
(1977) 08 AP CK 0016
In the Andhra Pradesh High Court

Mohd. Yousuf and Others

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 26-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 25, 25A, 25C, 25E

Citation : (1978) 2 LLJ 329

Hon'ble Judges : Madhusudan Rao, J; Madhava Reddy, J

Bench : Division Bench

Judgement

1. This is a petition under Article 226 of the Constitution of India for the issue of a writ of certiorari to quash the order of the Industrial Tribunal in I.D. No. 17 of 1972 by which the Tribunal rejected the claim of the workmen that they are entitled to be absorbed in the Hindustan Aeronautics Ltd. (for short HAL), Hyderabad Division with protection of emoluments. The petitioners, who are 24 in number, were employed in the Bangalore Division of HAL at one of its detachments at Begumpet. The HAL was employing workmen for the purpose of servicing and for maintenance of aircraft of the Indian Air Force at various centres and was having detachment of its employees at these centres. Begumpet was one such centre. At the Begumpet centre there were three categories of employees, viz., (1) those who were sent on deputation from Bangalore to Begumpet detachment ; (2) those that were transferred to Begumpet; and (3) persons locally recruited. The petitioners belong to the second and third categories of employees. In the year 1968 there was a move to close down these centres of the HAL consequent upon the decision of the Air Force to have their aircraft serviced by the Defence Personnel themselves. In the early part of the year 1969 the Chairman of the HAL held a meeting of the representatives of the unions and workers and arrived at an understanding that options would be given to the employees in these two centres who had to be retrenched consequent upon the closure of the centres, to be absorbed, depending upon their qualifications, in one of the divisions of HAL. On 26th October, 1970 the

petitioners were given option to be absorbed in one of the Divisions of HAL, and were required to sign option forms issued to them. Simultaneously, they were given one month's notice intimating that they would be retrenched with effect from 31st December, 1970, It is the petitioner's case that notwithstanding this notice, they were continued in service till 15th January, 1971 and the HAL held out that they would be absorbed in Hyderabad division. On 15th January, 1971 they were called to the Begumpet Base and were asked to take retrenchment compensation with a promise that they would be absorbed in equivalent posts in Hyderabad Division. The petitioners accepted the compensation and later reported at Hyderabad Division. While some of those that were retrenched from the Begumpet centre were absorbed in the Hyderabad Division, the petitioners were rejected on the ground that they did not possess the requisite educational qualifications. This action of the company, according to them, is contrary to law and also to the clear understanding reached between the workmen and the management of HAL. The petitioners therefore, raised an industrial dispute which was referred to the Tribunal by the Government. The questions referred to the Tribunal were : (1) whether the refusal of the management of Hindustan Aeronautics Ltd., Hyderabad Division, to absorb the following workmen with protection of emoluments effected as a result of the closure of Hindustan Aeronautics Ltd., Begumpet Detachment, is justified :

- (1) Sri B. Pandu
- (2) Mohd. Ismail
- (3) Sri M, Padma Rao
- (4) Sri A.K. Harry
- (5) Sri R. Gansalavas
- (6) Sri I. R. K. S. Rao
- (7) Sri M. Bhaskar ; and
- (8) Sri G.T. Vijaya Raghavan

If not, to what relief are they entitled ? (2) whether the refusal of the management of Hindustan Aeronautics Ltd., Hyderabad Division, to protect the emoluments as on the date of retrenchment by the Hindustan Aeronautics Ltd., Begumpet Detachment, of the following workmen is justified ?

- (1) Sri Mohd. Yousuf
- (2) A. Govinda Rao
- (3) M. W. Waheed
- (4) N.S. Pattabhiram
- (5) M. J. De. Costa

- (6) P. Lingaiah
- (7) B. Madhav
- (8) K. Machander
- (9) Kashinath Joshi
- (10) Syed Nazeer Ahmed
- (11) S. Jadagiri
- (12) P. Shanmugham
- (13) M.A. Nazir
- (14) D'Souza
- (15) Liyakat Hussain
- (16) B. Gopal
- (17) H. Sudarshan

If not, to what relief are they entitled ?

