



W.A.No.516 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	01.10.2024
<i>Pronounced on</i>	15.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.516 of 2023

Five Members Committee of
Parrys Confectionery Tozhilaalargal,
No.4A, Venkateshwara Avenue,
Porur, Chennai – 600 116.

...Appellant

Vs.

1.The Presiding Officer,
III Additional Labour Court, (FAC)
Chennai – 600 104.

2.The Management,
Parrys confectionery Ltd.,
No.234, N.S.C. Bose Road,
Parrys, Chennai – 600 001.

3.The Management,
Lotte India Corporation Ltd.,
No.234, N.S.C. Bose Road,
Parrys, Chennai – 600 001.

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P.No.31188 of 2014, on 02.01.2023.



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For Appellant : Mr.S.Kumaraswamy
For R1 : Labour Court
For R2 : Vacated
For R3 : Mr.Anand Gopalan
for M/s.Agam Legal

JUDGMENT

M.S.RAMESH, J.

When M/s.Parry Confectionery Limited had closed down their factory at Manappakkam, Chennai on 19.08.2002, 59 workmen therein were terminated and paid the closure compensation. The Trade Union of the Manappakkam Factory had raised a dispute before the Government Labour Authorities, claiming the closure to be a case of illegal lockout and sought for orders under Sections 10(3) or 10B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), for prohibiting the continuation of the illegal lockout and continuance of the employment of the workers therein.

1.2. The conciliation ended in a failure, after which the appellant herein had raised a dispute in I.D.No.212 of 2007 before the I Additional Labour Court, Chennai, to declare the termination of the 59 workmen as illegal and consequently sought for reinstatement and other attendant



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benefits. Through an award dated 08.08.2014, the Labour Court had rejected the claim of the appellant herein by holding that there was no *functional integrity* between the Manappakkam factory and the Confectionery unit set up by Parry at Nellikuppam, Cuddalore District and thus dismissed the Industrial Dispute. However, the Labour Court had held that the workers are liable for compensation under Section 25F of the Act.

1.3. The challenge to the award before a learned Single Judge of this Court in W.P.No.31188 of 2014 by the appellant was also dismissed on 02.01.2023. This order of dismissal is assailed in this Intra Court Appeal.

2.1. Certain relevant facts relating to the present dispute are as follows:-

2.2. The Management of M/s.Parry Confectionery Limited had set up a confectionery unit at Nellikuppam, Cuddalore District around the year 1950. This Unit was subsequently taken over by Lotte India Corporation Ltd./3rd respondent herein on 06.09.2004.

2.3. In the meantime, in the year 1968, the Cocoa Products and Beverages Limited (CPBL) had established a unit for manufacturing



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cocoa products and chocolates at Manappakkam, Chennai.

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2.4. In the year 1983, M/s.Parry Confectionery Limited acquired controlling interest of CPBL. The Manappakkam Factory discontinued its manufacturing activities from October, 2000.

2.5. After negotiations with the then existing Trade Union, a Voluntary Separation Scheme was floated, by which a sizeable majority of the workmen had left their services, after receiving compensation.

2.6. Thereafter, as the number of workmen employed on an average, on a working day, for the preceding 12 months, was less than 100, the Management served a notice on 17.06.2002 under Section 25FFA of the Act, indicating its intention to close down the Manappakkam Factory, with effect from 19.08.2002. Consequently, the employment of 59 workmen, who were on the rolls of factory, were terminated due to closure of the factory and they were all paid the closure compensation and one month's notice pay, in lieu of the notice period. In this background, the Manappakkam factory of M/s.Parry Confectionery Limited was closed down with effect from 19.08.2002.

3. Claiming that there exists *functional integrity* between Nellikuppam factory and Manappakkam factory, a section of the



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disgruntled workmen, among the then existing workmen, who had received the closure compensation, have raised this Industrial Dispute, claiming the lockout as illegal.

4. The learned counsel for the appellant submitted that there is interdependency among the Nellikuppam factory and Manappakkam factory and therefore, both are considered to be a single factory. In view of the same, since the workers of this single factory are more than 100 in number, the lockout itself is illegal, since it is in violation of Section 25N of the Act. In this regard, the learned counsel placed reliance on the decision in ***S.G.Chemicals and Dyes Trading Employees Union Vs. S.G.Chemicals and Dyes Trading Ltd. and Another*** reported in (1986) 2 SCC 624.

