

D.Ravikumar Vs. Ti Diamond Chain Ltd

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Court : Chennai

Decided On : Apr-30-2013

Judge : M.Jaichandren

Appellant : D.Ravikumar

Respondent : Ti Diamond Chain Ltd

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

30. 4.2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH W.A.No.80 o

1. D.Ravikumar 2. K.Jothikumar 3. M.Doss 4. A.Manoharan 5. S.Palani 6.
K.Paramanandam 7. V.Palaniswamy 8. L.Senthil Kumaran 9. Y.Johnson
10.N.Kandan 11.V.Babu 12.D.Manickam 13.N.Sbramani 14.S.Ramachandran
15.S.Sundarajan 16.A.Jayaseelan 17.H.K.Ramaprasad 18.A.K.Loganathan
19.V.Gopinathan 20.M.Ravi 21.R.Mookiah c/o. Mr.S.Kumaraswamy Democratic
Labour Union No.10, 11th Street, Karunanithi Nagar Ayanavaram, Chenna

023. ... appellants Vs.

1. The Management, TI Diamond Chain Ltd., MTH Road, Chenna

053. 2. The Presiding Officer Principal Labour Court, Chennai Respondents
Prayer: The writ appeal has been filed against the order of the learned single

Judge of this Court in W.P.No.23614 of 2006, dated 27.9.2010. For Appellant : Mr.S.Kumaraswamy For Respondents : Mr.Sanjay Mohan Senior Advocate for M/s.S.Ramasubramaniam and Associates R1

(Judgment of the Court was made by M.Jaichandren,J.) This writ appeal has been filed against the order of the learned single Judge, dated 27.9.2010, made in W.P.No.23614 of 2006. The writ petition had been filed by the Management of TI Diamond Chain Limited, MTH Road, Ambattur, Chennai, challenging the common award passed by the Principal labour Court, Chennai, dated 31.10.2005, insofar as it related to the direction issued by the said labour Court for reinstatement of the workmen in service.

2. The brief facts as stated by the writ petitioner, W.P.No.23614 of 2006, are as follows:

2. 1. The respondents in the said writ petition had joined in service under the TI Diamond Chain Limited, MTH Road, Ambattur, Chennai, on various dates, between 1990 and 1996. The petitioner management had put up a factory, originally, at MTH Road, Ambattur, Chennai, for the manufacturing of cycle chains, to cater to the needs of TI cycles of India, a unit of Tube Investment of India Limited. The company had diversified its activities and it had started manufacturing industrial chains and automotive chains. The factory at MTH Road, Ambattur, Chennai, engaged in the manufacturing of cycle chains, had started the manufacturing of industrial chains and automotive chains, exclusively. 2.2. The factory at MTH Road manufacturing cycle chains had been shifted to the Ambattur Industrial Estate, along with the machineries. The employees engaged in the cycle chain manufacturing had been deployed to other sections. The petitioner management had required trainees for the new factory. The company had recruited trainees for the cycle chain factory. After giving the necessary training, they had been confirmed in service. While so, due to various factors, the cycle chain manufacturing unit had started incurring huge monetary losses, from the year, 1996. Therefore, the said unit had to be closed, from 16.12.1996. The workmen affected by the closure had been paid the notice pay and the closure compensation, under section 25FFF of the Industrial Disputes Act, 1947. Thus, the

services of the respondents in the writ petition had been terminated. As the conciliation talks had failed, the respondents in the writ petition had made their claims before the Principal labour Court, Chennai. As the issues, that had arisen for the decision of the Principle labour Court, Chennai, were similar in nature, they had been taken up for trial, by the said labour Court, together.

2.3. The Common issues framed by the labour Court are as follows: "i. Whether the closure of the first respondent establishment with effect from 16.12.1996 in accordance with law? ii. Whether the respondents have violated the provisions of Chapter V-B of the Industrial Disputes Act? iii. Whether the petitioners are entitled to reinstatement with continuity of service, backwages and all other attendant benefits?"

