
(1964) 04 MAD CK 0038
In the Madras High Court
Case No : Writ Petition No. 339 of 1962

Workmen Employed in Rob Roy Estates, Coonoor	APPELLANT
Vs	
Presiding Officer, Labour Court, Coimbatore and Another	RESPONDENT

Date of Decision : 27-04-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25

Citation : AIR 1965 Mad 364 : (1965) ILR (Mad) 379

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) On a reference by the State Government, buy G. O. Ms. No. 4366, Department of Industries, Labour and Co-operation, dated 1-7-1961,

under S. 10(1)(c) of the Industrial Disputes Act, for adjudication of the dispute relating to the claim of the staff members of the Rob Roy Estate for

additional bonus for the years 1953-54 to 1958-59, the Labour Court, Coimbatore, decided by its award, dated 26-9-1961, that the staff

members were not eligible for additional bonus for the years. The claim for additional bonus mainly turned upon the question whether Rob Roy

Estate could be treated as a separate unit of Spencer and Co., Ltd., for purposes of bonus. On a consideration of the entire evidence and

circumstances, the Labour Court was of the opinion that though Rob Roy Estate could exist independently of the other units, it could not, however,

be treated as a separate unit for purposes of bonus. This opinion of the Labour Court was based on its findings that (i) the profits of Spencer and

Co. Ltd., were ascertained on the general income of the various units of the company and dividends were declared and paid to the share-holders

(ii) the share-holders of the company own the Rob Roy Estate and it is managed

by the Board of directors of the company; (iii) Income Tax

returns were sent on the basis of the income of all the concerns of Spencer and Co. Ltd., including the income from Rob Roy Estate and so too,

sales tax assessed on the basis of the various units together of the company including Rob Roy Estate; and (iv) the assets and liabilities and

reserves are not separately allocated by Spencer and Co. Ltd., as between its individual units.

(2) The fact that for the assessment of agricultural Income Tax, separate accounts of the estate have been maintained as the income of the Rob

Roy Estate alone were relevant for the purpose and that wages of the workers engaged in the estate were necessarily to be paid on a plantation-

industry-wise basis, did not, in the view of the Labour Court, justify the staff members of Rob Roy Estate to claim bonus on the trading results of

that estate alone. On that view, the Labour Court did not decide the further question as to what should be the quantum of additional bonus payable

to the staff members of the estate. The workmen of the estate represented by the Estates Staff Union of South India, Coonoor, seek by this

petitioner to quash the award of the Labour Court which is the first respondent, the other respondent being the management of the Rob Roy

Estate, Kotagiri.

(3) Spencer and Co. Ltd., is a public limited liability company with its registered office at Mount Road, Madras, and has various branches all over

India. In 1948, the company purchased the Rob Roy Estate, and since then it has owned and been managing it. It is said that the fixed assets of the

estate and all its liabilities were merged in the accounts of Spencer and Co. Ltd. Madras, and the estate was being treated as part of the business

of the company of Madras. According to the company, Rob Roy Estate constitutes one of the branches of its business, there is only one

consolidated profit and loss account of the company, the profits of Rob Roy Estate are merged with the profits of the company and bonus is paid

to all workmen on the basis, except the workmen of the estate who are paid bonus on the recommendation of the UPASI on industry-wise basis.

On the other hand, the workmen would say that though the Rob Roy Estate is owned by Spencer and Co. Ltd. the estate is an independent unit

with its separate labour force recruited and paid accordance with the service

conditions of the staff of the plantation industry and the agreements entered into by the UPASI and APN with the units of the workmen on a plantation-industry-wise basis, and it has also, separate accounts of receipts and disbursements. The workmen, therefore, claim that they are entitled to be paid the additional bonus on the basis of the profits of the Rob Roy Estate.

