

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on March 04, 2014
Judgment Delivered on March 12, 2014

+ W.P.(C) No. 5574/1999
SPORTS AUTHORITY OF INDIA Petitioner
Through: Mr.Anil Grover, Advocate
with Ms.Noopur Singhal,
Advocate

Versus

LABOUR COMMISSIONER, DELHI ADMN. AND ORS
..... Respondent
Through: None for R1, 4 and 5
Mr.Varun Prasad, Advocate
for R2
Mr.R.R.Ojha, Advocate for
R3

+ W.P.(C) No. 2482/2002
SPORTS AUTHORITY OF INDIA Petitioner
Through: Mr.Anil Grover, Advocate
with Ms.Noopur Singhal,
Advocate

Versus

DELHI ADMINISTRATION AND ORS. Respondent
Through: None for R1 and R2
Mr.Varun Prasad, Advocate
for R3
Mr.R.R.Ojha, Advocate for
R4
None for R5 and R6

None for R7

+ W.P.(C) No. 5745/1999

M/S. SECURITY DEVELOPMENT SERVICES P. LTD.
..... Petitioner

Through: Mr.R.R.Ojha, Advocate

Versus

GOVT. OF NCT AND ORS. Respondent

Through: None for R1 to R4
Mr.Varun Prasad, Advocate
for R5
Mr.Anil Grover, Advocate
with Ms.Noopur Singhal,
Advocate for R6
None for R7

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO
V.KAMESWAR RAO, J.

1. Of the aforesaid three Writ Petitions, the Writ Petition (C) Nos. 5574/1999 and 5745/1999 have been filed challenging the recovery certificates dated April 06, 1999 issued by the office of respondent No. 1 in W.P.(C) 5574/1999 and respondent No. 2 in W.P.(C) No. 5745/1999 pursuant to the award dated May 28, 1998 in I.D. No. 194/1995 in an Industrial Dispute raised by the respondent No. 2 in Writ Petition (C) No. 5574/1999 and the respondent No. 5 in Writ Petition (C) No. 5745/1999.

2. The Writ Petition (C) No. 2482/2002 is filed against the award dated May 28, 1998 in I.D. No. 194/1995 by the Sports Authority of India (referred as petitioner in this Judgment) wherein the Labour Court has directed the reinstatement of those claimants, who have signed the

statement of the claim with 30% back wages. Since the genesis of all the three writ petitions is the award dated May 28, 1998, all the three writ petitions are being heard and decided by this common order.

3. The facts are being culled out from the Writ Petition (C) No. 2482/02 wherein the challenge is made to the award dated May 28, 1998, and the parties are being referred to in terms of their position in the Memo of Parties.

4. It is the case of the petitioner that it is a society registered under the Societies Registration Act, 1860 and is under the administrative control of the Department of Sports, Government of India. The main objective for the formation of the petitioner is as a Care Taker/Manager of the various stadiums built for Asian Games in Delhi. For the purpose of maintaining the day to day checking of these stadiums, the petitioner has on its rolls, regularly employed watch and ward staff who had come on the strength of the petitioner as a result of amalgamation of SNIPES Board with the erstwhile Sports Authority of India. According to the petitioner, the number of the said watch and ward staff on the regular rolls of the petitioner-Society is more than sufficient for meeting the permanent/perennial requirements of the petitioner-Society. In fact, the SIU of the Government of India, recommended that there would be no special watch and ward staff at all in the SAI office in Delhi. For managing the day to day security work of regulating movement and safety of men and materials to the security organization, has been and is that, the notices inviting tenders are issued in leading newspapers, to organizations possessing the special security skills to submit their bid. The tenders are assessed on their comparative merit and the lowest effective bidder is given the work for looking after the security job

works, outside the building. Pursuant to one such tender, the respondent No. 4 namely Security Development Services Private Limited was engaged. On the expiry of the tender period, the same process was evolved and a new security services in the name of Delhi Guard and Security Services, respondent No. 5 was engaged. The respondent No. 4 has engaged the claimants/respondent No. 3 for doing the job of watching.

5. It may be necessary to mention here that the Central Government had issued a notification dated December 09, 1976 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 whereby they had prohibited employment of contract labour for sweeping, cleaning, dusting and watching the buildings owned or occupied by the establishment in respect of which the appropriate Government under the said Act, is the Central Government.

6. On July 06, 1990, the Sports Authority of India Kamgar Union, the respondent No. 3 herein sent a charter of 17 demands which included the regularization of the services of the claimants. The claimants were engaged between the period 1982 to 1990. In view of the fact that the respondent No. 5 was given the contract, the services of the persons engaged by the respondent No. 4 were automatically disengaged.