5. The learned counsel appearing on behalf of the Management of the respondents 2 and 3, on the other hand, would submit that the closure of Manappakkam factory was a bonafide one and it did not have any functional integrality with the Nellikuppam factory. He would further submit that as per Section 25L of the Act, for the purpose of Chapter V-B, an Industrial Establishment means a factory as defined in the Factories



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Act. But under Section 25-O of Chapter V-B, the prior permission of the appropriate Government is mandated only to an employer who intends to close down an undertaking of an Industrial Establishment. Thus, it is his submission that when the factories at Nellikuppam and Manappakkam are distinct and separate by themselves and when the number of workmen at Manappakkam factory were less than 100, there was no illegality in closing down this factory, more particularly, when closure compensation is paid to all the existing workmen. With this submission, the learned counsel placed reliance on the decisions of ***Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*** reported in ***(1987) 2 SCC 203*** and ***D.Ravikumar and 20 Others Vs. The Management, TI Diamond Chain Ltd. and Another*** reported in ***2013 SCC OnLine Mad 1553***.

6. We have given our anxious consideration to the rival submissions.

7. Before we address the facts involved in the present appeal, we deem it appropriate to deal with the law relating to 'functional integrality' between two units.



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8. The pre-requirement to take permission for closing down an undertaking of an Industrial Establishment, in which more than 100 workmen were employed on an average on a working day for the preceding 12 months, is stipulated under Section 25-O of the Act. The term 'Industrial Establishment' has been defined under Section 25L(a)(i) as a factory as defined under Clause (m) of Section 2 of the Factories Act. It is not necessary that in order to effect closure of business, the Management should close down all the branches of its businesses. On the other hand, a Management establishment can still maintain two different and distinct undertakings under them, even though they maintain same finance, same balance sheet, common provident fund accounts, common ESI accounts, etc.

9. In *Isha Steel's case (supra)*, the Hon'ble Supreme Court had extensively dealt with the meaning of an undertaking and the functional integrality between two units, out of which one of the two units had closed down. The relevant portion of the judgment reads as follows:-

“8. It is not necessary that in order to effect closure of business the management should close



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down all the Branches of its business. In Hindustan Steel Ltd. v. Workmen [(1973) 3 SCC 564 : 1973 SCC (L&S) 195 : (1973) 3 SCR 303 : 1973 Lab IC 461], this Court has held that the word “undertaking” used in Section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even the closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by the said provision. In deciding the above case this Court relied upon its earlier decision in Workmen v. Indian Leaf Tobacco Development Co. Ltd., Guntur [AIR 1970 SC 860 : (1969) 2 SCR 282 : 37 FJR 231] . In that case the court observed that a genuine closure of depots or branches, even though it did not amount to closure of the business could not be interfered with by an Industrial Tribunal. It further held that the closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. The court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter.



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9. *It was, however, argued in this case on behalf of the workmen that since the Provident Fund accounts of the employees and the Employees' State Insurance accounts of the two units had common numbers with the authorities concerned and settlements containing similar terms (copies of which are not produced before us) had been entered into in 1974 between the management and the workmen of the two units, it should be held that the two units had functional integrality between them. We are of the view that even these factors are not sufficient to hold that the two units were one and the same notwithstanding the fact that the nature of the business carried on in them was the same. In Indian Cable Co. Ltd. v. Workmen [1962 Supp 3 SCR 589 : 22 FJR 262 : (1962) 1 LLJ 409] this Court has held that the fact that the balance sheet was prepared incorporating the trading results of all the branches or that the employees of the various branches were treated alike for the purpose of provident fund, gratuity, bonus and for conditions of service in general, could not lead to the conclusion that all the branches should be treated as one unit for purposes of Section 25-G of the Act."*



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10. In the case of ***Workmen Vs. M/s.Straw Board Manufacturing***

Company Limited reported in ***(1974) 4 SCC 681***, the Hon'ble Supreme Court had held that the unity of ownership, supervision and control that existed in respect of two mills that involved in that case and the fact that the conditions of the service of the workmen of the two mills were substantially identical, were not by themselves sufficient in the eye of law to hold that there was functional integrality between the two mills and accordingly held that it was a clear case of closure of an independent unit and not of a part of an establishment.

11. The law laid down in ***Isha Steel's case (supra)*** came to be subsequently followed by a Division Bench of this Court in ***D.Ravikumar's case (supra)*** for substantiating the independence of one of the units managed by the same Company. In this legal background, let us now analyse the facts involved in the present case.

