The Management TI Diamond Chain Ltd. Vs The Presiding Officer Principal Labour Court and Others

Court: Madras High Court

Date of Decision: Sept. 27, 2010

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 2

Citation: (2011) 2 LLJ 102

Hon'ble Judges: Chitra Venkataraman, J

Bench: Single Bench

Advocate: Sanjay Mohan, for S. Ramasubramaniam and Associates, for the Appellant; S. Kumaraswamy, for RR 2 to 20, 22 and 23, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.
The Petitioner Management is before this Court under Article 226 of the Constitution of India, challenging the

common award dated 31st October 2005, passed by the Principal Labour Court, Chennai.

2. The facts leading to the filing of IDO Ps before the Labour Court are as follows:

The employees, the Respondents herein, joined the services of the Petitioner on different dates between 1990 and 1996. The Petitioner herein

originally put up a factory at MTH Road, Ambattur, for the manufacture of cycle chains to cater to the needs of TI Cycles of India, a Unit of Tube

Investment of India Ltd. The company diversified its activities to manufacture of industrial chains and automotive chains. The factory at MTH

Road, Ambattur, engaged in the manufacture of cycle chains, started the manufacture of industrial chains and automotive chains only. The factory

at MTH Road manufacturing cycle chains was shifted to Ambattur Industrial Estate along with the machinery. The employees engaged in cycle

chain manufacturing were deployed to other Sections. The Petitioner required trainees for the new factory. The company recruited trainees for the

cycle chain factory. After giving necessary training, they were confirmed. It is stated that unable to meet the stiff competition from North India and

despite several measures taken, the Petitioner could not contain the cost of manufacture of cycle chains. Thus the steady escalation in cost of

various inputs had its telling effect on the viability of the operations in the Cycle Chain Manufacturing Unit. It is stated that the Cycle Chain Unit

started incurring huge loss since 1996. On and from 16.12.1996, the Unit manufacturing cycle chains was closed on account of mounting loss and

the stiff competition faced by the Industry. It is stated that the workmen affected by the closure were paid notice pay and closure compensation u/s

25FFF of the Industrial Disputes Act. Thus the services of the Respondents herein/workmen were terminated. This led to the filing of petitions

before the Conciliation officer. With talks on conciliation failing, the Respondents raised a dispute before the Labour Court. Since the issues raised

by the workers are one and the same, all the petitions were tried together and common issues were framed, which are as follows:

(i) Whether the closure of first Respondent establishment with effect from 16.12.96 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?

3. As regards the closure of the establishment on 16.12.1996 in accordance with law, the Labour Court pointed out that admittedly, the Cycle

Chain Manufacturing Unit started its factory at Ambattur to cater to the requirements 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 Manufacturing Unit were deployed to manufacture exclusively cycle chains.

Admittedly, the Petitioner initially started manufacturing cycle chains; thereafter started manufacturing industrial chains and automative chains. The

Labour Court pointed out that it is not in dispute that the machinery connected with the manufacture of cycle chains were shifted from MTH Road,

Ambattur to B6 Ambattur Industrial Estate for manufacturing of cycle chains exclusively. Referring to the state of affairs of the cycle industry, on

account of stiff competitive nature, a fact which had not been disputed by the parties herein in all the Industrial Disputes, the Labour Court pointed

out that the workers of the Ambattur Industrial Estate resorted to strike, demanding enhanced Basic Salary and Dearness Allowance. Ultimately, a

settlement was reached between the Management and the representative of the workmen on 31.3.1996. After settlement, there was dispute

among the Management and the workers regarding the shortage in production. In spite of letter dated 11.6.1996 from the Management requesting

the labourers to increase the production to reach the normal production level, there being no further improvement, the Management issued notice

dated 14.12.1996 to close down the Cycle Chain Manufacturing Unit on the ground that the functioning of the Unit had become totally unviable.

