THE ASSOCIATED CEMENT COMPANIES LIMITED, CHAIBASSA CEMENT WORKS, JHINKPANI

v.

THEIR WORKMEN

1959

September 11

(S. R. DAS, C.J., S. K. DAS and M. HIDAYATULLAH, JJ.)

Industrial Dispute—Lay-off compensation—Disqualification—Cement factory—Limestone quarry—Whether both parts of one establishment—Lay-off of workers in cement factory due to strike in limestone quarry—"In another part of the establishment" meaning of—Test for determining whether a particular unit is part of a bigger establishment—Factories Act, 1948 (63 of 1948), s. 2(m)—Plantations Labour Act, 1951 (69 of 1951), s. 2(f)—Mines Act, 1952 (35 of 1952), ss. 2(j), 17—Industrial Disputes Act, 1947 (14 of 1947), ss. 2(kkk), 18(3), 25C, 25E, 33.

The cement factory in question which is in the State of Bihar belonged to the appellant company and a limestone quarry owned by the same company was situate about a mile and a half from the factory. Limestone being the principal raw material for the manufacture of cement, the factory depended exclusively for the supply of limestone on the said quarry. On behalf of the labourers in the limestone quarry certain demands were made on the management of the company but as they were rejected they went on strike; and on account of the non-supply of limestone due to the strike, the management had to close down certain sections of the factory and to lay-off the workers not required during the period of closure of the sections concerned. Subsequently, after the dispute between the management and the workers of the limestone quarry was settled and the strike came to an end, a demand was made on behalf of the workers of the factory who had been laid-off during the strike, for payment of lay-off compensation under s. 25C of the Industrial Disputes Act, 1947, but the management refused the demand relying on cl. (iii) to s. 25E of the Act, which provided that "no compensation shall be paid to a workman who had been laid-off.....if such laying-off is due to strike..... on the part of workmen in another part of the establishment". The Industrial Tribunal took the view that the limestone quarry was not part of the establishment of the cement factory and that the workmen in the latter were not disentitled to lay-off compensation by reason of cl. (iii) of s. 25E of the Act. The appellant company appealed by special leave to the Supreme Court and contended that the decision of the Tribunal was erroneous because the facts of the case showed (a) that in respect of both the factory and the limestone quarry there was unity of ownership, unity of management, supervision and control, unity of finance and employment, unity

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of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity, and (b) that the strike was decided on by the same Workers' Union which consisted of the workmen at the factory and the quarry. It was contended for the respondents *inter alia* (1) that the conclusion of the Industrial Tribunal that the factory and the limestone quarry are not parts of one establishment is a finding of fact which should not be disturbed in an appeal by special leave, (2) that the effect of the Explanation to s. 25A of the Act is to negative the idea of a factory and a mine forming parts of one establishment, and (3) that since in the matter of reference of industrial disputes, the Act gives jurisdiction to two distinct authorities, the Central Government in respect of the limestone quarry and the State Government in respect of the factory, the two units, the factory and mine, cannot be treated as one establishment.

Held: (1) that the question whether the factory and the limestone quarry form one establishment depends upon the true scope and effect of the expression "in another part of the establishment" in cl. (iii) of s. 25E of the Industrial Disputes Act, 1947, and involves a consideration of the tests which should be applied in determining whether a particular unit is part of a bigger establishment, and though for that purpose certain preliminary facts must be found, the final conclusion to be drawn therefrom is not a mere question of fact;

(2) that the true scope and effect of the Explanation to s. 25A of the Act is that it explains what categories, factory, mine or plantation, come within the meaning of the expression "industrial establishment"; it does not deal with the question as to what constitutes one establishment and lays down no tests for determining that question;

(3) that existence of two jurisdictions does not necessarily imply that for all purposes of the Act, and particularly for payment of unemployment compensation, the factory and quarry must be treated as separate establishments; and,

(4) that on the facts of the present case the limestone quarry and the factory constituted one establishment within the meaning of cl. (iii) of s. 25E of the Act and that the workmen at the factory were not entitled to claim lay-off compensation.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 87 of 1958.

Appeal by special leave from the Award dated October 10, 1956, of the Industrial Tribunal, Bihar, Patna, in Reference No. 6 of 1956.

R. J. Kolah, S. N. Andley and *Rameshwar Nath*, for the appellants.

B. C. Ghose and *P. K. Chatterjee*, for the respondents.

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1959. September 11. The Judgment of the Court was delivered by

S. K. DAS J.—This appeal by special leave from an award dated October 10, 1956, made by the Industrial Tribunal, Bihar, raises an important question of interpretation in the matter of a disqualification for lay-off compensation under s. 25E read with s. 25C of the Industrial Disputes Act, 1947 (hereinafter called the Act), and so far as we know, this is the first case of its kind in which the expression "in another part of the establishment" occurring in cl. (iii) of s. 25E has come up for an authoritative interpretation.

