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other victims. He had it with him either as a matter of course or for doing the work he might have been doing that day. We are therefore of the opinion that Ram Charan had no common intention with Banwari in his acts towards the various victims of the incident and that he has been wrongly convicted.

We therefore dismiss the appeal of Banwari and allow the appeal of Ram Charan and acquit the latter of the offences he has been convicted of.

Appeal partly allowed.

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February 15.

THE FINE KNITTING CO., LTD.

v.

THE INDUSTRIAL COURT, BOMBAY AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial dispute —Industrial concern—splitting up of a going concern—Hosiery Company—Installation of spinning machinery—Recognition of Company as hosiery undertaking and spinning undertaking as separate —Validity —Bombay Industrial Relations Act, 1946 (Bom. 11 of 1947), s. 11.

The appellant Company was incorporated in 1908 and its principal activity then was to manufacture hosiery. In 1924 when the appellant shifted its factor to Ahmedabad it installed spinning machinery with a view to ensure suitable and even supply of yarn for its hosiery manufacture. Originally, a notification had been issued on May 30, 1939, under the Bombay Industrial Dispute Act, 1938, whereby hosiery concerns were included in the defination of "Cotton Textile Industry", but subsequently on July 17, 1945, another notification was issued as a result of which the Hosiery manufacture was excluded from the Cotton Textile Industry and it was covered by a separate notification. For the purposes of the Bombay Industrial Relations Act, 1946, the appellant concern was recognised as an undertaking of the hosiery industry by the Registrar under s. 11 of that Act. Subsequently as a result of certain proceedings taken by the Textile Lobour Association of Ahmedabad, the Registrar decided

to recognise the appellant concern as consisting of two undertakings, the hosiery section and the rest excluding the hosiery section and this decision was confirmed by the Industrial Court.

The appellant challenged the order of the Industrial Court on the grounds (1) that the spinning and the hosiery sections in its establishment were one concern because (a) there was unity of ownership, management, supervision, control and employment, (b) there was complete functional integration, and (c) the two sections were functioning under the same roof, and (2) that, in any case, s. 11 of the Act did not authorise the splitting up of a concern into two undertakings. The evidence showed that though in 1924 the spinning section had begun as a subsidiary to the hosiery section in order to serve as its feeder, later on the spinning section developed to such an extent that it became a spinning mill by itself and could no longer be regarded as a minor section attached to the hosiery works, that only 20% of the yarn manufactured by the spinning section was consumed for hosiery purposes while the rest was sold in the market, that the spinning department produced yarn of all counts, some of which could not be used for hosiery work, that when the knitting department was closed in 1948, the spinning department was not. It was also found that the amount paid to the employees in each of the two departments by way of minimum wages and dearness allowance was different.

Held, that the decision of the Registrar recognising the hosiery and spinning departments of the appellant concern as separate undertakings under s. 11 of the Bombay Industrial Relations Act, 1946, was correct.

Held, further, that the question whether the several undertakings carried on by the same company are separate or not depends on whether they are distinct and independent of each other or are functionally integral or inter-department and that the Registrar was within his powers under s. 11 of the Act to come to a decision on this question on the basis of the circumstances disclosed on evidence.

Associated Cement Companies Ltd. v. *Their Workmen,* (1960) 1 S.C.R.703, *Pratap Press* v. *Their Workmen,* (1960) 1 L.L. J. 497 *Pakshiraja Studios* v. *Its Workmen.* (1962) 2 L.L. J. 380 and *Honorary Secretary, The Soath India Millourers' Association* v. *The Secretary Coimbatore District Textile Workers' Union,* Coimbotore (1962) Supp. 2, S.C.R. 926 relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 306 of 1961.

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The Fine Knitting Co., Ltd.
v.
The Industrial Court, Bombay

Appeal by special leave from the Judgment and order dated May 16, 1959, of the Industrial Court, Bombay, in Appeal (I.C.) No. 90 of 1959.

J.P. Mehta and *I.N. Shroff*, for the appellant.