4. On behalf of the workmen, WW1 was examined, wherein, he pointed out that TI Diamond Chain Ltd., C.C. Division is an integral part of TI

Diamond Chain Ltd., the second Respondent in the petition before the Labour Court. WW1 had specifically stated that the machinery, the

property of the Cycle Chain Unit, belonged to the Industrial Chains and Automotive Chains Unit, the second Respondent herein. There is no

separate property for the first Respondent independent of the second Respondent. The evidence of WW1 was not denied by MW1 or MW2 in

their evidence. M.W.1 admitted that officers are deputed from the Industrial Chains and Automotive Chains Unit to the Cycle Chain Unit

establishment. The Tribunal pointed out that this establishes the stand of the employees that both the companies are under the control of the

Industrial Chains and Automotive Chains Unit and Cycle Chain Unit was dependent on the Industrial Chains and Automotive Chains Unit not only

in administrative matters, but also on the sales aspect.

5. Referring to Chapter V-B of the Industrial Disputes Act, the Tribunal considered the issue as to whether the first Respondent is an undertaking

of the second Respondent or the first Respondent was a separate legal entity. Initially, the Petitioner was manufacturing only cycle chains; later on,

it started manufacturing industrial chains and automative chains. WW1, in his evidence, had stated that after the closure of the Cycle Chain

Manufacturing Unit, the machinery for the manufacture of cycle chains were shifted from Ambattur Industrial Estate to MTH Road, Ambattur. The

Labour Court pointed out that in the cross-examination, the Management witness stated that he was not aware of the shifting of machinery. The

Labour Court observed that it indicated that the Management witnesses had not spoken the truth. Referring to the evidence thus let in orally, the

Labour Court pointed out that the Cycle Chain Manufacturing Unit and the Petitioner Unit are interdependent and an Undertaking of the Petitioner

establishment. The said fact had not been categorically denied by MW1 and MW2. The Labour Court further pointed out to Exs.M4 and M8, that

it was evident that the Petitioner Management owned several other factories including Kakkalur and Hyderabad also and separate factory licences

were obtained and E.S.I. Code numbers were allotted to them. It was not disputed that the Petitioner company diversified the manufacture of

cycle chains to the first Respondent and that there were not less than 100 workmen employed on an average per day.

6. Referring to Section 25O of the Industrial Disputes Act, the Labour Court came to the conclusion that the closure of the Cycle Chain Unit was

the closure of an Undertaking and not the closure of the Industrial Establishment. As far as the permission pertaining to the closing down of the

Undertaking of an Industrial Establishment as per Section 25O of the Industrial Disputes Act is concerned, the Labour Court pointed out that the

only test that would be applicable is whether the Cycle Chain Manufacturing Unit is an Undertaking of the Petitioner Industrial Establishment or

both the Units are to be treated as separate establishments. The Labour Court further pointed out that the raw materials to the Cycle Chain

Manufacturing Unit were supplied by the Petitioner Unit and the finished products were marketed through the Petitioner. Referring to the decision

relied on by the workers reported in S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and

Another, , the Labour Court ultimately came to the conclusion that the Petitioner company had not taken permission from the Government for

closing the Cycle Chain Manufacturing Unit. The closure of the first Respondent Unit was not genuine and for bona fide reasons. Further, the

Petitioner failed to obtain permission as required u/s 25O of the Industrial Disputes Act from the Government, which makes the closure illegal and

void ab initio. However, while so holding, the Tribunal pointed out that even though the Cycle Chain Manufacturing Unit was closed, the workers

are entitled to be reinstated with continuity of services, full back-wages and all other attendant benefits and thereby allowed the Industrial Disputes

filed by the employees/Respondents herein. Aggrieved by this order, the Management has come on a writ petition.

7. Learned Counsel for the Petitioner pointed out that the facts available as regards the functioning of both the factories clearly pointed out to the

total absence of 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 Automative Chain Unit have functional integrality should have been considered from the point of

interdependency of the two units to exist, for which there is hardly any material for the Labour Court to hold against the Petitioner. Even though

there may be commonality of the Management of these Units, yet, the Labour Court has to give a finding as to whether there is a functional

integrality as laid down by the decisions reported in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their

Workmen, ; S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , Alaghu

Pharmacy (B) Vs. Regional Provident Fund Commissioner and Assistant Provident Fund Commissioner, Enforcement, ; Isha Steel Treatment,

Bombay Vs. Association of Engineering Workers, Bombay and Another, and Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press

Workers'' Union and Its Workmen, . He pointed out to the difference in the products manufactured by the two Units employing different

employment terms in the two Units, absence of transfer of labour from one Unit to the other Unit, etc. Further, any settlement reached u/s 18(1) of

the Act by one Unit could not have a binding effect on the other Unit.

