Bombay High Court Johnson And Johnson Employees' ... vs Johnson And Johnson Ltd. And Ors. on 14 July, 2004 Equivalent citations: (2005) ILLJ 746 Bom Author: D Chandrachud Bench: D Chandrachud JUDGMENT D.Y. Chandrachud, J. 1. Rule, returnable forthwith. Learned counsel for the Respondents waive service. By consent taken up for hearing and final disposal. 2. On August 16, 1999, the Petitioners instituted a complaint before the Industrial Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, complaining of unfair labour practices under Item 5 of Schedule II and Items 9 and 10 of Schedule IV. The first Petitioner is a registered Trade Union which claims to have a membership of all the 142 workmen engaged by the First Respondent in its Permacel Division at Andheri. The Union had entered into seven settlements with the employer since 1981, the last of them on July 21, 1999. On August 13, 1999, a Press Note appeared in the daily edition of the Economic Times stating that the First Respondent had sold and transferred its Permacel Division at Andheri to a Company forming part of the Premchand Group headed by Mr. Susheel Premchand. The Union stated that it was kept in dark about the proposed transaction even as late as July 21, 1999 when the last settlement was signed. From the office of the Registrar of Companies, it was found that a Company by the name of Permacel Pvt. Ltd., had been incorporated on June 22, 1999 by the Premchand Group. The Union thereupon addressed a letter to the First Respondent on August 14, 1999. It was allegedly sought to be delivered to the Executive Vice President who refused to accept it stating that the Andheri Division now belonged to a new Company. At a meeting held on August 14, 1999, the office bearers of the Union were stated to have been informed that the Andheri Division had been sold, though no further information was disclosed. The gravamen of the complaint is that 142 employees represented by the First Respondent were given job security by the First Respondent and were required to serve as workmen of that Company. The Union submitted that the transfer of the Andheri Division without taking the Union into confidence, attracted Item 5 of Schedule II and in the event that the sale was complete, there was an unfair labour practice under Items 9 and 10 of Schedule IV. The relief which was sought was a declaration that the employees continued to be workmen of the First Respondent, a direction to the First Respondent to continue the workmen in service in accordance with the terms and conditions of service in the last settlement; an injunction restraining the First Respondent from transferring or selling the Andheri Plant and a direction to continue the employees on the roll. 3. The First Respondent filed its written statement on September 20, 1999 and set up a plea that the Permacel business together with the factory establishment came to be sold to the Second Respondent under an agreement of sale dated August 10, 1999. The transferee Company, the Second Respondent is said to be owned by the Premchand family, the original promoter of Johnson and Johnson in India and it was averred that the Second Respondent belonged to a group of Industrial Companies known as the Premchand Roychand Group. The First Respondent stated that the terms of the agreement for sale provided that all the workmen and staff employed in the Permacel Division factory establishment

would continue in the employment of the Second Respondent without any interruption of service and the conditions of service would not be less favourable than those applicable immediately before the transfer. Under the terms of the transfer, it was averred, the Second Respondent would be liable to pay compensation in the event of retrenchment as if their services were continuous and had not been disrupted on transfer. According to the First Respondent, the conditions of service 'spelt out in the last settlement would be implemented by the Second Respondent and accordingly letters were delivered to the individual workmen on August 16, 1999. Effective from August 11, 1999, 142 employees hitherto in the employment of the First Respondent were stated to have been transferred as employees of the Second Respondent. 4. Evidence was adduced in the course of the proceedings before the Industrial Court both on behalf of the Complainant and on behalf of the Respondents. The proceedings have culminated in an order of the Industrial Court dated February 13, 2004 by which the complaint has been dismissed. The Industrial Court was of the view that Section 25-FF of the Industrial Disputes Act, 1947 does not provide for consultation with the Union or its consent for the transfer of an industrial undertaking. In the circumstances, the Court was of the view that no unfair labour practice has been established under Item 5 of Schedule II and Items 9 or 10 of Schedule IV. 5. Before the Industrial Court, parties proceeded on the basis that if the transfer of an undertaking is not bona fide or, if the transfer is bogus, fictitious, mala fide or benami in character, the transfer would be not only illegal, but would have no effect in law and would have to be ignored. Having said this, the Industrial Court, however, held that the transfer of the undertaking had been effected by a registered sale deed and, therefore, had to be construed as a transfer by the operation of law. The Court held that once transfer was by operation of law, it must be held to be valid and binding. The Industrial Court has, therefore, in the circumstances, declined to go into the question as to whether the transfer was in fact not a genuine transfer on the ground that once it is a transfer by operation of law, it must be presumed to be valid and binding unless the transaction of sale is set aside by the competent forum. 