

PETITIONER:
WESTERN INDIA MATCH CO. LTD.

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT:
03/05/1963

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1964 AIR 472 1964 SCR (3) 560
CITATOR INFO :
E 1984 SC 516 (24)

ACT:
Industrial Dispute-Production bonus scheme-Made applicable only to workmen in factory-Claim by workmen of sales office-Sales office and factory whether part of same unit of industrial produuction-Inspectors, salesmen and retail salesmen, whether workmen U. P. industrial Disputes Act, 1947 (U.P. 28 of 1947).

HEADNOTE:

The appellant company was engaged in the manufacture and sale of matches in four places in India, including Bareilly, in which there were factories as well as sales offices. As an incentive to larger production of matches the company introduced in 1945 a Production Bonus Scheme which was made

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applicable to workmen engaged in the factory in making matches as also to those working in the factory office. In 1947, it was withdrawn in its application to the sales office. The workmen of the sales office consisting of clerical staff as also salesmen and inspectors of salesmen made a claim to Production bonus pointing out that there should be no discrimination between the employees in the same company. The company resisted the claim on the grounds : (1) that the sales office was entirely independent of the factory; and (2) that the salesmen, retail salesmen and inspectors employed by the sales office were not workmen within the meaning of the U.P. Industrial Disputes Act, 1947. The facts showed : (1) that there was interdependence of the two activities viz., manufacture of matches in the factory and their sale by the sales office, inasmuch as (a) the sales office could not exist without the factory, (b) the factory itself could not conveniently function without a sales organization. and (c) the factory arranged its volume of production in accordance with the programme made from time to time by the sales manager; (2) that the sales office and the factory had the same banking account, though separate cheque books were maintained and operated upon ; (3) that the financial forecasts that were made for the

Bareilly branch from time to time made no distinction between the disbursements in the sales office and the factory ; (4) the rules and practice in connection with the recruitment, control and discipline of man-power, as also documents, including letters of appointment and standing orders and the muster rolls were kept distinct and separate between the factory and the sales office; and (5) the sales office paid rent to the factory for the area occupied by it by means of book adjustments. The evidence also showed that 75% of the time of the workmen in the sales office was devoted to writing work.

Held that, on the facts, there was functional integrality and inter-dependence or community of financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production.

Held further, that the inspectors, salesmen and retail salesmen were workmen as defined in the U.P. Industrial Disputes Act, 1947.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 300-301 of 1963.
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Appeals by special leave from the award dated October 23, 196 of the Industrial Tribunal (111), Allahabad in Adjudication Case No. 33 of 1961.

G.B. Pai, J. B. Dadwhanji, O. C. Mathur and Ravinder Narain, for the appellant in C.A. No. 300 of 1963 and the respondent in C.A. No. 301 of 1963.

C.B. Agarwala, O. P. Lal and G. O. Mathur, for the respondents in C.A. No. 300 of 1963 and the appellants in C.A. No. 301 of 1963.

1963. May 3. The judgment of the Court was delivered by

DAS GUPTA. T. The Western India Match Gompany; the Bareilly Branch of which is the appellant in the first of the two appeals before us, is engaged in the manufacture and sale of matches in India. The manufacture of matches is carried on by the company at its four factories at Ambernath, Madras, Calcutta and Clutterbuckgan j in Bareilly. At these four places the company has also four sales offices catering to the needs of the regions assigned to them. The sales office at Clutterbuckganj with which we are concerned in this appeal carries on its sales activities in the States of U.P., Punjab, Delhi, Himachal Pradesh, a part of Rajasthan and a part of Madhya Pradesh. According to the appellant each of these sales offices is independent of the factories of their respective regions and so the Bareilly Sales Office is quite independent of the "factory at Bareilly. As an incentive to larger production of matches the company introduced in 1945 a Production Bonus Scheme the details of which will be mentioned later. The scheme was applied at the beginning not only to the 1500 workmen engaged in the factory in making matches but also to the workmen working in the factory office, who numbered about 100. In 1947, the production bonus was withdrawn from the office staff of the factory, though it continued to operate as regards