8. Learned Counsel for the Petitioner pointed out that there were no material for the Tribunal to come to a conclusion that there was functional

integrality between these two units to hold that Section 25O of the Industrial Disputes Act is attracted to the facts of the case. Given the fact that

the Cycle Chain Manufacturing Unit was started first and later on shifted to Ambattur, learned Counsel for the Petitioner pointed out that the

common management of two Units, would not, per se, be called as functional integrality. In support of the contention, learned Counsel for the

Petitioner placed reliance on the following decisions:

(i) Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., .;

(ii) The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, ;

(iii) Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, .;

(iv) S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, .;

(v) Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers'' Union and Its Workmen,

(vi) Alaghu Pharmacy (B) Vs. Regional Provident Fund Commissioner and Assistant Provident Fund Commissioner, Enforcement, and (vii)

Nandinee Travels Pvt. Ltd. Vs. Regional Provident Fund Commissioner, .

In the light of the law declared in the decisions referred to above, learned Counsel for the Petitioner submits that the Tribunal committed serious

error in holding that Section 25O of the Industrial Disputes Act is attracted in this case.

9. Per contra, learned Counsel for the Respondents drew my attention of this Court to Section 2(k) of the Industrial Disputes Act as regards the

application of Chapter V-B, and submits that the decision relied on by the Petitioner reported Isha Steel Treatment, Bombay Vs. Association of

Engineering Workers, Bombay and Another, , relates to the law that stood prior to the Amendment of Act 46 of 1982 and hence, the said

decision has no relevance to the case on hand. He pointed out that Ex.M19 is not related to the Petitioner herein or to the Cycle Chain

Manufacturing Unit. Ex.M20 is the letter from the E.S.I. Corporation to the Cycle Chain Manufacturing Unit. In the absence of any material to

discredit the claim of the Respondents herein as to the functional integrality existing between these two Units, the contention that there was no

material to substantiate the functional integrality, has to fail.

10. Learned Counsel for the Respondents further drew my attention to Sections 2(n) and 4 of the Factories Act and pointed out that financial

management, marketing and clerical work performed by the Ambattur Industrial Estate are dependent on the factory at MTH Road. Further, he

placed reliance on the decisions reported in:

(i) Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, ;

(ii) Workmen Vs. Williamson Magor and Co. Ltd. and Another, ; and (iii) Harjinder Singh Vs. Punjab State Warehousing Corporation, , to

impress on the need for a liberal view as to the welfare of the workmen and 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. In the light of the facts found by the Labour Court, the Petitioner''s case

merits to be rejected.

11. Heard learned Counsel appearing for both sides.

12. It is an admitted fact that the manufacturing of the industrial chains and automotive chains came as a diversification from the first Unit

manufacturing cycle chains. It is also an admitted fact that both the units are under one Management called TI Diamond Chain Ltd; that at the

managerial level, there had been inter-transfer of personnel from one Unit to other; that the workers engaged in one Unit were not transferred from

one Unit to the other Unit. Whatever settlement arrived at in one Unit had no impact or a binding effect on the other Unit. It is also not denied by

the Respondents that the conditions of service existing among the Units are different and separate Standing Orders are applicable for the workmen

in each of the two Units. Even after the closure of the Cycle Chain Manufacturing Unit from 16.12.1996, the Industrial and Automotive Chain

Manufacturing Unit functions without any impact felt on account of the closure of the Cycle Chain Unit; thus, except for the commonality of the

management, maintenance of accounts, balance sheet and managerial personnel, there are hardly any material to substantiate that functional

integrality existed between the two Units. In this regard, the law declared by the Apex Court on the aspect of functional integrality needs immediate

reference.

