**(2005) 03 BOM CK 0026**

**In the Bombay High Court**

**Case No :** Writ Petition No. 755 of 2002

Rhone Poulene (India) Ltd. APPELLANT

Vs

Anjali Devrukhar and Others RESPONDENT

**Date of Decision :** 23-03-2005

**Acts Referred:**
Payment of Gratuity Act, 1972 — Section 1(3), 2, 2(1), 3, 7(4)

**Citation :** (2005) 3 ALLMR 413 : (2005) 4 BomCR 619 : (2005) 106 FLR 149 : (2005) 3 LLJ 166 : (2005) 2 MhLj 1052

**Hon'ble Judges :** D.Y. Chandrachud, J

**Bench :** Single Bench

**Advocate :** C.U. Singh and Geetanjali Prabhu, instructed by Haresh Mehta and Co, for the Appellant; B.J. Sawant, for the Respondent

**Final Decision :** Allowed

# Judgement

D.Y. Chandrachud, J.—The dispute in the present case falls in a narrow compass. The question before the Court is as to whether the appropriate Government in relation to the petitioner is the Central Government or the State Government for the purposes of the Payment of Gratuity Act, 1972. Section 2(a) of the Act defines the expression "appropriate Government" thus :

"(a) "appropriate Government" means,--

(i) in relation to an establishment --

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government."

 

The Controlling Authority and the Appellate Authority have held that the applications for payment of gratuity that were filed by the first respondent and 272 other workmen were maintainable before the Controlling Authority appointed by the State Government since it is the State Government which is the appropriate Government.

2. The petitioner is a Company incorporated under the Companies Act, 1956 inter alia engaged in the business of manufacturing and marketing pharmaceutical products. In December, 2000, the petitioner acquired over 40% of the equity share capital of May and Baker India Limited. In January, 2001 a further 20% came to be acquired. The first respondent and 272 other workmen whose names are listed in Annexure-A to the petition accepted voluntary retirement from service under a scheme which was floated by the management under the approval of the Income Tax Department. Nearly five years thereafter, these employees filed applications before the State Controlling Authority claiming gratuity for the period after their actual severance until the date on which they would have attained the normal retirement age of 60 years.

3. The petitioner filed a preliminary objection to the applications in January, 2000 raising an objection to the jurisdiction of the Controlling Authority appointed by the State Government. Evidence was adduced by the management and on behalf of the workmen. The Controlling Authority by an order dated 3rd July, 2001 held that the appropriate Government was the State Government and that it would accordingly have jurisdiction. This order was confirmed in appeal by the Appellate Authority on 31st October, 2001.

4. Counsel appearing on behalf of the petitioner submits that detailed and voluminous evidence in the form of documentary material and oral evidence was led before the Controlling Authority to establish that the Company had branch offices in more than one State. The petitioner had taken over the business of the erstwhile May and Baker India Ltd. and it was submitted that the Company has a large network of branches spread all over India. Employees are transferred from one place to another as a condition of service and separate settlements were entered into with the Unions to govern the employees in the Head Office and Depots on the one hand and the Technical representatives on the other. The evidence, it was submitted, established the relationship between the factory in the State of Maharashtra and the branches including sales offices outside the State. In these circumstances, it was submitted that both the authorities had manifestly erred in holding that the appropriate Government was the State Government. On the other hand, Counsel appearing on behalf of the respondents made an attempt to sustain the finding which has been arrived at by the authorities below by urging that the Depots in the present case are only places where goods are stored and they cannot be classified as branches.

5. In considering the rival submissions which have been urged before the Court, it would be necessary to advert first and foremost to the documentary material that came to be exhibited in the course of the evidence led by the management.