12. Before the Labour Court, the appellants examined one Mr.P.Murugavel as a witness (W.W.1). During his cross examination, he had admitted that the factory at Manappakkam was no longer functioning; the factory at Nellikuppam was started 30 years ago and was



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still functioning; each units were functioning at Manappakkam and Nellikuppam factories; wages paid to the workmen at both the units were different; there was no transfer of workmen between these two factories; Nellikuppam factory was situated 150 kms away from Manappakkam factory; and separate accounts were maintained in respect of Manappakkam factory.

13. The Management witness (M.W.1), during trial, had stated that the service conditions of the Manappakkam factory is different from that of the Nellikuppam factory; there was no transfer of employees from one factory to another; each factory had separate ESI and PF Code number and factory licence; there were different settlements in both the factories; from July 2001 onwards, the strength of the workmen was less than 100; and there was no functional integrality between the factories at Manappakkam and Nellikuppam.

14. The Labour Court, on appreciation of evidences available before it, had come to the conclusion that, though both the factories were managed by the same Company, one was not dependent on the other. It had also taken into account that both the factories had separate ESI



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Codes, separate Employee Unions and separate agreements with the Management and that there was no transfer of employees from one entity to another. The facts that emerged from the evidence that both the factories situate 150 kms distance from each other and that both the factories were registered under different enactments, were also taken into account by the Labour Court. It is in the backdrop of these findings that the Labour Court had come to the conclusion that there was no functional integrality between Manappakkam factory and Nellikuppam factory. We do not find any perversity or any other illegality in this well considered award of the Labour Court.

15. Similarly, the learned Single Judge, while dealing with the impugned award of the Labour Court, had considered all these factors and rendered a finding that the two units at Manappakkam and Nellikuppam were two different Companies and had approved the findings of the Labour Court negating the appellant's functional integrality between the two factories. We endorse the findings of both the Labour Court, as well as the learned Single Judge in the Writ Petition and we find no reason to interfere with the same.



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16. The learned counsel for the appellant placed reliance on

S.G.Chemical's case (supra) and made a faint attempt to administer that both the factories at Manappakkam and Nellikuppam had functional integrity. This submission does not deserve consideration for the simple fact that ***S.G.Chemical's case (supra)*** was already dealt with and differentiated in ***Isha Steel's case (supra)*** setting forth its inapplicability in the following manner:-

“The decision in S.G.Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited [(1986) 2 SCC 624 : 1986 SCC (L&S) 301] is not of much assistance to the workmen. The management in that case was running its business in pharmaceuticals at three places. The Pharmaceutical Division was at Worli, the Laboratory and Dyes Division was at Trombay and the Marketing and Sales Division was at Churchgate. In 1984 the company which was managing the said three divisions of business was sold out. As the buyers proposed to handle the future sales of the Company through their own distribution channels, they found that the services of the staff working at the Churchgate office were no longer required. Therefore, the management closed down the office at Churchgate. The question was whether



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there was functional integrality between the office at the Churchgate and the factory at Trombay. This Court on a consideration of the material before it in that case, held that the functions of the Churchgate division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate and the Trombay factory into one establishment, because the Churchgate division used to purchase the raw material required by the Trombay factory for producing or processing the goods, it used to market and sell the goods so manufactured or processed by that factory and it also used to disburse the salary and other employment benefits and maintain accounts etc. of the workmen. These were considered to be integral parts of the manufacturing activities of the factory at Trombay, because the factory, could never have functioned independently without the Churchgate division being there.”

17. The appellant herein consists of only 25 disgruntled workmen among the 59 workmen, who were on the Manappakkam factory at the time of its closure. When the manufacturing activities were discontinued at Manappakkam factory from October 2000, the Voluntary Separation



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Scheme was introduced by which all the workmen, except 59 alone had opted for the Scheme. Even among these 59 workmen, when closure compensation was offered, after notice under Section 25FFA of the Act, 34 out of the 59 workmen had received the closure compensation and had not raised any dispute.

18. Since the appellant had miserably failed to establish the functional integrality between the two Units, both before the Labour Court by letting in evidence, as well as before the learned Single Judge, we find no merits in the present appeal. The Writ Appeal stands thus dismissed. No costs.

[M.S.R., J] [C.K., J]
15.11.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
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To

The Presiding Officer,
III Additional Labour Court, (FAC)
Chennai – 600 104.



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Pre-delivery judgment made in
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