(4) On behalf of the petitioner, the contention is that the Labour Court in arriving at its conclusion that the Rob Roy Estate was not an independent unit but part of the business of the company, failed to appreciate and apply the correct tests" which the Supreme Court has laid down in various decisions to find out whether the industrial activity in question constitutes a separate and independent unit for purposes of the claim by the workmen of bonus on the working of the unit or whether it is part and parcel of the main business undertaking, so that the workmen concerned would only be entitled to bonus on the basis of the working results of the whole undertaking. It is argued that the main tests are functional integrality, unity of finance and employment of labour and that the Labour Court having found that there was no functional integrality and there was no unity of employment, it should have held that unity of finance alone would not make the Rob Roy Estate a mere branch of a single unit, namely, the Spencer and Co. Ltd. The petitioner adds that as Rob Roy Estate is owned by a public limited company, the test of unity of finance cannot prevail over the absence of functional integrality and unity of employment. For the second respondent, the argument is that the Labour Court correctly understood the relevant tests and properly applied them to the facts of the case, so that no interference with this finding is called for.

(5) In view of the rival contentions, it is necessary to notice the tests, which have been laid down and often applied, to determine whether a particular industrial activity is a unit, separate from and independent of the main concern, or it is but an integral part of such concern. The tests have been formulated and reiterated in a number of decisions of the Supreme Court; but it would suffice to refer to only a few of them to which my attention was called at the Bar.

(6) In The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, , the Supreme Court, after referring

to the tests suggested in the course of the arguments, namely, geographical proximity, unity of ownership, management and control, unity of

employment and conditions of service, functional integrality and general unity of purpose, observed:--

It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all case. 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, 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 right 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 important integrality or general

unity may be the important test; and still in 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.....In the midst of all these complexities it may be difficult to discover the real thread of unity.

The case related to claim of compensation under S. 25-E read with S. 25-C of the Industrial Disputes Act, and the question turned upon the

interpretation of the words ""another part of the establishment"" occurring in cl. (iii) of S. 25-E. In the absence of any specific statutory test for

determining what is ""one establishment"", their Lordships of the Supreme Court proceeded on such considerations as in the ordinary industrial or

business sense to determine the unity of such an establishment and in so doing they also kept in view the scheme and object of the Industrial

Disputes Act and other relevant provisions of the Mines Act, 1952, and the Factories Act, 1948. On facts, the limited liability company there

owned a Cement factory and also a quarry which was situate a mile and a half away from the Cement factory and which supplied to it the raw

materials for manufacture of cement. There was a common management, one common account, unity of purpose and functional integrality between

the quarry and the factory and it was further evident that the members of the staff were used to be transferred from quarry to the factory and vice

versa by the manager according to the exigencies of service. The Supreme Court held, differing from the Industrial Tribunal, that the quarry and the

factory were not separate establishments; but the quarry was only another part of the establishment, namely, the factory within the meaning of S.

25-E(iii) of the Industrial Disputes Act.

(7) The question in *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, related to the claim

of bonus made by workmen employed in one of each business carried on by the same employer on the pooled profits of all his businesses. The

Supreme Court held on the evidence before it that the two businesses of Printing Press and Newspaper owned by the same employer were two

separate and distinct industrial units for purposes of bonus. In coming to that conclusion, the Supreme Court referred to the tests laid down in *The*

Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, and the observation that it was impossible to

lay down any one test as an absolute and invariable test for all cases and the real purpose of the test would be to find out the true relation between

the parts, branches, units etc., and stated:

Of all these tests the most important appears to us to be that of functional "integrality" and the question of unity of finance and employment and of

labour. Unity of ownership exists ex hypothesi. Where two units belong to a proprietor, there is almost always likelihood also of unity of

management. In all such cases, therefore, the Court has to consider with care how far there is "functional integrality" meaning thereby such

functional interdependence" that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters

of finance and employment the employer has actually kept the two units distinct and integrated.

With reference to these tests, the Supreme Court observed that the functions of the Press and the Paper could not be considered to be so

interdependent that one could not exist without the other and that further no evidence was produced to show the conduct of the businessman

himself as to show the conduct of the businessman himself as to whether he had

fixed up the capital of the two, the profits of the two and the labour force of the two units.