2. Upon the voluminous evidence, oral and documentary, adduced before the Industrial Tribunal, it found that the closure of the Begumpet Detachment and the retrenchment of the workmen was valid, that the petitioners had no right to be absorbed in the Hyderabad Division of HAL, that there was no discrimination in the matter of absorption of retrenched workmen and that the option exercised by the petitioners did not vest any right in the petitioners to be appointed or absorbed in HAL, Hyderabad Division. The basis for coming to the conclusion that the petitioners were not entitled to be absorbed in the Hyderabad Division of HAL was the finding arrived at by the Tribunal that the various units of HAL at different places did not constitute "one establishment" so as to apply the principle of "first come last go" enunciated in Section 25(g) of the Industrial Disputes Act (hereinafter referred to as the Act.). In view of this finding the Tribunal rejected the claim of the petitioners.

3. In this writ petition, Mr. Panduranga Rao, learned Counsel for the petitioners, while not disputing that the closure of the Begumpet centre was justified, contended that the HAL with all its units at various places constituted "one establishment" within the meaning of the Act and, consequently, in the matter of retrenchment, the petitioners, could not be retrenched while their juniors were retrenched. He also contended that the option exercised by the workmen on the offer made by the management itself constituted a binding contract between the employer and the employees and consequently, the management was bound to absorb them in the Hyderabad Division of the HAL. It was urged that the Industrial Tribunal can, having regard to the facts and circumstances of the case, make a new contract between the parties and enforce it by way of an award on a

reference made to it u/s 10 of the Act,

4. The result of this writ petition depends mainly upon the question whether the various units of the HAL located at Bangalore, Hyderabad and other places constitute "one establishment." It is not disputed that the HAL is a company having six divisions, viz., Bangalore Division, Hyderabad Division, Nasik Division, Kanpur Division, Koratpur Division and Lucknow Division, In addition, the HAL has been undertaking the servicing and maintenance of aircraft of the Indian Air Force, For this purpose it was maintaining two detachments, one at Begumpet, Hyderabad and another at Nasik in Maharashtra. These two detachments had to be closed down consequent upon the decision of the Indian Air Force to have its own separate service and maintenance establishments. If as contended by the petitioner all these various divisions including the two detachments at Begumpet and Nasik constitute one "establishment" for the purpose of the Industrial Disputes Act, then undoubtedly, consequent upon the closure of one of these two divisions or detachments, the principle enunciated in Section 25(g) of the Act in the matter of retrenchment of employees must be applied and, if as contended by the petitioners, juniors have been retained, the petitioners cannot be retrenched.

5. There is no definition in the Act as to what constitutes "one establishment". Whether the various units of a company constitute separate establishments or one establishment has to be determined having regard to the principles laid down by the Supreme Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, . The principles enunciated are :

The Industrial Disputes Act not having prescribed any specific tests for determining what is "one establishment" for the purposes of Sub-section (iii) of Section 25E of the Act, such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment having regard no doubt to the scheme and object of the Act and other relevant provisions of the Mines Act, 1952 or the Factories Act, 1948, must be taken into account. The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches, etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units, etc., with different locations near or distant, the question arises what tests should be applied for determining what constitutes "one establishment".

It is perhaps impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these 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 unit. How the relation between the units will be judged must depend on the facts

proved, having regard to the scheme and object of the statute which gives the rights of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case, the unity of ownership, management and control may be the important test; in another case the functional integrality or general unity may be the important test ; and in still another case, the important test may be the unity of employment. Indeed in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation ; many enterprises may have functional integrality between factories which are separately owned ; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which he independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity. Regard must be had to the provisions of the statute under which the question falls to be considered ; if the statute itself says what is one establishment, then there is no difficulty. If the statute does not, however, say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches, etc., namely, whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word " establishment " is not to be given the sweeping definition of one organisation of which it is capable but rather is to be construed in the ordinary business or commercial sense.

But the various tests which could be applied to decide such a question would be unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity.