The facts are simple and are shortly set out below. The Associated Cement Companies Ltd., hereinafter called the Company, have a number of cement factories in different States of the Indian Union as also in Pakistan. There are two such factories in the State of Bihar, one at Khelari and the other at a place called Jhinkpani in the district of Chaibasa in Bihar. The latter factory is commonly known as the Chaibasa Cement Works. There is a limestone quarry owned by the same Company situate about a mile and a half from the Chaibasa Cement Works, the quarry being known as the Rajanka limestone quarry. Limestone is the principal raw material for the manufacture of cement and the Chaibasa Cement Works, depended exclusively for the supply of limestone on the said quarry. At the time relevant to this appeal there were two classes of labourers at the quarry, those employed by the Company through the management of the Chaibasa Cement Works and others who were engaged by a contractor. There was one union known as the Chaibasa Cement Workers' Union, hereinafter called the Union, of which the Company's labourers both at the Cement Works and the quarry were members. There was another union consisting of the contractor's labourers which was known as the A. C. C. Limestone Contractor's Mazdoor Union. On January 3, 1955, the Union made certain demands on the management on behalf of the labourers in the limestone quarry, but these were rejected by the management. Then, by a subsequent letter dated February 18,

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1955, the General Secretary of the Union gave a notice to the Manager of the Chaibasa Cement Works to the effect that the Union proposed to organise a general stay-in-strike in the limestone quarry from March 1, 1955, if certain demands, details whereof are unnecessary for our purpose, were not granted on or before February 28, 1955. A similar notice was also given on behalf of the A.C.C. Limestone Contractor's Mazdoor Union. These notices led to certain efforts at conciliation which however, failed. On February 24, 1955, the management gave a notice to all employees of the Chaibasa Cement Works, in which it was stated that in the event of the strike materialising in the limestone quarry, it would be necessary for the management to close down certain sections of the factory at Jhinkpani on account of the non-supply of limestone; the notice further stated that in the event of such closure, it would be necessary to lay off the workers not required during the period of closure for the sections concerned. The strike commenced on March 1, 1955, and lasted till July 4, 1955. On March 25, 1955, the management wrote to the General Secretary of the Union intimating to him that the workers in certain departments referred to in an earlier letter dated March 19, 1955, would be laid-off with effect from April 1, 1955. On March 28, 1955, the management gave the lists of employees who were to be laid-off with effect from April 1, 1955, and they were actually laid-off from that date. During the period of the strike fresh efforts at conciliation were made and ultimately the strike came to an end on July 5, 1955, when the Central Government referred the dispute between the management and the workers of the limestone quarry to the Central Industrial Tribunal at Dhanbad. This reference was, however, withdrawn by mutual consent in terms of a settlement arrived at on December 7, 1955. The details of this settlement are not relevant to this appeal.

Thereafter, a demand was made by the Union for payment of lay-off compensation to those workers of Chaibasa Cement Works who had been laid-off for the period April 1, 1955, to July 4, 1955. This demand

was refused by the management. This gave rise to an industrial dispute which was referred by the Government of Bihar under s. 10 of the Act to the Industrial Tribunal, Bihar. The terms of reference set out the dispute in the following words:—

> "Whether the workmen of the Chaibasa Cement Works are entitled to compensation for lay-off for the period from April 1, 1955, to July 4, 1955."

The parties filed written statements before the Industrial Tribunal and the only witness examined in the case was Mr. Dongray, Manager of the Chaibasa Cement Works, Jhinkpani.

At this point it is necessary to read the two sections of the Act which relate to the right of workmen to lay-off compensation and the circumstances in which they are disqualified for the same. The right is given by s. 25C and the disqualification is stated in three clauses of s. 25E, of which the third clause only is important for our purpose. We now proceed to read ss. 25C and 25E so far as they are material for our purpose.

> "S. 25C. (1) Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off."
>
> "S. 25E. No compensation shall be paid to a workman who has been laid-off—
>
> (i) .....
>
> (ii) .....
>
> (iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment."

