IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 3788 OF 2012 (L-RES)

BETWEEN:

THE MYSORE ELECTRICAL INDUSTRIES LIMITED
(A GOVERNMENT OF KARNATAKA UNDERTAKING)
HAVING ITS REGISTERED OFFICE AT
TUMKUR ROAD, P B NO. 2221,
YESWANTHAPUR, BANGALORE- 22
REP BY ITS MANAGER (P & IR)

...PETITIONER

(BY SRI: H M MURALIDHAR, ADVOCATE)

AND

ENGINEERING & GENERAL WORKERS UNION
NO.2, MILL CORNER, SAMPIGE ROAD,
MALLESWARAM
BANGALORE-560003

...RESPONDENT

(BY SRI: K B NARAYANA SWAMY, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS ON THE FILE OF THE INDUSTRIAL TRIBUNAL, BANGALORE IN ID NO.5/2000, PERUSE THE SAME, ALLOW THE WRIT PETITION, QUASH THE IMPUGNED AWARD DATED 3RD DECEMBER 2011 PASSED IN ID NO.5/2000 VIDE ANNEXURE-A BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI CONSEQUENTLY, DISMISS THE DISPUTE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

1. The petitioner-employer is before this Court seeking for the following reliefs:

   a) Call for the records on the file of the Industrial Tribunal, Bangalore, in I.D.No.5/2000, peruse the same, allow the writ petition, quash the impugned Award dated 3rd December 2011 passed in I.D.No.5/2000 vide Annexure 'A' by issue of a writ in the nature of certiorari, consequently, dismiss the dispute.

   b) Or in the alternative pass such other order/s as this Hon'ble Court deem fit to pass on the facts and in the circumstances of the case, in the interest of justice and equity.

2. The employer is an undertaking of State of Karnataka engaged in manufacture and sale of power breakers of various capacities. It has its own service rules, Cadre and Recruitment Rules for appointment of regular employees which is what is alleged to have been followed by the employer.

3. The services which are concerned with in the present matter are those related to house-keeping,

gardening, loading and unloading which is alleged to require only a few hours a day. It is on that basis that the employer had entrusted those works to labour contractors for lumpsum amount by entering into contract.

4. The contractors are alleged to have engaged their own men to carry out the said work. The house-keeping and gardening work was entrusted to "Sri.Shankar Nursery (associated)", work of loading and unloading was entrusted to "M/s Associated Detective & Security Services".

5. On 7.03.2000, Sri Shankar Nursery terminated the contract relating to house keeping and gardening. Similarly on 24.03.2000, M/s Associated Detective & Security Services terminated the contract and thereafter withdrew their men.

6. In pursuance thereof, the employer entrusted the work to "M/s Essential Services" vide contract dated 29.03.2000 which also came to be withdrawn by the said contractor vide letter dated 29.11.2000. It is

alleged that thereafter the employer has not engaged any contract workers.

7. The persons engaged by Sri Shankar and M/s Associated Detective & Security Services had filed a petition on 31.03.1999 through the respondent Union before the Deputy Labour Commissioner for a declaration that the workers whose names are mentioned in Annexure-A thereto were always employees of the employer and therefore they are entitled to get all the benefits as applicable to the permanent workmen from the date of their joining service. It was contended that the said workers were discharging their work which were perennial in nature along with other permanent workmen and therefore they are entitled to be declared as permanent workmen.

8. The employer opposed the said petition by contending that the persons named in annexure to the petition were not discharging their jobs as mentioned against their name, the employer does

not even know them. The work entrusted to the contractors was house-keeping, gardening, loading and unloading which required only few hours of work in a day and therefore, the same cannot be said to be perennial in nature and therefore, they were not entitled to be treated as permanent workmen.

9. The matter having been referred to conciliation, the conciliation efforts failed and as such, the State Government in exercise of powers conferred under Section 10(1)(d) of the Industrial Disputes Act, 1947 [for short 'ID Act'] referred the points of dispute for adjudication to Industrial Tribunal, Bengaluru on 14.12.1999.

10. The points which were referred for adjudication are as under:

> *i. Whether the management of Mysore Electrical Industries Ltd., Tumkur Road, Bangalore, are justified in engaging contract workers as packers, Electricians, Welders, Cook, Stores, Painters, House-Keeping, Driver, Typist, Draftsman, Librarian etc., and getting done permanent and perennial nature of work through them and whether the said contract system in sham?*

ii. If not, to what relief the workers shown in Annexure 'A' who are represented by Engineering and General Workers Union, No.2, Mill Corner, Malleswaram, Bangalore-3 are entitled?

