

SUPREME COURT OF INDIA

Management of Pratap Press, New Delhi

Vs.

Secretary, Delhi Press Workers's Union Delhi

C.A.Nos.482 of 1958

(P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.)

23.02.1960

JUDGEMENT

DAS GUPTA, J.

1. When an entrepreneur - whether an individual proprietor or a partnership firm, or an incorporated Company - is engaged in several activities each of which comes within the definition of "industry" in the Industrial Disputes Act, the question often arises whether these several activities together form one industrial unit or are distinct separate industrial units. It seldom happens that the several ventures can show in every year equally successful results and so when a dispute arises between such an owner and the workmen engaged in one of the ventures over bonus, not only the quantum of the bonus which may be reasonably payable to workmen, but the very question whether any sum will be payable at all or not, may well depend, on whether the overall results, or the results of the particular venture where the workmen with whom the dispute has arisen are employed are taken into consideration. A proper decision of such a dispute therefore requires in the first place a determination of the question whether the several ventures in which the employer of these workmen are engaged form one industrial unit with the particular venture in which these workmen are employed. That precisely is the question which has arisen in these two appeals between the management of the Pratap Press and its workmen. This Press was started by its proprietor Shri Narendra in 1951. He started the publication of the paper Vir Arjun in April 1954. He was also one of the partners of the firm which owned another paper the Daily Pratap. A dispute over a claim of bonus raised by the workmen of the Press having been referred to the Industrial Tribunal, the workmen contended in the first place that the three activities - the Press, the Vir Arjun as also the Daily Pratap - were in reality the industrial ventures of one family consisting of Shri Narendra and his sons and the working results - whether profit or loss of these three concerns should be pooled together for the decision of the question what bonus, if any, should be paid. Their alternative contention was that the result of the Press only should be considered. The employer contended that the workmen's contention that the three concerns should be treated as one could not be accepted inasmuch as the ownership of the Daily Pratap was a partnership firm of which he was only one of the partners while the other two, viz., the Press and the Vir Arjun, were owned by him. His case was that these two, the Press and the Vir Arjun, were parts of one single industry and the total results of these two have to be considered in deciding whether bonus should be allowed or not. The Industrial Tribunal accepted the employer's contention that the results of the Daily Pratap could not be taken into consideration for the simple reason that the ownership of the Daily Pratap was different from the ownership of the Pratap Press and the Vir Arjun paper. On the next question whether the Pratap Press and the Vir Arjun form one industrial unit or two distinct industrial units its decision was

however against the employer's contention. On a consideration of the materials before it held that the Vir Arjun was a distinct and separate industrial entity from the Pratap Press and so the results of the Vir Arjun could not be taken into consideration in deciding the question of bonus. It may be mentioned here that the question is of considerable importance in the facts of these appeals as admittedly if the working results of Vir Arjun are taken into consideration the position would be that Vir Arjun having incurred losses in each of these years these would wipe out the profits made by the Pratap Press in those years and no surplus profits would remain for distribution as bonus.

2. The question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard and fast rule can be laid down for the decision of the question and each case has to be decided on its own peculiar facts. In some cases the two activities each of which by itself comes within the definition of industry are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

3. An instance in the first class of cases is furnished by the case of Workers in Hindi Prachar Press v. Hindi Prachar Press, 1958-2 Lab LJ 358 (Lab. Court Mad), where the question was whether the workmen of the Press were entitled to a bonus. The Tribunal found that the press was only a department or a section of the activities of an organization or an institution known as Dakshina Bharat Hindu Prachar Sabha. The main object of that institution was the propagation of knowledge of Hindi in South India. For that purpose there were several sections like library section, publicity section, book sales section, training centres for teachers who are paid stipends and are given free lodging etc. It was held that the various connected activities of the institution were carried on through various departments which are inter-dependent on one another and the income and expenditure of the institution as a whole must be taken into consideration for the purpose of ascertaining the available surplus to meet the demand for bonus made by workmen employed in one of such departments. G. G. Industries Mazdoor Union v. G. G. Tin Factory, Agra, 1952-1 Lab LJ 507 (LATI-All), on the other hand is a case where a decision was based on the employer's conduct. The employer was the sole proprietor of the G. G. Tin Factory. He was also the sole proprietor of the G. G. Chocolate Factory, the G. G. Toy Factory, the G. C. Fruit Factory and the Krishna Ice Factory. The dispute before the Tribunal was as regards the increments in the wages of the workmen employed in the G. G. Tin factory and bonus claimed by the workmen of the said factory for the year 1949. If all the factories of which he was the sole proprietor, were to be regarded as units of the one and the same industry, the overall picture was a net loss of about Rs. 1,25,000. The Labour Appellate Tribunal however found that for each factory separate accounts were kept and separate balance-sheets prepared. The capital invested by the proprietor in respect of each of those factories had been kept distinct. In deciding that the G. G. Tin factory should be considered a separate and distinct industrial unit the Tribunal observed :- "The proprietor himself is treating each Factory as a distinct undertaking and the several factories as independent of each other."