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Now, the central point round which the controversy between the parties has raged is this. Was the lay-off of the workers in certain sections of the Chaibasa Cement Works due to a strike on the part of workmen in another part of the establishment within the meaning of cl. (iii) of s. 25E ? In other words, was the limestone quarry at Rajanka part of the establishment known as the Chaibasa Cement Works ? The contention of the management was and is that the Cement Works and the limestone quarry form one establishment within the meaning of cl. (iii) aforesaid. The contention on behalf of the workmen is that they are not parts of one establishment but are separate establishments. The learned Chairman of the Industrial Tribunal held, for reasons which we shall presently discuss, that the limestone quarry was not part of the establishment known as the Chaibasa Cement Works and the workmen in the latter were not disentitled to lay-off compensation by reason of cl. (iii) of s. 25E. The correctness of this view is the principal point for decision in this appeal.

On behalf of the respondent workmen it has been contended that the conclusion of the Industrial Tribunal that the factory at Jhinkpani and the limestone quarry at Rajanka are not parts of one establishment is a finding of fact and this appeal should be disposed of on that footing. We do not think that this contention is correct and we shall presently deal with it. We propose, however, to examine first the relation between the limestone quarry at Rajanka and the cement factory at Jhinkpani in the light of the evidence given before the Tribunal and the findings arrived at by it; because they will show the process of reasoning by which the Tribunal came to its final conclusion.

The evidence was really onesided and the only witness examined was Mr. Dongray, Manager of the Chaibasa Cement Works. Now, the relation between the limestone quarry and the factory can be considered from several points of view, such as (1) ownership, (2) control and supervision, (3) finance, (4) management and employment, (5) geographical proximity and (6) general unity of purpose and functional integrality,

with particular reference to the industrial process of making cement. On all that above points Mr. Dongray gave evidence. It was not disputed that the Company owned the limestone quarry as also the factory and there was unity of ownership. Mr. Dongray's evidence further showed that there was unity of control, management and employment. He said that the limestone quarry was treated as a part and parcel of the Chaibasa Cement Works, that is, as a department thereof and he as the Manager was in overall charge of both, though there was a Quarry Manager in charge as a departmental head under him. On this point Mr. Dongray said :—

> " There is a Manager appointed for the quarries. The Manager is working under me. The Cement Works itself has about eight or nine departments under it. There are heads of each department. The Manager of the quarry has the same status as the heads of other departments at the Cement Works."

This was supported by a circular letter dated March 11, 1952, which said that the entire factory and the associated quarries were under the sole control of the Manager, who was responsible for maintaining full output at economic cost up to the expected standard. The circular letter further stated that all orders and contracts were to be issued by the Manager for the working of the factory and quarries and the relevant bills were to be passed by him. As to finance and conditions of employment, Mr. Dongray said :—

> " All requirements of the quarry are sent by the Manager there to the office of the Cement Works and if they are available in the Cement Works Stores, they are issued from there; otherwise I indent them from the Bombay office or purchase them locally. There is no account office in the quarries and their account is maintained in the Cement Works' Office. I as Manager of the Chaibasa Cement Works make payment for the indents or requirements of the quarries stated above. The quarry has no separate banking account. The Quarry Manager is not entitled to operate banking account apart from myself. At the quarries there are daily-rated workers and monthly-paid staff.

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To the daily-paid workers in the quarries, the cashier of the Cement Works or his Assistant makes payment, when required. The monthly-paid staff of the quarries come to the Cement Office for receiving payment. In the Cement Works we have got a system of allocation of work for different jobs every day. It is done by the Departmental Heads. Same system prevails in the quarries also. The Quarry Manager does the distribution as head of that department. Attendance Register is maintained at the quarry in the same way as it is done in the different departments of the Cement Works. There is only one common pay sheet for all the monthly-paid staff, whether he is at the factory or in the quarries. For the daily-rated workers we have got different sheets department-wise and there is one such sheet for the daily workers of the quarry as well. There is one summary sheet of the payment showing the payment of all the departments including the payment in the quarries as well. I have to send statutory intimation to the authorities under the Mines Act regarding the quarries for working faces and other accidents etc. The staff and workers working in the quarries are transferable to the Cement Works according to the exigencies of the work and also *vice versa*. There have been a few instances of such transfers. The terms and conditions of service, for instance, T. A., leave, provident fund, gratuity, etc., are same for workers in the Cement Works as also the workers in the quarries. We got the application of the statutory provident fund rules extended to our department in the quarries also. The report of the working of the quarry comes to me from the Manager there from time to time. I as Manager of the Cement Works make payments of royalties in in respect of limestones raised from the quarries. Payments for compensation, maternity benefits, accidents, etc., in the quarry are made under my authority by the factory office and not by the Quarry Manager."