2.4. The labour Court had pointed out that the cycle chain manufacturing unit had started its factory at Ambattur, for the requirement of TI Cycles of India, which is a unit of the Tube Investment of India Limited. The workers, who were employed in the cycle chain manufacture unit, had been deployed to manufacture cycle chains, exclusively. Initially, the petitioner Management had started manufacturing cycle chains. Thereafter, it had started to manufacture the industrial chains and automotive chains. The labour Court had pointed out that the machineries connected with the manufacturing of cycle chains had been shifted from MTH Road, Ambattur, to B-6, Ambattur Industrial Estate, Chennai, for the manufacturing of cycle chains, exclusively. When the workers of the Ambattur Industrial Estate resorted to strike, demanding enhanced basic salary and dearness allowance, a settlement had been arrived at between the management and the representatives of the workmen, on 31.3.1996. However, as there was no increase in the production, as agreed upon, the Management had issued a notice, dated 14.12.1996, for closing down the cycle chain manufacturing unit, stating that it had become unviable.

2.5. Before the labour Court, W.W.1 had been examined on behalf of the workmen. He had stated that TI Diamond Chain Limited, (C.C division) is an integral part of the TI Diamond Chain Limited, M.T.H. Road, Ambattur, Chennai, the second respondent before the labour Court. He had further submitted that the first respondent has no independent existence. The labour Court had found that there was functional integrality between the first and the second respondents before the labour Court, as found from the statements made by the witnesses examined on behalf of the Management. The labour Court had

found that the cycle chain unit was dependent of the industrial chains and automatic chains unit, not only in administrative matters, but also in respect of the sales of the products. 2.6. Referring to Section 25-O of the Industrial Disputes Act, 1947, the labour Court had come to the conclusion that the closure of the cycle chain unit was a closure of the undertaking and not the closure of the industrial establishment. The labour Court had found that the raw materials to the cycle chain manufacturing unit was being supplied by the petitioner unit and finished products were being marketed through the petitioner unit. Referring to the decision, reported in S.G.CHEMICALS AND DYES TRADING EMPLOYEES UNION Vs. S.G.CHEMICALS AND DYES TRADING LIMITED AND ANOTHER (1986-1-LLJ 490), the labour Court had come to the conclusion that the petitioner company had not taken permission from the appropriate Government for closing the cycle chain manufacturing unit. The closure of the first respondent was not genuine or bona fide in nature. Therefore, the closure of the cycle chain manufacturing unit was illegal and void, ab initio. Accordingly, the labour Court had held that the employees were entitled to be reinstated in service, with continuity of service, with full backwages and with all other attendant benefits. 2.7. Aggrieved by the award passed by the labour Court, the Management of TI Diamond Chain Limited had filed the writ petition before this Court, in W.P.No.23614 of 2006. 2.8. The learned counsel appearing on behalf of the petitioner in the writ petition had stated that there was no functional integrality between the two units. The question as to whether the two independent units, namely, the cycle chain manufacturing unit and the industrial and automotive chain manufacturing unit had functional integrality ought to have been considered from the point of interdependency of the two units. Even though there were no materials available on record, the labour Court had erroneously held that there was functional integrality between the two units. 2.9. It had been further contended on behalf of the petitioner in the writ petition that there may be certain common factors relating to the management of the two units. However, such factors cannot be taken to be relevant for considering the functional integrality of the units in question. Therefore, the provisions of Section 25-O of the Industrial Disputes Act, 1947, would not be applicable to the present case. 2.10. The learned counsel appearing for the respondents in the writ petition had submitted that the financial management,

marketing and the clerical work performed at the Ambattur Industrial Estate were dependent on the factory at MTH Road, Ambattur, Chennai. He had further pointed out that the closure of one unit need not, in any manner, result in the closure of the other unit to draw the inference of functional integrality. 2.11. In view of the submissions made on behalf of the petitioner, as well as the respondents in the writ petition, the learned single Judge had held, in her order, dated 27.9.2010, that the findings of fact by the labour Court and the inference drawn by the labour Court, based on such facts, were contrary to law. As such, the conclusions arrived at by the labour Court were perverse in nature. As there was no functional integrality between the units in question, and as the petitioner unit had continued to exist, even after the closure of the cycle chain manufacturing unit, on 16.12.1996, the claims made on behalf of the respondents were liable to be rejected. Accordingly, the learned single Judge, by her order, dated 27.9.2010, had allowed the writ petition, in W.P.No.23614 of 2006, setting aside the award of the labour Court, dated 31.10.2005.

3. Aggrieved by the order passed by the learned single Judge, dated 27.9.2010, in W.P.No.23614 of 2006, the respondents in the writ petition had preferred the present writ appeal before this Court.