11. During the pendency of the said adjudication 19 of 66 workmen raised a conciliation proceeding contending that employer had refused them work from February 2000, which was opposed by the employer contending that they are not even employees of the company, hence, the question of refusing them work would not arise. This issue was also referred to conciliation which ended in a failure. The State government vide order dated 7.03.2001 referred this dispute for adjudication on the question.

"Whether the management of Mysore Electrical Industries Limited, Tumkur Road, Bangalore was justified in refusing work to 19 contract workers, if not what relief that the said workers entitled to?

12. The Labour Court, Bangalore took up the same as Reference No.5/2001 and since the earlier dispute was pending before the Industrial Tribunal, the same was referred to the Industrial Tribunal.

13. While the matter was pending, the Union filed an interlocutory application on 14.12.2000 under Section 11 of the ID Act seeking for a direction to the employer to restore the services of the workmen listed in the annexure to the affidavit. The Industrial tribunal after hearing the matter vide order dated 12.04.2001 directed the employer to restore the services of the workmen listed in the annexure. Said order was challenged before this Court in W.P. No.18358/2001 wherein an order of stay was declined. W.A. No.3517/2001 having been filed, the Division Bench of this Court stayed the operation of the order and subsequently disposed of the matter with a direction to the tribunal to dispose of the proceedings before the Tribunal expeditiously.

14. The Tribunal after considering the matter directed the employer to restore the services of the workmen and it is aggrieved by the same that the petitioner-employer is before this Court.

15. Sri.H.N.Muralidhar, learned counsel for the petitioner-employer would submit that,

15.1. There is no prohibition in terms of Section 10(1) of the Contract Labour Abolition Act [`CLRA' for short] prohibiting the employer from engaging the services of contractors by engaging contract labour. In the absence of such prohibition, the employer is entitled to enter into a contract with a contractor which cannot be found fault with unless a notification is issued under Subsection (1) of Section 10 of the CLRA, the Industrial adjudicator would not get any right to adjudicate any dispute relating to contract labour.

15.2. The precondition for the workman to raise a dispute under the CLRA before the labour adjudicator is the issuance of a notification under Section 10(1) of the CLRA Act.

15.3. In the present case there being no such notification, the industrial Tribunal ought to

have considered this aspect which it has failed to do.

15.4. In the other matter, where the workman had approached the labour Court which was subsequently transferred to Industrial tribunal alleging that the employer had refused work, the Tribunal had come to a conclusion that there is no relationship between the employer and the workman, therefore, the question of refusing work wouid not arise.

15.5. The Tribunal having come to such a conclusion in the subsequent matter could not have directed the employer to reinstate the workmen by way of the impugned order.

15.6. The Tribunal has not adjudicated and or given any finding on the questions referred to it but has only directed implementation of the earlier order passed by the tribunal on 12.4.2001 which could not have been done. By way of the final order, the tribunal has only confirmed the

interlocutory order without adjudicating the issues in question. Therefore, the order of the tribunal is required to be set-aside.

15.7. In support of his case, Sri.H.M.Muralidhar, learned counsel relies upon the decision in **Steel Authority of India Ltd. And others (SAIL) -v- National Union Waterfront Workers and others**[1], more particularly para 125 thereof which is reproduced hereunder for easy reference:

> **125.***The upshot of the above discussion is outlined thus*:
>
> *(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate*

[1] (2001)7 SCC 1

Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is

quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed

either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

16. Per contra, Sri.K.B.Narayana Swamy, learned counsel for the Union would submit that,

16.1. The workmen had been engaged with the employer even before the contractor came into the picture, the services of the workmen were shifted by the employer unilaterally to the contractor with a sole purpose of obviating compliance with the applicable labour laws, as also making payment of lesser amounts that required to be made.

16.2. The arrangement between the employer and the contractor is a sham transaction. It has come in evidence that there is no agreement which has been entered into between the employer and the contractor and no such agreement has been produced before the Tribunal.

16.3. The employer has not registered himself under Section 7 of CLRA, the contractor has not registered himself under Section 12 of the CLRA, hence the question of a non-registered employer entering into a contract for labour

with a non-registered contractor would not arise. The same apart from being a violation of the mandate of the CLRA would establish the transaction to be a sham transaction between the employer and the contractor.