Exhibits 1 to 26 filed on behalf of the management, which showed the working of the quarry and the

factory, supported the aforesaid evidence of Mr. Dongray; they showed, as has been observed by the Tribunal itself, that the management was maintaining one common account and the final authority on the spot in respect of the quarry as also in respect of other departments of the factory was Mr. Dongray, the Manager. There were also other documents to show that the transfer of members of the staff from the quarry to the factory and *vice versa* was made by Mr. Dongray according to the exigencies of service. It is worthy of note here that the Union itself gave notice to the Manager of the factory with regard to the intended strike in the limestone quarry. The geographical proximity of the limestone quarry was never in dispute. It was adjacent to the factory, being situate within a radius of about a mile. As to general unity of purpose and functional integrality, this was also not seriouly in dispute. Mr. Dongray said that limestone was the principal raw material for the manufacture of cement and the cement factory at Jhinkpani depended exclusively on the supply of limestone from the quarry at Rajanka. His evidence no doubt disclosed that some excess limestone was sent to the factory at Khelari as well. On this point Mr. Dongray said:—

> "Limestone from this quarry is at times sent to the Khelari Cement Works, but that is very rare and in small quantity. It is done only in cases of emergency."

Mr. Dongray explained that the normal number of departmental workers in the quarry before the strike was in the neighbourhood of 250; but there were about 1,000 workers employed by contractors. The number of daily-rated workers was in the neighbourhood of 950 and the total monthly-paid staff varied from 100 to 105. The wages paid to the workers in the quarry were debited to limestone account of the Cement Works, and in the matter of costing, the amount spent on limestone was also debited. The bank accounts, however, were in the name of the Company and the persons who were entitled to operate on those accounts were Mr. Dongray, the Manager, the Chief Engineer, and the Chief Chemist of the Cement Works.

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All the aforesaid evidence, oral and documentary, was apparently accepted by the Tribunal as correct; for the learned Chairman summarised the evidence of Mr. Dongray without any serious adverse comment. He then referred to certain contentions urged on behalf of the Union, which he said were not without force. We may now state those contentions. The first contention was that under the provisions of the Act, the appropriate authority in respect of the factory at Jhinkpani was the State Government of Bihar, whereas the appropriate authority in respect of the limestone quarry, which was a mine as defined in the Mines Act, 1952, was the Central Government. The second contention was that there were two sets of Standing Orders, one for the workmen of the factory and the other for the workmen in the limestone quarry. The third contention was that the limestone quarry had an office of its own and a separate attendance register, and the fourth contention was that under the provisions of the Mines Act, 1952, Mr. Dongray was an Agent in respect of the limestone quarry and there was a separate Manager who was responsible for the control, management and direction of the mine under the provisions of s. 17 thereof. The learned Chairman referred to certain criticisms made in respect of the evidence of Mr. Dongray. One criticism was that though the Company was the owner of both the factory and the limestone quarry, it had also factories and limestone quarries at other places in India and Pakistan and if the test of one ownership were the determining test, then all the factories and limestone quarries of the Company wherever situtate would be one establishment. This criticism was not, however, pertinent because the Company never claimed that all its factories in different parts of India and Pakistan formed one establishment by reason of unity of ownership only. The other criticism was that Mr. Dongray admitted that, if necessary in the interest of service, the workmen at the Chaibasa Cement Works could be transferred to some other factory of the Company and therefore transferability was not a sure test. This criticism was also not germane, because the Company

never claimed that transferability was the only sure test. A third criticism also advanced on behalf of the workmen was that Mr. Dongray admitted that all the accounts of the different factories and limestone quarries of the Company were ultimately consolidated into one Profit and Loss Account, a criticism which in our view was equally not pertinent to the question at issue. The learned Chairman then expressed his final finding in the following words:—

> "From these and other admissions made by Mr. Dongray it would appear that it is only for economy and convenience that he was given charge of the control of both the concerns but his capacity was dual. While he was controlling the Cement Works as it Works Manager he had the control of the quarries as its Agent under the Mines Act. It has also to be noted that if both these establishments which are inherently different by their very nature are treated as one and the same, anomalous position may arise in dealing with the employees in the quarries in matters of misconduct and such other things if there is a pendency of a dispute in the Cement Works and *vice versa*. Obviously, the employees of the Cement Works have to be dealt with by the State Tribunal while the employees of the quarries by the Central Tribunal. This also nullifies the force of the management's contention that both are parts of the same establishment. Considering these it has to be held that the contention of the management fails and that of the Union must prevail."