6. During the pendency of the proceedings before the Industrial Court, there was a controversy in regard to the issue as to whether the First Respondent can be compelled to disclose the terms of the agreement of sale that was arrived at between the parties. The First Respondent took the plea before the Industrial Court that it was not bound to disclose the agreement and, the proceedings at the interim stage came up before this Court and culminated in an order dated August 29, 2000 in Writ Petition 1809 of 2000. The Industrial Court had directed the First Respondent to place the document in a sealed cover, but by an interim order dated July 19, 2000 had rejected an application for inspection. When the matter came up before this Court, an agreement was arrived at between the parties to the effect that the document which had been placed in a sealed cover may be perused by the Judge of the Industrial Court upon which a copy of such portions of the agreement dated August 10, 1999 which pertained to the conditions of service of the workmen, in the First Respondent as well as in the transferee upon the transfer of the undertaking would be made available to the Petitioners. Moreover, it was

clarified that it would be open to the Industrial Court to allow disclosure and inspection of any part of the agreement if in the course of the evidence which is recorded, such disclosure or inspection was considered necessary by the Industrial Court. Thereupon, the Industrial Court passed an order on December 5, 2003 dismissing the application for inspection of the original deed of assignment. That order was challenged before this Court in a writ petition which was disposed of on January 27, 2004. The Learned single Judge noted that in so far as the main complaint is concerned, there appears to be no express challenge to the validity of the Deed of Assignment and, inspection has been furnished in respect of such part of the Deed of Assignment which (sic) pertained to the rights of the service conditions of the employees. The Court, however, gave liberty to the Petitioners to raise their grievances after a final order was passed. 7. After the complaint was finally decided and the Petition was filed before this Court, a copy of the agreement dated August 10, 1999 was placed for the perusal of the Court. At that stage, this Court was of the view, prima facie, that there was no justification for withholding a copy of the document from the Petitioners. A copy was fairly supplied by counsel appearing on behalf of the First Respondent to counsel for the Petitioners. The agreement has accordingly been perused and submissions have been urged before this Court on the basis thereof. 8. Counsel appearing on behalf of the Petitioners has urged that the Industrial Court has ex-fade fallen in error in declining to investigate into the submission as to whether the transfer was, as a matter of fact, bogus or fictitious. Counsel sought to submit that the Second Respondent is a Company floated by Johnson and Johnson (I) Ltd. The first Directors were respectively, the Managing Director and Senior Vice President of Johnson and Johnson; the share capital of the Second Respondent until March 31, 2000 was an amount of Rs. 2000/- consisting of 10 shares of Rs. 200/-each and it was only during the year 2000-01 that the capital came to be enhanced to Rs. 90 lakhs. On the other hand, the transaction for the sale of the undertaking was for a consideration of Rs. 27.8 crores and it was urged that it appears that the entire transaction had taken place on the strength of a promissory note. Counsel submitted that since the First Respondent had sought to rely upon the Agreement of August 10, 1999, it was for : the First Respondent to prove the existence of the agreement and of the bona fides of the transaction. Parties, it was urged, went to trial on the basis that the Agreement dated August 10, 1999 was a foundation of the transfer from the First Respondent to the Second Respondent. 9. On the other hand, it was sought to be urged on behalf of the Respondents that (i) There was no challenge to the Agreement dated j August 10, 1999; (ii) That even upon the disclosure of the Agreement in this Court, there is absolutely no basis for the contention that the transaction is bogus or fictitious; (iii) As a matter of fact, the transaction that has been -arrived at between the parties is entirely genuine and bona fide; (iv) Neither in the pleadings, nor in the evidence has any case been set up to the effect that the transaction between the First and Second Respondents was -bogus or fictitious; (v) That nearly five years' have now elapsed after the transfer of the undertaking and there has been no termination of the work force; (vi) The Second Respondent is functioning during this period and it