16.4. Many of the workmen being in the service of the employer from as far back as 1995 and various other workmen having joined subsequently, have been discharging various works like that of house-keeping, painter, packer, cook, welder, typist, etc, on a continuous basis. The fact that they have been rendering such work for several years would by itself establish that the works being carried out by the workmen are perennial and permanent in nature.

16.5. The workmen having earlier been engaged on the rolls of the employer, it is only with an intention to violate the requirements of the

applicable labour law that the methodology of contract labour has been resorted to.

16.6. The services rendered by the workmen being essential for the running of the factory of the employer, the workmen of the Union are required to be treated on par with the regular employees of the employer who have also been engaged to render similar service, that is to say that not only workman belonging to the respondent Union, but certain other workmen have been engaged by the employer to render the very same service.

16.7. The workers remaining the same, nature of work being the same, the employer resorted to unilaterally shift the workers who were working with the employer to the rolls of the contractor and many different contractors thereafter with an intention to pay less money than what is required and therefore, the entire transaction is a sham transaction.

16.8. Learned counsel relies upon the decision of the Hon'ble Apex court in **Gujarat Electricity Board, Thermal Power Station, UKAI, Gujarat[2],** more particularly paragraphs 10, 33, 53 to 59 which are extracted hereunder for easy reference:

> ***10.*** *In view of the aforesaid contentions, the questions that fall for consideration in this appeal, which are common to all the appeals are as follows:*
>
> *(a) Whether an industrial dispute can be raised for abolition of the contract labour system in view of the provisions of the Act?*
>
> *(b) If so, who can raise such dispute?*
>
> *(c) Whether the Industrial Tribunal or the appropriate Government has the power to abolish the contract labour system? and*
>
> *(d) In case the contract labour system is abolished, what is the status of the erstwhile workmen of the contractors?*
>
> ***33.*** *These decisions in unambiguous terms lay down that after the coming into operation of the Act, the authority to abolish the contract labour is vested exclusively in the appropriate Government which has to take its decision in the matter in accordance with the provisions of Section 10 of the Act. This conclusion has been arrived at in these decisions on the interpretation of Section 10 of the Act. However,*

[2] (1995)5 SCC 27

it has to be remembered that the authority to abolish the contract labour under Section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and the so-called contract is a sham or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the workmen concerned raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer, the court or the industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief. In this connection, we may refer to the following decisions of this Court which were also relied upon by the counsel for the workmen.

53. *Our conclusions and answers to the questions raised are, therefore, as follows:*

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No court including the industrial adjudicator has jurisdiction to do so.

ii) If the contract is a sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is a sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is a sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer

the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and

how many of the workmen should be absorbed and on what terms.

54. *It is in the light of the above position of law which emerges from the provisions of the Act and the judicial decisions on the subject that we have to answer the contentions raised in different civil appeals before us. As regards the present civil appeal, the facts of which have already been referred to earlier, Shri Venugopal, the learned counsel for the appellant-Board contended that none of the direct workmen of the Board had espoused the cause of the contract labour and hence the Tribunal had no jurisdiction to entertain the reference. He also submitted that any amount of consent by the appellant-Board for such a reference will not confer jurisdiction on the Tribunal to entertain the reference.*

55. *As has been pointed out earlier, the order of reference of the dispute to the Tribunal was made by the State Government on the basis of a joint application for reference under Section 10(2) of the ID Act. The application was duly signed by the present appellant-Board, all the seven contractors involved in the dispute and by the then Surat Labour Union which had both direct as well as contract labourers, as its members. The respondent-Union is the successor of the said Surat Labour Union. These facts show two things, viz., that contrary to the submission made by the learned counsel, the direct employees of the Board had espoused the cause of the contract labourers, and the appellant-Board had also accepted the fact that the dispute in question was raised and supported also by the said employees. No objection was taken before the Tribunal or the High Court either to the order of reference or to the adjudication of the dispute by the Tribunal that the dispute was not espoused by the direct employees of the appellant-Board. This would also show that the fact that the dispute was espoused by the direct*

employees of the Board was accepted by the Board and never questioned till this date. Apart from the fact, therefore, that the Board had signed the joint application for reference and therefore it cannot in an appeal by special leave under Article 136 of the Constitution for the first time raise the question which is a mixed question of law and fact, we are of the view that even on facts as they stand, it will have to be held that the dispute was in fact espoused by the direct employees of the appellant-Board. We therefore reject the said contention.