We now revert to the contention urged on behalf of the respondent that this appeal should be disposed of on the footing that the final conclusion of the Industrial Tribunal is a finding of fact. The judgment of the Tribunal itself shows that the final conclusion was arrived at by a process of reasoning which involved a consideration of several provisions of the Act and some provisions of the Mines Act, 1952. The Tribunal accepted a major portion, if not all, of the evidence of Mr. Dongray; but it felt compelled to hold against the appellant despite that evidence by reason of an

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anomalous position which, it thought, would arise if the factory and the quarry were held to be one establishment. The question before the Tribunal, and this is also the question before us, was the true scope and effect of cl. (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 tests 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. Learned counsel for the respondent is not, therefore, justified in asking us to adopt the short cut of disposing of the appeal on the footing that a finding of fact should not be disturbed in an appeal by special leave. In this case we cannot relieve ourselves of the task of determining the true scope and effect of cl. (iii) of s. 25E by adopting the short cut suggested by learned counsel.

We proceed now to consider what should be the proper tests in determining what is meant by "one establishment". Learned counsel for the respondent has suggested that the test has been laid down by the Legislature itself in the Explanation to s. 25A of the Act. That Explanation states:—

> "In this section and in sections 25C, 25D and 25E, "industrial establishment" means—
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> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948; or
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> (ii) a mine as defined in clause (j) of section 2 of the Mines Act, 1952; or
>
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951."

The argument is that the Explanation states in clear terms what an industrial establishment means in certain sections of the Act including s. 25E, and on a proper construction it negatives the idea of a factory and a mine forming parts of one establishment. Curiously enough, s. 25E does not contain the

expression "industrial establishment". It uses the word "establishment" only. We agree, however, that if s. 25E is read with s. 25C and the definition of "lay-off" in s. 2 (kkk) of the Act, as it must be read, the word "establishment" in s. 25E has reference to an industrial establishment. On the footing that the word "establishment" in s. 25E means an industrial establishment, what then is the effect of the Explanation? The contention of the respondent is that an industrial establishment may be either a factory as defined in clause (m) of s. 2. of the Factories Act, 1948, or a mine as defined in cl. (j) of s. 2 of the Mines Act, 1952, or a plantation as defined in cl. (f) of s. 2 of the Plantations Labour Act, 1951; but it cannot be a combination of any two of the aforesaid categories; therefore, a factory and a mine together, as in the present case, cannot form one establishment. This argument proceeds on the assumption that the Explanation while stating what undertakings or enterprises come within the expression "industrial establishment" necessarily lays down the test of 'one establishment' also. We do not think that there is any warrant for this assumption. The Explanation only gives the meaning of the expression "industrial establishment" for certain sections of the Act; it does not purport to lay down any test as to what constitutes one 'establishment'. Let us take, for example, a factory which has different departments in which manufacturing processes are carried on with the aid of power. Each department, if it employs ten or more workmen, is a factory within the meaning of cl. (m) of s. 2 of the Factories Act, 1948; so is the entire factory where 1,000 workmen may be employed. The Explanation merely states that an undertaking of the nature of a factory as defined in cl. (m) of s. 2 of the Factories Act, 1948, is an industrial establishment. It has no bearing on the question if in the example taken, the factory as a whole or each department thereof should be treated as one establishment. That question must be determined on other considerations, because the Explanation does not deal with the question of one establishment. In our view, the true scope and effect

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of the Explanation is that it explains what categories, factory, mine or plantation, come within the meaning of the expression "industrial establishment"; it does not deal with the question as to what constitutes one establishment and lays down no tests for determining that question. We cannot, therefore, accept the argument of learned counsel for the respondent that a factory and a mine, a mine which supplies the raw material to the factory, can never be one establishment under the Act; that we do not think is the effect of the Explanation to s. 25A.

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. In an American decision (*Donald L. Nordling* v. *Ford Motor Company* (1)) there is an example of an industrial product consisting of 3,800 or 4,000 parts, about 900 of which came out of one plant; some came from other plants owned by the same Company and still others came from plants independently owned, and a shutdown caused by a strike or other labour dispute at any one of the plants might conceivably cause a closure of the main plant or factory.

Fortunately for us, such complexities do not present themselves in the case under our consideration. We do not say that it is usual in industrial practice to have one establishment consisting of a factory and a mine; but we have to remember the special facts of this case where the adjacent limestone quarry supplies the raw material, almost exclusively, to the factory; the quarry is indeed a feeder of the factory and without limestone from the quarry, the factory cannot function. Ours is a case where *all* the tests are fulfilled,

(1) (1950) 28 A.L.R., 2d. 272.

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as shown from the evidence given on behalf of the appellant to which we have earlier referred. There are unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity. We shall presently deal with the legal difficulties at which the Tribunal has hinted and which have been elaborated by learned counsel for the respondent. But apart from them, the only fair conclusion from the facts proved in the case is that the Chaibasa Cement Works consisting of the factory and the limestone quarry form one establishment. The existence of two sets of Standing Orders and a separate attendance register for the limestone quarry have already been adverted to. They have been sufficiently explained by Mr. Dongray, particularly the existence of two sets of Standing Orders by reason of the statutory requirement of approval by different authorities—one set by the Labour Commissioner, Bihar, and other by the relevant Central authority.