is impossible to therefore, hold that the" transaction was bogus or fictitious and; (vii) In view of the limited jurisdiction under the Act, the complaint had to be dismissed. 10. In considering the tenability of the-'rival submissions which have been urged before the Court, it would, at the outset, be worthwhile to advert to the provisions of Section 25-FF of the Industrial Disputes Act, 1947 which are as follows: l "25-FF. Compensation to workmen in case of transfer of undertaking.- Where the ownership or management of an undertaking is transferred, whether by, agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who had been in continuous service for not less than one year in that undertaking immediately, before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched: Provided that nothing in this Section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if- (a) the service of the workman has not been interrupted by such transfer. (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has been interrupted by the transfer." What Section 25-FF thus provides is with reference to a situation where the ownership or management of an undertaking is transferred whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer. In such an event every workman who had been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched. What the proviso to Section 25-FF does is to lay down that nothing in the Section shall apply to a workman where there has been a change of the employers by reason of the transfer if certain conditions are fulfilled. These conditions are: (i) that the service of the workman has not been interrupted by the transfer; (ii) the terms and conditions of service after transfer are not less favourable than those applicable to him immediately prior thereto; and (iii) the new employer is legally liable to pay in the event of retrenchment, compensation on the basis that the service has been continuous and has not been interrupted. 11. In the present case, Clause 31 of the agreement that was entered into on August 10, 1999 specifically incorporates conditions which are laid down under the proviso to Section 25-FF. As a result of Clause 31, it is clear that the services of the workman have not been interrupted by the transfer. Moreover, it has been provided that the transferee shall not modify any conditions governing the employment of an employee unless it is agreed by the employee. Moreover, with effect from the closing date, the transferee is to provide all the entitlements and benefits to employees on the basis that their services shall be deemed to have been continued and not to have been interrupted by reason of the sale of the business undertaking. 12. The provisions of Section 25-FF came up for consideration before a Constitution Bench of the

Supreme Court in Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen, . The Supreme Court held that the first part of the Section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen, engaged by the said undertaking comes to an end and it consequently provides for payment of compensation to the employees as if they were retrenched under Section 25-FF. The words 'as if denotes that though the termination of service on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the termination was a retrenchment. The nature of compensation is that which has been prescribed in Section 25-F. The only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers and no claim can be made against the transferee concern. However, if the three conditions which are specified in the proviso are satisfied, there is no termination of service either in fact or in law, and consequently, there is no scope for the payment of any compensation. Unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. However, if a transfer is fictitious or benami, Section 25-FF has no application at all. In such a case, there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation. These principles are now a part of the settled body of law and have been consistently followed since. 13. In the present case, apart from the provisions contained in Clause 31 of the Deed of Assignment, a communication was addressed to each one of the workmen on August 16, 1999. The communication confirmed that the services of the workmen would not be interrupted by the transfer and that their services after transfer would be treated as continuous; the terms and conditions of service after transfer would not be less favourable than those immediately before; the accumulated balance in the retirement benefit would be transferred to the trustees of the corresponding funds of the transferee and in the event that the transferee ,were to retrench any of the workmen, the company would pay to the workmen compensation on the basis that their services had been continuous and had not been interrupted by the transfer. These provisions which were incorporated in Clause 31 of the transaction of sale and in the assurance which was meted out to the workmen on August 16, 1999 clearly fall within the proviso to Section 25-FF of the Industrial Disputes Act, 1947. 