6. Having regard to the principles enunciated above, if we examine the award made by the Industrial Tribunal we find that it has critically examined the purport of the various documents and the weight of the oral evidence in order to determine whether HAL with its various divisions and detachments constituted a single unit or not. In paragraph 16 of the award the Tribunal referred to the fact that HAL though one establishment as stated by W.W. 25 it had different divisions at different places like Hyderabad and Bangalore. It has also taken into account the fact that although transfers were effected of certain employees from one division to another, there were no transfers of employees from Begumpet base to Hyderabad division. It has also referred to the fact that the trades of the Hyderabad Division are different from those obtaining in Begumpet Base. While there is no airframe work in Hyderabad Division and no aeroengine division, these trades were obtaining at Begumpet Base. Although Begumpet Base is in close proximity to Hyderabad Division even as admitted by the petitioners Begumpet Base always formed part of Bangalore Division. When there is no functional integrality between the Begumpet Base and Hyderabad Divisions, the mere proximity of these two units cannot convert them into one establishment. It has also considered the contention of the workmen that Hyderabad Division Begumpet Base and Bangalore Division and the other Divisions have a common

balance sheet and a common Chairman it should be treated as one establishment and rightly held as observed by the Supreme Court that no single test could be applied in this behalf. The Tribunal, on an appreciation of the entire evidence and taking into account the relevant factors, has categorically held that a separate complex like Hyderabad Division which is by itself " an establishment " is not bound to absorb the workmen of that establishment on account of its closure.

7. It was, however, argued by Sri Panduranga Rao, learned Counsel for the petitioners that HAL was a single company under which there are six divisions and two detachments. According to the definition given in Standing Order No. 2(i) " company " means Hindustan Aeronautics Limited wherever situated and includes the factory or factories, show rooms, service centres. Head Office and other administrative offices and branches. Hence, it is argued all the factories wherever situated and all the units wherever functioning should be deemed to be " one establishment" for the purpose of the Act. Having regard to the principles enunciated by the Supreme Court, the definition of " company " in the Standing Order is not determinative of the question whether the several factories owned by the company constitute " one establishment" for the purpose of industrial law. The several test laid down by the Supreme Court have to be applied for this purpose. The definition of " company " which is a juristic person cannot be always identical with the concept of an industrial establishment for the purpose of settlement of an industrial dispute. In *India T. R. Co. v. Workers of I.T. & R. Co.*, (1958) 1 M.L.J. 360 : 71 L.W. 417 AIR 1958 Mad. 205. Rajagopalan, J. (as he then was) held that in adjudication of an industrial dispute, the rights and liabilities of the employer and the employees (workman) in so far as they relate to retrenchments, are governed by the statutory provisions in Chapter VA of the Industrial Disputes Act. It was further held that Section 25C makes it specific that the unit of the industry to which the statutory principle governing retrenchment applied is the " industrial establishment ". The definition of an industrial establishment in the Explanation of Section 25A(2) is limited in its scope and cannot apply to the interpretation of industrial establishment as it has been used in Section 25G. For the purposes of applying Section 25G the position is that the term " industrial establishment" has not been defined by the Act itself. From the scheme of the Act it should be clear that it envisages each as a distinct concept, (1) an industry, (2) an industrial concern, within an industry, (3) an industrial establishment, which may itself be the whole of the industrial concern, or which may be part of the larger industrial concern, (4) a section of an industrial establishment and (5) categories of workmen in an industrial establishment, or in a section thereof.

8. In *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, dealing with the case of a company carrying on business at various places in India having decided to close down one of its branches and retrenched some of its workmen, the Supreme Court held :

Having regard to the popular sense of the words " industrial establishment" or to

the limitation of relief u/s 25G of the Industrial Disputes Act in workmen in the same category, the conclusion would be inescapable that each branch of a company would normally be regarded as a distinct industrial establishment for the purposes of applying the principles embodied in Section 25G of the Industrial Disputes Act. 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.

Having regard to these principles the Court held in that case that each branch constituted a separate establishment.

