matter of, what may be called, description or local terminology, and that it makes no difference whatsoever to the substance of the matter. It is common ground that the wage board has fixed a minimum wage of Rs. 114 per month for unskilled workers, as stated in the award itself. The president of the industrial court has given a 50 per cent rise in the wages earned by a koyta "whether daily-rated or piece-rated." There is no material whatsoever placed before us on behalf of the petitioner-company to show that, in fixing wages on that basis separately for harvesters and for cart men instead of fixing a composite wage for them as in annexure F to the petition, and then proceeding to fix wages for harvesters according to the koyta system, any prejudice has been caused to the petitioner-company. Under these circumstances, we see no reason why we should interfere in this matter on a writ petition.

19. In the result, we discharge the rule and dismiss the petition with costs fixed at Rs. 400.