14. The submission which has been sought to be urged on behalf of the Petitioners is that the transaction which was entered into between the First and Second Respondents is sham and bogus and that, therefore, it must be disregarded in view of the law laid down in Anakapalle (supra). In order to consider whether the submission is capable of acceptance, it would be necessary for the Court to scrutinise the pleadings and the evidence before the Industrial Court. 15. The foundation of the complaint which was filed before the Industrial Court was, as follows: (i) The Settlements that were entered into between the Petitioners and the First Respondent on November

9, 1990 and November 19, 1993 provided job security to the members of the Union; (ii) The action of the First Respondent in transferring the undertaking to the Second Respondent without taking the Union into confidence constituted an unfair labour practice under Item 5 of Schedule II; (iii) In the event that the sale has been completed that would constitute an unfair labour practice within the meaning of Items 9 and 10 of Schedule IV. The complaint was subsequently amended, and the Court is informed that the last of those amendments was dated February 6, 2004. In the course of the amendment, it was sought to be highlighted that the First and Second Respondents were transferring more than 80% of the work of the Fourth Respondent and that the plant, machinery and raw material were being transferred to the Fourth Respondent. At this' stage, it is important to note that neither in the complaint as it was originally filed, nor, for that matter, in the amendment, was there any challenge to the validity of the Agreement dated August 10, 1999 or to the bona fides of the First: Respondent in entering into the Agreement. Absolutely no case was made out to the effect that the Agreement was bogus or that it was a sham arrangement. Indeed, when the matter came up before this Court against the interim: order of the Industrial Court declining to grant inspection of the agreement to the Union, the single Judge in his order dated January 27, 2004 observed that in so far as the main complaint was concerned, there appeared to be no express challenge to the validity of the Deed of Assignment in its entirety, nor did it pray for setting aside the assignment. This observation was undoubtedly made at the interim stage during the pendency of the complaint. However, a perusal of the complaint does reveal that there was no challenge to the Agreement of August 10, 1999 and there were no material pleadings in support of the submissions placed before the Court that the Agreement was sham and bogus. In the course of the cross-examination of the witness of the First Respondent, some efforts were made to elicit admissions. Mr. A.V. Upadhyaya, the General Manager and Company Secretary who gave evidence on behalf of the First Respondent stated that it was correct to say that Johnson & Johnson (India) Ltd., was promoted by the Premchand Group. The witness further agreed that Permacel Pvt. Ltd., was a subsidiary Company of a holding Company of the Premchand Family. The witness confirmed that he was a signatory to the Articles of Association of the Second Respondent and to the Memorandum of Association. 16. These suggestions in the course of cross-examination are in my view inadequate to sustain the plea that the Agreement that is entered into was bogus and sham. In considering as to whether the transfer of the industrial undertaking of the First Respondent to the Second Respondent is sham and bogus, it would be necessary for the Court to have regard to the pleadings and to the evidence, both oral and documentary. The pleadings as already noted earlier, are silent in this regard. The oral evidence is perfunctory. In so far as the documentary evidence is concerned, counsel appearing on behalf of the Petitioners has sought to highlight certain specific facts which it would now be material to consider. 17. Counsel for the Petitioners urged that under Clause 4 of the Agreement, the lump sum consideration that was fixed for the sale of the business undertaking was Rs. 28.78 crores and that consideration was supported only by a promissory note

executed by the transferee Company in favour of the First Respondent. Moreover, it was ought to be urged that the Deed of Assignment was dated after the closing date. Apart from these factors, counsel appearing on behalf of the Petitioners highlighted that the Second Respondent was initially constituted by the allotment of 200 equity share each of Rs. 107- which were allotted at par. Counsel submitted that the Second Respondent was thus initially constituted with a paltry capital of Rs. 2000/-. The signatories to the Articles of Association were Shri M.B. Ambwani, Managing Director of the First Respondent and Shri A V. Upadhyay, General Manager (Legal) and later the Company Secretary of the First Respondent. Moreover, it was submitted that the first two Directors of the Second Respondent were Mr. Ambwani and