We proceed now to consider the legal difficulties which according to learned counsel for the respondent stand in the way of treating the limestone quarry and the factory as one establishment. The Tribunal has merely hinted at these difficulties by saying that an anomalous position will arise if the quarry and the factory are treated as one establishment. It is necessary to refer briefly to the scheme and object of lay-off compensation and the disqualifications therefor as envisaged by the relevant provisions in Chapter VA of the Act. That chapter was inserted by the Industrial Disputes (Amendment) Act, 1953 (43 of 1953), which came into effect from October 24, 1953. The right of workmen to lay-off compensation is obviously designed to relieve the hardship caused by unemployment due to no fault of the employee; involuntary unemployment also causes dislocation of trade and may result in general economic insecurity. Therefore, the right is based on grounds of humane public policy and the statute which gives such right should be

liberally construed, and when there are disqualifying provisions, the latter should be construed strictly with reference to the words used therein. Now, s. 25C gives the right, and there are three disqualifying clauses in s. 25E. They show that the basis of the right to unemployment compensation is that the unemployment is involuntary; in other words, due to no fault of the employees themselves; that is why no unemployment compensation is payable when suitable alternative employment is offered and the workman refuses to accept it as in cl. (i) of s. 25E; or the workman does not present himself for work at the establishment as in cl. (ii); or when the laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment as in cl. (iii). Obviously, the last clause treats the workmen in one establishment as one class and a strike or slow-down by some resulting in the laying-off of other workmen disqualifies the workmen laid-off from claiming unemployment compensation, the reason being that the unemployment is not really involuntary.

It is against this background of the scheme and object of the relevant provisions of the Act that we must now consider the legal difficulties alleged by the respondent. The first difficulty is said to arise out of s. 17 of the Mines Act, 1952. That section says in effect that every mine shall be under a Manager having prescribed qualifications who shall be responsible for the control, management and direction of the mine; it is then pointed out that the word 'agent' in relation to a mine means a person who acts as the representative of the owner in respect of the management of the mine and who is superior to a Manager. The argument is that the limestone quarry at Rajanka had a 'Manager' under the Mines Act, 1952, and Mr. Dongray acted as the agent, that is, representative of the owner, viz., the Company; and this arrangement which was in consonance with the provisions of the Mines Act, 1952, it is argued, made the factory and the quarry two separate establishments. We are unable to accept this argument as correct. We do not think that s. 17 of the Mines Act, 1952, has any relevance

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to the question whether the limestone quarry was part of a bigger establishment. It prescribes the appointment of a Manager for purposes of the Mines Act, 1952, and does not deal with the question of 'one establishment' within the meaning of cl. (iii) of s. 25E of the Act. The fact that the quarry Manager worked under the overall control and supervision of Mr. Dongray showed, on the facts proved in this case, just the contrary of what learned counsel for the respondent has contended; it showed that the factory and the quarry were treated as one establishment.

The second difficulty is said to arise out of certain provisions of the Act which relate to the constitution of Boards of Conciliation, Courts of Inquiry, Labour Courts and Tribunals and the reference of industrial disputes to these bodies for settlement, inquiry or adjudication. The scheme of the Act is that except in the case of National Tribunals which are appointed by the Central Government, the appropriate Government makes the appointment of Boards of Conciliation, Courts of Inquiry, Labour Courts and Tribunals and it is the appropriate Government which makes the reference under s. 10 of the Act. Now, the expression appropriate Government is defined in s. 2(a) of the Act. So far as it is relevant for our purpose, it means the Central Government in relation to the limestone quarry at Rajanka and the State Government of Bihar in relation to the factory at Jhinkpani. We had stated earlier in this judgment that in this very case the original dispute between the management and the workmen in the limestone quarry was referred to the Central Tribunal at Dhanbad, while the latter dispute about lay-off compensation to workmen of the factory was referred by the Government of Bihar to the Industrial Tribunal at Patna. The argument before us is that when the statute itself brings the two units, factory and mine, under different authorities, they cannot be treated as one establishment for the purposes of the same statute. Our attention has also been drawn to s. 18(3) of the Act under which in certain circumstances, a settlement arrived at in the course of conciliation proceedings under the Act or an award of