56. *It was next contended that the dispute raised by the workmen was for abolition of the contract and such a dispute could not have been entertained by the Tribunal in view of the provisions of Section 10 of the Act. For this purpose, the learned counsel relied upon clause (1) of the order of reference. We find nothing in the said clause which supports the contention of the learned counsel. The clause reads as follows:*

"Whether the workers whose services are engaged by the contractors, but who are working in the Thermal Power Station of Gujarat Electricity Board at Ukai, can legally claim to be the employees of the Gujarat Electricity Board?"

It will be obvious from a reading of the said clause that what in fact is referred for adjudication is the determination of the status of the workmen, viz., whether though engaged by the contractors, they are legally the workmen of the appellant-Board? In other words, implicit in the said clause is the assertion of the workmen that they are in law the workmen of the appellant-Board and not of the contractors, and they wanted the Tribunal to decide their exact legal status. This is clear also from the statement of claim filed by the workmen in support of their demand. In para 3 of the statement of claim, it is averred that the Board has been employing Mukadam Supervisors "who are

draped in different paper arrangements and are now known as contractors of the Thermal Power Station" and the Board and the so-called contractors have joined hands for mass victimisation and termination of services even without payment of due wages. Again, in para 5 of the statement of claim, it is stated that the workmen are being paid wages by the Management of the Board through Mukadam Supervisors now known as contractors of the Board. The contractors come and go but the workmen are working throughout since the inception of the Thermal Power Station. The control, direction and initiation of these workmen are in the hands of the supervisors and technical staff of the Thermal Power Station. It is also alleged in the said para that the so-called contractors are not contractors as none of them have taken licence. It is also averred there that it is abundantly clear that the workmen employed to perform the permanent and perennial nature of duties are the employees of the Board. In para 10 of the statement of claim, it is prayed that "the Tribunal should hold and declare that the workers deployed in the Thermal Power Station under the garb of contractor are the permanent employees of the Thermal Power Station managed and controlled by the appellant-Board". In para 6 of the application for interim relief which was filed on behalf of the workmen, it was averred that the Board was through different agreements showing the workmen as if they were working under some intermediaries and the said intermediaries are "make-believe trappings" and are 'dubious' in nature and it was only to deprive the workmen of the benefits which are available to the employees of the Board that the said "make-believe trappings" were employed by the Board. It is therefore not correct to say that the present reference was for the abolition of the contract. The reference, on the other hand, was for a declaration that the workmen were in fact and in law the employees of the appellant-Board and that they should be given the

service conditions as are available to the direct employees of the Board.

57. *It was then contended by the learned counsel that the Industrial Tribunal has nowhere recorded a finding that the contract in question was a sham, a camouflage, a make-believe or a subterfuge. On the contrary, according to him, the Tribunal has held that the contract labour of each of the contractors must be deemed to be the employees of the appellant-Board, firstly because the Board and the contractors had not produced valid proof of the registration certificate and the licences respectively, relying on the decisions of the Madras and Karnataka High Courts, and secondly, because of the nature of the work. He submitted that the decisions of the Madras and Karnataka High Courts have been expressly overruled by this Court in Dena Nath case [(1992) 1 SCC 695 : 1992 SCC (L&S) 349] . As regards the nature of work, the exclusive jurisdiction to record a finding in that behalf is of the appropriate Government under Section 10 of the Act and the Tribunal is precluded from recording a finding in that behalf and abolishing the contract on the basis of such finding. In fact, the Tribunal has no jurisdiction to abolish the contract.*

58. *In the first instance, we find that the contention that the Tribunal has held that the workmen in question are the employees of the Board only because of the non-production of the valid proof of the certificate and the licences in question, is not correct. The Tribunal has, on the basis of the evidence on record, come to the conclusions, among others, that (i) the work was being done on the premises of the Board itself as the coal was being used for the purposes of the Board, viz., generation of electricity; (ii) the workmen were broadly under the control of the Board; (iii) there was overall supervision of the work by the officers of the Board; (iv) the work was of a continuous nature; and (v) the work was an integral*

