

(1991) 12 BOM CK 0051
In the Bombay High Court
Case No : Appeal No. 438 of 1991

National Textile Corpn. (South Mah.) Ltd.	APPELLANT
Vs	
Ashok Shridhar Athavale and others	RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 2(19)

Citation : (1991) 4 BomCR 363 : (1991) 93 BOMLR 708 : (1992) 2 LLJ 403 : (1992) 1 MhLj 310

Hon'ble Judges : Sujata V. Manohar, J;B.P. Saraf, J

Bench : Division Bench

Judgement

Smt. Sujata Manohar J.

1. The 1st respondent is an employee of the retail shop of Finlay Mills Limited. The shop was run by the Finlay Mills Limited upto October 1983, and thereafter it is run by National Textile Corporation who are the appellants before us. The Presiding Officer, 7th Labour Court, Bombay, by his order dated December 22, 1988, held that the 1st respondent who was the employee of Finlay Mills retail cloth shop was not governed by the Bombay Industrial Relations Act, 1946 and the relevant Notification thereunder because, conducting of a retail cloth shop was not an integral part of the running of a Spinning and Weaving Mill. This decision was challenged by the 1st Respondent in Writ Petition 899 of 1989. A learned single judge of this court has, by his judgment which is impugned before us, come to the conclusion that the 1st respondent is governed by the provisions of Bombay Industrial Relations Act, 1946 and the relevant Notification. In the present appeal the judgment of the learned single judge is being challenged before us by the appellants, namely the National Textile Corporation Limited.

2. Prior to 1946, the Bombay Industrial Disputes Act, 1938 was in operation. Under the 1938 Act, notifications were issued from time to time u/s 2, sub-section (3) of the Act, extending the provisions of that Act to the Cotton Textile Industry as specified in those notifications. Under the Notification of May 30,

1939 the Act applied to the Cotton Textile Industry as specified below :

- a) All concerns using power and employing twenty or more workers which are engaged in cotton spinning;
- b) All concerns using power and employing twenty or more workers which are engaged in cotton weaving with or without an admixture of silk, rayon, artificial silk or one or more of these.

In 1945 this notification was superseded by another notification under which clause (a) and (b) remained the same as in the earlier Notification. However, the following clause (c) was added :

- c) All Mechanics' shops whether situated within or outside the precincts of and forming integral part of the concerns filing under 5 clause (a) or (b).

3. After coming into force of the Bombay Industrial Relations Act, 1946, the Notifications under the old Act were continued and they remained in force. On July 7, 1950 a fresh notification was issued superseding the notification of 1945. Under this notification also clauses (a) and (b) remained the same as in the notification May, 30, 1939. But a new clause (c) was added covering all mechanic's shops attached to, and all dyeing, bleaching and printing departments, whether situated within or outside the precincts of and forming integral part of the concerns falling under clauses in part (a) or (b).

4. On February 2, 1960 a new notification was issued superseding the notification of July 7, 1950. Under this notification clauses (a), (b) and (c) remained the same as in the notification of July 7, 1950, but a further clause (d) was added to the following effect :

- (d) All offices whether situated within or outside the precincts of the concern falling under clause (a) or (b).

This newly added clause (d) was deleted under the notification of October 4, 1962.

5. Thereafter, in supersession of the notification of October 4, 1962, a new notification has been issued on May 26, 1966. Since this is the Notification which requires to be interpreted by us, the material parts of that notification are reproduced below :

"No. 2847/34-A. In exercise of the powers conferred by the sub-section (3) of Section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. Act XXV of 1938), and in supersession of Govt. Notification in the Political and Services Department No. 2847/34-I dated the March 14, 1939, the Government of Bombay is pleased to direct that the provisions of the Act which have been extended to the province of Bombay under Government Notification in the Political and Services Department No. 2847/34-I dated the March 14, 1939, shall apply to the Cotton Textile Industry as specified below :

(a) all concerns using power and employing twenty or more workers which are engaged in cotton spinning;

(b) all concerns using power and employing twenty or more workers which are engaged in cotton weaving with or without an admixture of silk, rayon, artificial silk, or one or more of these;

(c) all Mechanics" shops attached to, and all dyeing, bleaching and printing departments, whether situated within or outside the precincts of and forming integral part of the concerns falling under clause (a) or (b);

(d)(i) all departments engaged in silk weaving, manufacture of hosiery or other knitted articles made out of cotton yarn or man-made fibre, manufacture of blankets with cotton waste with or without admixture of cotton and wool, weaving with admixture of man-made fibre, such as terene, nylon, decron, orlon.