a Labour Court or Tribunal is made binding "on all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part." It is contended that it will be difficult to apply s. 18(3) if the factory and the limestone quarry are treated as one establishment. Lastly, learned counsel for the respondent has referred us to s. 33 of the Act. Sub-section (1) of that section, in substance, lays down that during the pendency of any conciliation proceedings or of any proceeding before a Labour Court or Tribunal in respect of any industrial dispute, no employer shall alter the conditions of service to the prejudice of workmen or punish any workmen, save with the permission in writing of the authority before which the proceeding is pending. Sub-sections (2) and (3) we need not reproduce, because for the purposes of this appeal, the argument is the same, which is that if a proceeding is pending before a Central Tribunal, say in respect of the limestone quarry, there will be difficulty in applying the provisions of s. 33 in respect of workmen in the factory over which the Central Tribunal will have no jurisdiction. The Industrial Tribunal did not specifically refer to these provisions, but perhaps, had them in mind when it said that an anomalous position would arise if the factory and the quarry were treated as one establishment.

We have given our most earnest consideration to these arguments, but are unable to hold that they should prevail. It is indeed true that in the matter of constitution of Boards of Conciliation, Courts of Inquiry, Labour Courts and Tribunals and also in the matter of reference of industrial disputes to them, and perhaps for certain other limited purposes, the Act gives jurisdiction to two distinct authorities, the Central Government in respect of the limestone quarry and the State Government in respect of the factory. The short question is—does this duality of jurisdiction, dichotomy one may call it, necessarily imply that for all purposes of the Act, and particularly for

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payment of unemployment compensation as per the provisions in Ch. VA, the factory and the quarry must be treated as separate establishments. We are unable to find any such necessary implication. There is no provision in the Act which says that the existence of two jurisdictions has the consequence contended for by learned counsel for the respondent; nor do we find anything in the provisions creating two jurisdictions which by reason of the principle underlying them or by their very nature give rise to an implication in law that the existence of two jurisdictions means the existence of two separate establishments. On the contrary, such an implication or inference will be at variance with the scheme and object of unemployment compensation as provided for by the provisions in Ch. VA of the Act. We have pointed out earlier that the object of unemployment compensation is to relieve hardship caused by involuntary unemployment, that is, unemployment not due to any fault of the employees. If in the ordinary business sense the industrial establishment is one, a lay-off of some of the workmen in that establishment as a result of a strike by some other workmen in the same establishment cannot be characterised as involuntary unemployment. To hold that such an establishment must be divided into two separate parts by reason of the existence of two jurisdictions is to import an artificiality for which we think there is no justification in the provisions of the Act.

Nor do we think that ss. 18(3) and 33 present any real difficulty. Section 18(3) clearly contemplates a settlement or an award which is binding on a *part of the establishment*. It says so in express terms. If, therefore, in the case before us there is a settlement or award in respect of the limestone quarry, it will be binding in the circumstances mentioned in the sub-section, on the workmen in that part of the establishment which is the limestone quarry. Similarly, a settlement or award in respect of the factory will be binding on the workmen of the factory. Section 33, as far as it is relevant for the argument now under consideration, is in two parts. Sub-section (1) relates

to a matter connected with the dispute in respect of which a proceeding is pending. Sub-section (2) relates to a matter not connected with the dispute in respect of which the proceeding is pending. In one case permission of the authority before which the proceeding is pending has to be obtained for punishing etc.; in the other case, an application for approval of the action taken by the employer has to be made. We see no difficulty in applying s. 33 in a case like the one before us. For workmen in the mine, the authority will be the one appointed by the Central Government; for the factory, the authority will be that appointed by the State Government. This is the same argument as the argument of two jurisdictions in another form. The assumption is that there cannot be two jurisdictions for two parts of one establishment. This argument is valid, if the assumption is correct. If, however, there is no warrant for the assumption, as we have held there is none, then the argument has no legs to stand upon.

So far we have dealt with the case irrespective of and apart from reported decisions, because there is no decision which really covers the point in controversy before us. Learned counsel for the appellant has referred to the decisions in *Hoyle* v. *Cram* (1) and *Coles* v. *Dickinson* (2). The question in the first case was if the appellants there were liable to be convicted of an offence against the Bleaching Works Act, 23 and 24 Vict. c. 78 in employing the child without a school master's certificate. It was held that a child employed on the premises where the bleaching, dyeing and finishing were performed was employed in an incidental printing process within the second section of 8 and 9 Vict. c. 29; and that the place where he was so employed formed part of "the establishment where the chief process of printing was carried on" within the meaning of that Act. The decision proceeded mainly on the words of the statute; but Earle, C.J., said:

"It appears that the works at Mayfield having some years ago become inadequate, by reason of the

(1) (1862) 12 C.B. (N.S.) 125; 142 E.R. 1090.
(2) (1864) 16 C.B. (N.S.) 604; 143 E.R. 1264.