part of the overall work to be executed for the purposes of the generation of the electricity and that it had to be performed within specified time-limits as part of the integrated process. The Tribunal has also in this connection referred to a decision of this Court reported in Hussainbhai case [(1978) 4 SCC 257 : 1978 SCC (L&S) 506] to support its conclusion that in the aforesaid circumstances found by it, the workmen in question were the employees of the Board. It is true that the Tribunal has not in so many words recorded a finding that the contract was a sham or bogus or a camouflage to conceal the real facts. It is also true that the Tribunal has referred to the decisions of the Madras and Karnataka High Courts and on its finding that the Board and the contractors had not produced valid proof of the registration certificate and the licences for the relevant period has held that the workmen should be deemed to be the employees of the Board. However, the decision of the Tribunal has to be read as a whole. Thus read, the decision makes it clear that the Tribunal has based its conclusion both on the ground that the workmen were in fact engaged by the appellant-Board and not by the contractors who were merely intermediaries set up by the Board and also on the ground that there was no valid proof of the registration certificate and the licences in the possession of the Board and the contractors respectively. It is not, therefore, correct to say that the decision of the Tribunal is based only on the latter ground. We are of the view that there is a factual finding recorded by the Tribunal that the labour contracts in question were not genuine and the decision of the Tribunal is based on this ground as well.

59. *It is also not correct to say that to arrive at the finding as to whether the labour contracts are genuine or not, the court or the industrial adjudicator cannot investigate the factors mentioned in clauses (a) to (d) of Section 10(2) of the Act. The Explanation to*

Section 10(2) makes the decision of the appropriate Government final only on the question whether the process or operation or the work in question is of a perennial nature or not, and that too when a dispute arises with regard to the same. If no such question arises, the finding recorded by the Court or the Tribunal in that behalf is not ineffective or invalid. Further, in all such cases, the Tribunal is called upon to record a finding on the factors in question not for abolishing the contract but to find out whether the contract is a sham or otherwise. The contract may be genuine even where all the said factors are present. What is prohibited by Section 10 is the abolition of the contract except by the appropriate Government, after taking into consideration the said factors, and not the recording of the finding on the basis of the said factors, that the contract is a sham or bogus.

16.9. By relying on the above decision, he submits that the abolition of contract labour by issuance of notification under Section 10 of the CLRA comes into play when there exists a genuine contract. If there is no genuine contract and the contract is a sham or camouflage to hide the reality, the provision of Section 10 would not be applicable. In such circumstances, if the workmen raise industrial dispute, they should deem to be employees of the principal employer. He further submits that there is no need for issuance of any notification under

Section 10 for the industrial adjudicator to get jurisdiction in a matter relating to CLRA.

16.10. Reliance is placed upon the decision in **Oil and Natural Gas Corporation Limited -v- Petroleum Coal Labour Union and Others**[3] more particularly paragraphs 27, 29 and 30, which are extracted hereunder for easy reference:

> ***Whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the workmen concerned in the posts is valid and legal?***
>
> ***27.*** *The Central Government in exercise of its powers under Section 10 of the Act referred the existing industrial dispute between the workmen concerned and the Corporation to the Tribunal which rightly adjudicated Point (i) of the dispute (supra) on the basis of the facts, circumstances and evidence on record and passed an award dated 26-5-1999 directing the Corporation that the services of the workmen concerned should be regularised with effect from the date on which all of them completed 480 days, subsequent to their appointment by the memorandum of appointment. The contention urged on behalf of the Corporation that the Tribunal has no power to pass such an award compelling the Corporation to regularise the services of the workmen concerned is wholly untenable in law. Even if we consider the same, the said contention is contrary to the legal principles laid down by this Court in Hari Nandan Prasad v.*

[3] (2015)6 SCC 494

Food Corpn. of India [Hari Nandan Prasad v. Food Corpn. of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] , wherein the decisions in U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh [U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh, (2007) 5 SCC 755 : (2007) 2 SCC (L&S) 258] and Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] and Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] were discussed in detail.

29. *Further, it is very clear from the facts that all the workmen concerned have got the qualifications required for their regularisation, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases. This abovesaid legal principle has been laid down succinctly by this Court in Bharat Bank Ltd. v. Employees [1950 SCC 470 : AIR 1950 SC 188] , the relevant paragraph of the said case is extracted hereunder: (AIR p. 209, para 61)*

61. "We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and

proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organisation on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in Western India Automobile Assn. v. Industrial Tribunal [(1949-50) 11 FCR 321] quoted with approval a passage from Ludwig Teller's well-known work on the subject, where the learned author observes that: (FCR p. 345)

'… industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements.'

The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a

judicial determination in the proper sense of these expressions."

It has been further held by this Court in LIC v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] , as follows: (SCC p. 334, para 22)

22. "The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill."

30. *Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the workmen concerned.*

16.11. Relying on the above, he submits that the Tribunal had a jurisdiction to direct the employer to regularize the services of the workman in order to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately to deliver social justice which is a constitutional mandate as held in catena of cases.