 

The management placed on record several letters of transfer by which employees were transferred from one place of business of the Company to another in various parts of the country. For instance, there is a letter of transfer by which an employee at Madras was transferred on 26th May, 1998 to the Jaipur Depot. There is a letter dated 20th April, 2000 by which an employee at Midnapur was transferred to the headquarters at Calcutta. A letter dated 29th April, 1999 of transfer from Hyderabad to the Zonal Sales Office at Chennai was among other orders of transfer. Documentary material pertaining to appointments made as far back as in 1993 at the Lucknow Sales office, to an order of posting at the office at Kurnool on 5th December, 1997 and of an appointment made at the head office on 30th July, 1998 were placed on the record. These documents demonstrate first and foremost that the petitioner is a company with a country wide presence, which carries on business in various States besides the State of Maharashtra. The Company has produced documentary material to show that it has offices in different parts of the country. There was documentary material before the Industrial Court in the form of a letter dated 15th May, 2000 to show the existence of Central payroll which is established at the Bhandup factory. The Company has key personnel situated at all over country. Settlements have been entered into with the same Union in respect of the employees of the Head Office at Worli and the Depots in Mumbai, Madras, Calcutta, New Delhi and Jaipur on the one hand and on the other hand in respect of the service conditions of all the Technical representatives employed by the Company. Consignment notes were placed on the record showing the relationship between the factory at Bhandup with the offices all over India.

6. On behalf of the management oral evidence was adduced of Shri Shekhar Ramchandra Sawant, who was engaged as Plant Personnel Manager. In the course of his Examination-in-Chief, the witness stated that the employees scattered all over India, work in different Branches, Zonal Sales Offices and the Head Office. The Head Office of the Company is situated at Mumbai while its two factories are at Bhandup and at Paithan. The witness stated that branches of the Company are situated at Mumbai, Calcutta, New Delhi and Jaipur and the Sales Office is at Chennai. The witness stated that in the Branches goods are packed in accordance with orders of the customers and activities of loading, unloading and distribution of finished goods received from various locations through clearing and forwarding agents are carried out. The Sales Office, the witness stated, controls the field staff and looks after sales activities in respect of the products of the Company. The witness stated that appointment orders of all the employees employed at the Branches and the Sales Office are issued from the Head Office at Mumbai. There was a common Provident Fund number for all the Branches, the Sales Office and Head Office. In the course of his cross-examination, the witness stated that there is no difference between the Branch and the Depot. The second witness, Shri M. Ramchandran, similarly proved various documents showing the relationship between the factory and the Branch offices. The witness denied the suggestion that the Depots were engaged only in storage activities.

 

The evidence which was adduced on behalf of the management has not been displaced by the sole witness who deposed on behalf of the workmen. In fact, a perusal of the evidence of the workmen shows that it is perfunctory and does not deal with the essential question of jurisdiction at all. The witness did not controvert the position which came to be established in the evidence of the witnesses of the Company that the Company had Branches all over the country.

7. Section 1(3) of the Payment of Gratuity Act, 1972 provides that the Act shall apply to every factory, mine, oilfield, plantation, port and railway company; every shop or establishment in which ten or more persons are employed, and such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification specify. Section 2(a)(i)(b) provides that the appropriate Government shall mean in relation to an establishment having branches in more than one State, the Central Government, Section 2(a)(i) provides for those establishments in respect of which the appropriate Government is the Central Government. These are (i) establishments belonging to or under the control of the Central Government; (ii) establishments having branches in more than one State; (iii) an establishment of a factory belonging to or under the control of the Central Government; and (v) an establishment of a major port, mine, oilfield or railway company.

8. Neither the expression ''establishment'' nor for that matter ''branch'' is defined by the Act. These expressions must, therefore, bear the meaning which is attributed to them in common parlance. A branch is essentially a limb of an organization or an arm of the organization through which the organization carries on business. The branch is as it were a tributary which is controlled by the trunk. The connotation of the word ''branch'', is liable to vary depending upon the context and the nature of legislation in which it is used. In Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, , the Supreme Court held that in relation to Sales Tax legislation branches are not distinct and independent from the assessee but are merely establishments of the assessee (Para 22 page 668). In Agencia Commercial International Limited and Others Vs. Custodian of the Branches of Banco Nacional Ultramarino, , the Supreme Court held that as a general proposition a body corporate and its branches are not distinct and separate entities from each other; branches constitute mere components through which a corporate entity expresses itself and that all transactions entered into ostensibly with the branches are in legal reality transactions with the corporate body. However the Court noted that in the case of a Bank which operates through its Branches, the Branches are regarded for many purposes as separate and distinct entities from the head Office and from each other.

