Supreme Court of India
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Gujarat Electricity ... vs Hind Mazdoor Sabha & Ors on 9 May, 1995
Equivalent citations: 1995 AIR 1893, 1995 SCC (5) 27
Author: Sawant
Bench: Sawant, P.B.
PETITIONER:

GUJARAT ELECTRICITY BOARD,THERMAL POWER STATION, UKAI, GUJAR

Vs.

RESPONDENT:

HIND MAZDOOR SABHA & ORS

DATE OF JUDGMENT09/05/1995

BENCH:

SAWANT, P.B.

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SAWANT, P.B.

MAJMUDAR S.B. (J)

CITATION:

1995 AIR 1893 1995 SCC (5) 27

JT 1995 (4) 264 1995 SCALE (3)498

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NOS.5498-02, 5503 & 5504 OF 1995 [Arising out of SLP Nos.9310-14, 9315 and

13520/91]

JUDGMENT

Sawant, J.

Leave granted in all the petitions.

These four groups of appeals raise common questions of law relating to the abolition of contract system of labour. Civil appeals C.A.NO.5497 & 5504/95 arising out of SLP [c] Nos. 2613 of 1991 and 13520 of 1991 are filed by the managements, viz., Gujarat Electricity Board and M/s. Bihar State Cooperative Milk Producers' Federation Ltd. respectively, while civil appeals 5498- 02/95,5503/95 arising out of SLP [c] Nos.9310-14 of 1991 and 9315 of 1991 are filed by the employees' unions, viz., Delhi Officers and Establishment Employees' Union and New Delhi General Mazdoor Union respectively, both against the same management, viz., Standing Conference of Public Enterprises [SCOPE] & Anr.

2. For the sake of convenience, we will first deal with the facts in Civil Appeal 5497/95 arising out of SLP [C] No.2613 of 1991 and the questions of law as they arise therefrom.

C.A.5497/95 @ SLP [C] No.2613 of 1991

3. The appellant-Board runs a Thermal Power Station at Ukai in Gujarat where it generates and distributes electricity to the consumers. At the relevant time besides the direct workmen, the Board deployed through various contractors 1500 skilled and unskilled manual labourers to carry on the work of loading and unloading of coal and for feeding the same in the hoppers and for doing the cleaning and other allied activities in its power station. It appears that these workmen hailed from the adivasi area and many of them had lost their land on account of the construction of the Thermal Power Project of the Board with the result that the employment in the power station was the only means of livelihood left for them. The contractors, according to the respondent-Union, exploited these workmen by flouting labour laws. Ultimately, the workmen organised themselves into a trade union. But on that count they were victimised and on 16th November, 1981, the services of a thousand of these workmen were abruptly terminated. The Union, therefore, filed a writ petition in the High Court praying for direction to reinstate the workmen and for implementing and enforcing the Factories Act, the Employees' Provident Fund Act, the Payment of Wages Act and other labour enactments. The High Court by its order of 16th December, 1981 appointed one Shri Israni as a Court Commissioner to make detailed enquiries regarding the allegations made in the writ petition and also to try to resolve the dispute between the parties. The Commissioner held talks with the concerned parties and also associated the officers of the Labour Department of the Government with the said talks. It was agreed by and between the parties, viz., the Board and the contractors on the one hand and the workmen on the other, that all the workmen whose names and numbers were mutually agreed to, be allowed to enter the power station for work from 4th January, 1982 and that a settlement under Section 2 [p] of the Industrial Disputes Act, 1947 [for short the `ID Act'] be duly executed in that behalf. It was further agreed that the remaining disputes between the parties, viz., those relating to the revision of wages of the workmen, their rights and privileges arising out of the Factories Act, Employees' Provident Fund Act, Maternity Benefits Act and the Workmen's Compensation Act as well as the disputes with regard to the workmen's contention that they were the employees of the Board, be referred for adjudication by a joint reference under Section 10 [2] of the ID Act. Accordingly, a joint application was made to the Assistant Commissioner of Labour under Section 10 [2] of the ID Act requesting him that the disputes mentioned therein be referred for adjudication to the Industrial Tribunal and consequently the reference from which the present proceedings arise was made. The terms of the reference were as follow:

(1) 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 G.E.B.? (2) If yes, whether such employees can claim the following rights which the other employees of Gujarat Electricity Board are already enjoying? a. weekly off. b. sick leave, c. C.L., d. Earned or Privilege Leave, e. Maternity Leave & other benefits to female employees, f. Gratuity, 9. Provident Fund, h. Bonus and i. Wage scales, etc., (3) If they are not held to be the employees of Gujarat Electricity Board, what are their rights in respect of the matters mentioned in [2] above, against their respective employers? [4] Whether such employees prove that during the year 1979, 1980 and 1981, they or any of them were made to work overtime. If yes, what would be due to them on that account and from whom? (5) Whether such employees are entitled to revision of their present wages? If yes, what should be their revised wages and from which date? (6) Whether the said

employees prove that so far as their services are concerned, there have been breaches of any of the provisions of the Factories Act, Employees Provident Fund Act, Maternity Benefits and Workmen's Compensation Acts. If yes, what relief can be legally given to them in that respect and from which date?"

4. Before the Tribunal, the Union filed the statement of claim as well as an application for interim relief. Both the Board and the contractors submitted their reply to the application for interim relief. The Tribunal gave its award being Award Part I dated 30th April, 1982 giving interim relief whereby the Board was directed to pay wages to the workmen at the rate of Rs.9.40 per day from 1st April, 1982 till the disposal of the main reference. Under the said Award, the Board was directed to give to the workmen leave with wages and weekly off in accordance with the provisions of the Factories Act, and maternity benefits as per the provisions of the Maternity Benefits Act.

To the main reference, written statements were filed both by the Board and the contractors. The Board also filed application stating therein that in the meanwhile some of the contractors who were engaged and who were parties to the reference were no longer working with it and that new contractors were engaged in their place. The Tribunal joined the new contractors as parties to the dispute. Likewise, the Union also made an application for joining some of the contractors as parties and they were joined as parties to the reference. Some contractors filed applications for decision on the preliminary point raised in their written statement that since demand nos. 1 and 2 in the reference amounted to a demand for abolition of contract labour system the Tribunal had no jurisdiction to entertain the said demand and that the said point should be heard first. This application was rejected by the Tribunal.

After recording evidence and hearing the parties, the Tribunal by its award came to the conclusion that quite a number of skilled and unskilled employees were employed in the Thermal Power Station for unloading of coal wagons, breaking of coal, feeding them in hoppers, stacking, cleaning earth work, fabrication jobs etc., that the labourers were the local advasis and they were not given any leave or other facilities before 1982 except the wages which were very meagre, that workmen were doing all types of unskilled jobs which they were asked to do and that they were rotated in different jobs. Further, while the contractors had changed, the workmen continued to work and the workmen were working for periods ranging from 5 to 8 years. The contractors had not maintained any records and were not providing any facilities whatsoever. The contractors had no licence under the Contract Labour [Regulation and Abolition] Act, 1970 [hereinafter referred to as the 'Act'] and that no releevant original certificate of registration or licence had been vrought on record. The registration certificate and four licences produced by the Board were ignored by the Tribunal on the ground that they were only copies and nothing had been produced in support of their authenticity. The Tribunal also held that ever otherwise, these documents were not relevant since the registration certificate produced pertained to the contractors who were not concerned in the present case while the licences produced were for a period subsequent to the date of the reference. The Tribunal relied on the decisions of the High Courts of Madras and Karnataka, viz., The Workmen of Best & Cromption Industries Ltd. v. The Management of Best & Cromption Engineering Ltd., Madras & ors. [1985 (1) LLJ 492 and Food Corporation of India Loading and Unloading Workers' Union v. Food Corporation of India [1987 (1) LLJ 407] respectively and held that the workmen concerned in the reference could not be the workmen of the contractors. The Tribunal then proceeded to analyse the position of each of the seven contractors involved in the reference, and held, on the basis of the evidence concerning the said contractors and the workmen working undet them, that the workmen of all the seven contractors should be deemed to be the workmen of the Board. The Tribunal also gave consequential direction for payment of arrears of wages to the worrkmen by adjusting the advances which were given to them by the interim directions of the Tribunal. Against the said award of the Tribunal, the Board preferred a writ petition before the High Court.

The High Court by its decision under challenge before us, held, among other things, that there was no demand for abolition of contract labour system as contended by the Board and hence the preliminary objection raised by the Board that the Tribunal had no jurisdiction to consider the question of the abolition of contract labour system in view of the provisions of the Act, had no merit in it. The High Court held that the Tribunal was

called upon to decide as to whether the workers who were engaged for working in the Thermal Power Station were employees of the Board or of the contractors. Hence the Tribunal was required to examine the reality behind the facade after piercing the veil. The High Court also held, negativing the contention to the contrary, that the Tribunal had not based its finding on the sole ground that there were no valid licences for certain periods for certain contractors issued under the provisions of the Act. The Tribunal had decided the question on overall consideration of the facts and circumstances and on the grounds apart from the absence of valid licences. One of the factors taken into consideration by the Tribunal was the continuous nature of work.

5. Before us the main contention advanced on behalf of the appellant-Board is that after the coming into force of the Act, it is only the appropriate Government which can abolish the contract labour system after consulting the Central Board or the State Board, as the case may be and no other authority including the industrial adjudicator has jurisdiction either to entertain such dispute or to directs its abolition. It is also contended on behalf of the Board that in any case neither the appropriate Government nor the industrial adjudicator has the power to direct that the workmen of the erstwhile contractor should be deemed to be the workmen of the principal employer and such a direction is contrary to the provisions of the Act.