4. The learned counsel appearing on behalf of the appellants had submitted, inter alia, that the learned single Judge had erred in setting aside the award of the second respondent labour Court dated 31.10.2005. The learned Judge ought to have held that Chapter V-B of the Industrial Disputes Act, 1947, is applicable to the facts and circumstances of the case.

5. The learned counsel appearing on behalf of the appellants had further submitted that the learned single Judge had held that there was no functional integrality between the first respondent before the labour Court and the management of T.I. Diamond Chain Limited (cycle chain division) situated at B-6, Ambattur Industrial Estate, Chennai. Instead, the learned single Judge ought to have held that there was functional integrality between the first respondent before the labour Court and the management of T.I. Diamond Chain Limited (cycle chain division) by virtue of common ownership, finance, marketing management, and the

supply of raw materials.

6. He had also pointed out that both the divisions had been defended by the same management in the industrial disputes concerned. Even though the findings of the labour Court were based on the facts and circumstances of the case and based on the well established principles of law, the learned single Judge had, erroneously, set aside the award of the labour Court.

7. It had been further stated that the main ground on which the learned single Judge had rejected the claim relating to the existence of functional integrality between the two undertakings is that one of them continued to exist after the closure of the other undertaking. The learned single Judge ought to have noted the commonality that had existed between the two undertakings, in their management, maintenance of accounts, balance sheets and in the management of their personnel.

8. He had further submitted that, while Sections 25-M and 25-N of the Industrial Disputes Act, 1947, deal with lay off and 'retrenchment', respectively, in an industrial establishment, Section 25-O deals with closure of an undertaking in an industrial establishment.

9. The learned counsel appearing on behalf of the appellants had further submitted that the learned single Judge ought to have seen the fundamental differences in the said Sections before arriving at her conclusions. It had been further stated that the learned single Judge ought to have seen that the occupier of the factory, as per section 2(n) of the Factories Act, 1948, was the same, in both the undertakings. The learned single Judge had erred in holding that there was no functional integrality between the two undertakings, as one of them was functioning, is erroneous and unsustainable in the eye of law. Based on the facts of the case, the learned Judge ought to have held that there was functional integrality between the two undertakings, and therefore, the provisions of Section 25-O of the Industrial Disputes Act, 1947, would be applicable to the case on hand. Accordingly, the learned Judge ought to have held that the appellants would be deemed to be continuing in service, in terms of section 25-O of the Industrial Disputes Act, 1947.

10. Unless a serious and patent error had been noticed in the award of the labour Court, dated 31.10.2005, it would not have been open to the learned single Judge to set aside the same. Further, it cannot be said that the award of the labour Court was perverse or contrary to the evidence available on record. Therefore, the order of the learned single Judge, dated 27.9.2010, is liable to be set aside.

11. The learned counsel appearing on behalf of the appellants had relied on the following decisions in support of his contentions:

11.

1. In SURYA DEV RAI Vs. RAM CHANDER RAI AND OTHERS (2003

(6) SCC 675), the Supreme Court had recorded the following conclusions relating to the jurisdiction of the high courts, under Articles 226 and 227 of the constitution of India. "(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping a subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is

being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case." 11.2. In WORKMAN Vs. WILLIAMSON MAGAR AND CO. LTD., AND ANOTHER (1982 1 SCC 117), the Supreme Court had held that "the industrial tribunals, as far as practicable, should not be constrained by the formal rules of law and should avoid inability to arrive at an effective award to meet justice in a particular dispute." In the said decision, the Supreme Court had quoted with approval the decision made in K.C.P. EMPLOYEES' ASSOCIATION, MADRAS, Vs. MANAGEMENT OF K.C.P. LTD., MADRAS, reported in (1978) 2 SCC

42) wherein, it had been observed as follows: "In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts". 11.3. In SYED YAKOOB Vs. K.S.RADHAKRISHNAN (AIR 196.SC 47.(1), the Supreme Court had held as follows: "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it

decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmed Ishaque* (1955-1 SCR 1104), *Nagendra Nath v. The Commissioner of Hills Division* (AIR 195.SC 398), and *Kaushalya Devi v. Bachittar Singh* (AIR 196.SC 1168)).

