

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 13 OF 2007
IN
WRIT PETITION NO. 3970 OF 2005
WITH
CIVIL APPLICATION NO. 1404 OF 2006

Janardhan Sadashiv Rane,
Age 52 years, Occu. Nil,
R/o. C/o. Uttam Bhanudas Shinde,
N-2, L-1/34/4, Shriram Nagar,
Cidco, Aurangabad.

....Appellant.

Versus

1. M/s. Everkeen Blade Company Limited,
1-A, MIDC Area, Chikalthana,
Aurangabad - 431 210.
Through : Its Manager.

2. M/s. Centron Industrial Alliance Ltd.,
2 & 16, MIDC Area, Chikalthana,
Through : Its Director

....Respondents.

Mr. R.V. Gore, Advocate for appellant.

Mr. A.G. Godhamgaonkar, Advocate for respondent No. 1.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
RESERVED ON : 01/03/2018.
PRONOUNCED ON : 20/03/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of Writ Petition No. 3970/2005 decided by the learned Single Judge of this Court. The learned Single Judge has set aside the judgment and order of Member, Industrial Court, Aurangabad delivered in Complaint ULP No. 375/1999. Complaint ULP was filed by the

present appellants against two factories and the proceeding was allowed by the Industrial Court. Both the factories were directed to pay together compensation of Rs.1,00,000/- to each of the present appellants. Both the sides are heard.

2) The aforesaid complaint was filed before the Industrial Court under the provisions of sections 28, 30 r/w. item No. 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act' for short). It is the case of appellants that they were working with respondent No. 1 of the complaint viz. M/s. Everkeen Blade Company Limited (hereinafter referred to as 'company No. 1') and company No. 1 was subsidiary company of respondent No. 2 of the complaint viz. M/s. Centron Industrial Alliance Limited (hereinafter referred to as company No. 2).

3) It is the case of appellants workmen that there was functional integrality in the activities of aforesaid two companies and they were manufacturing same product viz. safety razor blades. It is their contention that though their names were shown on the muster roll of company No. 1, the workers of these two companies were transferable and they were working in the premises of other company also as per the directions given by the management. It is

contended that the strength of workers shown on muster roll of company No. 2 was more than 100, but the strength of workmen shown on the muster roll of company No. 1 was around 44. It is contended that as there was functional integrality between the two companies, the provisions of Chapter V-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act' for short) are applicable to the present dispute. It is contended that in view of this circumstance, it was necessary for company No. 1 to take permission before closure as required by section 25 (O) of ID Act.

4) The appellants had filed the complaint before the Industrial Court in anticipation of closure on 26.11.1999. The Industrial Court did not give interim relief and during pendency of the complaint, company No. 1 was closed with effect from 9.3.2000. It was closed without taking permission as required under section 25 (O) of ID Act.

5) In the complaint, the particulars of manufacturing activities which were going on in the premises of company No. 1 and company No. 2 were given. Following circumstances were quoted to show that there was functional integrality between the two companies.

(i) The share capital of company No. 1 was wholly

subscribed by company No. 2.

(ii) The godown for storage of raw material of both companies was the same.

(iii) The dyes used for manufacturing purpose in both the factories were the same.

(iii) There was regular interchange of workers and the operators shown on the muster roll of company No. 2 were rendering services in company No. 1 for grinding and blade punching the furnace.

(iv) Stamping, spraying, wrapping, quality control and packing facilities were exchangeable. The same product viz. safety razor blade was manufactured in the two companies.

(v) The management was the same and the persons involved in the management were supervising the work in both companies.

(vi) The premises of the two factories, of the two companies were adjacent to each other and between those two premises, there was one canteen and facilities of this canteen were available for workmen of both the companies.

(vii) Even after the so called closure of company No. 1, the work orders which were issued in favour of company No. 1, were completed by company No. 2 in it's factory premises and those work orders were of more than Rs.40

lakh.

6) It is the case of appellants workmen that when the company No. 1 was shown to be closed, there was more than sufficient work for continuing the activity of the factory, but accumulated losses were falsely shown and without following the due procedure, company No. 1 came to be closed. It is contended that due to abrupt closure of company No. 1, the workers lost their only way of livelihood. Relief of declaration that the closure of company No. 1 was illegal was claimed and direction was claimed against company No. 1 and company No. 2 to reinstate the appellants and to pay them backwages.