The Central Government or the industrial adjudicator as the case may be, can only direct the abolition of the contact labour system as per the provisions of the Act but the Act does not permit either of them to declare the erstwhile workmen of the contractor to be the employees of the principal employer. It is also contended that if the contract is genuine as evidenced by the registration certificate granted to the principal employer and the licence issued to the contractor, then it would have to be held that the workmen concerned are in effect the workmen of the contractor and not the workmen of the principal employer and hence no dispute can be raised under the ID Act by such workmen for any relief since it is only the workmen present or past who can raise such a dispute under the ID Act for relief against their employer. On the other hand, it is contended on behalf of the workmen that the Act does not prevent or prohibit the raising of a dispute under the ID Act for abolition of the contract labour system. Where the contract is genuine, the workmen of the principal employer can raise the dispute for abolition of the contract labour system. Where it is not genuine, the workmen of the so called contractors themselves can raise a dispute for a declaration that they are in fact the employees of the principal employer. In either case, on the basis of the well-known factors laid down by the judicial decisions to establish the relationship of the employer and the employee between the parties, the Tribunal or the Court, as the case may be, will have jurisdiction to declare the contract labourers as the direct employees of the principal employer and grant consoquential reliefs.

6. 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?

6. We may first refer to the relevant provisions of the Act.

The Statement of Objects and Reasons accompanying the Bill provided as under:

"The system of employment of

contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amentities.

2. The proposed Bill aims at abolition of contract labour in respect of such

categories as may be notified by
appropriate Government in the light of
certain criteria that have been laid
down, and at regulating the service
conditions of contract labour where
abolition is not possible. The Bill
provides for the setting up of Advisory
Boards of a tripartite character,
representing various interests, to
advise Central and State Governments in
administering the legislation and
registration of establishments and
contractors. Under the Scheme of the
Bill, the provision and maintenance of
certain basic welfare amenities for
contract labour, like drinking water and
first-aid facilities, and in certain
cases rest-rooms and canteens, have been
made obligatory. Provisions have also
been made to guard against details in
the matter of wage payment."

As the preamble of the Act points out, the Act has been placed on the statute book for two purposes, viz., [i] to regulate the employment of contract labour and [ii] to provide for its abolition in certain circumstances and for matters connected therewith. It is thus clear that the Act does contemplate the total abolition of contract labour but its abolition only in certain circumstances and to regulate the employment of contract labour in certain establishments. The object as well as the provisions of the Act also show that the Parliament while realising the need for abolishing the contract labour system in certain circumstances also felt the need to continue it in other circumstances by properly regulating the same. The Act came into force on and from 5th September, 1970. It applies to [a] every establishment in which 20 or more workmen are employed or were employed as contract labour on any day of the preceding 12 months and [b] to every contractor who employs or employed on any day of the preceding 12 months 20 or more workmen. Liberty is given to the appropriate Government

to apply the provisions of the Act to any establishment employing such number of workmen less than 20 as may be specified in the notification. The provisions of sub-section [5] of Section 1 of the Act make it clear [a] that the Act will not apply to establishments in which work only of an intermittent or casual nature is performed and [b] if question arises whether work performed in an establishment is of an intermittent nature, the appropriate Government shall decide that question after consultation with the Central Advisory Board or the State Advisory Board as the case may be and that "ics decision shall be final". The explanation to the said sub-section [5] makes it clear that the work performed in an establishment shall not be deemed to be of an intermittent nature [i] if it was performed for more than 120 days in the preceding 12 months or [ii] if it is of a seasonal character and is performed for more than 60 days in a year. Section 2 [a] gives definition of 'appropriate Government'. Section 2 [e] defines 'establishment' to mean [a] any office or department of the Government or a local authority and [b] any place where any industry, trade, business, manufacture or occupation is carried on. Section 2 [g] defines 'principal employer'. Section 2 [i] defines 'workmen'as under:

"[i] "workmen" means any person employed

in or in connection with the work of any

establishment to do any skilled, semi-

skilled or un-skilled manual,

supervisory, technical or clerical work

for hire or reward, whether the terms of

employment be express or implied, but

does not include any such person

[A] who is employed mainly in a

managerial or administrative capacity;

or

[B] who, being employed in a supervisory

capacity draws wages exceeding five

hundred rupees per mensem or exercises,

either by the nature of the duties

attached to the office or by reason of

the powers vested in him, functions

mainly of a managerial nature; or

[C] who is an out-worker, that is to

say, a person to whom any articles and

materials are given out by or on behalf

of the principal employer to be made up,

cleaned, washed, altered, ornamented,

finished, repaired, adapted or otherwise

processed for sale for the purposes of

the trade or business of the principal

employer and the process is to be

carried out either in the home of the

out-workers or in some other premises,

not being premises under the control and

management of the principal employer."

Sections 3 and 4 require the Central and the State Government to constitute respectively Central and State Advisory Contract Labour Boards. Section 7 requires every principal employer of an establishment to which the Act applies, to make an application in the prescribed form to the registering officer for registration of the establishment.

Section 8 provides for revocation of the registration if the registration of any establishment has been obtained by misrepresentation or supression of any material fact or if for any other reason, the registration has become useless or ineffective. Section 9 of the Act speaks of the effect of non-registration. It states that no principal employer of an establishment shall employ contract labour in the establishment after the time fixed for the purpose. Section 10 then provides as follows:

"10, Prohibition of employment of

contract labour. [1] Notwithstanding

anything contained in this Act, the

appropriate Government may, after

consultion 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 occuption 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 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

other work is of perennial nature, the

decision of the appropriate of the

appropriate Government thereon shall be

final."

Section 12 provides for the licensing of the contractors and states that no contractor shall undertake or execute any work through contract labour except under and in accordance with the licence issued. It also provides that the licence issued may contain such conditions including any 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. Section 13 provides for the grant of licences in the prescribed form and the application for licence has to contain the particulars regarding the location of the establishment, the nature of process, the operation or work for which contract labour is to be employed and such of the particulars as may be prescribed. The licensing officer on receipt of the application has to make investigation, and the licence if granted is valid for the period specified therein and may be renewed from time to time for such period and on such conditions as may be prescribed. The following conditions are prescribed by Rule 25 [2]:

[i] the licence shall be non-

transferable;

[ii] the number of workmen employed as

contract labour in the establishm

ent shall not, on any day, exceed

the maximum number specified in the

licence;

[iii] save as provided in these rules,

the fees paid for the grant, or as

the case may be, for renewal of the

licence shall be non-refundable;

[iv] the rates of wages payable to the

workmen by the contractor shall not

be less than the rates prescribed

under the minimum wages Act, 1948

for such employment where

applicable and where the rates

have been fixed by agreement,

settlement or award, not less than

the rates so fixed;

[v] (a) in cases where the workmen

employed by the contractor

perform the same or similar kind

of work as the workmen directly

employed by the principal employer of

the establishment, the wage

rates, holidays hours of

work and other conditions

of service of the workm

en of the contract shall be

the same as applicable to the

workmen directly employed by the

principal employer of the

establishment on the same

or similar kind of

work;

Provided that in the case of

any disagreement with regard to the

type of work the same shall be

decided by the Chief Labour

Commission [Central];

(b) in other cases the wage rates,

holidays, hours of work and

conditions of service of the

workmen of the contract shall be

such as may be specified in this

behalf by the Chief Labour

Commission [Central].

Section 14 states that if the licensing officer is satisfied either on a reference made to him in this behalf or otherwise, that among other things, the holder of a licence has obtained the licence by misrepresentation or suppression of any material fact or has without reasonable cause failed to comply with the conditions subject to which the licence has been granted or has contravened any provision of the Act or the Rules made thereunder, he can cancel the licence. The cancellation is without prejudice to any other penalty to which the holder of the licence may be liable under the Act. Section 20 casts an obligation on the principal employer to provide any amenity required to be provided under the Act to the contract labour and permits the principal employer to recover all expenses from the contractor incurred by him for providing the amenities. Section 21 likewise makes the contractor responsible for payment of wages to each worker employed by him, and every employer to nominate a representative to be present at the time of the disbursement of the wages. In case the contractor fails to make the payment within the prescribed period or makes short payment, the principal employer is made liable to make payment of wages in full or the unpaid balance as the case may be and the principal employer is permitted to recover the amount so paid, from the contractor. Sections 22 to 27 of Chapter VI prescribe penalties for contravention of the provisions of the Act. Section 29 of Chapter VII requires every principal employer and every contractor to maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed. Section 30 makes the laws and agreements inconsistent with the Act, ineffective while saving the more beneficial service conditions of the contract labourers. Section 31 empowers the appropriate Government to grant exemption to any establishment or class of establishments or any class of contractors from complying with the provisions of the Act or the rules made thereunder on such conditions and restrictions as may be prescribed.

7. Under the Act the Government has in exercise of power granted by Section 35 of the Act made Contract Labour [Regulation and Abolition] Rules, 1971 [hereinafter referred to as the 'Rules'] which have come into force from 10th February, 1971. Rule 17 [1] prescribes a form, viz., Form I, for application, referred to in Section 7 [1], for registration of the establishment, to be made by the principal employer for employing contract labour. The form shows that the employer has to furnish, among other things, information with regard to [i] nature of work carried on in the establishment, [ii] particulars of contractors and contract labour, viz., [a] names and addresses of contractors, [b] nature of work in which the contract labour is employed or to be employed, [c] maximum number of contract labour to be employed on any day through each contractor, [d] estimated date of commencement of each contract labour under each contractor and [e] estimated date of termination of employment of contract labour under each contractor. Rule 18 [1] provides for Form II of the certificate of registration to be granted under Section 7 [2] of the Act. The certificate of registration has to contain [i] the name and address of the establishment, [ii] the maximum number of workmen to be employed as contract labour in the establishment, [iii] the type of business, trade, industry, manufacture or occupation which is carried on in the establishment, [iv] the names and addresses of contractors, [v] nature of work in

