

THE SUPREME COURT FORGES THE INTEGRATED TESTS APPROACH TO DECIDE EMPLOYER-EMPLOYEE RELATIONSHIP IN BALWANT RAI SALUJA VS. AIR INDIA LTD.

Contributed by: Ravi Singhania

In a recent judgment, the Supreme Court of India was concerned with determination of the relevant factors which could be considered as relevant for ascertaining the question whether a relationship of employer and employee exists in a given case. In *Balwant Rai Saluja vs. Air India Ltd.* (2014 LLR 1009), the Apex Court while addressing the question whether the workmen engaged in canteens through a contractor, could be treated as employees of the principal establishment, after reviewing several earlier of its own decisions, adopted and applied the 'integrated approach', namely, an integration of all the relevant tests evolved earlier to find a reasonable solution in a problematic case. The Court was required to ascertain whether workmen, engaged as casual or temporary employees by a contractor to operate and run a canteen on the premises of a corporation could be said to be the workmen of the corporation, re-dusted all the well-established and settled principles and then pronounced, and in fact refashioned, a new and more comprehensive test to answer the vexed question which continues to crop up repeatedly.

Briefly stated the facts in this case were that Air India in the capacity of the principal employer had engaged Hotel Corporation of India (HCI) as a contractor to run a canteen on its corporate premises which was a requirement under the Factories Act, 1948. In terms of the contract between Air India and HCI, the responsibility to run the canteen was absolutely with HCI and the employees for the canteen were provided by the latter. The employees were engaged on a casual or temporary basis by HCI which acted as the contractor for running and operating the canteen. The employees claimed to be the deemed employees of the management of Air India on the ground that they worked in a canteen which was established on the premises of Air India for the benefit of Air India employees. The claim of the employees went from the Industrial Tribunal- cum- Labour Court to the High Court and eventually wound up in the Supreme Court of India as the employees appealed the decision of the Lower Courts. Before Supreme Court the main issue for consideration before the Court in the present reference is “whether workers, engaged on a casual or temporary basis by a contractor (HCI) to operate and run a statutory canteen, under the provisions of the Act, 1948, on the premises of Air India, can be said to be the workmen of the said corporation”. In short, what in law was the status of the employees?

The employees backed their claim on the grounds that under the Factories Act they were treated as workmen and since they were working in a canteen established by statute, and since they were workmen and worked under the control of Air India for whose benefit the canteen was being run, they were not under the control of the contractor, who in turn had no control over the management, administration and functioning of the canteen. It was alleged that the employees worked under the supervision and control exercised by Air India's management as HCI also functioned under the control of Air India's management. The concept of control was invoked by the employees as certain judgments of the Court had considered control as a relevant test and examined the nature of the control exercised by the principal employer in those cases. The Court also examined cases where the test of complete administrative control of the management over the contract workers sourced from a contractor had

been applied. The Court even referred to certain pronouncements of English Courts in order to gather their approach to employer-employee relationship and noted some relevant conditions like the servant agreeing to work for a consideration to provide his services and skill, agreeing to perform his services subject to the employers control in a sufficient degree and the need for other provisions of the contract being consistent with a contract of service. On the issue of control, the English cases had clarified that control would include the power of the employer to decide how the thing was to be done, the means to be employed for doing it, the time and place where it was to be done and above all such control must exist in a sufficient degree. And yet the Apex Court found cases where earlier rulings qualified that no doubt control was one of the important tests but was not to be taken as the sole test. In some cases to determine the true relationship between employer and employee all other relevant facts and terms and conditions of the contract had also been considered. Thus, on completing a complete tour de force of case law, the Supreme Court felt that what was needed was an integrated approach, meaning thereby that in deciding complex cases it would be necessary to integrate the relevant tests so as to examine whether the employees in question were fully integrated into the employer's business or concern or whether they were independent of the concern although attached therewith to some extent.

Applying the integrated approach to the facts of the case, the Court found that the running of the said canteen and control over its operations was with HCI and the functions of appointment, payment of salary, removal from service, dismissal, and disciplinary action over the canteen staff rested with the HCI. Despite the fact that Air India did exercise some supervision on the quality, skill and performance of the staff, to ensure provision of good quality food and service, the Court ruled that going by the integrated tests approach they were satisfied that the employees of HCI stood on a different footing in as much as they were part of a separate legal entity and different business concern which was set up for carrying out the activity of operating and running of canteen services, nor, applying the test of control did the Court find that Air India exercised absolute and effective control over HCI's employees. All things considered they did not satisfy the tests of employer- employee relationship vis-à-vis Air India which did not qualify as their employer.

Going forward the Supreme Court's ruling in this case is noteworthy for the Courts integration of various tests evolved by it in the past and fashioning an integrated approach to virtually hold that there cannot be a one size fit all approach and complex cases must be resolved by application of a holistic set of tests.

Singhania



Ravi Singhania

Managing Partner

Email: ravi@singhania.in