9. The provisions of Section 2(a)(i) have fallen for consideration before a Learned Single Judge of the Karnataka High Court in Binny Limited Vs. Commissioner of Labour and Others, . The Learned Single Judge noted that in undertakings having

 

branches in more than one State, transfer of an employee from one State may take place during the tenure of his service, if transfer is a condition of his service. A dispute may arise as regards the total number of completed years of service put in by the employee for the purpose of gratuity. The appropriate Controlling Authority appointed by the Central Government would be in a better position to deal with these cases expeditiously than the authorities appointed by different State Governments in different States. The Learned Judge held that the expression "establishment" must be understood, in its general sense and the petitioner before the Court was held to be an establishment having its main place of business in Tamil Nadu and a Branch in Karnataka. Consequently, it was held that the Controlling Authority appointed by the State Government had no jurisdiction to entertain the application of the workmen in that case. I am in respectful agreement with the judgment of the Learned Single Judge of the Karnataka High Court. Unless an interpretation is placed as indicated by me earlier anomalous results will follow. For instance, the factory belonging to the petitioner would fall under the jurisdiction of the Controlling Authority appointed by the State Government whereas the Head Office and the Branches in other States would fall under the Controlling Authority appointed by the Central Government. Such a consequence could not possibly have been envisioned by the legislature. Both the Controlling Authority as well as the Appellate Authority have manifestly erred in taking the view which they did. The order of the Controlling Authority demonstrates that one of the circumstances on which it relied is that the petitioner is a factory registered under the Factories Act, 1948 and that it neither belongs to, nor is under the control of the Central Government. This is completely specious. The Petitioner is not a factory in the first place and the fact that the factory belonging to the petitioner is not under the control of the Central Government is not dispositive. Sub-clause (c) of Section 2(1)(i) deals with factories belong to or under the control of the Central Government for whom the appropriate Government is that Government. The case of the petitioner did not fall under Sub-clause (c) but under Sub-clause (b) namely, an establishment having branches in more than one State. Essentially the question which has to be answered is whether the establishment has branches in more than one State. The establishment in relation to those Branches must necessarily mean the Company which controls and directs the activities of the branches. Since the Company controls and directs its branches which in turn are situated in more than one State, clearly the appropriate Government can in the present case only be the Central Government. The Controlling Authority then relied upon the circumstance that Charters of demand were submitted separately by workers of the factory and by workers of the Depots. The Controlling Authority noted that manufacturing activity was carried out within the State of Maharashtra; that the workmen had been appointed for the Mumbai Factory and that they reside in Mumbai. The Controlling Authority, has confused the issue of territorial jurisdiction with the issue of which government is the appropriate Government. Insofar as the decision of the Appellate Authority is concerned, the reason which weighed with that authority was that the petitioner had a factory in the State of Maharashtra which did not either belong to, or was under the control of the Central Government. Again for the reasons already indicated earlier, this basis was erroneous. The fact that the factory is situated in the State of Maharashtra will not make the State Government the appropriate Government where the uncontroverted material on record showed the existence of branches in more than one State.

10. For all these reasons, the Controlling Authority as well as the Appellate Authority have manifestly erred in rejecting the preliminary objection in regard to their jurisdiction. The appropriate Government being the Central Government, the Controlling Authority and the Appellate Authority appointed by the State Government u/s 3 of the Act have no jurisdiction. It may be noted that u/s 2(d) the Controlling Authority is defined as the authority appointed as such by the appropriate Government. u/s 7(4)(d) a dispute in regard to gratuity lies within the jurisdiction of the Controlling Authority as defined in Section 2(d). The appropriate Government being the Central Government, the State authorities had no jurisdiction to entertain the dispute.

11. Counsel appearing on behalf of the workmen submitted that as a result of the position in law as determined in this judgment, 272 workmen would have to file fresh applications before the Controlling Authority appointed by the Central Government. This hardship can, in my view, be obviated by directing the second respondent to return the applications which were filed by the workmen involved in the present case for presentation before the Controlling Authority appointed by the Central Government under the Payment of Gratuity Act, 1972. The Controlling Authority appointed by the Central Government shall on receipt of the applications, proceed to dispose them of in accordance with law. The impugned order of the Appellate Authority dated 31st October, 2001 is quashed and set aside. The petition is accordingly allowed. No order as to costs.

 