13. In the decision reported in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, , the

Supreme Court pointed out to the definition of ""Industrial Establishment"" in Section 25C, 25D 25E of the Industrial Disputes Act and to the

explanation. The Supreme Court referred to the explanation to Section 25A of the Act, defining industrial establishment and pointed out that the

Act does not lay down any specific test for determining what is an establishment. It held that the question of unity or oneness presents difficulties

when the industrial establishment consists of Parts, Units, Departments, Branches etc. The question then arises is as to what test should be applied

for determining what constitutes one establishment. The real purpose of this test is to find out the true relation between the Parts, Units,

Departments, Branches etc. How the relation between the Units will be judged will depend on the facts proved. The difficulty of applying the test

arises because of the complexities of modern industrial organisations, where, in an industrial establishment, some Units may be integrated in part

with other Units coming under the same management and in part with factories or plants which are independently owned. The Supreme Court held

that the test of functional integrality, general unity and physical proximity should be taken into consideration in determining the ultimate question.

However, no particular test can be adopted as an absolute test in all cases and the word ""establishment"" is not to be given a sweeping definition as

one whole organisation, of which it is capable but rather is to be construed in the ordinary business or commercial sense.

14. In the decision reported in Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers'' Union and Its Workmen, , the

Apex Court once again pointed out that in all cases where there appears to be a functional integrality, the Court has to consider with care, how far

the functional integrality, meaning thereby functional interdependence, existed, 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 actually kept the two units distinct or integrated.

15. In the decision reported in Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., . referring to the

judgments referred to above, the Supreme Court reiterated the above-said principles once again. Quoting from Straw Board Manufacturing

Company''s decision, the Apex Court, in the decision reported in Isha Steel Treatment, Bombay Vs. Association of Engineering Workers,

Bombay and Another, , pointed out 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 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. The Apex Court further pointed out that the closure of a Unit amounted

to stoppage of part of the activity and it is an act of Management which is entirely in the discretion of the Management, and over this direction, no

Industrial Tribunal could interfere. The Supreme Court further pointed out to the decision reported The Management of Indian Cable Co., Ltd.,

Calcutta Vs. Its Workmen, that the common balance sheet incorporating the trading results of all branches are that the employees of various

branches were treated alike for the purpose of provident fund, gratuity, bonus and conditions of service in general, could not lead to the conclusion

that all branches should be treated as one Unit for purposes of Section 25G of the Act.

16. The decision reported in S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, ,

reiterated the law declared earlier on the issue of functional integrality. Dealing with the definition of ""Industrial Establishment"" or ""Undertaking"" and

to the relevancy of Section 25O of the Industrial Disputes Act, the Supreme Court held as to what constitutes ""one establishment"". The Supreme

Court held that the word ""Undertaking"" in the Industrial Disputes Act is to be understood in an ordinary meaning. The word ""Undertaking"" of an

Industrial Establishment occurring in Section 25O means an Undertaking in its ordinary meaning and in the sense, as defined in the case of

Hindustan Steels Ltd. v. The Workmen and others.

17. Since Section 25O of the Industrial Disputes Act applies to the closure of an undertaking of an industrial establishment and not the closure of

an industrial establishment, it does not require that an undertaking of an industrial establishment should be an industrial establishment. On the

relevancy of the Factories Act to the dispute on closure, the Apex Court pointed out that the said Act is a regulatory statute and merely because

registration is required to be made under a particular statute, it did not make the business or Undertaking so registered, a separate legal entity.

18. On the aspect of functional integrality, the Supreme Court pointed out to the meaning of functional integrality. The brief facts in the decided

case are that SG Chemicals and Dyes Trading Ltd. carried on business in pharmaceuticals, pigments and chemicals. The company had three Units

- the Pharmaceutical Unit was functioning from Worli, Bombay, the Laboratory and Dyes Division from Trombay and the Marketing and Sales

Division from Churchgate. The evidence showed that Churchgate Division and Trombay Unit were functionally integrated as the Churchgate Unit,

looked after the Marketing and Sales of the goods manufactured at Trombay. By a notice dated July 16, 1984, the company signing as SG

Chemicals and Dyes Trading Ltd., (Chemicals & Dyes Division), decided to close down the Unit at Churchgate and the number of workmen

shown therein was 90. The SG Chemicals and Dyes Trading Employees'' Union, Appellant before the Supreme Court, contended that the closure

of the Churchgate Unit was contrary to Section 25O of the Industrial Disputes Act and hence, the employees continued to be in the service of the

company, notwithstanding the closure notice. The Union also raised the plea of unfair labour practice by the Management. Further, the number of

workmen employed in the three Divisions exceeded one hundred and having regard to the functional integrality amongst all the three Units, Section

25O of the Industrial Disputes Act applied, that the Management should have applied for prior permission 90 days before the date on which such

closure was to become effective.