7) Company No. 1 and company No. 2 filed separate written statements before the Industrial Court. Both of them contended that they were separate entities under the Companies Act and there was no functional integrality between the two companies. They denied that there was unity of ownership, unity of management and exchange of workmen. They contended that the wage structure of two companies was different and different factory licenses were obtained by two companies by company No. 1 and company No. 2. It was contended that company No. 1 was started in the year 1974 and it was closed down in the year 1976. It was subsequently

started in the year 1988 and then it was closed in the year 2000. It is contention of company No. 1 that it was required to undergo the financial reconstruction and for that, it was required to be closed. It is the contention of company No. 1 that less than 100 workers were working and so, the permission under section 25 (O) of ID Act was not required.

8) Before the Industrial Court, only the complainant gave evidence. No evidence either oral or documentary in rebuttal was given either by company No. 1 or company No. 2. To prove the functional integrality, the complainant examined one Mr. Rane. The evidence given by Mr. Rane was in accordance with the aforesaid contentions. At para No. 12, the Industrial Court had quoted the relevant portion of his evidence, which is as under :-

"12. Witness for the complainant Mr. Rane deposes that premises of both adjoining Cos. are separated by a canteen premises which is used for both. Raw materials was being stored in a godown of Centron. Coil joints of raw material was also being done in Everkeen for both. Dyes for punching coil joints was commonly used in Die grinding department. Operator of Centron was performing operations in Dye grinding department. In case of heavy workload furnace of Centron was being used for work of Everkeen. After passivation printing on the product with ink and stamp

was being done in the name of Centron. After processing of the blades so manufactured, the same were sent to Centron. The packing of product so manufactured was done in the premises of Everkeen. Process called Cello phining for packing product manufactured was being undertaken in the premises of Centron, but packing was done in Everkeen. Product Manager of Centron used to exercise supervision and control over production of both the factories. Works Manager of the factories was one person. Similarly, Personnel and Factory manager and Quality control engineer were also being shared. There was a single Accounts department. Welder was a single person. Accounts department was housed in Centron. Time office were, however, separate. The coupon for canteen facility was one for both the factories."

9) Voluminous documentary evidence was given by the complainant before the Industrial Court. This evidence is discussed both by the Industrial Court and the learned Single Judge. Some documentary evidence is quoted in the judgment of Industrial Court at para No. 14 and it is as under :-

"14. Below Exh.U-19, documents are produced to show that the activities of Everkeen have been continued and carried on papers and similarly below Exh. U-6 and U-7, such correspondence is produced. The witness Mr. Rane states that, the contention that the work was not available with Everkeen is wrong,

that too at the time of its closure. Below Exh. U-6 and U-7 applications, purchase orders are filed which show Everkeen still continues its' activities through Centron after the date of closure. Mr. Rane also deposes that the production of Everkeen is continued in Centron until after closure. His this statement inspires confidence.

10) It is not disputed that on record, these two companies are separate entities. It is also not disputed that they had separate muster rolls and pay scales of the workers of the two factories were different. When the workers, appellants of company No. 1 were getting Rs.3500/- p.m., the employees of company No. 2 were getting Rs.6000/- p.m. at the relevant time.

11) Though there are aforesaid admitted circumstances, those circumstances are not sufficient to rebut the voluminous documentary evidence produced by the complainant to show the functional integrality. There is also oral evidence and there are circumstances in the form of submissions made by the learned counsels for company No. 1 and company No. 2 before the Industrial Court and learned Single Judge. The complainant has come with the case that the workmen of company No. 2 were having more experience. It appears that further, there was understanding

between the Union of workers of company No. 1 and company No. 1 and due to that, different pay scale was fixed like Rs.3500/- p.m. Company No. 1 was started in the year 1988 after it's reopening and then the appellants had joined that company. Company No. 2 was never closed in the past and it was in activity from prior to 1970.

12) Both the factories were manufacturing safety blades. On the basis of oral evidence and aforesaid circumstances, for which there is voluminous record, the Industrial Court had held that there was functional integrality between the two companies. The Industrial Court had held that in view of the record produced, it was necessary for company No. 1 and company No. 2 to produce the relevant record to rebut the evidence given by the complainant. Even the record of manufacturing, on the basis of which the loss was calculated by company No. 1 was not produced. Thus, before the Industrial Court, on one hand, there was voluminous record produced by the complainant and there was oral evidence to prove the functional integrality and on the other hand, nothing was there except aforesaid admissions in rebuttal. In view of the record produced and other admitted circumstances, which are being quoted hereinafter, the Industrial Court had held that total strength of the workers need to be considered for the purpose of section 25 (O) of ID Act and it was certainly more than 100 (48 + 290). As the

company No. 1 was closed without taking necessary permission and as there were other circumstances, the Industrial Court had held that there was unfair labour practice on the part of company No. 1 and company No. 2.