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the other workmen. The factory office staff raised a dispute on this question in 1957 and ultimately as a result of a decision of the Adjudicator given on March 13 1958, the

factory office staff also became entitled to the benefits of the production bonus scheme on the same terms as the other workmen in the factory. The workmen of the sales office consisting of the clerical staff as also salesmen and inspectors of salesmen were however denied the benefits of the scheme, though it does appear that for a very short period in 1946 the sales office staff also received payments purporting to be production bonus. The Adjudicator's decision extending the production bonus scheme to the factory staff was confirmed by this Court on March 17, 1961. It appears that during the pendency in this Court of the appeal against the Adjudicator's order there was some discussion between the Union-of which the sales office staff became members in 1957 or thereabout-and the sales manager 'at Bareilly, in regard to extending the Production Bonus Scheme to the members of the sales staff, if the appeal in this Court was decided in favour of the factory office staff. On March 13, 1961, the Union wrote to the sales manager reiterating the claim to Production bonus and pointing out that "discrimination between the employees of the same company in the matter of admissibility of item of wage was bound to lead to heartburning." The manager replied on May 22, 1961, characterizing this demand of the sales office staff as unreasonable to which the management could not agree. Ultimately, on August 18, 1961, the dispute which thus arose between the employers and the workmen was referred by the Government of U. P. to the Third Industrial Tribunal at Allahabad for adjudication. The dispute referred was described in these words:-

"Should the employers be required to pay production bonus to the workmen employed

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in their sales office ? If so, with effect from what date and with what other details

By a later amendment on December 4, 1961, the word "'in" was substituted by the word "by".

Though a number of matters were raised in issue, both the parties rightly 'concentrated at the hearing on the question whether the sales office and the Factory were independent units of production or formed integral parts of one and the same unit of industrial production. Whether or not an incentive scheme for better production should be introduced in any industry is essentially a matter for the management to decide. This position has been recognized by this Court in Titaghur Paper Mills Company Ltd.. v Their Workmen (1). and again in Burn & Co., v. Their Workmen (2). While in view of the importance of industrial adjudication not interfering with what is purely management functions, the Court felt that industrial adjudication should not impose an incentive bonus on the management for the first time. the Court pointed out that the position would be different where an incentive bonus is already in force for the majority of the workmen. "We can see no reason we said in Burn Company's Case"why where an incentive bonus scheme is in force in a concern for the majority of -its workmen, the Tribunal should not be able to extend the same to the remainder of the workmen." In view of this the appellant in this case tried to establish the fact that the sales office was entirely 'independent of the factory, while the workmen, on the other band, directed their efforts to showing that these are only two departments of the one and the same unit of production.

Another question on which the parties joined issue was whether Inspectors, Salesmen and Retail Salesmen out of the sales office staff were workmen

(1) [1959] Supp. 2 S.C.R. 1012 (2) [1969] 3 S.C.R. 423
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or not within the meaning of the U. P. Industrial disputes Act. The management contended that they were not workmen and so were not within the terms of reference; the respondents claimed that they were workmen within the meaning of the Act.

Applying the principles laid down by this Court in several cases where the question whether two or more units of business under the same ownership form one industrial unit or more to the facts and circumstances of this case as disclosed by the oral and documentary evidence, the Tribunal came to the conclusion that the sales office and the factory form one single unit of industry and there being no reason for making any discrimination against the sales office staff on the question of production bonus held that the employers should be required to pay production bonus to the workmen employed by their sales office also. The Tribunal directed that the sales office staff should be paid production bonus at the same rate at which it was given to the workmen of the factory and the factory office. The question whether inspectors, salesmen and retail salesmen employed by the sales office were workmen was also answered by the Tribunal in the affirmative so that they also became entitled to the benefit of the award. Being of opinion that the dispute should have been raised earlier by the workmen of the sales office, the Tribunal directed that the payment of production bonus to the sales office staff would start from the date the award became enforceable in law. Against this decision the employers, the Western India Match Co., Ltd., Bareilly, has appealed by special leave granted by this Court. The workmen have also appealed against the direction that the payment of production bonus should start from the date the award became enforceable in law.

Three points have been raised before us on behalf of the-employers in support of their appeal,
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which has been numbered Civil Appeal No. 300 of 1963. The first and the main contention is that the Tribunal has erred in holding that the sales office and the factory formed parts of one and the same unit of industrial production. In any case, it was next urged, the Tribunal ought not to have extended to the sales office staff the production bonus scheme, for the factory and the factory office without any modification. Thirdly, it was contended that the Tribunal was wrong in holding that Inspectors, Salesmen and Retail Salesmen are workmen within the meaning of the U.P. Industrial Disputes Act.