which contract labour is employed or is to be employed and [vi] other particulars relevant to the employment of contract labour. Rule 18 [3] requires the registering officer to maintain a register in a form showing the particulars of establishment in relation to which certificate of registration has been issued and the register of establishment has, in addition, to show the total number of workmen directly employed by the employer. Rule 18 [4] requires that any change in the particulars specified in the certificate of registration has to be intimated by the employer to the registering officer within 30 days from the date of the change and the particulars of and the reasons for such change. Rule 20 provides for an amendment of the certificate of registration pursuant to the change intimated by the employer under Rule 18 [4] which amendment has to be granted by the registering officer only after satisfying himself that there has occurred a change. Rule 21 provides for an application for a licence to be made by the contractor in Form IV. The form requires information with regard, among other things, to [i] name and address of the contractor, [ii] particulars of establishment where contract labour is to be employed such an [a] name and address of the establishment, [u] type of business, trade, industry, manufacture or occupation which is carried on in the establishment, [c] number and date of certificate of registration of the establishment under the Act and [d] name and addresses of employer; and [iii] particulars of contract labour such as [a] nature of work in which contract labour is or is to be employed in the establishment, [b] duration of the proposed contract work giving particulars of the proposed date of commencing and ending of the contract work [c] name and address of the agency or manager of contractor at the work site [d] maximum number of contract labour proposed to be employed in the establishment on any date. Rule 21 [1] also requires certificate in Form V by the principal employer that he has engaged the applicant- contractor as a contractor in his establishment and that he undertakes to be bound by all the provisions of the Act and the Rules. Rule 25 prescribes the form and the terms and conditions on which licence is issued to the contractor. The conditions on which the licence is issued include the condition that the licence shall be non-transferable and the number of workmen employed as contract labour in the establishment shall not on any date exceed the maximum number specified in the licence and that the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 for such employment, and where the rates have been fixed by agreement, settlement or award, the same shall not be less than the rates so fixed. In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the employer. In other cases, the wage rates, holidays, hours of work and conditions of service of the contractor's workmen shall be such as may be specified in that behalf by the Chief Labour Commissioner [Central]. While specifying the wage rates, holidays etc. the Chief Labour Commissioner has to have regard to the wage rates, holidays etc. obtaining in similar employments. The licensee-contractor has to notify any change in the number of workmen or the conditions of work. Rule 27 states that every licence granted to the contractor shall remain in force for 12 months from the date it is granted or renewed. Rule 29 provides for renewal of licences. Rule 32 provides for the grant of temporary certificate of registration and licences where the contract labour is not estimated to last for more than 15 days. Rule 75 requires every contractor to maintain in respect of each registered establishment a register in Form XIII. This form mentions details to be given in respect, among others, of the name and address of the principal employer and of the establishment, the name and address of the contractor and the nature and location of work, the name and surname of each workmen and their permanent home address, the date of commencement of employment, the signature or thumb-impression of workmen, the date of termination of employment and reasons for termination. Rule 76 requires that every contractor shall issue an employment card in form XIV to each worker within three days of the employment of the worker. Rule 77 requires that every employer shall issue service certificate to each of the workmen.

8. The provisions of the Act and of the Rules show, among other things, that every principal employer engaging a contractor and every contractor engaging the contract labour in the establishment, has to obtain for the purpose, registration certificate and the licences respectively from the authority under the Act. The nature of work for which the contract labour is engaged, the maximum number of the contract labour proposed to be engaged, the period for which such labour is to be employed, the names and addresses of the workmen so employed have also to be furnished to the authority. The workmen have to be paid minimum wages and where

there are agreements, settlements etc. the wages which are agreed to thereunder have to be paid. Further, if the contract labour is employed for doing the same type of work as is done by the direct employees of the principal employer, wages have to be paid and facilities given to the contract labour as are paid or given to the direct employees of the principal employer. Any change in the nature of employment or the number of the workmen to be employed and the period for which they are to be employed etc. has to be intimated to the authority concerned.

If any amenity is required by the provisions of the Act to be provided for the benefit of the contract labour, viz., canteens, rest rooms, drinking water, latrine, urinals, washing facilities and first aid facilities, and is not provided by the contractor within the time prescribed therefor, it is the principal employer who is required to provide the same within such time as may be prescribed. The principal employer can, however, recover the expenses of providing such facilities from the contractor's account or as a debt payable by the contractor. Further, the principal employer is required to nominate the representative duly authorised by him to be present at the time of the disbursement of wages by the contractor to the labour, and such representative is required to certify the wages paid to the labour. It is the principal employer who has to ensure the payment of wages to the contract labour and in case the contractor fails to make payment of wages within the prescribed period or makes short payment, it is the principal employer who is made liable to make the payment of wages in full or the unpaid balance due, as the case may be. He can recover the amounts so paid from the contractor's account or as a debt payable by the contractor. The contractor is also required to obtain a licence before undertaking or executing any work through contract labour and he can execute such work only in accordance with the licence issued to him. The application for licence has to indicate the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and other particulars, prescribed under the Rules. The licence issued has to contain conditions relating to the hours of work, fixation of wages and essential amenities.

The contravention of any provision of the Act including contravention of any condition of the licence granted to the contractor is made a penal offence.

Further, under Section 10 of the Act, the authority to prohibit employment of contract labour in any process, operation or other work in any establishment has been vested in the appropriate Government which has to exercise it after consulation with the Central Board or the State Board as the case may be. Before issuing the notification prohibiting the contract labour, the appropriate Government has to have regard to the conditions of work and benefits provided for the contract labour in the 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 a perennial nature, i.e., whether it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in the establishment, [c] whether it is done ordinarily through direct workmen in that establishment or an establishment similar thereto, and [d] whether it is sufficient to employ considerable number of whole-time workers. The explanation to that section makes the decision of the appropriate Government final with regard to the question whether the process, operation or other work is of pernnial nature. The effect of non-registration of an establishment under the Act is that the establishment cannot employ contract labour. So also, the effect of non-licensing of the contractor is that the contractor is precluded from undertaking or executing any work through contract labour. It is against the background of these provisions of the Act and in the light of the decisions of this Court which are cited before us that we have to answer the questions raised in these appeals.

9. On the basis of the provisions of Section 10, it is contended that no industrial dispute can be raised to abolish contract labour in any process, operation or other work in any establishment. The contention is two-fold. In the first instance, it is argued that the said section gives exclusive authority to the appropriate Government to prohibit contract labour and that too after following the procedure laid down therein. Before taking the decision to prohibit, the appropriate Government has to (i) consult the Central Board or the State Board, as the case may be; (ii) have regard to the conditions of work and benefits provided for the contract

labour in that establishment; and (iii) have regard to other relevant factors such as (a) whether the process, operation or the connected 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 carried on in that establishment; (c) whether it is done ordinarily through direct workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of wholetime workmen. The other contention is that the decision of the appropriate Government in that behalf is final and the decision is not liable to be challenged in any Court including before the industrial adjudicator.

10. In support of the first contention, reliance was placed on the following decisions of this Court :

In Vegoils Pvt. Ltd. v. The Workmen [(1972) 1 SCR 673], the facts were that the appellant, a private limited company carried on the business of manufacturing edible oils, soaps and certain by products, and employed about 700 permanent workmen for the purpose. However, for loading and unloading seed and oil cake bags and for feeding hoppers in the solvent extraction plant, it employed labour through a contractor. The direct workmen raised an industrial dispute claiming, inter alia, that the work of loading and unloading seed bags as well as that of feeding hoppers was of a perennial nature and hence the contract labour in respect of the said work should be abolished. The industrial Tribunal held that the work of feeding the hoppers could not be said to be intermittent and sporadic as claimed by the company and that it was closely connected with the principal activity of the appellant. The Tribunal also recorded a finding that in similar plants in the region, the work of feeding the hoppers was carried on by permanent workmen. Hence, the Tribunal held that the company should carry out this work through permanent workmen. As regards loading and unloading of seed and cake bags, the Tribunal held that these activities were also closely connected with the main industry and the work was of a permanent character. Although the comparable units in the same region carried on the working of loading and unloading through contract labour, the Tribunal held that since the contract labour has to be discouraged, the appellant must employ only permanent workmen for doing the said job as well. The Tribunal then referred to the Act, [i.e., the Contract Labour (Regulation and Abolition) Act] as well as to a State enactment, viz., Maharashtra Mathadi Hamal and Other Manual Workers [Regulation of Employment and Welfare] Act, 1969 and observed that these two enactments also supported its view. In appeal before this Court, the company, apart from questioning the Tribunal's decision on merits, challenged the jurisdiction of the Tribunal to consider the question of the abolition of contract labour in view of the provisions of the two Acts. This Court held that the Tribunal acquired jurisdiction to entertain the dispute in view of the reference made by the State Government on April 17, 1967. On that date, neither the Central Act nor the Maharashtra Act had been passed. Even during the proceedings before the Tribunal, the company raised no objection after the passing of the two enactments that the Tribunal had no longer jurisdiction to adjudicate upon the dispute. Under these circumstances, the Tribunal had to adjudicate upon the points referred to it having due rgard to the principles laid down by the courts particularly this Court governing the abolition of contract labour. The Court further held that the Act had received the assent of the President before the passing of the Tribunal's award while the State Act had come into force before the passing of the award. Though the contention that the Tribunal lost jurisdiction to consider the question of contract labour in view of these enactments could not be accepted, it was held that this Court would be justified when dealing with the appeal, to give effect particularly to the provisions of the Act having due regard to the clearly expressed intention of the legislature in the said Act regarding the circumstances under which contract labour could be abolished. The Court also held that even according to the evidence of the company's witnesses it was clear that the feeding of hoppers in the solvent extraction plant was an activity closely and intimately connected with the main activity of the appellant, and that excepting for a few days, this work had to go on continuously throughout the year. It could not also be said that by employing contract labour for the purpose, the appellant would be enabled to keep down the costs on the ground that there would not be sufficient work for all the workmen if permanent labour was employed. Further, the award of the Tribunal abolishing the contract labour in respect of feeding the hoppers was fully justified because it was in accordance with the principles laid down by this Court which were substantially incorporated in clauses [a] to [d] of Section 10 [2] of the Act and upheld the direction of the Tribunal in that regard. However, this Court held that the Tribunal's direction to the company not to engage any labour

through a contractor for the work of loading and unloading after May 1, 1971 must be set aside. Since the Act had come into force on 10th February, 1971 and under Section 10 of the Act the jurisdiction to decide matters connected with the prohibition of contract labour was vested in the appropriate Government, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Act. The Court also held that the Industrial Tribunal in the circumstances had no jurisdiction, though its award was dated 20th Noveember, 1970, to give a direction in that respect which becomes enforceable after the date of the coming into operation of the Act. Further under clause [c] of Section 10 [2] of the Act, one of the relevant factors to be taken into account when contract labour regarding any particular type of work is proposed to be established, is whether that type of work is done ordinarily through direct workmen in the establishment or an establishment similar thereto. In the case before the Court, similar establishments employments employed contract labour for loading and unloading but the evidence also showed that the work of loading and unloading required varying number of workmen.