Mr. R.R. Malhar, the Senior Vice President of the First Respondent. Counsel submitted that these two Directors resigned on August 5, 1999 and that effective from that date, two additional Directors came to be appointed and an officer by the name of Shri P.H. Shroff was deputed, who was appointed as Additional Director effective from August 11, 1999. From the balance sheet of the year ending March 31, 2002, it was sought to be highlighted that the Second Respondent incurred a loss aggregating to Rs. 102 millions for the year ending on the aforesaid date and had an accumulated loss of Rs. 189 millions which had completely eroded the net worth of Rs. 9 millions. On the basis of these facts, it was sought to be urged that the transfer in favour of the Second Respondent must be regarded as bogus and sham and the Second Respondent is only an alter ego of the First Respondent. 18. The Industrial Court declined to accept the challenge preferred by the Petitioners to the transaction of transfer on a number of grounds. One of the grounds which weighed with the Industrial Court was that the scope of the proceedings under the MRTU and PULP Act, 1971 could not be enlarged to vest the Industrial Court with the power to declare the transaction which has been entered into between the parties as invalid or void, moreso when no such specific relief has been claimed by the Petitioners. The Industrial Court was of the view that in order to establish that Section 25-FF was not attracted, the Union must get a declaration to the effect that the alleged sale deed between the First and Second Respondents was illegal and invalid from the competent forum. The Industrial Court also formed the view that since the transfer of the undertaking has taken place on the basis of a registered Sale Deed, it was a transfer by means of the operation of law. Once the transfer was by the operation of law, the Industrial Court opined that the transaction has to be regarded as valid and binding unless it is set aside by the appropriate Court. 19. At the hearing of this proceeding, I had indicated to the learned counsel, the prima facie view of the Court that the Industrial Court was not justified in entertaining the view that the transfer must be regarded as being by operation of law, on the ground that it was by a registered sale deed. The transfer of the undertaking which has taken place between the First and Second Respondents is as a result of the voluntary act of the parties and cannot be regarded as a transfer by the operation of law. However, the Industrial Court cannot be regarded as being in error in construing the scope and purview of its jurisdiction when it held that while exercising jurisdiction under the Act, the Court would have to ensure that it does not

enlarge upon its jurisdiction particularly when there was no specific challenge to the transaction on the ground that it was either invalid or void. Be that as it may, since the entire documentary material on which reliance has been placed by the Petitioners has been produced before the Court and the matter has been argued on merits as well, I propose to consider the submissions which have been urged on merits with a view to rendering a full, final and complete adjudication on this issue. 20. Now from the material which has been placed on the record, it emerges that the Second Respondent was incorporated on June 22, 1999. The signatories to the Memorandum of Association were the Managing Director and General Manager (Legal) of the First Respondent. The Managing Director of the First Respondent and a Senior Vice President of the First Respondent were initially appointed as Directors of the Second Respondent. However, that by itself is not dispositive of the question as to whether the transaction between the First and Second Respondents was bogus or sham or a transaction in order to defeat the provisions of law. On behalf of the Second Respondent several facts have been highlighted from the balance sheets which have been produced by the Petitioners on the record. It is true that when the Second Respondent was initially incorporated, 200 equity shares each of Rs. 10/- were allotted at par. Equally, it is clear from the balance sheet of the year ending March 31, 2000 that the Second Respondent was furnished with an advance of an amount of Rs. 44.88 lakhs as share application money from a Company by the name of Stock Traders Pvt. Ltd. The Directors are required to report material events which have occurred after the date of the balance sheet before the actual report. From the report of the Directors, it has emerged that subsequently, the Company received Rs.44.10 lakhs as share application money from Permacel India Holding A. G. The Company accordingly allotted shares to Stock Traders Pvt. Ltd. and Permacel India Holding A.G. The paid up share capital of the Company accordingly stood at Rs. 90 lakhs. During the First accounting year ending March 31, 2000, the Second Respondent had aggregate sales and other income of Rs.28.71 crores. The Company incurred a loss of Rs. 6.10 crores. This was attributed primarily due to non-recurring expenditure incurred during the period. On behalf of the Petitioners much