8. It, is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are

wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened." 11.4. In S.B. PATOLE Vs. FUJITSU ICIM LIMITED (2011 (1) LLN 19.(BOM), it had been held that it may be that the closure of one Division or Department or Section of the undertaking or the industrial establishment would not lead to the closure of the industrial establishment. However, this does not mean that the division which is closed is not an integral part of the industrial establishment.

12. Per contra, the learned counsel appearing on behalf of the first respondent had submitted that the order passed by the learned single Judge dated 27.9.2010, made in W.P.No.23614 of 2006, is right in law. The learned single Judge had arrived at her conclusion after analyzing the facts and circumstances of the case and on considering the decisions of the supreme court cited on behalf of the management.

13. The learned counsel had further submitted that, even though there is commonality of ownership of the two entities, it cannot be relied on for testing the

functional integrality of such entities. He had submitted that the provisions enshrined in chapter V-B of the Industrial Disputes Act, 1947, would apply only to a factory, as defined under the Factories Act, 1948. They would not apply to a commercial establishment. In fact, the first and the second respondents before the labour Court were two separate factories. They had separate provident funds payable to their employees. Both the entities had different E.S.I. codes. Separate factory licences had been issued to them. The recruitment of employees had been made, for both the entities, separately. There is no transferability of the employees, from one factory to the other. The products manufactured by the factories were also different. The service conditions of the employees in the factories were also different in nature. There were separate trade unions representing the employees in the said factories. Separate settlements had also been entered into, by the management, with the employees of the said factories.

14. It had been further stated that for finding out the existence of functional integrality between two entities, a bundle of facts should be in existence. No single factor could be taken into account, separately, to find out the existence of the functional integrality between the entities. Even though one of the factories had been closed down, the other has been carrying on its manufacturing process. Therefore, it is not open to the appellants to contend that functional integrality had been established, based on the evidence available on record. There can be functional integrality only if both the factories are functioning.

15. He had further submitted that the first respondent labour Court had mixed up the facts relating to the company and those which were relating to the factories. The concept of occupier would not be a relevant or a germane reason to arrive at the conclusion that the two factories in question were having functional integrality between them. The sales done by the company cannot be construed to be the sales done by the factories. The commonality in the administration of the factories, by the company, cannot be taken to be a relevant factor to indicate the existence of functional integrality between the entities.

16. The learned counsel for the second respondent had further submitted that the action of the second respondent, in closing the factory concerned, is not mala fide

in nature. Even if it is found that the closure of the factory concerned is irregular and improper, the affected employees could only be compensated with certain monetary benefits. Even if it had been found that the closure of the factory concerned was contrary to the provisions of the Industrial Disputes Act, 1947, the appellants could only be put back in the same position in which they were functioning as employees. However, it may be noted that the first respondent labour Court had dismissed the claims made by the appellants, as against the first respondent in the industrial disputes raised by them.

17. The learned counsel for the second respondent had further submitted that if the labour Court had come to the conclusion that the closure of the first respondent factory was illegal, it ought not to have dismissed the industrial disputes against the first respondent. In fact, the labour Court does not have the power to direct the reinstatement of the appellants in the service of the second respondent factory, with backwages and other attendant benefits, contrary to the well established principles of law. Even if the closure of the first respondent is contrary to the provisions of section 25-O of the Industrial Disputes Act, 1947, the appellants could have been paid the appropriate compensation. However, the directions issued by the labour Court for their reinstatement in service, with backages and other attendant benefits, ought not to have been granted by the labour Court. As such, the direction is contrary to the law laid down by the supreme Court.

18. The learned counsel had also submitted that the labour Court had erred in holding that the raw materials to the first respondent factory was being supplied by the second respondent factory and the finished products were marketed by the second respondent factory. Such a finding is contrary to the evidence available on record. Further, the labour Court had arrived at a wrong conclusion holding that the officials of the second respondent factory were transferred to the first respondent factory and that, even after the closure, the officials of the first respondent factory had been given the employment in the second respondent factory.

19. The learned counsel had also submitted that the labour Court had erred in holding that the first respondent was an integral whole of the second respondent and therefore, the closure of the first respondent factory was bad in law, as there were more than 100 workmen employed in the first and the second respondent factories, put together, during the proceeding 12 months. The said findings of the labour Court is contrary to law.

20. He had further submitted that the first respondent labour Court had relied on irrelevant materials and had omitted to consider the relevant materials, while arriving at its conclusion. As such, the award of the first respondent labour Court, dated 31.10.2005, is liable to be set aside.