9. In *Globe Theatres (Private) Ltd. Vs. Labour Court and Another*, while considering the question whether two units belonging to the same owner constituted one industrial establishment for the purpose of Section 25G, the Madras High Court observed that this matter must be viewed in the ordinary industrial or business sense having regard to the scheme and object of the Act. The Court further held :

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 on an independent basis for these establishments. It cannot be held that such branches constitute one industrial establishment for the purposes of the rule...

A single concern of a single proprietor may have different departments. Each department may constitute a separate industrial establishment for the purposes of Section 25G unless functional integrity has been found to exist between the different departments...

The above propositions are subject to the broad qualification that no single test can be viewed as complete or exhaustive and for each case appropriate tests have to be evolved bearing in mind the broad principles stated above.

In that case on a review of the evidence, the Court held that the employees of the New Globe Theatre and Roxy Talkies were employees of a single industrial establishment for the purpose of Section 25G of the Act.

10. Having gone through the award of the Industrial Tribunal in this case in detail, we are of the opinion that the finding of the Tribunal that the Begumpet Base and Hyderabad Division of the HAL do not constitute "one establishment" for the purpose of Section 25G of the Act is amply justified on the evidence. The contention of the learned Counsel for the petitioner that there has been a misreading of the evidence or failure to consider certain admissions is not borne out by record. As no such evidence was pointed out to us we deem it unnecessary to refer to this contention at length. Once this finding of the Tribunal is upheld we find little merit in the contention of the petitioners that they should not have been retrenched or that they should have been absorbed in Hyderabad

Division of HAL, Only if the various divisions of HAL constitute a single unit, could the petitioners have complained that their juniors have been retained while they (the petitioners) have been retrenched. The entire establishment at Begumpet having been abolished all the employees were retrenched and such of those who had the requisite qualifications and could be absorbed having regard to the vacancy position in the Hyderabad Division of the HAL were absorbed. Consequently, there is no violation of Section 25G of the Act. In the matter of absorption of retrenched employees there is no statutory provision which requires the management to absorb the senior-most retrenched workmen. The rule in Section 25G applies only to the case of retrenchment and not absorption. It may not be out of place to mention here that the dispute referred to the Industrial Tribunal is whether the refusal of the management to absorb the petitioners was justified and not whether the retrenchment was illegal. The petitioners have not been able to show any statutory right vesting in them to their absorption in accordance with seniority. They base their right to absorption on the options exercised by them on 26th December, 1970 pursuant to the option forms issued by the management. The petitioner contend that the options exercised by them constitute a binding contract between the management and the workmen obliging the management to necessarily absorb them in the Hyderabad Division. The petitioners were required to exercise their options in the following words :

Consequent to the closure of the bases, I exercise the following option for deployment of my services as indicated below against the appropriate column :

1(a) I would like to be absorbed in HAL/Hyderabad Division* of the company. I am agreeable to the following terms :

(i) No outstation allowance will be payable on my transfer to the respective division.

(ii) I shall be on probation for a period of three months during which my ability, aptitude to work, etc. will be assessed and if it is not considered satisfactory my services shall be terminated and that I shall not have any claim over the appointment at the concerned division.

(iii) The date of seniority viz-a-vis the respective division employees for purposes of promotion, allotment of company quarters, seat in company transport, etc., shall reckon from the date of my reporting to the respective division.

(iv) I will be eligible to draw all other benefits accruing on transfer and my services will be deemed to be continuous service for all other purposes.

* 1 (b) I am not agreeable for transfer to any of the divisions and I am agreeable that my services may be terminated on closure of the base and my accounts settled in accordance with rules.

* 1 (c) I would like to be in Bangalore Division and I am agreeable to the following terms :

1. On transfer, I will be assigned to any department depending upon availability of vacancies and I will not be paid any outstation allowance.

Date : Signature :B. No./ P.B. No.

(Strike off whichever is not applicable)

The letter to which this option form is appended is in the following words :

Dear Sir,

HAL has been initiated that the work relating to 1st and 2nd line servicing of aircraft at HAL Detachments will be taken over by Indian Air Force at the Outstation Bases according to a phased programme, mutually agreed upon.