N. M. Barot, Secretary, Labour Association, for the respondent No. 3.

1962. February 15. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.- The appellant, the Fine Knitting Co. Ltd., was incorporated in 1908 and its principal activity then was to manufacture hosiery. In 1924, when the appellant shifted its factory from Barejadi to Ahmedabad, it installed spinning machinery with 9000 spindles with a view to ensure suitable and even supply of yarn for its hosiery manufacture. On May 30, 1939, the Government of Bombay issued a notification under the Bombay Industrial Disputes Act, 1938 (No. XXV of 1938), whereby hosiery concerns were included in the definition of 'Cotton Textile Industry'. Subsequently on July 17, 1945, another notification was issued as a result of which the hosiery manufacture was excluded from the Cotton Textile Industry and it was covered by a separate notification issued under the said Act. This latter notification which was made applicable to the Hosiery Industry specified that the said notification *inter alia*, to all concerns using power and employing twenty or more persons which are engaged in the manufacture of hosiery or other knitted articles made of cotton and all processes incidental or supplementary thereto. After this notification was issued, the appellant ceased to be covered by the extended and inclusive definition of the 'Cotton Textile Industry' and was recognised as a Hosiery concern being engaged in the manufacture of hosiery. Later, in 1946, the Bombay Industrial Relations Act, 1946 (No. XI of 1947) (hereinafter called the Act.), was applied to the

industries to which the Bombay Industrial Disputes Act had been applied, as a result of s.2(3) of the former Act. In consequence, for the purposes of the Act, the appellant concern was recognised as an undertaking of the Hosiery Industry under s.11. This was the result of notification No. 10 of 1948, issued by the Registrar under the Act. This position was recognised by the Industrial Tribunal in industrial adjudications concerning disputes between the appellant and its workmen.

Even so, respondent No. 3, the Textile Labour Association, Ahmedabad, sought to reopen the issue by applying by to the Registrar on October 16, 1953, that the appellant's factory should be recognised as an undertaking both in the Cotton Textile Industry and the Hosiery Industry. The Registrar who is the second respondent in the present appeal held an enquiry and ultimately came to the conclusion that there was no justification for splitting up the concern into two units and recognising them as suggested by the third respondent. The third respondent did not prefer an appeal against the said decision of the second respondent; but respondent No. 4 who are the five elected representatives of the employees of the appellant sought to challenge the said decision of the second respondent by preferring an appeal to the Industrial Court, respondent No. 1. The appellant contended that respondent No. 4 were not entitled to prefer an appeal because they were not parties to the proceedings in the original application before the second respondent. This preliminary objection was upheld and the appeal preferred by respondent No. 4 was dismissed. The result was that the order passed by the Registrar rejecting the application made by respondent No. 3 concluded the dispute.

Even while the said appeal was pending before the first respondent, respondents Nos. 3 and 4

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initiated the present proceedings by means of two applications made before the second respondent in which the same relief was claimed that the appellant concern should be recognised as an undertaking both in the Cotton Textile Industry and in the Hosiery Industry. The second respondent, however, rejected these applications on the ground that since he gave his earlier decision, there had been no change of circumstances and so there was no justification for reconsidering the matter over again. The third and the fourth respondents then went in appeal before the first respondent and their appeals were allowed by the first respondent and a direction was issued that the appellant company should be recognised as two undertakings—one in the Cotton Textile Industry and the other in the Hosiery Industry. The appellant then moved the High Court of Bombay under Articles 226 and 227 of the Constitution and challenged the validity of the order passed by the first respondent. In the High Court the parties took an order by consent on August 20, 1958. As a result of this consent order, the direction issued by the first respondent was set aside and the matter was remanded to the second respondent to enable him to hold a fresh enquiry and to dispose of the dispute between the parties in accordance with law.

On February 14, 1959, the second respondent pronounced his decision. He came to the conclusion that in the circumstances disclosed on evidence, the best courts would be to recognise the spinning and hosiery sections of the appellant company as two separate undertaking and treat them as two separate enterprises. That is why under s.11(1) he decided to recognise the Fine Knitting Co. Ltd. (Hosiery Section) and the Fine Knitting Co. Ltd. (excluding Hosiery Section) as undertakings in the Hosiery Industry and the Cotton Textile Industry respectively. The appellant was aggrieved by this order and so is preferred appeals before the first

respondent. The respondents Nos. 3 and 4 also challenged the decision of the second respondent and contended that the entire concern of the appellant should be treated as Cotton Textile Undertaking. All the three appeals failed and the first respondent confirmed the order passed by the second respondent. The result is that the appellant concern is recognised as consisting of two undertakings, the Hosiery Section and the rest excluding the Hosiery Section. It is against this order of the first respondent that the appellant has come to this Court by special leave.