emphasis has been sought to be laid on the circumstance that under Clause 5 of the Agreement dated August 10, 1999, the consideration of Rs. 27.78 crores was supported merely by the execution of a Promissory Note by the Second Respondent. During the course of his submissions, counsel appearing on behalf of the petitioners expressed doubt on whether any part of the consideration has been paid at all. Though this point has not been raised either in the pleadings or in the course of the evidence, counsel appearing on behalf of the Second Respondent has placed on the record documentary material to evidence the payment of an amount of Rs. 27.78 crores by the Second Respondent to the First Respondent. The material which has been placed on the record inter alia consists of an extract from the Statement of Accounts of the Second Respondent with the Hongkong and Shanghai Banking Corporation Limited and the receipt voucher in relation to the making of the aforesaid payment. In considering whether the transaction with the Second Respondent is bogus and fictitious, the Court must also have due regard to the

circumstance that the Second Respondent has shown a turn over of Rs. 28.7 crores during the year 1999-2000, Rs. 42.5 crores for the year 2000-01, Rs. 41.2 crores for the year 2001-02, Rs. 45.5 crores for the year 2002-03 and Rs. 46.2 crores in the unaudited balance sheet for the year 2003-04. Though the initial years of business of the Second Respondent between 1999 and 2003 showed a loss respectively of Rs. 6.1 crores, Rs. 2.6 crores, Rs. 10.2 crores and Rs. 4.6 crores, it has been stated before the Court that the provisional figures for the year 2003-04 reflect a profit of Rs. 3.2 crores. 21. Counsel appearing on behalf of the First and Second Respondents submitted that it is true that Shri P.H. Shroff was deputed to the Second Respondent. However, it is submitted that since Shri Shroff was conversant with the business and he was due to retire from the First Respondent, it made commercial sense, to exploit his experience and knowledge. Hence, he was appointed as an Additional Director during which period he and the new management could explore the prospects of establishing long term relations. Once that process was complete, Mr. Shroff was appointed as a Managing Director of the Second Respondent. In the first year, his remuneration from the Second Respondent was Rs. 38 lakhs whereas thereafter, it has been raised to Rs. 1.22 crores per annum. These facts were put forth before the Court in order to establish that the transaction by which the Second Respondent appointed Shri Shroff as its Managing Director was an arms length transaction in the commercial interest of the Second Respondent. In so far as the time lag between the Deed of Assignment and the closure date is concerned, it has been urged that a time lag of a few months would not be unreasonable for the execution of a formal legal document and, the accounts would show that the Second Respondent has been paying rents as well as lease rents. Other circumstances have been relied upon from the material on the record in order to buttress the submission that the Second Respondent is a genuine and established corporate body. The balance sheet for the year ending on March 31, 2000 showed that loans of Rs. 31 crores were given to the Second Respondent by STPL. Moreover, the Second Respondent had cash and bank balances of nearly Rs. 70 lakhs. The Second Respondent (had made deposits of approximately Rs. 3.7 crores. Similarly the balance sheet for the year ending March 31, 2001 showed that ICICI had lent more than Rs. 16 crores against the security of assets. There is merit in the submission that if the sale was sham a financial institution would not have extended a loan of such magnitude. Moreover, STPL. is stated to have furnished security for the ICICI loan. The attention of the Court has been drawn to the fact that for the year ending March 31, 2002, the balance sheet shows that there has been a further increase of Rs. 20 lakhs in the fixed assets and that STPL infused a further amount of Rs. 1.8 crores in the Company. The auditors have also recorded an assurance of continued financial support by the shareholders. 22. In my view, having regard to the aforesaid material which has been placed on the record, it is not possible for the Court to accept the contentions of the Petitioners that the transaction between the First and Second Respondents was a bogus and sham transaction. Relevant financial data in regard to the Second Respondent has been placed before the Court, commencing with the balance sheet for the year ending March 31,