21. He had further submitted that there was no transfer of employees from one factory to the other. Only certain officers may be deputed depending on the administrative exigencies. Therefore, it cannot be said that there was functional integrality between the respondent factories, as claimed by the appellants in their claim petitions filed before the labour Court concerned.

22. As such, the learned single Judge was right in setting aside the award of the labour Court, dated 31.10.2005, by her order, dated 27.9.2010, made in W.P.No.23614 of 2006.

23. The learned counsel for the second respondent had relied on the following decisions in support of his contentions:

23. 1. In SHAMA PRASHANT RAJE Vs. GANPATRAO (AIR 200.SC 3094), it had been held as follows: "The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior

Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal."

23.2. In THE ASSOCIATED CEMENT COMPANIES LIMITED, CHAIBASSA CEMENT WORKS, JHINKPANI Vs. THEIR WORKMEN (AIR 196.SC

56) wherein it had been held as follows: "The question before the Tribunal, and this is also the question before us, was the true scope and effect of clause (iii) of s. 25E of the Act, with particular reference to the expression " in another part of the establishment " occurring therein. That question was not a pure question of fact, as it involved a consideration of the test which should be applied in determining whether a particular unit is part of a bigger establishment. Indeed, it is true that for the application of the tests certain preliminary facts must be found; but the final conclusion to be drawn therefrom is not a mere question of fact. The Act not having prescribed any specific tests for determining what is 'one establishment', we must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and object of the Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. 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 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 unity of purpose etc. To most of these we have referred while summarising the evidence of Mr. Dongray ,and the findings of the Tribunal thereon. It is, perhaps, impossible to lay down any one test as an absolute and 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 therefor. 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. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and -in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity. We must have regard to the provisions of the statute under which the question falls to be considered; if the statute itself says what is one establishment, then there is no difficulty. If the statute does not, however, say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches etc., namely, whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word 'establishment' is not to be given the sweeping definition of one organisation of which it is capable, but rather is to be construed in the ordinary business or commercial sense." 23.3. It had been pointed out that in **ALAGHU PHARMACY (B) REP. BY ITS PROPRIETRIX J.S.ELVARANI Vs. REGIONAL PROVIDENT FUND COMMISSIONER AND ASSISTANT PROVIDENT FUND COMMISSIONER ENFORCEMENT (2010) I LLJ**

487) it had been held that for the existence of functional integrality the closing down of one unit should result in the closing down of the other, or there should be such pervasive interdependence between the units, which makes it difficult to extricate the activity of one from the other. 23.4. In **NANDINEE TRAVELS PVT. LTD., Vs. REGIONAL PROVIDENT FUND COMMISSIONER (2003) I LLJ 81.BOM)** it had been held as follows: "Keeping in view the law laid down by the Apex Court in the aforesaid cases the question that requires to be considered in

this proceeding is, whether the petitioner Company can survive even if the trading establishment of other three entities are closed forever. To answer and set aside the test of functional integrality, as is apparent from the impugned order, the respondent has applied only the test of geographical proximity and alleged financial dependency to hold that all the said four units can be clubbed together for the purpose of the said Act. Therefore, in our considered view, the facts recorded and test applied by the respondent in the impugned order is not the relevant test to consider the applicability of Section 2-A of the said Act. The pre-determining test as enunciated by the Supreme Court is, whether subsequent units would survive on the closure of the petitioner unit and whether in matters of finance and employment the employer has actually kept the two units in common, distinct or integrated. Mere fact of common ownership of the two units and mere location of the two units in common building complex by itself is not sufficient to satisfy the test of functional integrality and further mere common object of common ownership of the two units and mere location of the two units in common premises or building by itself would not be sufficient to satisfy the test of functional integrality. The first and foremost test to establish the functional integrality would be, whether the second unit would survive in the absence of first unit or when the first unit is closed whether the second unit continue to do its business activity. This aspect has not been noticed by the respondents at all in its impugned order." 23.5. In REGIONAL PROVIDENT FUND COMMISSIONER Vs. DHARAMSI MORARJI CHEMICAL CO. LTD., (1998) 2 SCC 44.it had been held as follows: "It is true that if an establishment is found, as a fact, to consist of different departments or branches and if the departments and branches are located at different places, the establishment would still be covered by the net of Section 2-A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. However, on the facts of the present case, the only connecting link which could be pressed in service by the learned counsel for the appellant was the fact that the respondent-Company was the owner not only of the Ambarnath factory but also of Roha factory. On the basis of common ownership it was submitted that necessarily the Board of Directors could control and supervise the working of Roha factory also and therefore, according to the learned counsel, it could be said that there was interconnection between Ambarnath factory and