It will thus appear from this decision firstly, that an industrial dispute can be raised by the direct workmen of the establishment for abolition of the contract labour system. Secondly, although on the date the dispute was raised the Act was not in force, and hence the dispute with regard to the abolition of the contract labour system had to be decided by the Tribunal, since the Act came into force at the time of the decision, the dispute had to be decided in accordance with the provisions of the Act. Hence on and after the coming into force of the Act, no direction could be given by the Industrial Tribunal to abolish the contract labour system, since the jurisdiction to give directions with regard to the proibition of contract labour is vested in the appropriate Government.

In B.H.E.L. Workers' Association Hardwar & Ors. etc. etc. v. Union of India & Ors. etc. etc. [(1985) 2 SCR 611] the matter came to this Court by way of a writ petition filed by the workmen under Article 32 of the Constitution. It was contended by the workmen's Association that out of 16000 and odd workmen working within the premises of the respondent-Company, as many as a thousand workers were treated as contract labour and placed under the control and at the mercy of contractors and though they did the same work as workers directly employed by the company, they were not paid the same wages nor were their conditions of service the same as that of the directly employed workers. It was further alleged that the management paid to the contractors, and in turn, the contractors paid salary to them, after deducting substantial commission, and the wages paid to them did not bear comparison to the wages paid to those directly employed by the company. Hence it was alleged that the rights of the contract workers were infringed under Articles 14 and 19 [1] (f) [sic. - g?] of the Constitution and a declaration was sought from the Court that the system of contract labour prevalent in the respondent-company was illegal, the contract employees were the direct employees of the respondent-company and entitled to equal pay as the workmen directly employed. The respondent-company opposed the petition by contending that if the petitioners had any genuine grievance, they could avail themselves of the rights secured to them under the Act, Minimum Wages Act, Equal Remuneration Act, etc. for seeking appropriate relief. It was further contended on behalf of the company that certain jobs though required to be done within the plant area, could more conveniently and efficiently be done on a job contract basis, and this was actually due to the introduction of a new technology for expansion of production programme with foreign collaboration. The jobs themselves were entrusted to contractors and it was not appropriate to say that the contractors merely supplied the labour. They were required to do the total job and payment was made on the basis of the quantum of work involved and not on the basis of the workers employed by the contractor. This Court dismissed the writ petition by holding that the Act does not provide for the total abolition of contract labour, but for its abolition only in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The Act is not confined to private employers only. The definition of 'establishment' under Section 2 [e] and of 'principal employer' under Section 2 [g] expressly include the Government or any of its departments. The Court further held that no invidious distinction can be made against contract labour. Contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the

appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner [Central]. The Parliament has not abolished contract labour but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Section 10 of the Act. Whether the work done by the contract labour is the same or similar to that done by the workmen directly employed by the principal employer of any establishment, is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 [iii] [iv] (a) of the 1971 Rules.

The Court further held that it was not possible in an application under Article 32 to embark upon an enquiry whether the thousand and odd workmen working in various capacities and engaged in multifarious activities did work identical with work done by the workmen directly employed by the company and whether for that reason, they should not be treated as contract labour but as direct employees of the company. There are other forums created under other statutes designed to decide such and like questions. The Court further observed that the counse] wanted this Court to abolish the employment of contract labour by the State and by all public sector undertakings which was not possible since that would be nothing but the exercise of legislative activity with which function the court is not entrusted by the Constitution. While holding thus, the Court, however, directed the Central Government to consider whether the employment of contract labour should not be prohibited under Section 10 of the Act in any process, operation or other work of the BHEL. The Court also directed the Chief Labour Commissioner to enquire into the question whether the work done by the workmen employed by the contractors is the same type of work as that done by the workmen directly employed by the principal employer in the BHEL, Hardwar. In Catering Cleaners of Southern Railway etc. v. Union of India & Ors. etc. [(1987) 2 SCR 164], the petitioners who were catering cleaners of the Southern Railway had filed a representative writ petition on behalf of about 300 and odd catering cleaners working in the catering establishments at various Railway junctions of the Southern Railway and in the pantry cars of long-distant trains running under the control of the Southern Railway. Since a long time, they were agitating for the abolition of the contract labour system under which they were employed to do the cleaning work in the catering establishments and pantry cars and for their absorption as direct employees of the principal employer, viz., the Southern Railway. Although the contract labour labour system had been abolished in almost all the railways in the country, the Southern Railway persisted in employing contract labour for doing the work in question. Since several representations made by them to the authorities proved fruitless, they approached this Court under Article 32 of the Constitution to direct the respondent-Union of India and others to exercise their power under Section 10 [1] of the Act and to abolish the contract system and further to direct the Railways to regularise the services of the existing catering cleaners and to extend to them the service benefits then available to other categories of employees in the catering establishments. The Railway administration opposed the writ petition contending that it had not been found possible to abolish the contract labour because the nature of the cleaning work in the catering units of the Southern Railway, was fluctuating and intermittent. The Court referred to the report of the Parliamentary Committee which had held that the job of cleaning in Railway catering units was of a permanent nature and the work if entrusted to the direct employees would only marginally increase the cost. The Committee had recommended the employment of cleaners directly by the Railways to avoid their exploitation. The Court also referred to the decision of this Court in Standard Vacuum Refining Co. of India Ltd. v. Its Workmen & Ors. [(1960) 3 SCR 466]. After analysing the provisions of the Act, the Court held that on the facts, it appeared to it to be clear that the work of cleaning catering establishments and pantry cars was necessary and incidental to the industry or business of the Southern Railway, that the work was of a perennial nature, that it was done through direct workmen in most Railways in the country and that the work required the employment of sufficient number of whole-time workmen and thus the requirement of clauses [a] to [d] of Section 10 [2] of the Act were satisfied. In addition, the Court found that there was a factor of profitability of the catering establishments which as stated in the report of the Parliamentary Committee, was making a profit of Rs.50 lakhs per annum. However, even on these findings, the Court held that the writ petitioners could not invite the Court to issue a mandamus directing the Central Government to abolish the contract labour system because under Section 10 of the Act, Parliament

had vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or any other work in any establishment. The appropriate Government is required to consult the Central Board or the State Board as the case may be, before arriving at its decision. The decision, of course, is subject to the judicial review. Hence, the Court would not be justified in issuing a mandamus prayed for unless and until the Government failed or refused to exercise the power vested in it under Section 10 of the Act. In the circumstances, the appropriate order to make according to the Court, was to direct the Central Government to take suitable action under Section 10 of the Act in the matter of prohibiting the employment of contract labour and the Government should do it within six months from the date of the order. The Court further observed that without waiting for the decision of the Central Government, the Southern Railway was free of its own motion to abolish the contract labour system and to regularise the services of the employees in the work of cleaning catering establishments and pantry cars. The Court further observed that the administration of the Southern Railway should refrain until the decision of the Central Government from employing contract labour. The Court also directed that the work of cleaning catering establishments and pantry cars should be done departmentally by employing those workmen who were previously employed by the contractors on the same wages and conditions of work as were applicable to those engaged for the same work by the Southern Railway.

In Dena Nath & Ors. v. National Fertilisers Ltd. & Ors. [(1992) 1 SCC 695], the question involved was whether, if the principal employer does not get registration under Section 7 and/or the contractor does not get licence under Section 12 of the Act, the labour engaged by the principal employer through the contractor is deemed to be the direct employees of the principal employer or not. On this point there was a conflict in the decisions of High Courts of Delhi, Calcutta, Punjab and Kerala on the one hand and of the High Courts of Madras, Bombay, Gujarat and Karnataka on the other. The view taken by the former High Courts was that the only consequence of the non-compliance of the provisions of Sections 7 and 12 of the Act was that the principal employer and the contractor as the case may be, are liable for prosecution under the Act whereas the view taken by the latter High Courts was that in such a situation the contract labour became the direct employees of the principal employer. After noticing the decision of this Court in Standard Vacuum Refining Co. case [supra] and going through the genesis of the Act, the Court held that it is not for the High Court to enquire into the question and decide whether the contract labour in any process, operation or any other work in any establishment should be abolished or not. It is a matter for the appropriate Government to decide after considering all the matters as required by Section 10 of the Act. The Court further held that the only consequence provided under the Act where either the principal employer or the labour contractor violates the provisions of Section 7 or 12 as the case may be, is the penalty as envisaged under Sections 23 and 25 of the Act. Merely because a contractor or an employer has violated a provision of the Act or the Rules, the Court cannot issue any mandamus for deeming the contract labour as having become the employees of the principal employer. The Court referred to the decisions of the Karnataka and the Gujarat High Courts [the latter is under challenge in the present proceedings] and observed that it would not like to express any opinion on the same since they were under challenge in this Court but would place on record that it did not agree with the observations of the Madras High Court regarding the effect of the non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of the Bombay High Court which was under consideration before it. The Court further stated that it was of the view that the decisions of the Calcutta and Delhi High Courts were correct and approved of the same.

11. 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, 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 sham or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the concerned workmen 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 decision of this Court which were also relied upon by the counsel for the workmen.