(ii) all departments doing winding, warping, drawing in, sizing, reeling, doubling;

(iii) All departments doing manufacturing leather cloth and departments doing folding including calendering and baling,

whether situated within or outside the precincts of the concerns falling under clause (a) or clause (b) provided such departments form an integral part of such concerns."

6. In order to interpret this notification it is necessary to bear in mind that right from the year 1939 onwards the Bombay Industrial Disputes Act, 1938 and thereafter Bombay Industrial Relations Act, 1946 have been applied to the cotton textile industry as specified below;

(i) All concerns using powers and employing twenty or more workers which are engaged in cotton spinning; and

(ii) all concerns using power and employing twenty or more workers which are engaged in cotton weaving with or without an admixture of silk, rayon, artificial silk or one or more of these.

From time to time certain other facets of activities forming an integral part of these two types of concerns have also been covered by these two Acts. Thus under the notification of May 26, 1966, a mechanic shop which may be attached to all concerns engaged in cotton spinning or weaving, if it forms an integral part of the said concerns would be covered by the Bombay Industrial Relations Act. Similarly, all dyeing, bleaching and printing departments of such concerns, if they form an integral part of such concerns, would also be covered by the Bombay Industrial Relations Act.

7. Since the notification essentially extends this Act to cotton textile industry, it is further provided in clause (d)(i) of the Notification of May 26, 1966 that all departments engaged in silk or artificial silk weaving also, if they form an integral part of such concerns under clauses (a) and (b), would be covered by the

notification. Similarly some specific activities other than cotton spinning or cotton weaving, with or without admixture of silk, rayon etc. are also covered by clause d(i). For example, manufacture of hosiery or other knitted article made either out of cotton or manmade fabric would be covered, once again, provided that those manufacturing activity is an integral part of the concerns under clauses (a) and (b). Manufacturing of blankets as set out in clause (d)(i) would also be covered by the notification if such manufacturing activity is an integral part of the concerns under clauses (a) and (b). Sub-clauses (ii) and (iii) of clause (d) specify some further activities which are also covered under the notification. Thus all departments doing winding etc. and all departments manufacturing leather cloth or doing folding including calendering and baling are covered once again, provided that such departments form an integral part of such concerns.

8. Therefore all the notifications make the Act applicable to concerns which are engaged in cotton spinning or cotton weaving (with or without an admixture of silk, rayon etc.). If such a concern also engages in any activity, other than spinning or weaving such as bleaching dying etc., the other activity is not covered by the Act unless the notification in force at the relevant time expressly extends the operation of the Act to such an activity also. That is why the notifications have, from time to time, expressly included other activities sought to be so covered. Thus under the notification of May 26, 1966, clauses (c), (d)(i), d(ii) and d(iii) expressly include within the ambit of the Act activities specified there, provided that the departments engaged in these activities form an integral part of the concerns engaged in cotton spinning or weaving.

9. Therefore each and every department of a concern engaged in spinning and weaving is not necessarily covered by the notification of May 26, 1966. In order to be so covered, in the first place, the department must carry on those activities which are specified in the notification. Secondly, the department must form an integral part of the concern engaged in cotton spinning or weaving. Unless both these conditions are satisfied, the Bombay Industrial Relations Act will not extend to such a department.

10. In the present case, the activity of running a retail cloth shop is not specifically covered by clauses (c), (d)(i), (d)(ii), or (d)(iii). It is, however, contended by the respondents that the main clause (a) of the notification includes a retail cloth shop, such as the present one. It is contended that the phrase "All concerns ... which are engaged in cotton spinning" would cover a retail cloth shop run by such concerns. This submission, in our view, does not have any merit. In the first place, the activity of running a retail cloth shop. As set out earlier, the notification of May 26, 1966 applies the Bombay Industrial Relations Act to specific concerns engaged in certain specified activities. These are cotton spinning and weaving. The other departments of such concerns are impliedly covered by clauses (a) and (b); because the other departments of such concerns which do not carry on the activity of spinning or weaving, but are sought to be included in the notification have been expressly so specified by

clauses (c) and (d) of the notification. There are, of course, two ways of interpreting clauses (c) and (d). It may be possible to contend that clauses such as (c) and (d) merely clarify what is already implicit in clauses (a) and (b). In the present case, it is not possible to look upon clauses (c) and (d) as clarificatory. If the intention were to include under the Act all kinds of activities in all the departments of concerns engaged in spinning or weaving, it is difficult to understand why only certain specific departments are singled out under clause (c) and (d) for inclusion in the notification. The intention clearly is that only these specified departments and specified activities are to be covered by the notification, if they form an integral part of the concerns falling under clauses (a) and (b). Clearly, therefore, other activities and other departments are not so covered. Therefore, a retail shop would not be covered by clause (a) by necessary implication.