Roha factory and it could be said that there was supervisory, financial or managerial control of the same Board of Directors. So far as this contention is concerned the finding reached by the High Court, as extracted earlier, clearly shows that there was no evidence to indicate any such interconnection between the two factories in the matter of supervisory, financial or managerial control. Nothing could be pointed out to us to contraindicate this finding. Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned counsel for the appellant for culling out interconnection between Ambarnath factory and Roha factory was that both of them were owned by a common owner, namely, the respondent-Company and the Board of Directors were common. That by itself cannot be sufficient unless there is clear evidence to show that there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned counsel for the appellant that Roha factory was a part and parcel of Ambarnath factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921." 23.6. In THE MANAGEMENT OF PRATAP PRESS, NEW DELHI Vs. SECRETARY, DELHI PRESS WORKERS' UNION AND ITS WORKMEN (AIR 196.SC 1213), it had been held as follows: "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. 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 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 or integrated."

23.7. In ISHA STEEL TREATMENT, BOMBAY Vs. ASSOCIATION OF ENGINEERING WORKERS, BOMBAY AND ANR. (AIR 198.SC 1478), it had been held as follows: "The first question which arises for consideration in this case is whether the two units should be treated as having functional integrality. In the Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited, [1974] 1 L.L.J.

499 this Court had occasion to consider a similar question. At page 507 this Court considered the above question as follows: "20. After giving due consideration to all the aspects pointed out by the learned counsel for the appellants, we are unable to hold that the R. Mill is not an independently functioning unit and that there is any functional integrality as such between the R. Mill and the S. Mill. The fact of the unity of ownership, supervision and control and some other common features, which we have noticed above, do not justify a contrary conclusion on this aspect in the present case. There is considerable force in the submission of Mr. Chitale that the R. Mill is a different line of business and the closure of the S. Mill has nothing to do with the functioning of the R. Mill. The matter may be absolutely different when in an otherwise going concern or a functioning unit some workmen's

services are terminated as being redundant or surplus to requirements. That most of the conditions of service of the two mills were substantially identical can be easily explained by the fact that, being owned by the same employer and the two units being situated in close proximity, it will not be in the interest of the management and peace and well being of the company to treat the employees different creating heart burning and discrimination. For the same reason, there is no particular significance in this case even in the application of the standing orders of the company to the employees of the R. Mill which, because of the non-requisite number of employees employed in the latter, is not even required under the law to have separate standing orders. It is, in our opinion, a clear case of closure of an independent unit of a company and not a closure of a part of an establishment." In the above decision this Court has held that the unity of ownership, supervision and control that existed in respect of the two mills 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. It held that it was a clear case of closure of an independent unit and not of a part of an establishment." 23.8. In S.G.CHEMICALS AND DYES TRADING EMPLOYEES' UNION Vs. S.G.CHEMICALS AND DYES TRADING LIMITED AND ANR. (1986 2 SCC 624), the Supreme Court had quoted the decision made in STRAW BOARD MANUFACTURING COMPANY LIMITED Vs. M/S.STRAW BOARD MANUFACTURING COMPANY LIMITED (1974) 1 LLJ 49.SCC) wherein it had been held as follows: "The most important aspect, in respect of a case relating to closure, is whether one unit has such componential relation that closing of one must lead to the closing of the other, or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or a unit." 24. In view of the submissions made by the learned counsels appearing on behalf of the appellants as well as the second respondent on a perusal of the records available and on considering the decisions cited supra, we are of the considered view that the appellants have not shown sufficient cause or reason to set aside the order of the learned single Judge, dated 27.9.2010, made in W.P.No.23614 of 2006.

25. The learned single Judge in her order, dated 27.9.2010, had held that there is no functional integrality between the Management of T.I. Diamond Chain Limited (cycle chain division), B.6 Ambattur Industrial Estate, Chennai, and the Management T.I. Diamond Chain Limited, M.T.H. Road, Ambattur, Chennai, the respondent in the claim petition filed before the first respondent labour Court.