This last contention can be disposed of easily. "Workman" has been defined in the U. P. Industrial disputes Act to mean any person employed in an industry to do any manual, supervisory, technical or clerical work for hire or reward. The Tribunal has accepted the evidence of the workmen's witness Sexena that the writing work takes up 75% of the time of these categories of the sales staff Mr. Pai has characterized this finding as arbitrary. We do not think this criticism is justified. The management did not file any document to show the list of duties of these persons but contented itself with filing an affidavit that no certified duty list of inspectors, salesmen and retail salesmen has been circulated for travelling letters by the employers. A statement of duties of the salesmen and retail salesmen was filed on behalf of the workmen and was marked Ex. W. 61. The correctness of what is stated in this document has not been challenged by the management. On a

consideration of the statement of duties as detailed in this document along with the oral testimony of the workmen's witnesses, we are of opinion that the Tribunal cannot be said to have acted unreasonably or arbitrarily in believing that 75% of the time of these categories of workmen is devoted to writing work. It is not out of place to mention in this connection that on some previous occasions the management

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itself has treated these categories as workmen within the meaning of the U. P. Industrial Disputes Act. The management's contention that the Tribunal has erred in thinking that the inspectors, salesman and retail salesmen are workmen must therefore be rejected,

A more difficult question is whether the sales office and the factory form part of one and the same unit of industrial production or are independent of each other. It will be useful to clear the ground first of the confused notion which is expressed in para. 8 of the Company's written statement that the employees of the Sales office have nothing to do with "Production". It does not require an economist to tell us that just as the man who tills the soil, and grows the crop is engaged in producing wealth for the community, so also is the person who reaps the harvest, the person who transports it from the field to a place of storage and the people who are engaged in completing the process by bringing it to the ultimate consumer. It is equally trite that just as a man who makes an article, be it bricks or steel or boxes or something else-by using different materials in such a way as to make them more suitable to satisfy people's wants is engaged in productive labour, so also is the person or persons who help in the ultimate achievement of satisfaction of those wants by bringing them to the consumer's reach. Therefore, it would be unreasonable to say that though those who make the matches are "producing" but those who sell them are not.

Once, this misapprehension is cleared we are face to face with the centre of the problem. The principles to be followed in deciding these problems have so often been considered by this Court and the tests that can be applied to assist their solution have so frequently been laid down that further detailed discussion is un-necessary. It is enough to mention

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that among the many tests that have been evolved, functional integrality, inter-dependence or community of financial control and management; community of man-power and of its control, recruitment and discipline, the manner in which the employer has organised the different activities, whether he has treated them as independent of one another or as inter-connected and inter-dependent, enjoy pride of place. But this list is by no means exhaustive.

Nor can the tests and the principles that have been laid down be applied mechanically or by way of syllogism. A mechanical or syllogistic approach may appear to furnish the easiest way of solving a complicated problem, but the allurements of the easy way has to be resisted. For, while such ways are beset with risks of error in all branches of law, they are even more unsafe and inexpedient in industrial law, where sensitive problems of human relations have to be solved in the midst of all the complexities of modern industrial Organisation. That is why in applying the well settled tests and principles on these problems we have to bear in mind that while all tests that are possible of application should be applied, the value and importance to

be attached to individual tests will vary according to the nature of the industrial activities and according to the nature of the disputes in which the problem has arisen, viz., whether it is in respect of lay off, retrenchment, production bonus, profit bonus or something else.

Again, as in most questions which come before the courts, it is the substance which matters and not the form; and every fact and circumstance relevant to the ascertainment of the substance deserve careful attention.

In the first place, functional integrality is writ large on the activities under consideration. The sales-office cannot exist without the factory while

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it is true that the sales office does from time to time handle the production of a sister concern of the company, the Assam Company, by far the largest portion of its activities is devoted to the marketing of what is made at the Bareilly factory and to a certain extent of the products of the Western India Match Company. It is equally clear that the factory itself cannot conveniently function without a sales organization. The inter-dependence of the two activities the manufacture of matches in the factory and their sale by the sales office-is further emphasized by the fact that the factory arranges its volume of production in accordance with the programmes made from time to time by the sales manager.