13) During pendency of the complaint, company No. 1 was closed. The appellants had accepted the compensation offered by company No. 1 under protest. It was meager compensation. As there was unfair labour practice, the Industrial Court has given compensation of Rs.20,000/- per year and it is given for the period of five years and total compensation of Rs.1,00,000/- was awarded to each workman by the Industrial Court as additional compensation. The Industrial Court considered the law laid down in the case reported as **1974 (I) LLJ 499 [Workmen of the Straw Board Manufacturing Co. Ltd. Vs. M/s. Straw Board Mfg. Co. Ltd.]**. Other reliefs were refused by the Industrial Court.

14) The learned Single Judge has held that there was dispute over relationship as workmen of company No. 2 and Industrial Court ought to have addressed this issue separately. The learned Single Judge has placed reliance on some observations made by the Apex Court in the cases reported as **1986 (II) SCC 624 [S.G. Chemicals and Dyes Trading Employees Union Vs. S.G.**

Chemical & Dyes Trading Limited and Anr.] and 2001 (III) SCC 101 [CIPLA Ltd. Vs. Maharashtra General Kamgar Union and Ors.]. The learned Single Judge of this Court has considered some portion of of **S.G. Chemical's** case cited supra, which is as under :-

"34. Then the Apex Court considered its earlier pronouncement in Hindusthan Steel & Associated Cement Co. and Straw Board and ruled thus :

"16. It is thus clear that the word "undertaking in the expressions "an undertaking of an industrial establishment" in section 25-O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of Hindustan Steel Limited. If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, section 25-O would apply to the closure of the undertaking provided the condition laid down in section 25K is fulfilled. The tests to determine what constitutes one establishment were laid down by this Court in Associated Cement Company's Case. The relevant passage is as follows:

"What then is one establishment in the ordinary industrial or business sense ? The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units, 1 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. Several tests were referred to in the course of arguments before us, such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unit of purpose etc. It is, perhaps, impossible to lay down any one test as an absolute 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 right of unemployment compensation and also prescribes disqualification therefore. Thus, in one case the unity of ownership, management and control may be the important test: in another case 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."

These tests have been accepted and applied by this Court in different cases, for instance, in *South India Mill owners Association and Ors. v. Coimbatore District Textile Workers Union & Ors.*, [1962] 1 Lab. L.J. 223 S.C., *Western India Match Co. Ltd. v. Their Workmen* [1964] 3 S.C.R. 560: S.C. [1963] 2 Lab. L.J. 459 and *Workmen of the Straw Board Manufacturing Company Limited*. In *Western India Match Company's* case the Court held on the facts that there was functional intergality and interdependence or community of financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production. In the *Straw Board Manufacturing Company's* case the Court held (at page 713) :

"The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componental relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional intergality will assume an added significance in a case of closure of a branch or unit. "

15) The aforesaid portion of the case decided by the Hon'ble Apex Court shows that the Apex Court has observed that there can be various, many factors for ascertaining the functional integrity. The Apex Court has made it clear that facts and circumstances of each and every case may differ and the decision needs to be given on the basis of facts and circumstances of the case in hand. These observations are not considered by the learned Single Judge and the learned Single Judge has considered only one factor on which argument was advanced by the learned counsel for company No. 2 which is as under :-

"Real question is whether the closure of one company will lead to closure of other is significant factor"

After using these observations, the learned Single Judge has held that as company No. 2 is still in existence and as in law, the factories were owned by two different companies, there was no functional integrity. It is further held that the evidence given by the complainant fall short to prove the functional integrity.