In The Standard-Vacuum Refining Co. of India Ltd. v. Its workmen and others. [supra], an industrial dispute was raised by the workmen of the appellant-company with respect to the contract labour employed by the company with respect to the contract labour employed by the company for cleaning maintenance work at the refinery including the premises and plants belonging to it. The workmen made a demand for abolition of the contract system and for absorbing workmen employed through the contractor into the regular service of the company. The matter was referred for adjudication to industrial Tribunal. The company objected to the reference on the ground [1] that it was incompetent inasmuch as there was no dispute between it and the respondents and it was not open to them to raise a dispute with respect to the workmen of some other employer, viz., the contractor, and [2] in any case, it was for the company to decide what was the best method of carrying on its business and the Tribunal could not interfere with that function of the management. The Tribunal held that the reference was competent. It was of the opinion that the work which was being done through the contractor was necessary for the company to be done daily, that doing this work through annual contracts resulted in deprivation of security of service and other benefits of the workmen of the contractor and hence the contract system with respect to that work should be abolished. In appeal, this Court held that the dispute raised was an industrial dispute within the meaning of section 2 [k] of the Industrial Disputes Act because [i] the respondent-workmen had a community of interest with the workmen of the contractor, [ii] they had also substantial interest in the subject- matter of the dispute inasmuch as the class to which they belonged was substantially affected thereby, and [iii] the company could give relief in the matter. The Court further held that the work in question was incidental to the manufacturing process and was necessary for it and was of a perennial nature which must be done every day. Such work is generally done by workmen in the regular employment of the employer and there should be no difficulty in having direct workmen for that kind of work. The matter would be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full time workmen for the purpose. While dealing with the contention that the Tribunal should not have interfered with the management's manner of having its work done in the most economical and convenient way that it thought proper, and that the case in question was not one where the contract system was a camouflage and the workmen of the contractors were really the workmen of the company, the Court held that it may be accepted that the contractor in that case was an independent person and the system was genuine and there was no question of the company carrying on the work itself and camouflaging it as if it was done through contractors in order to pay less to the workmen. But the fact that the contract in the case was a bona fide one would not necessarily mean that it should not be touched by the industrial Tribunals. If the contract had been mala fide and a cloak for suppressing the fact that the workmen were really the workmen of the company, the Tribunal would have been justified in ordering the company to take over the entire body of workmen and treat it as its own workmen. But because the contract in the case was bona fide, the Tribunal had not ordered the company to take over the entire body of workmen. It had left to the company to decide for itself how many workmen. It had left to the company to decide for itself how many workmen it should employ and on what terms, and had merely directed that when selection is being made, preference be given to the workmen employed by the contractor. The Court also held that the only question for decision was whether the work which was perennial and must go on from day to day and which was incidental and necessary for the work of the refinery and was sufficient to employ a considerable number of whole-time workmen and which was being done in most concerns through direct workmen, should be allowed to be done by contractors. Considering the nature of the work done and the conditions of service in the case, the Court opined that the Tribunal's decision was right and no interference was called for.

This decision is of seminal importance for two reasons. It laid down the tests for deciding whether contract labour should be continued in a particular establishment, occupation or process etc. Section 10 of the Act incorporates more or less the same tests as laid down by this decision. Secondly, it also spelt out the circumstances when the workmen of an establishment can espouse the cause of other workmen who were not the direct employees of the establishment and raise an industrial dispute within the meaning of the ID Act.

This being a case decided prior to the coming into operation of the Act, the Court has held here that even if the contract is a genuine one, the industrial adjudicator will have jurisdiction to abolish the contract labour and give appropriate relief as the industrial Tribunal had done in the case. Its importance lies in the fact that it lends support to the proposition that even after the coming into operation of the Act, the industrial adjudicator will have, in appropriate cases, jurisdiction to investigate as to whether the contract is genuine or not, and if he comes to the conclusion that it is not, he will have jurisdiction also to give suitable relief. It may also appear that even where the contract is genuine but is comes to be abolished by the appropriate Government under Section 10 of the Act, the industrial adjudicator will have jurisdiction to determine the status of the workmen of the erstwhile contractor.

In Hussainbhai, Calicut v. The Alath Factory Thozhilali Union, Kozhikode & Ors. [(1978) 4 SCC 257], a number of workmen were engaged in the petitioner's factory to make ropes. But they were hired by contractors who had executed agreements with the petitioners to get such work done. When 29 of these workmen were denied employment, an industrial dispute was referred by the State Government. The Industrial Tribunal held them to be workmen of the petitioner. This award was challenged by the petitioner before the High Court and the learned Single Judge held that the petitioner was the employer and the workmen were employees under the petitioner. The Division Bench of the High Court upheld this decision. While dismissing the special leave petition against the said decision, this Court observed that the facts found were that the work done by the workmen was an integral part of the industry concerned. The raw material was supplied by the management, the factory premises belonged to the management, the equipment used also belonged to the management and the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and the defective articles were directed to be rectified by the management. These circumstances were conclusive to prove that the workmen were workmen of the petitioner. The Court further held that if the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of the enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life bond. If however, there is total dissociation between the management and the workmen, the employer is in substance and in real life terms another. The true test is where the workers or group of workers labour to produce goods or services and these goods or services are for the business of another, that another is in fact, the employer. He has economic control over the workers' skill, subsistence, and continued employment. If for any reason, he chokes off, the workers are virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned and especially since it is one of the myriad devices resorted to by the managements to avoid responsibility when labour legislation casts welfare obligations on real employer based on Articles 38, 39, 42, 43 and 43A [sic.] of the Constitution.

In R.K. Panda & Ors. v. Steel Authority of India Ltd. [(1994) 5 SCC 304], the contract labourers by filing a writ petition under Article 32 claimed parity in pay with direct employees and also regularisation in the employment of the respondent-authority. They were continuing in employment for periods ranging from 10 to 20 years. The contractors used to be changed but the new contractors were under the terms of the agreement required to retain the workers of the predecessor contractors. The workers were employed through the contractors for different purposes like construction and maintenance of roads and buildings within plant premises, public health, horticulture, water supply etc. In the agreement with the contractors, it was stated that the parties shall be governed by the provisions of the Act as well as by the provisions of the payment of Bonus Act. On these facts, this Court observed as follows: "It is true that with the passage

of time and purely with a view to

safeguard the interests of workers, many

principal employers while renewing the

contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smokescreen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for the High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not be pointed out

that in all such cases, the labourers

are initially employed and engaged by

the contractors. As such at what point

of time a direct link is established

between the contract labourers and the

principal employer, eliminating the

contractor from the scene, is a matter

which has to be established on material

produced before the court. Normally, the

Labour Court and the Industrial

Tribunal, under the Industrial Disputes

Act are the competent fora to adjudicate

such disputes on the basis of the oral

and documentary evidence produced before

them."

Taking into consideration the developments during the pendency of the writ petition in this Court and the offer made by the respondent-authority to the workmen either to accept voluntary retirement on the terms offered by it or to agree to be absorbed on regular basis and the scheme of modernisation which was in the process of implementation, the Court gave certain directions in respect of 879 workmen who were involved in that case. Those directions included, among other things, regularisation of those workmen who had put in 10 years' continuous service provided they were below 58 years of age which was the age of superannuation under the respondent-authority. The workmen so regularised were not to receive any difference in their contractual and regular wages till the date of their absorption which was to be completed within four months of the date of the order. The respondent-authority was further at liberty to retrench workmen so absorbed in accordance with law. The said direction was further applicable to 142 out of 246 jobs in view of the fact that contract labour had already been abolished in 104 jobs.

12. As regards the second contention based on the provisions of Section 10 of the Act, viz., that the decision of the Government under the said provision as to whether it should be abolished or not, is final and the same cannot be challenged in any court including before the industrial adjudicator. Shri Venugopal is support of his contention relied upon certain decisions of this Court under the Citizenship Act, 1955 where the finality is attached to the decision of the Central Government taken under Section 9 [2] of the said Act. The provisions of Section 9 [2] of the Citizenship Act which are more or less pari materia with the provisions of Section 10 of the present Act, are as follows "[2] If any question arises as to

whether, when or how any person has

acquired the citizenship of another

country, it shall be determined by such

authority, in such manner, and having

regard to such rules of evidence, as may

be prescribed in this behalf."

The decisions of the Court in that behalf are Akbar Khan Alam Khan & Anr. Vs. The Union of India & Ors., [(1962) 1 SCR 779] Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Anr. [(1965) 2 SCR 884], State of U.P. Vs. Abdul Rashid & Ors. [(1984) Supp. SCC 347] and Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi [(1986) 4 SCC 78].

13. It is not necessary for us to go into the question of the finality of the decision under Section 10 of the Act since as held by this Court in Vegoils Pvt. Ltd., B.H.E.L. Workers' Association, Catering Cleaners of Southern Railway, and Dena Nath [supra], the exclusive authority to decide whether the contract labour should be abolished or not is that of the appropriate Government under the said provision. It is further not disputed before us that the decision of the Government is final subject, of course, to the judicial review on the usual grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate Government under Section 10 of the Act arises only where the labour contract is genuine and the question whether the contract is genuine, or not can be examined and adjudicated upon by the court or the industrial adjudicator, as the case may be. Hence in such cases, the workmen can make a grievance that there is no genuine contract and that they are in fact the employees of the principal employer.

14. It is no doubt true that neither Section 10 of the Act nor any other provision thereof provides for determination of the status of the workmen of the erstwhile contractor once the appropriate Government abolishes the contract labour. In fact, on the abolition of the contract, the workmen are in a worse condition since they can neither be employed by the contractor nor is there any obligation cast on the principal employer to engage them in his establishment. We find that this is a vital lacuna in the Act. Although the Act has been placed on the statute book with all benevolent intentions, and elaborate provisions are made to prevent the abuse of the contract labour system as is evident from the Statement of Objects and Reasons and the provisions of the Act referred to by us in detail earlier, the legislature has not provided any relief for the concerned workmen after the contract is abolished. One reason for the same pointed out to us was that the workmen engaged by the contractor may not be qualified to be engaged by the principal employer according to the latter's rules of recruitment. In this respect, we envisage two different situations, first where similar type of work is being carried out by the direct employees of the principal employer and, second where the contract labour is engaged to execute work which is not being carried out by any section of the direct employees of the principal employer. As regards the first situation, the condition no. [5] of the licence to be granted to the contractor in Form VI under Rule 25 [1] of the Rules requires that wage rates, holidays, hours of work and other conditions of service of the contract workmen shall be the same as applicable to the workmen directly employed by the principal employer for performing the same or similar type of work. In other cases, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor, as per condition [6] of the said Form, shall be such as may be specified by the Chief Labour Commissioner [Central]. When the legislature has been careful enough to take such precautions, we are unable to appreciate as to why it could not have provided also for the absorption of the workmen who have been doing the work in question. It is possible that the contractor has been transferring his workmen from one job to another and the same workmen may not be working for all the time in the same establishment or the process. But as pointed out earlier, the application for registration under Rule 17 [1], the certificate of registration under Rule 18 [1], the register of establishment under Rule 18 [3], the application for licence under Rule 21 [1] and the licence granted under Rule 25 [1] all require the particulars of contract labour to be furnished in the prescribed form.