(8) The question was again considered by the Supreme Court in *Pakshiraja Studio v. Its Workmen*, 1962 2 LLJ 380 and with reference to

Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen, , it was pointed out that out of the sets

helpful in deciding it, most important are that of functional integrality and the question of unity of finance and employment and of labour. The actual

decision there was that the Cinema Studio and the business of picture production and distribution of films formed part of one and the same unit for

purposes of deciding a claim for bonus. There was one management, one capital fund, one bank account, one cash book and the same

administrative staff maintained for all the three activities. The decision for all the three activities. The decision of the Supreme Court was based

mainly upon these facts. Their Lordships considered that on the context of these facts, the fact that the management prepared separate trading

accounts of the Studio and of the pictures, and separate balance sheets also for the two activities, made no difference to the conclusion that the two

form parts of the same business. It is important to note that the Supreme Court, in maintaining that conclusion, was particularly aware of the fact

that the several lines of activities carried on by the management could exist independently of each other and would appear to have laid stress that

the owner decided to mix them up by having one capital fund, one bank account and cash book account with a staff common to the several lines.

(9) *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, ,

was also a case of claim for bonus by workmen of the Saroja Mills Ltd., a limited liability company, on the basis of its total trading results or

pooled profits. The company ran two mills, one at Coimbatore and the other at Madurai, both pursuing the same type of business but producing

yarn of different quality. The Tribunal had overruled the contention of the management and held that the two mills could not be treated as separate

units and the Supreme Court declined to hold that the conclusion of the Tribunal was erroneous in law. But on the side of the management, reliance

was placed on the following facts. The two mills were situated at two different

places about 150 miles apart from each other. There was, therefore, no geographical unity or contiguity. The workmen in the two Mills were different and were not transferable from mill to the other. They manufactured different counts of yarn. They had different accounts and the borrowing by one of the mills was debited to its account. On the other hand, for the workmen it was argued that these facts did not detract from the two mills being parts of one unit of business and stressed the following facts. The mills were owned and managed by one company, the mill at Madurai having no independent legal existence except as a concern run by the company. The profits and loss account for both the companies and one consolidated account and dividend was paid on that basis. On these rival contentions, their Lordships of the Supreme Court noticed that some of the tests which earlier decided cases had laid down and pointed out that no one test in itself would be decisive and that in dealing with the problem, several factors were relevant, the significance of which might both be the same in each case.

(10) Though in *Fine Knitting Co. Ltd., v. Industrial Court*, 1962 1 LLJ 275, there was unity of ownership, management and control, it was nevertheless held that the different units did not constitute parts of one and the same unit. This was on the ground that there was no functional integrality between the different units.

(11) The limited liability company in *D. C. M. Chemical Works v. Its Workmen*, 1962 1 LLJ 388, was engaged in the business of manufacture of sugar, textiles and chemicals, the first two units were situated at one and the same place, but not the chemical industry. The company sold bulk of the chemicals manufactured and only a small percentage of chemicals was supplied to the textile units for its use and the value thereof was debited to the textile industry at market rate; and on the ground that there was nothing common between the three main lines of business and there was no question of one depending upon the other or of functional integrality between the three lines, the Supreme Court held that they were separate units and not parts of the same unit. In addition to those grounds, it also appears that the company itself was treating the units as separate and distinct for the purpose of recruitment of labour, sales and conditions of service for the workmen employed therein. The company had no doubt a common

balance sheet for all the units common capital and reserve fund and dividends were declared on the basis of the total profits of the company as a

whole. But with reference to these facts, the Supreme Court pointed out that they had no particular significance as they were attributable to the

facts of the company being a legal entity.

(12) In view of these decisions the general tests to find out whether the businesses or departments of industrial activities under a single ownership

and control are different entities or parts of the same unit for the purpose of profit bonus are many and are not in doubt. These tests are reiterated

by the Supreme Court in 1962 1 LLJ 388 Workmen of Joint Steamer Companies Vs. Joint Steamer Companies, , and Western India Match Co.