16.12. By referring to sub-para 5 of paragraph 125 of the decision in **SAIL[1]** which is extracted hereinabove, he submits that the contract when not genuine and uses as a mere ruse and camouflage to evade compliance with beneficial legislation so as to deprive the workers of the benefit, the contract labour will have to be treated as employees of the principal employer who has to be directed to regularize the services of the contract labour in the establishment which is what the tribunal has done by directing the employer to provide work to the workmen if they report to work and found medically fit which is what had been directed in the Interlocutory order dated 12.04.2011. He, therefore, submits that the order passed by the Tribunal is in accordance with law and does not require interference.

17. Sri.H.M.Muralidhar, learned counsel in rejoinder would submit that,

17.1. The decision in **Gujarat Electricity Board[2]** has been over ruled by the decision in **SAIL[1]** and in this

regard he refers to paragraphs 102, 103, 104 and 105 thereof which are extracted hereinabove for easy reference. He submits that merely on issuance of a notification under 10(1) of the CLRA, the workers would not get automatically regularized, there cannot be an automatic absorption. The grounds and factors as that exist would have to be appreciated by the Industrial adjudicator to ascertain whether the workmen are entitled to absorption or not. In this regard he also refers to sub-para 5 of para 125 of judgment in **SAIL[1]** and submits that the absorption post issuance of notification under Section 10(1) of the CLRA is subject to sub-para 6 of para 125 of the judgment in **SAIL[1]** and the absorption could only occur by giving preference to the contract labour if the principal employer intends to employ regular workmen, if necessary by relaxing age criteria, as also the academic and other technical qualification.

17.2. Thus, he submits that if contract labour is abolished and the employer were not to engage any other

persons in their place, the erstwhile contract labour would not get any right to work. It is only a preferential right that is vested in them which comes into play only when employer were to engage other regular workmen, in that instead of party being engaged, the employer would have to consider erstwhile contract labour. In the present case, he again reiterates that there being no notification under Section 10(1) of CLRA, the Industrial adjudicator would not get any jurisdiction to decide the dispute. In the present case, he again reiterates that there being no notification under Section 10(1) of the CLRA, the Industrial adjudicator would not get any jurisdiction to decide the dispute.

18. Sri.K.B.Narayana Swamy in reply to the rejoinder would submit that,

18.1. The decision in **Gujarat Electricity Board[2]** has been overruled to a limited extent as regards the automatic absorption post the issuance of

notification under Section 10(1) of the CLRA. By the decision in **SAIL[1]** in terms of which only a preferential right has been granted to the workmen to seek for employment in the event of employer engaging anyone else. The aspect of jurisdiction of the Industrial adjudicator to decide the matter in the absence of a notification under Section 10(1) of the CLRA has not been set-aside by the **SAIL[1].** Therefore, he submits that the said finding in **Gujarat Electricity Board's case[2]** as regards jurisdiction of the Industrial Adjudicator stands undisturbed.

19. Heard Sri.H.M.Muralidhar, learned counsel for the petitioner-employer and Sri.K.B.Narayana Swamy, learned counsel for the respondent-workmen. Perused papers.

20. The points that arise for consideration are:

20.1. Whether a notification under Section 10(1) of CLRA is a pre-requisite for the Industrial tribunal to have jurisdiction to decide the matter relating to reinstatement, regularization or services of contract labour?

20.2. Whether in the event of the contract, arrangement of transaction between the employer and the contractor being found to be sham, camouflage to make payment of lesser amounts to the workman, then what is required to be paid. Could the workmen be directed to be paid the same wages as that paid to other workmen?

20.3. Whether the works of house keeping, painter, driver, typist, welder, cook, electrician, packer, loader, unloader, can be said to be perennial work and not temporary work?

20.4. Whether the order passed by Industrial tribunal suffers from any legal infirmity requiring interference at the hands of this Court?