Hence is should not be difficult to verify the workmen who were actually working in the establishment in question for a given period of time and the period for which they had worked since the record of payment of wages made to them would be available as it is to be made in the presence of the representative of the principal employer who is also responsible to make the payment of the whole of the wages or the balance of it in case the contractor makes default. For ensuring the payment to the workmen, the muster roll has necessarily to be maintained. If they have in fact worked for a reasonably long time satisfactorily and have thus gained experience, it should not be difficult to identify and absorb them. In fact, they will any time be better than fresh recruits and their engagement would be beneficial to the establishment concerned. On account of the abolition of the contract labour, the establishment will in any case require replacement of the contract labour. It may be that the establishment may not require the whole complement of the workmen erstwhile employed by the contractor. But that also may not always be correct since the contractor would more probably than not have employed less work-force than may be necessary in order to keep his margin of profit as wide as possible. Whatever the case, the logic in not employing the workmen of the erstwhile contractor or those of them who may be necesary, in the principal establishment after the contract is abolished, does not appear to be sound.

The legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labour in the principal establishment on the abolition of the contract labour, fearing that such provision would amount to forcing the contract labour on the principal employer and making a contract between them. The industrial adjudicator however is not inhibited by such considerations. He has the jurisdiction to change the contractual relationships and also make new contracts between the employer and the employees under the ID Act. It is for this reason that in all cases where the contract labour is abolished, the industrial adjudicator, depending upon the facts of the case will have the authority to direct the principal employer to absorb such of the workmen of the erstwhile contractor and on such terms as he may determine on the basis of the relevant material before him. Hence the legislature could have provided in the Act itself for a ireference of the dispute with regard to the absorption of the workmen of the erstwhile contractor to the industrial adjudictor after the appropriate Government has abolished the contract labour. That would also have obviated the need to sponsor the dispute by the direct workmen of the principal employer. That can still be done by a suitable amendment of the Act.

15. The answer to the question as to what would be the status of the erstwhile workmen of the contractor, once the contract labour system is abolished is therefore that where an industrial dispute is raised, the status of the workmen will be as determined by the industrial adjudicator. If the contract labour system is abolished while the industrial adjudication is pending or is kept pending on the concerned dispute, the adjudicator can give direction in that behalf in the pending dispute. If, however, no industrial dispute is pending for determination of the issue, nothing prevents an industrial dispute being raised for the purpose.

16. The last but equally important question that remains to be answered is : who can raise an industrial dispute for absorption of the workmen of the ex- contractor by the principal employer. As has been pointed out earlier, if the contract is not genuine, the workmen of the contractor themselves can raise such dispute, since in raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. Hence the dispute would squarely fall within the definition of industrial dispute under Section 2 (k) of the ID Act being a dispute between the employer and the employees. In that case, the dispute would not be for abolition of the contract labour, but for securing the appropriate service conditions from the principal employer on the footing that the workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute, the workmen are required to establish that the so called labour contract was sham and was only a camouflage to deny them their legitimate dues.

However, the situation is obviously different when the labour contract is genuine and there is no relationship of employer-employee between the principal employer and the workmen of the contractor. No industrial dispute can be raised by the workmen of the contractor either before or after the contract labour is abolished

by the appropriate Government under Section 10 of the Act. This hurdle in raising the dispute will however disappear if it is raised by the direct workmen of the principal employer who have (i) a community of interest with the contract labour, (ii) a substantial interest in the subject matter of the dispute and (iii) when the employer can grant the relief as is held in the following decisions:

In Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate [(1958) SCR 1156], the question for decision was whether the dispute raised by the workmen relating to a person who was not a workman could be an industrial dispute as defined in the ID Act and as the definition stood before the amendment of 1956. The appellants who were the workmen of the respondent, espoused the cause of one Dr. Banerjee, Assistant Medical Officer who had been dismissed without hearing, with a month's salary in lieu of notice, but who had accepted such payment and left the tea garden. The dispute raised was ultimately referred by the Government to the Tribunal. Both the Tribunal and the appellate industrial Tribunal took the view that as Dr. Banerjee was not workman, the dispute was not an industrial dispute as defined in Section 2 [K] of the ID Act. In appeal from the said decision after analysing the provisions of Section 2(k), the majority of this Court summarised the law on the subject as follows :-

"To summarise. Having regard to the

scheme and objects of the Act, and its

other provisions, the expression 'any

person' in Section 2(k) of the Act must

be read subject to such limitations and

qualifications as arise from the

context; the two crucial limitations are

(1) the dispute must be a real dispute

between the parties to the dispute (as

indicated in the first two parts of the

definition clause) so as to be capable

of settlement or adjudication by one

party to the dispute giving necessary

relief to the other, and (2) the person

regarding whom the dispute is raised

must be one in whose employment, non-

employment, terms of employment, or

conditions of labour (as the case may

be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

In the case before us, Dr. K.P. Banerjee was not a 'workman'. He belonged to the medical or technical staff- a different category altogether from workman. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the

dispute regarding his termination of

service was an industrial dispute within

the meaning of Section 2(k) of the Act."

Justice Sarkar, in his dissenting judgment, however held that the ID Act did not make the interest of the workmen in the dispute a condition of the existence of an industrial dispute. Such an interest is incapable of definition and to make it a condition of an industrial dispute would defeat the object of the Act. The learned Judge further held that even assuming that workmen must be interested in order that there can be an industrial dispute, the present case satisfied that test and fell within the purview of section 2 [K] of the ID Act.

In The Standard-Vacuum Refining Co. case [supra] to which we had an occasion to refer to earlier in another context, after taking due note of the propositions of law laid down in Dimakuchi (supra), this Court has discussed the law on the subject elaborately. The said discussion bears verbatim reproduction here.

"....The definition of "industrial

dispute' in Section 2(K) requires three

things-

(i) There should be a dispute or

difference;

(ii) The dispute or difference

should be between employers and

employers, or between employers and

workmen or between workmen and

workmen;

(iii) The dispute or difference

must be connected with the

employment or non-employment or the

terms of employment or with the

conditions of labour, of any

person.

The first part thus refers to the factum

of a real and substantila dispute, the

second part to the parties to the dispute and the third to the subject-matter of the dispute. The contention of the learned Solicitor-General is two-fold in this connection, namely, (i) that there is no real or substantial dispute between the company and the respondents and (ii) that the subject-matter of the dispute is such that it cannot come within the terms of the definition in Section 2(k).

The first submission can be disposed of shortly. There is undoubtedly a real and substantial dispute between the company and the respondents on the question of the employment of contract-labour for the work of the company. The fact that the respondents who have raised this dispute are not employed on contract basis will not make the dispute any the less a real or substantial dispute between them and the company as to the manner in which the work of the company should be carried on. The dispute in this case is that the company should employ workmen

directly and not through contractors in carrying on its work and this dispute is undoubtedly real and substantial even though the regular workmen (i.e., the respondents) who have raised it are not employed on contract labour. In Dimakuchi case to which reference has been made, the dispute was relating to an employee of the tea estate who was not a workmen. It was nevertheless held that this was a real and substantial dispute between the workmen and the company. How the work should be carried on is certainly a matter of some importance to the workmen and in the circumstances it cannot be said that this is not a real and substantial dispute between the company and its workmen. Thus out of three ingredients of Section 2 (k) the first is satisfied; the second also is satisfied because the dispute is between the company and the respondents; it is the third ingredient which really calls for determination in the light of the decision in Dimakuchi case.

Section 2(k), as it is worded,
would allow workmen of a particular
employer to raise a dispute connected
with the employment or non-employment,
or the terms of employment or with the
conditions of labour of any person. It
was this aspect of the matter which was
considered in Dimakuchi case and it was
held that the words "any person" used in
Section 2(k) would not justify the
workmen of a particular employer to
raise a dispute about any one in the
world, though the words "any person" in
that provision may not be equated with
the words "any workman". The test
therefore to be applied in determining
the scope of the words "any person" in
Section 2(k) was stated in the following
words at pp.1174-75:

"If, therefore, the dispute is a
collective dispute, the party raising
the dispute must have either a direct
interest in the subject matter of
dispute or a substantial interest
therein in the sense that the class to
which the aggrieved party belongs is

substantially affected thereby. It is the community of interest of the class as a whole-class of employers or class of workmen-which furnishes the real nexus between the dispute and the parties to the dispute. We see no insuperable difficulty in the practical application of this test. In a case where the party to a dispute is composed of aggrieved workmen themselves and the subject-matter of the dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen espouse the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases the dispute is an industrial dispute."

We have therefore to see whether the respondents who have raised this dispute have a direct interest in the subject-matter of the dispute or a substantial interest therein in the

sense that the class to which the respondents belong is substantially affected thereby and whether there is community of interest between the respondents and those whose cause they have espoused. There can be no doubt that there is community of interest in this case between the respondents and the workmen of Ramji Gordhan and Company. They belong to the same class and they do the work of the same employer and it is possible for the company to give the relief which the respondents are claiming. The respondents have in our opinion also a substantial interest in the subject-matter of the dispute, namely, the abolition of the contract system in doing work of this kind. The learned Solicitor-General particularly emphasised that there was no question of the interest of the respondents being prejudicially affected by the employment or non-employment or the terms of service or conditions of labour of the workmen of Ramji Gordhan and Company and

placed reliance on the words "may prejudicially affect their interest" appearing in the observations quoted above. We may, however, mention that the test laid down is that the workmen espousing the cause should have a substantial interest in the subject-matter of the dispute, and it was only when illustrating the practical application of the test that this Court used the words "may prejudicially affect their interest". Besides it is contended by Mr. Gokhale for the respondents that even if prejudicial effect on the interest of the workmen espousing the cause is necessary, this is a case where the respondents' interest may be prejudicially affected in future in case the contract system of work is allowed to prevail in this branch of the work of the company. He submits that if the company can carry on this part of the work by contract system it may introduce the same system in other branches of its work which are now being done by its regular workmen. We do not think it

necessary to go into this aspect of the matter as we have already indicated that prejudicial effect is only one of the illustrations of the practical application of the test laid down in Dimakuchi case, viz., substantial interest in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It seems to us therefore that the respondents have a community of interest with the workmen of ramji Gordhan and Company who are in effect working for the same employer. They have also a substantial interest in the subject-matter of the dispute in the sense that the class to which they belong (namely, workmen) is substantially affected thereby. Finally the company can give relief in the matter. We are therefore of opinion that all the ingredients of Section 2(k) as interpreted in Dimakuchi case are present in this case and the dispute between the parties is an industrial dispute and the reference was competent."