19. Applying the decision of the Supreme Court reported in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani

Vs. Their Workmen, , the Apex Court ultimately came to the conclusion that the Unit at Trombay could not have existed and functioned without

the Churchgate Division. It pointed out that the total number of workmen employed at the relevant time in the Trombay factory and the Churchgate

Division was one hundred and fifty and therefore, if the Company wanted to close down its Churchgate Division, Section 25O of the Industrial

Disputes Act applied and not Section 25FFA of the said Act.

20. The Apex Court further pointed out to the provisions of the Factories Act and held that the Factories Act have no relevance for the purpose

understanding the term ''industrial establishment'' as given in the Industrial Disputes Act.

21. Referring to the concept of functional integrality, the Supreme Court, as propounded in the decisions reported in The Associated Cement

Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, , and The Honorary Secretary, South India Millowners''

Association and Others Vs. The Secretary, Coimbatore District Textile Workers'' Union, , Western India Match Co. Ltd. Vs. Their Workmen, ,

pointed out that the common balance sheet and common management are not the only tests which, as a matter of fact, conclude the functional

integrality. On the other hand, the functional integrality should point out the functional interdependence between the two Units that closure of one

Unit would result in the closure of the other Unit. This means, necessarily, the total strength of the work force have to be taken from both the units

to test whether Section 25O of the Industrial Disputes Act stood satisfied by the closure of the Unit by the company.

22. In the decision reported in Alaghu Pharmacy (B) Vs. Regional Provident Fund Commissioner and Assistant Provident Fund Commissioner,

Enforcement, , this Court applied the above-said principles on functional integrality to a case falling under the provisions of the Employees'' State

Insurance Act and held that for functional integrality to exist, the interdependency between the Units must be such that one cannot exist without the

other.

23. Applying the said tests to the case herein, as already pointed out, the Tribunal''s award proceeds on the understanding that in view of the

common finance control and management, common managerial personnel and its control and recruitment under the same Management, one has to

come to the conclusion that Cycle Chain Manufacturing Unit got diversified to start a Unit for manufacture of industrial chains and automotive

chains. However, this did not make Cycle Chain Manufacturing Unit a separate Unit, independent of the Industrial and Automotive Chain

Manufacturing Unit. The control of finance and sale done by the Petitioner herein, who is the manufacturer of industrial chains and automotive

chains on behalf of the Cycle Chain Manufacturing Unit, make interdependency substantiated. I do not agree with this line of reasoning. Given the

fact that even after the closure of Cycle Manufacturing Unit, admittedly the other Unit manufacturing industrial chains and automotive chains

existed; that the functioning of the Cycle Chain Manufacturing Unit was not shown as dependent on the other Unit or vice versa; the mere fact of

the common management alone, by itself, cannot come to the aid of the workers to plead functional integrality to contend that Section 25O of the

Industrial Disputes Act was not satisfied and hence the orders had to be set aside. The occupier may be one and the same and the two Units may

be under the same Management; yet, that by itself, does not justify the view that there existed functional integrality. There is no material to

substantiate that the diversification that the Cycle Chain Manufacturing Unit underwent had made either the Cycle Chain Unit a part of the

diversified Unit, or for that matter, the other Unit had become part of the original Unit for its existence. There is no denial of the fact that the training

imparted in these Units is not one and the same; there was no transfer of work force from one Unit to the other Unit. It is not denied by the

contesting Respondents that recruitment, training, service conditions and appointment are not the same and the settlement entered into by the Union

in one Unit had no binding effect on the Union in the other Unit. In the face of these facts also, it is difficult to accept the plea of the Respondents

that there existed functional integrality that the Petitioner is under the obligation to absorb the workers of the closed Unit into the Petitioner''s Unit.