The first point which Mr. Mehta has strenuously urged before us on behalf of the appellant is that on a proper application of the tests laid down by this Court, it should be held that the spinning and the Hosiery Sections in the appellant's establishment are one concern and in support of this argument he has referred us to the decisions in the *Associated Cement Companies Ltd.* v. *Their Workmen* (1), *Pratap Press* v. *Their Workmen* (2) and *Pakshiraja Studios* v. *Its Workmen* (3). This question has been recently considered by this Court in the case of the *Honorary Secretary, The South India Millowners' Association* v. *The Secretary, Coimbatore District Textile Workers' Union, Coimbatore* (4) in which judgment has been pronounced on February 1, 1962. In the last mentioned case, this Court has examined the relevant earlier decisions and has come to the conclusion that though the question about the unity of two industrial establishments has to be considered in the light of the relevant tests laid down from time to time, it would be unreasonable to treat any one of the said tests as decisive. As has been observed in that case, in dealing with the problem, several factors are relevant, but it must be remembered that the significance of the several factors

(1) [1960] 1 S.C.R. 703.
(2) [1960] 1 L.L.J. 497.
(3) [1961] 2 L L.J. 380.
(4) [1962] Supp. 2 S.C R. 925

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would not be the same in each case nor their importance. It is in the light of these decisions that the point raised by Mr. Mehta has to be considered.

Mr. Mehta contends that in the present case there is unity of ownership and as a necessary corollary, there is unity of management, supervision and control; there is unity of purpose and design and he argues that there is complete functional integration. According to him, as no hosiery could be manufactured without yarn, there is such a functional inter-dependence between the spinning and the hosiery sections that the latter cannot exist without the former. There is also unity of finance and in consequence, there is one capital and depreciation fund account, one common account of expenditure and income, one balance-sheet and one profit and loss account. There is also unity of employment and the two concerns function under the same roof; so there is unity of habitation. It is on these grounds that Mr. Mehta contends that the first and the second respondents were in error in splitting up the appellent's establishment into two sections and recognising them separately as such.

In dealing with the significance and the effect of the factors on which Mr. Mehta has rightly relied it is necessary to bear in mind certain other relevant factors on which the decision under appeal is substantially based. It is true that in 1924, the spinning section of the establishment may have begun as a subsidiary to the hosiery section and in order to serve as its feeder. But the evidence on the record clearly shows that the position is now reversed and that the spinning section has now assumed major importance and hosiery takes a minor place in the industrial activities of the appellant. The inspection notes made by the second respondent show that it was admitted by the

management that the spinning section has now developed to such an extent that it is like a spinning mill by itself; it can no longer be regarded as a minor section attached to the hosiery works. It was conceded before the second respondent that only about 20% of the yarn manufactured in the spinning section is consumed for hosiery purposes while the rest is available to be sold in the market. The production figures in the spinning section and the consumption of the yarn produced in that section unmistakably point to the fact that the spinning section is no longer a minor department run by the appellant solely for the purpose of its hosiery section. In 1955 in the months of November and December, the production in the spinning department was worth Rs. 1,17,742 whereas whatever was consumed in the knitting department was only Rs. 23,817 leaving a balance which was sold for Rs. 93,925. The corresponding figures for the year 1956 are Rs. 6,70,854, Rs. 1,40,105 and Rs.5,30,749. Similar figures for 1957 are Rs.8,17,153, Rs. 1,31,725 and Rs. 7,04,018 and for 1958 are Rs. 6,68,095, Rs. 1,26,252 and Rs. 5,40,873. The balance-sheet for the year 1954 shows that the total hosiery sale was worth Rs. 2,37,232-6-0 whereas the total yarn sale was worth Rs. 14,82,705-5-0. Similarly, for the year 1955, the hosiery sale was Rs. 2,56,986 and the yarn sale was Rs. 14,44,929. The strength of the employees engaged in the two respective sectors tells the same story. The table prepared by the second respondent from the information supplied by the management shows that for the year 1955, spinning employees were 174, hosiery employees 56 and the common workmen 35. For the year 1956, the figures were 217, 54 and 38; for 1957, the figures were 194, 65 and 38; and for 1958, the figures were 178, 60 and 32. Mr. Mehta quarrels with some of these figures but does not dispute the broad conclusion which is drawn from the figures that the number of employees engaged in the spinning section is far more

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than that employed in the hosiery section. Thus, there can be no doubt that the spinning activity of the appellant which may have begun as subsidiary to the hosiery activity has now grown in importance and has taken a place of pride in the industrial activity of the appellant considered as a whole; it can no longer be regarded as subsidiary to hosiery.