16) The learned Single Judge has ignored the aforesaid circumstances on which there is not only oral evidence, but there is voluminous documentary evidence and that evidence is not rebutted by company No. 1 and company No. 2. In the reasoning, the learned Single Judge has quoted the admitted circumstances that Senior

Manager Shri. Joshi of company No. 2 (Finance and Administration) was working as material manager of company No. 1. Copies of purchase orders worth more than Rs. 41 lakh were produced before the Industrial Court which were in the name of company No. 1 and without complying those orders, company No. 1 was closed. The work in respect of those orders was done by company No. 2 after the closure of company No. 1. This circumstance is not appreciated by the learned Single Judge. The difference in pay scale was due to the settlement which had taken place between the Union of company No. 1 and company No. 1 long back and this circumstance is not properly appreciated by the learned Single Judge. The circumstance that in the past also, company No. 1 was in existence and it was closed and it was started again in the year 1988 and again it was closed in the year 2000, is relevant circumstance and it was against company Nos. 1 and 2 and this circumstance is not appreciated by the learned Single Judge. The circumstance that the notes of Annual General Meetings of the two companies were same and annually reports of the two companies were published commonly is also not considered by the learned Single Judge. It is not disputed that the correspondence of these two companies was shown on common address, though the offices were shown different is also not considered by the learned Single Judge. The circumstance that the record was produced by complainant to show that the statement of

liability, annual sale etc. were calculated by company Nos. 1 and 2 together is not considered by the learned Single Judge. In view of these circumstances and other circumstances already quoted the learned Single Judge could not have given any weight to the circumstance that company No. 2 continued to function after the closure of company No. 1. Aforesaid circumstances were more than sufficient to draw inference of functional integrality between the two companies. The submission made for company No. 2 that company No. 1 was manufacturing safety razor blades for company No. 2 with its permission and as company No. 2 had stopped giving work, company No. 1 was required to be closed, could not have been considered in favour of company Nos. 1 and 2. This circumstance again goes against company Nos. 1 and 2 as it is additional circumstance to draw inference of functional integrality in view of the aforesaid circumstances. Thus, the provision of Chapter V-B of ID Act were applicable to company No. 1, but the procedure given in that Chapter was not followed.

17) The learned counsel for appellants placed reliance on the case reported as **LEX (BOM) 1998 425 [Industrial Perfumes Ltd. Vs. Industrial Perfumes Workers Union]**. In this case, this Court has observed that it is the duty of the Court in such cases to ascertain as to whether the closure was real or manufacturing

activity was continued by using other set of employees. In the present matter also, it can be said that company No. 1 was created for reasons which must be to avoid tax and other liability by company No. 2 and company No. 1 was working as a unit of company No. 2. That is why even after closing of company No. 1 manufacturing activity of company No. 1 continued in the factory shown to be belonging to company No. 2. This Court has no hesitation to observe that in the present case also, the learned Single Judge has committed serious error in not considering and appreciating the aforesaid circumstances properly.

18) The learned Single Judge has further ignored that by interfering in the order of Industrial Court, it was interfering in the findings of fact given by the Industrial Court which had opportunity to see the entire oral and documentary evidence. Company Nos. 1 and 2 had avoided to produce the relevant record when it was their duty to produce such record as evidence was already given to make out the case of functional integrality against them. In such a case, there cannot be a question of considering the relationship of employer employee separately as the point of functional integrality covers such point. Thus, the learned Single Judge has committed serious error in holding that the relationship of employer employee ought to have been considered separately by the Industrial Court.

Though Industrial Court has referred item No. 9 of Schedule IV of the Act for holding that it is unfair labour practice, the conduct of respondent Nos. 1 and 2 falls also under item No. 1. It was apparently false closure to avoid to give work for financial reasons of company No. 2.

19) The learned counsel for respondent company No. 2 argued on the point of tenability of the present Letters Patent Appeal also. He placed reliance on the observations made by the Apex Court in the case reported as **AIR 1964 SC 477 [Syed Yakoob Vs. K.S. Radhakrishnan and Ors.]**. The Apex Court has laid down the circumstances in which writ of certiorari under Article 226 can be issued. There cannot be any dispute over proposition made by Apex Court. The present respondents had filed writ petition under articles 226 and 227 of the Constitution of India and now they cannot say that the petition was not under Article 226 of Constitution of India. Further, there is circumstance that Industrial Court was the original Court for taking decision on facts. The learned Single Judge has considered all these aspects of the case. This Court has no hesitation to observe that the Letters Patent Appeal is tenable in the present matter. In the result, this Court holds that the decision given by the learned Single Judge of this Court in writ petition cannot sustain in law and following order is made.

ORDER

- (I) Letters Patent Appeal is allowed.
- (II) The judgment and order of the learned Single Judge of this Court in Writ Petition No. 3970/2005 is hereby quashed and set aside.
- (III) The decision given by the Industrial Court in Complaint ULP No. 375/1999 is hereby restored.
- (IV) The cost of the present proceeding is to be paid to the appellants by the respondents.
- (V) Civil Application is disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

SSC/