Ltd. Vs. Their Workmen, , include the geographical proximity, unity of ownership, management and control, unity of employment and conditions of

service, functional integrality and general unity of purpose. They also include the conduct of the owner or management in relation to keeping

separate or mixing up accounts, capital, profit and loss and employment and whether the particular line of business or department has any legal

existence apart from that of the main owner as an individual or a company. While these tests are easily formulated, their application, as seen from

the various decisive, the object of these tests is merely to determine the "true relation between the parts, branches and units". In a particular set of

circumstances, unity of ownership, management and control may be helpful. In another set of circumstances, unity of finance or and unity of

employment and common conditions of labour may be useful. The test of functional integrality may help in certain other circumstances. What I think

should be remembered is that it cannot be asserted that one test alone and not the other that should prevail in given circumstances. If the correct

tests are borne in mind and the problem is approach with reference to them, their application to particular facts is more or less a matter of

appreciation of evidence and evaluation of its effect in relation to the question.

(13) The contention for the petitioner is not that the Labour Court mis-apprehended or did not correctly understand the general tests themselves to

determine the relationship of Rob Roy Estate with the company. As a matter of fact, it appears from the award of the Labour Court that both the

parties before it relied on Management of Pratap Press, New Delhi Vs. Secretary,

Delhi Press Workers' Union and Its Workmen, . The Labour

Court referred to the tests laid down in that case and proceeded to apply them to the facts of the case. It is, however, contended that the Labour

Court having held that Rob Roy Estate could exist independently of the other units, it erred in law in applying the sole test of unity of finance and

arriving at the conclusion that the Rob Roy Estate could not be treated as a separate unit for purposes of bonus. Counsel for the petitioner

particularly draws attention to the following sentence in the award.

Though Rob Roy Estate can exist independently of the other units, it cannot be treated as a separate unit for the purpose of bonus as the profits of

the Company were ascertained on the basis of the general income of the various units of the company and the dividends were declared and paid to

the share-holders", and contends that Spencer and Co. Ltd., being a limited liability company, it is but natural that it has one directorate, owns all

its assets, prepares one consolidated profit and loss account and balance sheet on the basis of which dividends are declared and paid to the share-

holders and that this phenomenon cannot, therefore, be taken as the sole test applicable to the facts of this case.

(14) It is true that the observation above extracted from the award, taken by itself, may appear as if the Labour Court's conclusion was reached

on applying the sole test of unity of finance. But on applying the sole test of unity of finance. But a perusal of the rest of the award and award taken

as a whole shows, in my opinion, that the petitioner's counsel is not right in his contention. The Labour Court first considered the nature of the

estate and thought that it could exist independently without depending on the other industrial undertaking a Spencer and Co. Ltd. But in view of the

other circumstances which have been referred to, it thought that the test of inter-dependence did not apply to the case as a decisive factor. It then

went into the question whether in matters of finance and employment, Messrs. Spencer and Co. Ltd., had treated the estate with reference to the

other units of its business, and whether it kept the estate and other units distinct or integrated. The Labour Court found that actually, the company

had been treating its assets and liabilities and reserves assign unit and as belonging to one concern and not to individual units and it was drawing up

one profit and loss account, one balance sheet and dividends were paid on the

basis of the pooled profits. The directors of the company owned the estate and they regarded the estate as part of the company. The Labour Court was not unmindful of the fact that a separate account for Rob Roy Estate as for other units was maintained, wages to the workers in the estate were paid on the basis of plantation-industry-wise basis and like facts. But the Labour Court thought that they were not sufficient to hold that the estate was a separate and independent unit. Taking the entire award,--I am therefore, unable to accept the contention for the petitioner that the Labour Court laid too much emphasis on a single test or misdirected itself in the application of the tests of the facts of the case.

(15) The jurisdiction of this Court under Art. 226 of the Constitution is not appellate in character and it will not, therefore, review, evidence as in appeal and come to its own findings on the materials on record. Its jurisdiction under certiorari is corrective and is confined to find if the proceedings or order sent up before it suffer from any error of law or of jurisdiction on the facts of the record. I think, learned counsel for the second respondent is right in his contention that once, this Court finds that the Labour Court has informed its mind of the correct tests and has properly applied them to the facts of the case, its conclusion cannot be successfully assailed in a writ of certiorari. I am, therefore, not satisfied that any interference with the award of the Labour Court is called for.

(16) The petition is dismissed with costs of the second respondent. Counsel's fee Rs. 100.

(17) Petition dismissed.