It is common ground that by the notification issued under the Cotton Textile (Control) Order, 1948, the appellant is called upon to supply to the Government the prescribed quantity of yarn produced by the spinning department. It is unnecessary to refer to the details of the order or to the extent of the yarn required to be supplied by the appellant under it. What is significant is the fact that by the application of the order issued in that behalf, the Government has treated the appellant as a producer who has a spinning plant and in that sense, the existence of the spinning activity of the appellant has been treated as an independent activity liable to be controlled by the notification issued under the Cotton Textile (Control) Order, 1948.

Then as to the argument that the spinning and the hosiery are functionally integrated, it is clear that hosiery can exist without spinning, provided the industry engaged in hosiery purchases yarn required for the purpose of hosiery. That is one aspect of the matter. But the more important aspect on which reliance has been placed against the appellant is that the appellant's spinning department produces yarn of all counts some of which would admittedly not be useful for hosiery work. When the appellant was asked whether the allegation made by respondents Nos. 3 and 4 in that behalf was true or not, the management of the appellant hesitatingly denied the said allegation. But an advertisement published in the local daily "Sandesh" was produced by respondents Nos. 3

and 4 and it clearly showed that yarn of all counts was offered by the appellant for sale in the general market. Therefore, it would be idle to contend that the spinning work carried on in the spinning department is meant exclusively or solely for the hosiery department. If the spinning department produces yarn which is not useful or necessary for, and which cannot be used by, the hosiery section, the only inference is that the spinning department is working on its own and is producing yarn to be sold in the market. That being so, the argument of functional inter-dependence or integrality cannot be treated as valid.

Besides, it is not disputed that when the knitting department was closed in 1948, the spinning department was not. If the two departments are functionally inter-dependent, the closure of the one without the closure of the other may need an explanation. The explanation which has appealed to the first and the second respondents apparently is that though the spinning work carried on by the appellant may, to some extent, be useful for the hosiery work, the major part of its work is carried on independently with an eye on the market and so the closure of the hosiery cannot and did not affect the continuance of the spinning department.

There is yet another circumstance on which considerable reliance has been placed by the first and second respondents in rejecting the appellant's contention that the two departments constitute one unit. This circumstance refers to the conduct of the appellant itself in dealing with the employees engaged in spinning and in knitting departments. It is admitted that the minimum wages paid to the employees in knitting differed from the minimum wages paid to the employees in spinning and so does the amount of dearness allowance paid to the respective employees differ. It is difficult to understand how an employer can make a distinction ui

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the payment of minimum wages between one class of employees and another if both the classes of employees are engaged in different departments of the same establishment or concern. If there is unity of employment and unity of purpose and design as suggested by Mr. Mehta, it is inconceivable that the employees engaged in two departments integrally connected with each other and constituting one unit would be paid different minimum wages. What is true about the minimum wages and the dearness allowance is also true about the bonus. It appears that even in years in which the appellant made profits and actually paid bonus to the workmen employed in the spinning department, no bonus was paid to the employees engaged in the knitting department. That again can be explained and justified only on the basis that the appellant treated the two departments as distinct and separate and so the employees in the one got bonus and not the employees in the other. It was suggested by Mr. Metha that the genesis of the present dispute lies in the anxiety of the third respondent to take within its jurisdiction the employees engaged by the appellant in its spinning department. On the other hand, Mr. Barot for respondents Nos. 3 and 4 contends that the present trouble arose because the appellant began to deny to its employees in the spinning department the benefits of all relevant conditions of service which were applicable to the employees in the Textile Industry in Ahmedabad. Whatever may be the background of the dispute and its genesis, it is clear beyond doubt that the way in which the appellant has treated its employees in spinning as distinguished from its employees in knitting leads very strongly to the inference that the appellant treated the two departments not as one unit but as separate units each one functioning on its own and independently of the other.