20.5. What order?

21. **ANSWER TO POINT NO.1:** ***Whether a notification under Section 10(1) of CLRA is a pre-requisite for the Industrial tribunal to have jurisdiction to decide the matter relating to reinstatement, regularization or services of contract labour?***

21.1. The contention of Sri.H.N.Muralidhar, learned counsel for the employer is that unless a notification under Section 10(1) of CLRA is issued, the Industrial tribunal would have no jurisdiction over a dispute raised by the alleged

contractor. Section 7 of the CLRA requires an employer to register himself which reads as under:

> ***7. Registration of certain establishments.-*** *(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:*
>
> *Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.*
>
> *(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.*

21.2. Section 12 of the CLRA requires a contractor to register himself which reads as under:

> ***12. Licensing of contractors.-*** *(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.*

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

21.3. From the above it is clear that it is only the employer who is registered under Section 7 can engage a contractor registered under Section 12. As a corollary if an employer who is not registered under Section 7, then he cannot engage services of a contractor though registered under Section 12 of CLRA and vice versa, that is to say a employer registered under Section 7 cannot engage services of a contractor who is not registered under Section 12 of CLRA. It is therefore, required that both the employer and the contractor are registered under Section 7 and 12 respectively.

21.4. Section 10 of the CLRA reads as under:

10 Prohibition of employment of contract labour. - *(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.*

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. -If a question arises whether any process or operation or after work is of perennial nature, the decision of the appropriate Government thereon shall be final.

21.5. A perusal of Section 10 would indicate that the State Government can in certain cases prohibit contract labour which would necessarily mean that it is only as regards the areas where State government by exercise of powers under Section 10 can prohibit it. The reference made by Sri.H.N.Muralidhar, learned counsel as regards Section 10, in my considered opinion is completely misconceived inasmuch as Section 10 relates to prohibition of contract labour in certain industries. The submission of Sri.Muralidhar that unless there is prohibition of notification under Section 10, an employer can engage contract labour, is according to me is again misconceived. Merely because there is no notification under Section 10 of CLRA, the same would not permit an employer who is not registered under Section 7 to enter into a contract for contract labour with a contractor who is not registered under Section 12. The

requirement of Section 7 and 12 are to be complied with irrespective of whether there is a notification under Section 10 or not.

21.6. Section 10 only prohibits an engagement of a contract labour and would have no bearing and is not a pre-requisite for a workman who is engaged by employer under a contract to raise a dispute for redressal of his grievance.

21.7. In the present matter, the facts on record and which are not in dispute indicate that the workman had been engaged by the employer and were working with him, subsequently their services were shifted by the employer to certain agencies without their consent and they were regarded as contract labour. It is also on record that employer has not registered himself under Section 7 of CLRA and the contractor has not registered under Section 12 of CLRA, let alone the labour being registered under the

contractor as contract labour. Thereafter the contractor terminated the contract which was accepted by the employer resulting in the workers being without employment. The tribunal has come to a categorical finding that the so-called agreement between the employer and contractor is a sham agreement entered into with the sole purpose and intention of making payment of lesser amount to the workers.

21.8. On enquiry if the agreement has been produced though it was first contended by Sri.Muralidhar that agreement has been produced, he is unable to show the same. A perusal of the list of document produced before the Industrial Tribunal would establish that there is no such agreement between the employer and the contractors which has been produced before the Industrial Tribunal. Thus, not only are there no registration under Section 7 and 12 of CLRA,

but there is no agreement also between the employer and contractor.

21.9. In such a situation, it is clear that the claim made by the employer is completely false one and sham. There is no need for this Court to ascertain if the agreement is a camouflage, more so when the agreement itself has not been placed on record.

21.10. The claim of the employer itself appears to be completely dishonest and such a claim without due compliances appears to be only for the purpose of depriving the workers of their due amounts.

21.11. Hence, I answer Point No.1 by holding that notification under Section 10(1) of CLRA is not a pre-requisite for the Industrial Tribunal to have a jurisdiction to decide the matters relating to reinstatement or regularization of services of contract labour.

22. **ANSWER TO POINT NO.2:** ***Whether in the event of the contract, arrangement of transaction between the employer and the contractor being found to be sham, camouflage to make payment of lesser amounts to the workman, then what is required to be paid. Could the workmen be directed to be paid the same wages as that paid to other workmen?***

22.1. As held in answer to point No.1, the employer is not registered under Section 7, the contractor is not registered under Section 12 and there is no notification under Section 10(1) of CLRA. There is no agreement between the employer and contractor, as also the contractor and the workmen which has been placed on record.

22.2. The finding of the labour Court as regards the alleged transaction being a sham and camouflage has already been upheld in answer to point No.1 above. Once this Court comes to a finding that the agreement is sham and camouflage, the workmen cannot be denied their just benefits. In the present case, there is no agreement at all, it is only a contention by

the employer. The said contention is also sham and to cover up the liability of the employer to make payment of due amounts to the workmen. The Hon'ble Apex Court in **SAIL's**[1] case has held that if a contract is found to be not genuine but mere camouflage, so-called labour will have to be treated as employes of the principal employer, who shall be directed to regularize the services of the contract labour in the establish concerned subject to there being a vacancy and if there is no vacancy, if the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if found suitable and if it is necessary, by relaxing the conditions as to maximum age appropriately, taking into consideration the age of the workman at the time of their initial employment by the contractor and also relaxing the condition as to

academic qualification other than technical qualification.