Hence, by applying the law declared by the Apex Court, I have no hesitation in setting aside the findings of the Tribunal holding that the Petitioner

had failed to comply with Section 25O of the Industrial Disputes Act, as the workmen in both the Units put together exceeded 100 and the

Petitioner has to get permission as required u/s 25O of the Industrial Disputes Act from the Government; in the absence of the same, the action of

the Petitioner is illegal and void ab initio. I accept the contention of the Petitioner that in the absence of any material evidence let in as regards the

integrality, the award has to fail in this case. It is no doubt true, as rightly pointed out by the learned Counsel for the Respondents, that the

document marked as Ex.M19 related to Kaakanur Factory and Ex.M20 related to Cycle Chain Manufacturing Unit; that the Management had not

produced the letter pertaining to the second Unit. At the same time, it must be pointed out that Kakanur Unit and the first Unit having separate

registration under the Employees'' State Insurance Act, are under the management of TI cycles of India; yet, are functionally independent. Learned

Counsel for the Respondents pointed out that even though the Units may have separate registration, the certificate issued in Ex.M20 to the Cycle

Chain Manufacturing Unit may have relevance to the second Unit, namely, the Industrial Chains and Automotive Chains Manufacturing Unit. I do

not agree with this line of reasoning of the Respondents. The fact that the Management had not produced the document pertaining to the second

Unit viz., Industrial Chains and Automotive Chains Manufacturing Unit, does not mean that one should draw an inference on the existence of

functional integrality. Learned Counsel for the Petitioner brought to my attention, the evidence of the Management witnesses, particularly brought

out in the cross-examination. A reading of the said evidence shows that the witness who deposed on behalf of the Petitioner Management was

shifted to the other Unit. To a specific question as to whether after 14.12.1996 there was any work done in connection with the Cycle Chain

Division, the said witness pointed out that they had attended only as regards the administrative matters relating to the Cycle Chain Manufacturing

Unit. A reading of the said evidence shows that both the Units have different manufacturing pattern and different labourers were there. The

evidence of M.W.1 does not, in any manner, support the case of the Respondents herein on the aspect of functional integrality. On the other hand,

the evidence of WW1 pointed out that his appointment was made by the Cycle Chain Manufacturing Unit and he was given specific training in the

manufacture of cycle chains. He admitted that cycle chains alone were manufactured in the Cycle Chain Manufacturing Unit. There was a separate

Union for Cycle Chain Manufacturing Unit. Provident Fund and Employees State Insurance amounts had been deducted by the Cycle Chain

Manufacturing Unit itself. He had no knowledge about the services and salaries of the employees in the other Unit.

24. The contention of the Respondents was that the first Unit and the second Unit come under the same management; consequently, the closure of

the Unit was bad in law. The reliance placed on the decision of the Apex Court reported in Orissa Textile and Steel Ltd. Vs. State of Orissa and

Others, , does not, in any manner, advance the case of the Respondents, given the fact that there exists no functional integrality between the two

Units.

25. Though normally as against the order of the Labour Court, in matters of findings of fact, this Court does not sit as a Court of appeal under

Article 226 of the Constitution of India and the jurisdiction is limited, yet, when the findings and the inference thereon rested on a wrong application

of the legal principles or the law declared by the Apex Court, the order suffers from perversity and hence has to be set aside. Even going by the

evidence available that the Petitioner Unit continues to exist even after the closure of the Cycle Chain Manufacturing Unit on 16.12.1996, tested on

the face of the documents produced before the Court, it follows that there is no functional integrality between the two Units. Consequently, I have

no hesitation in accepting the plea of the Management herein.

26. In the result, the award passed by the Tribunal is set aside and the writ petition is allowed. No costs.

27. It may be pointed out at this juncture that, after hearing the learned Counsel for the Petitioner and the Respondents, this Court suggested the

parties herein to work out the possibility of settlement. However, in spite of best efforts taken by the counsel on either side in this regard, both the

parties viz., Management and the labourers, have not come down from their respective stand and stuck to their decision. Even though this is a fit

case for settlement, yet, for the reasons stated above, the settlement could not take place. Consequently, the above order is passed allowing the

writ petition, thus setting aside the award of the Tribunal.