11. Moreover the notification of May 26, 1966 states that the activities of other specified departments of concerns engaged in spinning or weaving are included in the Notification provided that they form an integral part of such concerns. In fact, it is the submission of the respondents themselves that functional integrity is essential before any department of a concern engaged in spinning would get the benefit of clause (a). It is difficult to see how a retail cloth shop can be considered as an integral part of a concern engaged in spinning or weaving. It was submitted by the respondents that a concern engaged in spinning or weaving. It was submitted by the respondents that a concern carries on manufacturing activities for no other purpose than to sell the manufactured product and earn a profit. Therefore, marketing of the manufactured product is an integral part of the activities of such a concern. But running a retail cloth shop is not equivalent to marketing a manufactured product. A retail cloth shop or may not be run by a concern engaged in spinning or weaving. Marketing does not depend only or even mainly on having a retail cloth shop. At the highest, this is merely an ancillary activity of the concern, an activity it may well do without. Hence such an activity cannot be considered as an integral part of a concern engaged in spinning or weaving.

12. In the case of *Isha Steel Treatment, Bombay v. Association of Engineering Workers, Bombay and Anr.* reported in 1987 I LLJ-427 the Supreme Court, while considering what would constitute an integral part of manufacturing activity, held that the activity should be such that the concern could not have functioned independently without it. It said, "in order that the department shall form an integral part of concern the department should be such that it could not function without it". Our attention was also drawn to a decision of the Supreme Court in the case of *M/s. Godavari Sugar v. D. K. Worlikar* reported in 1960 II LLJ-247 where the Supreme Court considered the provisions of the Bombay Industrial Relations Act and a notification issued under that Act dealing with applying the Act to the sugar industry. The question before the Supreme Court was whether the head office of the sugar factory would be covered by the notification. The Supreme Court held that the notification applied not to sugar industry as such

but to the manufacture of sugar and its by-products. It held that when one considers these activities which are the subject matter of the notification, the head office cannot be covered by such a notification. Hence the employees engaged in the head office which was separated by 100 miles from the factory, do not fall within the notification. It said that the object of the notification is to confine its benefit to such service or employment which is integrated with the manufacture of sugar and its by-products; subsidiary services are also included. But the scope of the notification cannot be extended to the head office of the sugar mills. The Supreme Court, therefore, has clearly held that all employees of a concern may not be necessarily covered by the provisions of the Bombay Industrial Relations Act. This would depend upon the terms of the notification issued covering the activities in question. In the present case, in our view, the notification does not cover a retail cloth shop run by a concern engaged in spinning or weaving.

13. Since the Act does not apply to the employees of a retail cloth shop such as the present one, we need not examine other cases cited before us which discuss the question as to who is to be considered as an employee for the purposes of the Act. It is also not necessary for us to examine the meaning of the term "undertaking" which is defined u/s 2(37) or the meaning of the term "industry" which is widely defined u/s 2(19) of the Bombay Industrial Relations Act.

14. The respondents urged that one concern may have different undertakings. Vide *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, . But from this, one cannot conclude that every undertaking of a concern which is engaged in cotton spinning or weaving would be covered by the notification. Such an interpretation would ignore the specific provisions of clauses (c) and (d) of the Notification of May 26, 1966 and the condition imposed in these clauses to the effect that the other activities and the other departments which are specified in clauses (c) and (d) have also to form an integral part of such a concern. The basic tests, therefore, under the notification are of a department being as specified and its forming an integral part of the concern engaged in spinning or weaving. Neither test is met here.

15. In view of the nature of the notification, in our view, the learned single judge was not right when he said that if there is a reasonable business connection between the manufacturing activity referred to in clauses (a) and (b) of the Notification and the marketing of the goods by the Company at its own retail shop, then such a retail shop would be covered by the notification. The test is not of a reasonable business connection. The test is whether the department forms an integral part of the main activity of the concern, namely spinning and/or weaving.

16. It was lastly urged by the respondents that the Notification should be considered broadly to cover all reasonable activities of a concern which may be engaged in cotton spinning or weaving so that all the workers of such a concern

are covered by the Bombay Industrial Relations Act. It was submitted that social justice requires such a broad interpretation. We cannot, however, ignore the express language of the notification and the limited application of the Bombay Industrial Relations Act in terms of the notifications which have been used from time to time to cover only certain workers engaged in certain specified activities in the cotton textile industry. In view of the clear intention expressed in the notification in question, it is not possible for us to extend the notification to persons employed in the retail cloth shop of a textile mill. We find it difficult to extend the notification to such persons by simply relying on the concept of "Social Justice".

17. The appeal is, therefore, allowed and the order of the learned single judge quashing the order of the Labour Court dated December 22, 1988 is set aside.

18. In the circumstances there will be no order as to costs.