Turning now to the question of finance, we find that the sales office and the factory have the same banking account, though separate cheque books are maintained and operated upon. Even more important is the fact that the financial forecasts that are made for this Branch from time to time make no distinction between the disbursements in the sales office and the factory. This is clear from the forecast for the period October-December 1961, Ex. W.27. This forecast was prepared by the sales manager and bears the heading "Bareilly Sales Office". Under the head "Cash Disbursements" we find first some figures in respect of bonus, woods, splints, raw-materials and general stores and then one inclusive item for salaries and wages for both factory and sales office. This document discloses the further interesting fact that excise duty-a duty on the production of matches-also finds place in the financial forecast, prepared by the sales manager for the sales office.

The manner in which the financial forecast was prepared by the sales manager in respect of functions not only of, the sales office but also of the factory proper is eloquent testimony that the

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company did consider them as inter-dependent parts of the same production unit.

Against all this, Mr. Pai seeks support for his contention that the sales office is independent of the factory, mainly in the rules and practice in connection with the recruitment, control and discipline of man-power. The documents, including letters of appointment and standing orders, which have been produced undoubtedly show that the company has kept these matters distinct and separate between the factory and the sales office. It is also clear that separate muster rolls are maintained for the factory and the sales office, though it must be pointed out that a few workmen are common.

Our attention has been drawn also-to the fact that the sales office pays rent to the factory for the area occupied by it by means of book adjustments. These and some other

details to which our attention has been drawn by Mr. Pai are of little assistance however to establish his proposition that the Tribunal has acted arbitrarily in deciding that the sales office and the factory are parts of one and the same industrial unit.

We have to mention here that our purpose in referring to these details of evidence is not to find out whether the Tribunal has come to a wrong conclusion on fact, but only to see if it has made any mistake in applying the correct principles or has come to a conclusion that is unreasonable, arbitrary or perverse. On an analysis of the materials on the record we are clearly of opinion that the correct principles have been applied in a fair and reasonable manner and the conclusion reached cannot be challenged before us.

There remains for consideration Mr. Pai's contention that the Tribunal was not justified in

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extending to the sales office staff the production bonus for the factory and the factory office without any modification. Mr. Pai complains that having come to the conclusion that production bonus should be extended to the sales office staff the Tribunal did not apply its mind to the further question that was referred to it, viz.; with what details the production bonus scheme should be applied to the sales office staff. According to Mr. Pai the sales office staff, speaking generally, enjoys much higher rates of pay than the corresponding categories in the factory office and that this was a factor which ought to be taken into consideration in deciding whether the production bonus scheme in force in the factory for the factory staff should be applied to the sales office staff without any modification. If it were clear that the Tribunal had applied its mind to this aspect of the problem we would not have felt justified in upholding Mr. Pai's complaint. As it appears however that this aspect was not considered, we think it will be in the best interests of industrial peace and of social justice that the Tribunal applies its mind to the question and then comes to a decision.

We express no opinion whether Mr. Pai's contention that the sales office staff enjoys higher pay scales than the factory staff is correct in fact or not nor on the question whether if this assertion be found to be correct any modification in the production bonus scheme would be called for.

We confirm the Tribunal's decision that the production bonus scheme should be extended to the sales office staff and remand the case to the Tribunal for decision after taking note of all relevant facts whether the production bonus scheme in force in the factory and the factory staff should be extended to the sales office staff with or without modification.

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This disposes of the management's appeal viz., Civil Appeal No. 300 of 1963.

The workmen's appeal which is numbered Civil Appeal No. 301 of 1963 challenges the correctness of the Tribunal's direction that the payment of production bonus should start from the date the award became enforceable in law. According to the workmen the payment of production bonus should have been directed to be made with effect from the date of reference, if not from the date of the demand.

The question as to the date from which the benefit granted by an award should take effect must generally be left to the discretion of the Tribunal making the award and this Court ordinarily refuses to interfere with the exercise

of that discretion. We are unable to find any special circumstances in this case that would justify any departure from our established practice.

The Appeal No. 301 of 1963 is therefore dismissed. In view of the fact that the case is going back to the Tribunal for a decision of the question as mentioned above we think it proper to direct that the ultimate award by the Tribunal should be given effect from the same date from which the award now under appeal would have come into force.

There will be no order as to costs in either of the appeals.

Appeal No. 300 remanded.
Appeal No. 301 dismissed.

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JUDIS