22.3. The workmen being in employment from the year 1995 onwards, it cannot be said that they lack any qualification. The workmen being in employment from the year 1995 also indicates that there are vacancies. If that be so, the workmen need to be adequately provided for and absorbed and until such absorption would continue to render service as contract labour directly under the employer with the employer making payment of equal pay for equal work as held by this Court in **TUMAKURU CITY CORPORATION v. TUMKURU POURA KARMIKARA SANGHA**[4] case**.**

23. **ANSWER TO QUESTION NO.3:** ***Whether the works of house keeping, painter, driver, typist, welder, cook, electrician, packer, loader, unloader, can be said to be perennial work and not temporary work?***

[4] W.P. NO. 28392/2022 dated 6th December 2022.

23.1. This question is rendered academic on account of finding as regards point Nos.1 and 2. However, the same requires to be answered. The work of house keeping viz. cleaning and other services is required to be discharged on daily basis; in a industry a painter is also required to be at hand since there are various paint jobs which are required to be carried out from time to time; Drivers are required on regular basis for transport of people; a typist would be required on regular basis to type out certain documents; in a large establishment a welder would be required for carrying out repairs; a cook is required on daily basis for preparing food, more so three times a day for all the workmen; a electrician in a industry is a regular feature and required to take care of any electrical issues that arise; an industry manufacturing a product would require packer, loader and unloader on regular basis, firstly to unload any raw material which comes to the factory, secondly to unpack any item

received and pack an item to be transported, and load the same into the transport vehicle.

23.2. These jobs profiles being ones whose services are required on a day today basis, as also for months on end**.** I am of the considered opinion that these jobs are perennial in nature and therefore would not be temporary as contended by Sri.H.N.Muralidhar, learned counsel.

24. **ANSWER TO POINT NO.4:** ***Whether the order passed by Industrial tribunal suffers from any legal infirmity requiring interference at the hands of this Court?***

24.1. The Tribunal by way of impugned order directed restoration of services of the workmen. Though the said order could have been better worded, I do not find any infirmity with the said order inasmuch as the Tribunal has come to a conclusion that the job profile is perennial in nature.

24.2. The Tribunal has come to a right conclusion that the alleged agreement between the employer and the contractor is sham and camouflage and the workers

have been engaged for a long period of time and the instrumentality of contract workers has been used only to deprive them of their just amounts. The interim order having earlier been passed directing the employer to provide work for the workmen and the same not having been provided, the labour court directed the employer to comply with the said order.

24.3. As afore-observed, the said order could have been better worded, but the essential meaning of the operative portion of the said order, which I can gather from reading of the entire order is that the alleged contract being sham and camouflage, the labour Court instead of directing continuation of service and later absorption has passed a short order, I do not find any infirmity in the same, but, however, I am of the considered opinion that the same is required to be explained which would be done in the operative portion of this order.

25. **ANSWER TO POINT NO.5: What order?**

25.1. In view of my finding to the aforesaid points, I pass the following:

ORDER

i. The writ petition is dismissed.

ii. The workmen belonging to respondent-Union shall be treated as employees of the petitioner. Petitioner shall regularize their services subject to availability of vacancies and in the event of there being no vacancies, as and when vacancies arise, the petitioner shall give preference to the members of the respondent-Union, if they are found suitable by relaxing the condition as to maximum age, as also academic qualifications.

iii. The petitioner shall maintain proper records of sanctioned posts, number of workmen posted to such sanctioned posts or number of vacancies as and when vacancies arise, the same shall be notified to the members of the Union who shall be provided work at the petitioner's establishment.

iv. Needless to say that the petitioner shall reinstate the workman within a period of four weeks from the date of receipt of copy of this order.

v. Petitioner to act on a printout of the uploaded copy of this order on the website of this Court, if so furnished by the respondent, without waiting for certified copy thereof. If petitioner has any doubt about the order, petitioner may verify the contents of the order from the website of this Court and or from the learned panel advocate appeared in the matter.

Sd/-
JUDGE

LN
List No.: 1 Sl No.: 105