17. In view of the aforesaid decision, it cannot be and was not disputed before us that the direct workmen of the principal employer can espouse an industrial dispute for absorption of the contractor's workmen and the industrial adjudicator will have jurisdiction to entertain such dispute and grant the necessary relief. The answer to the last question, viz., who can raise an industrial dispute for the purpose of absorption of the contractor's labour in the principal establishment is, therefore, as follows : If the workmen of the so called contractor allege that in fact the contract is sham and they are in fact the workmen of the principal employer, they may raise the dispute themselves not for abolition of the contract labour system, but for making available to them the appropriate service conditions. When such dispute is raised, it is not for abolition of the contract labour, but for a declaration that the workmen concerned are in fact the employees of the principal employer, and for consequential reliefs on such declaration. If however, the contract is genuine, the direct workmen of the principal employer may espouse the industrial dispute for abolition of the contract labour system and for absorption of the contractor's workmen as the direct workmen of the principal employer. When such dispute is raised by the direct workmen of the principal employer, the industrial adjudicator can entertain the reference; but in view of the provisions of Section 10 of the Act, he will have first to direct the workmen to approach the appropriate Government for considering the question as to whether the contract labour in question should or should not be abolished under the said provisions. If, on such reference being made by the workmen, the appropriate Government does not abolish the contract labour, the industrial adjudicator has to reject the reference since the jurisdiction to abolish the contract is exclusively vested in the appropriate Government and he has no jurisdiction to adjudicate the dispute. However, if the appropriate Government abolishes the contract labour, the industrial adjudicator can proceed to decide (i) as to whether the erstwhile contract labour should be absorbed in the principal establishment; (ii) if so, to what extent and (iii) on what terms. The decision on the points, will have to be given by him by giving opportunity to the parties to lead the necessary evidence.

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

[i] In view of the 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 sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employess 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 sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is 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.

19. 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 jurisdiciton on the Tribunal to entertain the reference.

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.

20. 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 from also the statement of claim filed by the workmen in support of their demand. In paragraph 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 paragraph 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 fo the Thermal Power Station. It is also alleged in the said paragraph that the so-called contractors are not the 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 paragraph 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 paragraph 6 of the application for interim relief which was filed on behalf of the workmen, it was averred that the Board was though 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.

It was then contended by the learned counsel that the Industrial Tribunal has nowhere recorded a finding that the contract in question was sham, camouflage, 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 [supra]. 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.

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 reprted in Hussainbhai, Calicut case [(1978) 4 SCC 257] to support its conclusion that in the aforesaid circumstacnes 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 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.

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 Section 2 (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 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 sham or bogus.

21. The next contention of the learned counsel that the reference with regard to the abolition of the contract labour was not maintainable after the coming into force of the Act has been sufficiently answered by us earlier while discussing and recording our conclusions on the position of law in that behalf. Even on facts, we have pointed out that the present reference was not for the abolition of contract labour but for a declaration that the workmen were in law the employees of the appellant-Board. The industrial adjudicator has undoubtedly no jurisdiction to abolish a genuine labour contract in view of the provisions of Section 10 of the Act. However, it is not correct to say that the reference for the abolition of the contract, itself stands barred. It is the terms of the reference which will determine the jurisdiction of the industrial adjudicator to enetertain and decide the reference. The dispute as to whether the labour contract is genuine or not can be agitated by the workmen and the industrial adjudicator has jurisdiction to examine the controversy. If the contract is held to be genuine, the dispute if it is espoused by the direct workmen of the principal employer can be kept pending by the industrial adjudicator and the workmen may be referred by him to the appropriate Government for the abolition of the contract. If the appropriate Government abolishes the contract, the industrial adjudicator can thereafter grant futher relief, if claimed, viz., of the absorption of the workmen of the erstwhile contractor in the principal establishment. If, however, the appropriate Government does not abolsih the contract, the industrial adjudicator may reject the reference, as stated earlier. It is not, therefore, correct to say that the reference of an industrial dispute seeking to abolish the contract is per se barred, as contented by the learned counsel.

22. It was also contended by him that the industrial Tribunal cannot make recruitment and create contract against third parties, and for this purpose, reliance was placed by him on the decisions reported in Indian General Navigation and Railway Company Ltd. & Anr. Vs. Their Workmen [1966 (1) LLJ 735 Krishna Kurup Vs. General Manager, Gujarat Refinery, Baroda [(1986) 4 SCC 375] and Gurmail Singh & Ors. Vs. State of Punjab & Ors. [(1991) 1 SCC 189].

In Indian General Navigation and Railway Company Ltd. and Anr. Vs. Their workmen (supra), the facts were that the appellant company carried on business of Inland Water Transport in north-east India between various river stations in Bengal and Assam and for this purpose, it maintained a number of ghats or stations on the river Brahmaputra in Assam. The company did not employ any workmen at any of the river stations for the work of cargo-handling and left all such work to be carried on by different handling contractors. On 3rd May, 1954, an agreement was entered into between the company and its allied companies on the one hand and the Indian National Trade Union Congress (INTUC) on the other. The agreement was that a tripartite conference would be held later to decide the question of direct employment of workmen by the company. The said conference was held on 9th and 10th May, 1954 at which the company agreed that it would progressively introduce the system of direct employment of labour in all transhipment ghats in Assam. Accordingly, direct

labour was employed by the company in some of the major ghats, but in the smaller ghats the old contract labour continued. On 29th April, 1957, a conciliation meeting was held to consider the demand made by the Sibsagar Transhipment Labour Union for direct employment of workmen at three minor ghats. No decision was, however, reached and the contract labour continued to work at the said ghats. Another tripartite meeting was held on 10th November, 1959 and it was then agreed that the company would employ direct labour in all the ghats on or before 1st April, 1960. Meanwhile, a material change in the circumstances of the company's working took place in one sector of its operation. The company made arrangements to open a ghat in May, 1960 as an all-the-year-round main-line ghat replacing the current feeder service operation. This step represented a major advance in the improvement of transport facilities and also led to the closure of one of the ghats on 17th May, 1960. As a result, 56 workmen involved in the dispute in the appeal before the Court, came to be discharged by payment of one month's basic pay. On these facts, the dispute raised was whether the termination of the services of the 56 workmen was justified and whether they were entitled to reinstatement with continuity of service and full wages. It was contended by the company that the said workemn were not its employees, and in the alternative, the termination of the services of the workmen being the result of the closure of the ghat in question, they were not entitled to any relief. The Industrial Tribunal had made inconsistent findings. It had held that the relationship of master and servant had been proved between the company and the workmen in question but had also added that no direct employment was introduced, as was agreed to in the tripartite meeting held on 10th November, 1959. The Industrial Tribunal had found that the workmen in question were the employees of the company and had also found that the closure was bona fide and real and ech of the workmen was entitled to compensation under sub-section (1) of Section 25FFF of the ID Act. On these facts, the Court held that the company had not directly employed the workmen at all and it is the contract labour which used to work for the company at the ghat in question. The Court further found that though the company had guaranteed the payment at the prescribed rate to these workmen and in that sense had undertaken the liability to pay that money at that rate, the record showed that the money was paid to the contractor and the contractor paid it to the workmen from month to month until the ghat in question was closed. Even one month's basic pay which was paid to the workmen for retrenching them was paid to them through the contractor. The Court, therefore, held that the Tribunal was in error in coming to the conclusion that the workmen in question had been employed by the company. The company was not the employer of the workmen in question and hence the Tribunal could give them no relief. The workmen had claim, if any, against the contractor who was their employer.

In Krishna Kurup Vs. General Manager, Gujarat Reginery, Baroda (supra), out of 187 workmen, whose services had been terminated by the respondent-company by an oral order, 105 employees, in respect of whom the Gujarat High Court had recorded a finding for their absorption subject to scrutiny, were absorbed by the company, pending the special leave petition before this Court. Special leave was, therefore, granted for the remaining the 82 workmen. The Court by its order of 16th January, 1986 directed the Labour Commissioner to enqurie into as to whether they could be considered to be the employees of the company having regard to the nature of their employment, the period for which they had been employed off and on and all other relevant factors. The Commissioner found that the 82 workmen were not the employees of the company, but were contract labourers employed by the contractor. These findings were challenged on behalf of the workmen, and this Court accepted the said findings holding that the appellant had failed to prove that the workmen in question were direct employees of the company. The Court also observed that it was difficult to decide for the Court whether 82 workmen were doing the same work as was being done by the 105 workmen who were absorbed by the company. The Court also relied upon the affidavit filed on behalf of the company that it had not been able to provide work to all 105 workmen who were absorbed, and only 22 of them had been allotted work and the rest 83 had not been assigned any work whatsoever. The Court, therefore, held that it would not be justified in directing the company to absorb the 82 workmen and dismissed the appeal. In Gurmail Singh & Ors. Vs. State of Punjab & Ors. (supra), the appellants were in service as Tubewell Operators in the Irrigation Branch of the Public Works Department of the Punjab State. The State took a decision to transfer all the tubewells in the said Branch to the Punjab State Tubewell Corporation, a company wholly owned and managed by the State of Punjab. Accordingly, the appellants were served with a notice on August 31, 1982, in terms of Section 25-F of the ID Act, terminating their services with effect from November 30, 1982 and on

that date a notification was issued, abolishing the posts sanctioned for the Tubewell Circle, Irrigation Branch with effect from March 1, 1983. The appellants, inter alia, contended that in case the action of the State was upheld, the respondent company should be held to be under an obligation to employ the appellants with continuity of service and under the same terms and conditions which they were enjoying prior to the retrenchment from the service of the State. The appellants also contended that the notices did not fulfil the requirements of clauses (b) and (c) of Section 25-F of the ID Act. The principal question before the Court, however, was whether in the circumstances the State was under an obligation to protect the terms and conditions of service of the Tubewell Operators and whether there cannot be situations in which the Court or the industrial adjudicator should, in the interest of justice, fairplay and industrial peace, hold the employees entitled to continuity with the successor without being compelled to be satisfied with compensation from the predecessor. On these facts, the Court held as follows:

"Section 25FF provides that where

there is a transfer of an undertaking by

agreement or operation of law, an

employee who loses his job because of

such transfer will have a right to

compensation from the predecessor,

except where he gets the benefit of

uninterrupted service with the new

employer on no less favourable terms

than before and will be entitled to

compensation in case he should be

retrenched later by the new employer. 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". A second type of cases is one in which there is in form, and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organised differently. In such cases, the transferee and transferor are virtually the same and the overriding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eyes of the court. Though these exceptions to the above rules would still be operative, it is not necessary here to decide whether this principle will help to identify the transferee corporation with the State Government for the present purposes, particularly as there is a catena of cases which do not approve of such identification. A third category of cases falling as an exception to the principle behind Section 25-FF is where, as here, the transferor and/or

transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily and the court has a say as to whether the terms and conditions on which it proposes to hadn over or take over an industrial undertaking embody the requisite of "fairness in action" and could be upheld. In such circumstances, it will be open to the Court to review overall aspects of transfer of the undertaking and the arrangement between the State Government and the Corporation and to issue appropriate directions that no injustice results from the changeover. Such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 which the State and Corporation are obliged to adhere to.

x x x

x x x

Looking at the facts of this case in the above perspective, it appears that the State Government has acted arbitrarily towards the appellants. It has abridged the rights of the appellants by purporting to transfer only the tubewells and retrenched the appellants from service as a consequence. The conduct of the government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the tubewells contine to be run at its cost by the Corporation wholly owned by it, is something which is grossly unfair and inequitable."

Holding thus, the Court directed the absorption of the workmen by the Corporation, and granted them the benefit of their service with the Government for the purposes of the computation of their salary, length of service and retirement benefits, but denied them the benefit to claim the seniority over the employees of the Corporation engaged, since its commencement in 1970. The Court further directed that the Corporation should ensure that the workmen were not retrenched as surplus on account of any closure of any tubewells or other like reason until they retired or left the service of the Corporation voluntarily for any reason. Thus, it would be seen that these three decisions have not in any way diluted the propositions of law laid down by this Court in Dimakuchi and Standard Vacuum (supra), where the Court has approved of the jurisdiction of the Tribunal to direct the principal employer to absorb the workmen of the erstwhile contractor as his direct employees depending upon the satisfaction of the factors laid down therein and on terms that the Tribunal on the basis of the material before it, may deem fit to fix in the circumstances of the case.

It is also not correct to say that the Act is a complete Code by itself and, therefore, the industrial Tribunal has no jurisdiction to give a direction to the principal employer to absorb the workmen in question. We have already pointed out that the Act is silent on the question of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government. Hence, as far as the question of

determination of the status of the workmen is concerned, it remains open for decision by the industrial adjudicator. There is nothing in the Act which can be construed to have deprived the industrial adjudicator of the jurisdiction to determine the same. So long as, therefore, the said jurisdiction has not been taken away from the industrial adjudicator by any express provision of the Act or of any other statute, it will have to be held that the said jurisdiction which, as pointed out above, has been recognised even by the decisions in Dimakuchi and Standard Vacuum cases (supra) continues to exist. In the exercise of the said jurisdiction, the industrial adjudicator can certainly make a contract between the workmen of the ex-contractor and the principal employer and direct the principal employer to absorb such of them and on such terms as the adjudicator may determine in the facts of each case. We find nothing in the decisions relied upon on behalf of the appellant which goes counter to this proposition of law. The decisions in Indian General Navigation and Railway Company Ltd., Krishna Kurup and Gurmail Singh (supra) on which reliance is placed on behalf of the appellant for the purpose, have already been discussed by us above. The only additional decision which is pressed into service in this behalf is Sanghi Jeevaraj Ghewar Chand & Ors. Vs. Secretary, Madras Chillies, Grains Kirana Merchants Worker's Union and Anr. [(1969) 1 SCR 366]. By a common decision in this case, two appeals were decided by this Court. In one appeal, the establishement employed less than 20 employees and it was not a factory; in the other appeal, the establishment was in the public sector. By reason of exclusion under Section 1(3) of the Payment of Bonus Act, 1965, the establishment in the first appeal was excluded from the application of that Act whereas by reason of exemption under Section 32(x), the establishment in the other appeal stood exempted from the operation of the said Act. On these facts, the question was whether the employees of the two establishments could claim bonus de hors the Payment of Bonus Act and the Court held, considering the history of the legislation, the background and the circumstances in which the Bonus Act was enacted, and the object of the Act and its scheme, that the Act was an exhaustive Act, dealing comprehensively with the subject matter of bonus in all its aspects, and the Parliament had not left it open to those to whom the Act did not apply, by reason of its provisions either as to exclusion or exemption, to raise a dispute with regard to bonus through industrial adjudication under the ID Act or other corresponding law. The ID Act itself did not provide for a statutory right for payment of bonus although it had provided substantial rights for workmen with regard to lay off, retrenchment compensation etc. It will thus be clear that the right to bonus which was spelt out by the judicial decisions was expressly denied by the Bonus Act to the workmen in the establishment concerned in that case, and yet the workmen claimed the bonus on the basis of the alleged provisions of the ID Act. In the present case, there is nothing in the Act, as pointed out earlier, which has either expressly or impliedly taken away the raising of an industrial dispute to absorb the ex-contractor's workmen in the principal establishment when the dispute has been espoused by the direct workmen or the jurisdiction of the Tribunal to give a direction for the purpose, of course, on such terms as it deems fit in the circumstances of each case.

For all these reasons, we are unable to accept the contention that the industrial adjudicator cannot direct the principal employer to engage ex-contractors' workmen as direct employees.

23. It was then contended that the bulk of the contract labour was engaged by the contractors in the process of unloading coal, and since the year 1989 the process of unloading coal had been fully mechanised at the Ukai Thermal Power Plant with which we are concerned and as such, no labour was required in the process of the unloading of coal. For this purpose, reliance was placed on the contents of the additional affidavit filed by the Board during the hearing of the present appeal. We are concerned in the present appeal with the award of the Tribunal dated 22nd February, 1988. If a situation has, thereafter, arisen where the workmen directed to be employed by the award have become surplus, it is open for the appellant-Board to retrench them in accordance with the provisions of law. However, the situation in 1989 cannot be pressed into service to negative the award of 1988 by which the dispute raised in 1982 was adjudicated.

24. The last argument was that the appellant-Board has several other thermal power plants in the State where certain type of work is done through contract labour only by contractors and the present Thermal Power plant is only one of them. Any decision in the present appeal will have, therefore, according to the Board serious repercussions in the other plants. It is contended that this might also result in total break-down of the

functioning of the Board which would not be in the interest of the workers as a class. To say the least, the argument is one in terrorem and has only to be stated to be rejected. The Board has to manage its affairs according to the provisions of law. The Courts cannot grant it exemption from the law on the ground that it will not be in a position to run its affairs. For the above reasons, we confirm the decision of the High Court and the award of the Tribunal and dismiss the appeal with costs.

C.A. 5498-02 & 5503/95 @ SLP (C) No. 9310-9314 and 9315 of 1991

25. These appeals arise out of the decision of the High Court in a writ petition filed by the appellant-Union under Article 226 of the Constitution. In view of what we have held above, the decision of the High Court that the workmen concerned do not become the direct employees of the respondent-enterprises merely because there are no registration certificates and licences with the respondent undertakings and the concerned contractors respectively, has to be upheld. The decisions relied upon by Shri Mukhoty on behalf of the workmen, viz., D.S.Nakara & Ors. Vs. Union of India [(1983) (1) SCC 305]; Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress [(1991) Suppl. (1) SCC 600] and The State of Haryana Vs. Piara Singh [(1992) 4 SCC 118] are inapplicable to the issues involved in these appeals. The remedy of the workmen is to raise a proper industrial dispute as indicated earlier for appropriate reliefs. If and when such dispute is raised, the Government should make the reference within two months of the receipt of the dispute and the industrial adjudicator should dispose of the same as far as possible within six months thereafter. Civil Appeals are therefore dismissed but with no order as to costs.

C.A. 5504/95 @ S.L.P. (C) No. 13520 of 1991

26. In this case, the Labour Court has given relief of reinstatement with back-wages to the workmen. There is no finding recorded by the Court whether the industrial dispute was raised by the direct employees of the appellant-Society and whether the labour contract was genuine or not. The Labour Court has proceeded to grant the relief to the workmen only on the basis that the registration certificate and the licences under the Act were not produced by the Society and the contractors concerned respectively and, therefore, the workers should be deemd to be the employees of the Society.

In view of what we have held above, the award of the Labour Court and the decision of the High Court are set aside. The workers are free to raise a fresh proper industrial dispute and claim appropriate relief. If and when such dispute is raised, the Government should make the reference within two months of the receipt of the dispute and the industrial adjudicator should dispose of the same, as far as possible, within six months thereafter. Civil appeal is, therefore, allowed but with no order as to costs.

27. While parting with these matters, we cannot help expressing our dismay over the fact that even the undertakings in the public sector have been indulging in unfair labour practice by engaging contract labour when workmen can be employed diretly even according to the tests laid down by Section 10 [2] of the Act. The only ostentsible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38, 39, 41, 42, 43 and 47 of our Constitution. We, therefore, recommend that -

[a] all undertakings which are employing the contract labour system in any process, operation or work which satisfies the factors mentioned in clauses [a] to [d] of Section 10 [2] of the Act, should on their own, discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees; [b]

both the Central and the State Governments should appoint a Committee to investigate the establishments in which the contract labour is engaged and where on the basis of the criteria laid down in clauses [a] to [d] of Section 10 [2] of the Act, the contract labour system can be abolished and direct employment can be given to the contract labour. The appropriate Government on its own should take initiative to abolish the labour contracts in the establishments concerned by following the procedure laid down under the Act. [c] the Central Government should amend the Act by incorporating a suitable provision to refer to the industrial adjudicator the question of the direct employment of the workers of the ex-contractor in the principal establishment, when the appropriate Government abolishes the contract labour.