2000. The financial data which has been placed on the record is sufficient to negative the submission that the transaction was a smoke-screen or that it was bogus or fictitious. The Court is not powerless to lift the veil where a transaction is fraudulent or intended to defeat the rights and entitlements of workers. One such case where the veil was lifted by the Supreme Court was Workmen Employed in Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd., . That was a case where a new Company that was incorporated was wholly owned by the principal company, with no assets of its own except those transferred to it by the principal company. The new company had no business or income of its own except receiving dividends from shares transferred to it by the principal company and served no purpose except to reduce the gross profits of the principal company. The Supreme Court held that the obvious purpose was to reduce the amount that would be paid by way of bonus to the workmen. The Court held that avoidance of welfare legislation is as common as avoidance of taxation and it is the duty of the Court in every case where ingenuity is expended to avoid taxing and welfare legislation to get behind the smoke-screen and discover the true state of affairs. The material which is before the Court shows that this is not a case of that nature. In a case such as the present, the Court must, above all, be guided by three important considerations: First, the Court has been called upon to exercise its jurisdiction under Article 226 of the Constitution for the issuance of a writ of certiorari. The parameters of this jurisdiction are well settled. In Surya Dev Rai v. Ram Chander Rai, . Mr. Justice P.C. LAHOTI (as the Learned Chief Justice then was) held that certiorari under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction when a subordinate Court is found to have acted (i) Without jurisdiction - by assuming jurisdiction where there exists none; or (ii) In excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction; or (iii) Acting in flagrant disregard of law, rules of procedure or of the principles of natural justice where no procedure is specified, thereby occasioning a failure of justice. The Supreme Court has held that be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and (ii) a grave injustice or gross failure of justice has been occasioned thereby. 23. Second, while Courts have lifted the corporate veil when transactions are structured and intended to defeat labour welfare laws, the Court should not nullify bonafide commercial transactions. Corporate reorganisations are a reality, and some would believe, a necessity, in a rapidly evolving economy. The management and shareholders of a corporate enterprise must determine whether a reorganisation of business is warranted in the interest of the Company. Corporate organisation must be efficient and competitive if it has to survive. The law, and Courts as interpreters of law must accept this position. So long as reorganisation is done in a manner which is consistent with industrial law, and not with a view to defeat the rights available to workmen under labour welfare legislation, the Court must defer to the judgment of the management and shareholders. Third, and equally important, the jurisdiction

which the Industrial Court exercises under the MRTU and PULP Act, 1971 is a jurisdiction of a summary nature. In Cipla Ltd. v. Maharashtra General Kemgar Union, , the Supreme Court held that in view of the summary nature of the jurisdiction which is conferred by the provisions of the Act, it would for instance: not be open to the Industrial Court to entertain a complaint of an unfair labour practice unless the relationship of employer and employee is not in dispute and indisputable. These observations were undoubtedly made in the context of a situation where the workmen who had initially entered upon employment as contract workmen sought to repudiate that relationship by claiming a direct relationship with the principal employer. The observations of the Supreme Court, however, are an important and binding principle in construing the nature and extent of the jurisdiction of the Industrial Court under the Act. This principle has been reiterated by a Division Bench where Mr. Justice A. P. SHAH delivered the judgment of this Court in Hindustan Coca Cola Bottling S/W Pvt. Ltd. v. Bharatiya Kamgar Sena 2002-I-LLJ- 380, the Division Bench has noted that where an employer and employee relationship was recognised at some stage and was thereafter disputed, the Industrial Court has jurisdiction to decide the issue as an incidental issue under Section 32 of the Act. 24. Having heard the Learned counsel and for the reasons already indicated, I am' of the view that the finding that has been arrived at by the Industrial Court does not warrant the exercise of the jurisdiction under Article 226 of the Constitution for the issuance of a writ of certiorari. The transaction between the First and Second Respondents took place nearly five years ago. The Second Respondent has continued to subsist for over the last five years. Above all, it would not be possible to set the clock back. The Second Respondent has assumed the obligation of performing all the covenants that bind the First Respondent in respect of the terms and conditions of service of the workmen under the settlements that were entered into by the First Respondent with the Union. There is no interruption in the continuity of service. That being the position, no case for interference is made out. The petition accordingly stands dismissed. There shall be no order as to costs. 25. Parties to act on a copy of this order duly authenticated by the Associate/Personal Secretary of this Court.