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increase of the business and by the detorioration and deficiency of the water of the river Medlock, the appellants transferred part of their works to Sandy Vale: but that the principal part of the work continued to be carried on at Mayfield, which was the principal seat of the firm. In a commercial sense, therefore, Sandy Vale clearly was part of one entire establishment. It was contended for the respondent that the statute did not mean forming part in a commercial sense, but in a popular and local sense. But I see no reason for confining the meaning to local proximity. The whole substantially forms one establishment."

In the second case the question was this: by the 73rd section of 7 and 8 Vict. c. 15, premises which are used solely for the manufacture of paper were excluded from the operation of the Factory Acts; there were two mills, one at Manchester and the other in Hertfordshire. The Manchester mill prepared what was called half-stuff which was sent to the mill in Hertfordshire to be manufactured into paper, and the question was if the Manchester mill was exempted from the operation of the Factory Acts. The answer given was in the affirmative. It was stated that each step in the process was a step in the manufacture of paper, and the distance between the two places where the several parts were carried on was wholly immaterial in view of the words of the statute.

The last decision to which our attention has been drawn is the American decision in *Donald L. Nordling* v. *Ford Motor Company* (1). This decision is perhaps more in point as it related to unemployment compensation. The statute in that case provided that an individual losing his employment because of a strike or other labour dispute should be disqualified during its process "at the establishment in which he is or was employed". The claimants there had been employed at a Minnesota automobile assembly plant which was partially shut down because of a lack of parts due to a strike at a manufacturing plant owned and operated by the same corporation in Michigan. The Minnesota Supreme Court to which an application was made for

(1) (1950) 28 A.L.R. 2d. 272.

a *certiorari* to review a decision of the director of the division of employment and security reviewed the tests which have generally been applied for determining what is meant by the term 'establishment' within the meaning of the statute concerned; it pointed out that there was no uniformity of decision on the question and it was not possible to lay down an absolute or invariable test. The decision was based on the broader ground that the tests of functional integrality, general unity and physical proximity should all be taken into consideration in determining the ultimate question of whether a factory, plant or unit of a larger industry is a separate establishment within the meaning of the employment and security law. The test which was emphasized in that case was the test of the unity of employment and on that footing it was found that the evidence was ample to support the director's finding that the Minnesota plant was a separate establishment.

We do not think that these decisions carry the matter any further than what we have explained in earlier paragraphs of this judgment. 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.

For the reasons which we have already given, we are of the view that the learned Chairman of the Industrial Tribunal wrongly held that the limestone quarry at Rajanka and the factory at Jhinkpani were separate establishments. In our view, they constituted one establishment within the meaning of cl. (iii) of

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s. 25E of the Act. It was conceded on behalf the respondent workmen that the lay-off in the factory was due to the non-supply of limestone by reason of the strike in the limestone quarry and the strike was decided on by the same Union which consisted of the workmen at the factory and the quarry. That being the position, the disqualification in cl. (iii) aforesaid clearly applied and the workmen at the factory were not entitled to claim lay-off compensation.

The result, therefore, is that the appeal succeeds and is allowed and the award of the Industrial Tribunal is set aside. In the circumstances of the case in which a difficult question of interpretation arose for decision for the first time, we pass no order as to costs.

Appeal allowed.

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September 14

THE STATE OF BIHAR

v.

HIRALAL KEJRIWAL AND ANOTHER

(SYED JAFER IMAM and K. SUBBA RAO, JJ.)

Repeal of Statute—Saving clause—Interpretation of—Cotton Textiles (Control of Movement) Order, 1948, whether continues in force—Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946),, ss. 1(3) and 3(1)—Essential Commodities Ordinance, 1955, (Ordinance I of 1955), s. 16—Essential Commodities Act, 1955 (X of 1955), s. 16.

Appeal by special leave—Interference in—Constitution of India, Art. 136.

In exercise of the powers under s. 3 of the Essential Supplies (Temporary Powers) Act, 1946, the Central Government made the Cotton Textile (Control of Movement) Order, 1948. The 1946 Act was to expire on January 26, 1955, but before that, on January 21, 1955, the Essential Commodities Ordinance was promulgated which conferred on the Central Government a power similar to that conferred by s. 3 of the 1946 Act. Section 16 of the Ordinance provided that all Orders made under the 1946 Act in so far as such Orders could be made under the Ordinance shall continue in force and that accordingly any appointment made, license or permit granted or direction issued under any such Order shall continue in force. The Essential Commodities Act, 1955 by s. 16(1)(a) repealed the Ordinance and by s. 16(1)(b)