26. The learned single Judge had rightly held that, in the normal circumstances, this Court does not interfere with the award of the labour Court, by invoking its writ jurisdiction under Article 226 of the Constitution of India, especially, in matters relating to the findings of fact, as this court does not sit as a Court of appeal under Article 226 of the Constitution of India. However, it had been rightly held that when the findings of the labour Court and the inference made thereon are based on a wrong application of the legal principles, and when the award of the labour court suffers from perversity, it would be open to this Court to set aside such an award by invoking its writ jurisdiction, under Article 226 of the Constitution of India.

27. From the records available before this Court, it is found that the labour Court had taken into consideration a number of irrelevant factors in arriving at its conclusions. Further, certain relevant facts had not been considered by the labour Court, while passing its award.

28. On a perusal of the evidence available on record, it is found that the labour Court had misinterpreted the statements made by M.W.1, the management witness, in his deposition. The first respondent labour Court had not taken into consideration the fact that only certain machineries had been moved, while starting the factory at B-6, Ambattur Industrial Estate, Chennai. Further, no transfer of employees had been made between the first and the second respondent factories. In fact, there has only been deputation of officers, for the management of the factories.

29. It had also been noted that the raw materials had been supplied to the factories, separately, by the management of the company. The sales done by the Company, which has been managing the respondent factories, cannot be construed to be the sales done by the factories. Further, the products manufactured by the factories are different in nature. They are having separate

E.S.I. codes. Both the factories are having separate employees unions and they had entered into separate settlements with the management concerned, with regard to their members.

30. It is also found that the first respondent labour Court had not taken into consideration the fact that there is only a commonality of ownership of the factories by the company. However, there is no functional integrality between them. It is also noted that the provident fund schemes of the factories are separate and they have separate licences. The recruitment of the employees for the two factories are also done on different basis, based on the varied requirements. Moreover, the factories are located at different places.

31. It is also found that the learned single Judge had held that the second respondent factory in the claim petitions is in existence, even after the closure of the first respondent factory. As such, there is no functional integrality between the two entities. Even though both the factories were under the same management, it cannot be a deciding factor for this Court to hold that there was functional integrality between the factories concerned.

32. From the evidence of W.W.1 examined on behalf of the appellants, it could be seen that the appointments of the appellants have been made in the cycle chain manufacturing unit, which is the first respondent in the claim petitions. Further, it is clear that the appellants were not working in the industrial chain and automotive chain manufacturing unit, which is the second respondent in the claim petitions.

33. It is also noted that the nature of the works done by the employees of the two units are different in nature. Applying the tests laid down by the Supreme Court in the decision cited supra, on behalf of the second respondent, the learned single Judge had rightly held that the issue relating to the functional integrality between the separate units should be tested based on the bundle of facts, which are available on record. It is not one single factor, which could determine the existence of the functional integrality between the different entities.

34. The various factors are to be considered to find out if there is an existence of functional integrality between the two entities. However, in the case on hand, it is

noted that no such factors had existed. The factories had independent existence, even though they had been managed by the same company. One was not dependent on the other. In fact, they had separate E.S.I codes, separate employees unions, and the employees had been governed by the separate agreements entered into with the management. There is no transfer of employees from one entity to other and they were manufacturing different products. The employees, who had been in service in one entity, would not be possessing the skills to be employed in the other entity.

35. In such circumstances, the learned single Judge had rightly held that there were serious flaws in the award of the labour Court, dated 31.10.2005. The findings of the labour Court were based on extraneous factors, which were irrelevant and alien to the issues that had arisen for its consideration. Therefore, the learned single Judge had rightly set aside the award of the labour Court, dated 31.10.2005. Further, it is not in dispute that the appellants had not challenged the dismissal of their claim petitions against the first respondent therein, by the labour Court concerned.

36. In such circumstances, we are not inclined to interfere with the conclusions arrived at by the learned single Judge, in her order, dated 27.9.2010, made in W.P.No.23614 of 2006. Therefore, the present writ appeal deserves to be dismissed. Hence, it is dismissed. No costs. (M.J.J.) (M.M.S.J.) 30.4.2013 To:

1. The Presiding Officer, Principal Labour Court, Chennai M.JAICHANDREN J., and M.M.SUNDRESH J., In W.A.No.80 of

30. 4.2013

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