It is in the light of these circumstances that

the first and the second respondents were not impressed by the relevant factors on which the appellant relied in support of its plea of the unity of the two activities and came to the conclusion that the two activities were separate and as such, as must be separately recognised under s. 11. We do not see how the appellant can successfully challenge the correctness of this conclusion.

There is one more point which yet remains to be considered. Mr. Metha argues that the impugned order recognising two different undertakings under s. 11(1) is not justified by the provisions of the statute. Section 11 provides that the Registrar may, after making such inquiry as he deems fit, recognise for the purposes of the Act—

(1) any concern in an industry to be an undertaking;

(2) any section of an undertaking to be an occupation.

The argument is that s. 11(1) does not authorise the splitting up of a concern into two undertakings. A concern, says Mr. Metha, is the whole of the concern or establishment run by the appellant and as such it has to be recognised as one undertaking in so far as the order under appeal treats the appellant's concern as two undertakings, it is contrary to s. 11(1). We are not impressed by this argument. The appellant is undoubtedly engaged in the hosiery industry and that part of its business cannot be recognised as Cotton Textile Industry because it is a concern engaged in spinning only which can be recognised under that category. If that is so, industrial activity of the appellant in relation to hosiery industry must be recognised separately from the textile undertaking. If one concern or company carries on several businesses or undertakes different types of industrial works, these businesses or works would amount to separate enterprises or undertakings and would have to be

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recognised as such. In fact, if the appellant itself has been treating the two kinds of work separately and has thus split up its whole business into two independent sections, it is not easy to understand why the Registrar cannot recognise the existence of two undertakings carried on by the appellant and treat the said undertakings as such. We see no justification for the assumption made by Mr. Metha that s. 11(1) does not permit the recognition of several undertakings carried on by the same company separately. It all depends on whether the undertakings are separate, distinct and independent of each other or are functionally integral or inter-dependent. In the former case, the Registrar would be justified in treating the several undertakings separately while in the latter case, he may recognise all of them as one undertaking.

There is one minor point to which reference may incidentally be made. It appears that before the first respondent, it was urged by the appellant that the present applications made by respondents Nos. 3 and 4 were barred by res judicata. The argument was that since the second respondent had on an earlier occassion considered the merits of the case and refused to grant the request made by the third respondent for recognising the two undertakings separately, the same question could not be re-agitated again before the same authority. In our opinion, there is no substance in this argument. As we have already pointed out, when the second respondent passed his earlier order, an appeal was preferred against the said order by the fourth respondent before the first respondent. That appeal was, however, dismissed on the ground that the fourth respondent was not party to the proceedings before the second respondent and, therefore, he could not prefer an appeal. If the fourth respondent had no right to make an appeal because he was not a party to the said proceedings, it is difficult to see how he can

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be precluded from making the present application on the ground of res judicata. At the highest, a plea of res judicata may perhaps be raised against the third respondent but that would not be effective in view of the fact that in the present case, an application has been made by the fourth respondent as well. That is why Mr. Mehta did not seriously press the point of res judicata before us.

In the result, fails the appeal and is dismissed with costs.

Appeal dismissed.

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February 16.

KRISHAN LAL DHAWAN AND ANOTHER

v.

DELHI ADMINISTRATION

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Trial by Special Judge— Another special Judge conducts further proceedings—Conviction—Validity—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 350—Criminal Law Amendment Act, 1952 (46 of 1952). s. 8, sub-s. 3.

The appellants were charged under ss. 120B and 420 Indian Penal Code and s. 5 (1) (d) read with s. 5 (2) of the prevention of Corruption Act. The trial of the appellants was commenced before a special Judge who heard the prosecution evidence. Thereafter the trial was taken up by another special Judge who examined the defence witnesses and finally convicted the appellants. The appellants appealed to the High Court and the High Court upheld the conviction and sentence. The appellants thereupon appealed to the Supreme Court by special leave.

The sole question which was raised by the appellants was that in view of the fact the trial commenced before one Special Judge and another Special Judge took up the proceedings are incompetent. The respondent relying on s. 8, sub-s. (3), of the Criminal Law Amendment