4. In Pipe Mill Mazdoor Union, Lucknow v. Indian Hume Pipe Co. Ltd., 1951-1 Lab LJ 379 : (LATI - All), the question arose whether the industry carried on by the Lucknow Branch of the Company was a separate entity from the several other branches. The company had supplied some written information with regard to the Lucknow branch at the request of the regional conciliation board. This information showed that the accounts of the Lucknow branch were kept separately, that the amount of capital employed in the factory at Lucknow was also separately shown in 1947-48 and again in 1948-49. The Appellate Tribunal observed :-

"This paper, therefore, in our opinion, establishes the fact that the company kept accounts of the Lucknow branch both as regards capital and profit and loss separately as if it was an independent unit." The Tribunal decided to consider on that basis whether any bonus could be awarded to the workmen of the Lucknow branch.

5. In *Associated Cement Co., Ltd. v. Their Workmen* AIR 1960 SC 56 this Court had to consider the question whether the employer's defence to a claim for lay-off compensation by the workers of the Chaibasa Cement Works that the laying off was due to a strike in another part of the establishment, viz., limestone quarry at Rajanka was good. In other words the question was whether the limestone quarry of Rajanka formed part of the establishment known as the Chaibasa Cement Works within the meaning of section 25E (iii) of the Industrial Disputes Act. While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case. It is obvious there is an essential difference between the question whether the two units form part of one establishment for the purposes of section 25E (iii) and the question whether they form part of one single industry for the purposes of calculation of the surplus profits for distribution of bonus to workmen in one of the units. Some assistance can still nevertheless be obtained from the enumeration of the tests in that case. 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 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 or integrated.

6. Coming now to the facts of the present appeals we find that the functions of the Press and the *Vir Arjun* paper cannot be considered to be so interdependent that one cannot exist without the other. That many presses exist without any paper being published by the same owner is common knowledge and is not seriously disputed. Nor is it disputed that an industry of publishing a paper may well exist without the same owner running a press for the printing of the paper. The very fact that *Daily Pratap* owned by a partnership firm, was being printed at the *Pratap Press* belonging to *Shri Narendra* itself shows this very clearly. It cannot therefore be said that there is such functional interdependence between the press unit and the paper unit that the two should reasonably be considered as forming one industrial unit.

7. Along with this it is necessary to consider the conduct of the businessman himself. Has he mixed up the capital of the two, the profits of the two and the labour force of the two units? These are matters on which the employer is the best person to give evidence from his records of his concerns. No evidence has however been produced to show that at any time before the dispute was raised he treated the capital employed in the two units as coming from one single capital fund, nor anything to show that he pooled the profits or that the workmen were treated as belonging to one establishment. It is interesting to note that there is no record showing whether for his own purposes he treated the assets of the two units as forming one composite whole or the assets of two distinct units has been produced. The profit and loss accounts which we find on the record appear to have been prepared sometime in December 26, 1951, - apparently after the reference had been made and the dispute

whether these units were one or two, had arisen. No weight can therefore be attached to the fact that in this profit and loss account - both the receipts from the press and the receipts from the Vir Arjun were shown as the income.

8. Some account-books appear to have been produced in Court but it is nobody's case that these throw any light on the question whether the capital fund or the labour force for the two units were treated as one and the same. It is reasonable to think that the account-books were produced only to show the actual working results of the Vir Arjun. It has to be noticed that the Tribunal thought that the account had not been kept in a satisfactory manner and there was room for suspicion about the correctness of the same.

9. The position therefore is that the activities of the press unit are independent of the activities of the paper unit and there is no record from which it can be ascertained how the employer himself treated these two units. When in this position of things we find the employer himself making a statement that "there are two institutions, the Vir Arjun and the press, the account books are kept separately" and that "there are two cashiers," the conclusion reached by the Tribunal that the Press and the Vir Arjun paper are distinct and separate industrial units appears to be reasonable and cannot be successfully challenged.

10. Once this conclusion is reached the question of what bonus is payable depends on a proper calculation of the available surplus of the Pratap Press itself without taking into consideration the loss incurred by the Vir Arjun. No objection has been taken before us to the calculation made by the Tribunal on that basis. As the only point raised in this appeal, viz., that the Vir Arjun and the Pratap Press form one industrial unit fails the appeal is dismissed with costs.

11. The position is the same in the other appeal i.e., Appeal No. 189 of 1959. There also the only question raised is that the Pratap Press and the Vir Arjun are two part of two industrial unit. For the reasons already mentioned in the first appeal we must hold that these must be held to be distinct industrial units and that the workmen of the Press are entitled to such bonus as the working results of the Pratap Press justify. This appeal, is also therefore dismissed with costs.

Appeal dismissed.

</html