2. It has, therefore, become necessary to plan the deployment of staff working at various Outstation Bases.

3. Local employees working at the Outstation Bases are, therefore, requested to indicate their option in the following form within a month to enable management to plan their deployment at the appropriate time.

4. Option once exercised will not be allowed to be charged.

Yours faithfully, for Hindustan Aeronautics Ltd. Sd./- N. Vaidyanathan Personnel Manager.

A reading of the letter and the option form appended thereto would only indicate that the management was chalking out a plan of deployment of staff working at various outstation bases. There is no categorical commitment either in the letter or in the option form that retrenched workmen would necessarily be absorbed, much less that they would be absorbed in the Hyderabad Division of the company. No doubt in the letter the workmen were unequivocally informed that the option once exercised would not be allowed to be changed, but there is no corresponding undertaking by the management that in accordance with the option exercised by the workmen, they would be absorbed or appointed in the Hyderabad Division of HAL. On the other hand, from condition 1(a)(iii) in the option form which declares that the date of seniority viz-a-vis the respective division employees for the purpose of promotion would be reckoned from the date of the absorbed employee reporting to the respective division, would belie the claim of the petitioners that there was an unequivocal undertaking to absorb them. Their previous service was to be taken into account only for certain purposes. One of the alternatives proposed in the option form was that the employee may request for settlement of his accounts on the closure of the Begumpet base. This document would only indicate that the management was taking every effort to absorb as many retrenched employees as possible without giving any categorical assurance and without placing itself under any obligation to necessarily absorb all the retrenched employees. The contention of the learned Counsel for the petitioners that the option exercised itself constitutes a binding contract is not borne out by the above documents or any other document.

11. The learned Counsel relied upon a decision in *N. Lakshmana v. State of Karnataka* (1975) 25 L. W. 323. That was a case in which pursuant to the option exercised by the workmen the management appointed the workmen and no service conditions were thereafter stipulated. The question that arose for consideration was what the service conditions of the workmen employed pursuant to the exercise of option were. The Court, in the absence of any other express conditions of service stipulated between the parties, held that whatever terms and conditions were specified in the option form signed by the workmen, constituted a contract between the parties. In that decision the question whether by the mere exercise of the option offered by the management, the workmen acquired an indefeasible right to employment did not arise for consideration. In our view on the strength of that decision it cannot be held that the petitioners in the instant case acquired any right to appointment or absorption which was binding on the management.

12. Lastly, it was contended that the Tribunal could itself make a contract between the parties having regard to the circumstances of a case. Reliance for this proposition was placed on the decision of the Federal Court in *W. I. Automobile Association v. Industrial Tribunal, Bombay* AIR 1949 F.C. 3 Their Lordships of the Federal Court observed :

Adjudication does not, in our opinion mean adjudication according to the strict law of master and servant. The award of the Tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations.

These observations cannot be stretched to mean that merely because a dispute is referred to the Tribunal, the Tribunal may in exercise of the powers vested in it to mould the relief could also bestow a right on the workmen to be appointed under any employer. Before any relief could be granted the right of the workmen for appointment in the establishment of a particular employer should be established. Only when that right is established the question of granting any relief or moulding the relief having regard to the facts and circumstances of a particular case would arise. As discussed above, the Tribunal tightly held that no such right was established. Exercising the jurisdiction under Article 226 of the Constitution, this Court is precluded from reappraising the evidence and coming to a different conclusion on the several issues that have been specifically referred to and decided by the Tribunal with reference to the evidence adduced before it. In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , the Supreme Court following its earlier decision in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , held

The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate Court. The findings of fact reached by an inferior Court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an

error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal, had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recovered by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or insufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

In the instant case we find that the petitioners have not made out any of the grounds mentioned above so as to justify our interference with the findings of fact arrived at by the Tribunal.

13. In view of the foregoing discussion, the writ petition fails and is accordingly dismissed, but in the circumstances of the case without costs. Advocate's fee Rs. 100.