7. Aggrieved by this alleged disengagement by the respondent No. 4, the Sports Authority of India Kamgar Union/respondent No. 3 herein invoked the conciliation machinery as provided therefor under the provisions of the Industrial Disputes Act, 1947 (Act, in short).

8. It is noted that in the claim petition filed before the Conciliation Officer, the claim of the respondent No. 3 was on the premise that the petitioner herein is a principal employer. It was also the Union's case

that the respondent No. 4 had wrongfully terminated the services of the persons engaged by it. I reproduce some of the relevant paragraphs of the claim petition:

“2. That Principal Employer engaged Sh. Puran Singh and 107 other workmen (List enclosed as Annexure) as Security Guards/Watch and Ward staff/Chowkidars through M/s. Security Development Services Pvt. Ltd. for the maintenance of their stadiums since 1982 onwards.

3. That the Management No.2 wrongfully and illegally terminated the services of Shri Puran Singh, Moti Lal, Naresh Kumar, Viveka Nand Pande, Ravinder Singh, Harish Ram and Shiv Bushan Pande without observing provisions of I.D. Act, 1947 and Principal of Natural Justice.

That when the workmen of S.A.I. (Principal Employer), including engaged through contractors by the Principal employer organised themselves in the Trade Union of their choice visa Sports Authority of India Kamgar Union and demanded abolition of contract system on the works of M/s. Director General, Sports Authority of India and regularisation of contract labour as well as other daily rated workers in the said establishment as regular workmen the Principal Employer terminated the services of all the 101 workmen listed in the annexure w.e.f. 31.7.90 despite the fact that the works on which the dismissed workmen were employed were of regular nature.

4. That the Principal Employer also terminated the contract of M/s. Security Development Services Pvt. Ltd., New Delhi and awarded the same works to M/s. Delhi Guard and Security Services (Regd.) New Delhi w.e.f. 31.7.90 thereby rendering more than 200 contract labour dismissed who were in the employment of Principal Employer through M/s Security Development Services Pvt. Ltd. and list of those workmen since was not maintained by the Principal employer on the same work which is of

perennial nature, M/s. Delhi Guard and Security Services (Regd.) employed new workmen which makes it amply clear that Principal Employer and the contractors are in hand in gloves in as much as the workmen concerned be denied the fruits and benefits that of regular and permanent workmen of Principal Employer.

5. That the employment of Watch and Ward staff/Security Guards is of a perennial nature. There are regular workmen engaged by M/s. S.A.I. including chowkidars/guards and the work of Watch and Ward/Security Guards requires employment of sufficient number of whole time workmen but the Principal Employer is resorting to unfair labour practices as defined in Section 2(n) of the Industrial Disputes Act, 1947 by engaging through contractors contract labour on the works/employment which is of regular and perennial nature.

6. That there are regular Chowkidars/Guards/Watch and Ward Staff in the regular pay scales of permanent/temporary workmen that of the Principal Employer and the duties/responsibilities of Regular Chowkidars/Security Guards are the same and similar to that of security Guards/Watch and Ward Staff employed by the Principal Employer in the said establishment through the contract system which is unfair labour practice as defined in Section 2(n) of the I.D. Act and such employments are liable to be prohibited under Section 10 (2) of the Contract Labour (Regulation & Abolition) Act.

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8. That the contractors have dispensed away with the services of hundreds of security guards/Watch and Ward Staff without following the procedure of law and have also paid much less than Minimum Wages fixed under the Minimum Wages Act by Delhi Administration/Central Govt. what to talk of same pay and allowances a similar situated regular workmen under the Principal Employer the concerned workmen

are entitled to. The Principal Employer and the Contractors are so much hand in gloves that the payments to the contractors have been fully made and with shock and dismay on behalf of the workmen of S.A.I., their trade union alleges that the security money which is deposited with Asstt. Labour Commissioner, Delhi Administration is also reported to have been released by the said authority and to that extent it is on record that wrong certification have been done by the Principal Employer/concerned labour enforcement authorities in which case there is want on violation of the Labour Laws on the subject”.

9. The conciliation proceedings failed. Pursuant thereto, the erstwhile Delhi Administration referred the Industrial Dispute for the adjudication of the Labour Court in terms of the following reference:

“Whether the services of S/Shri Pooran Singh and 107 others as shown in Annexure A have been terminated illegally and/or unjustifiably by the Management and if so, to what relief are they entitled and what directions are necessary in this respect”.

10. It may be necessary to note here that in the claim petition before the Labour Court, the petitioner was impleaded as the respondent No. 1 and the respondent Nos. 4 and 5 in this writ petition were impleaded as the respondent Nos. 2 and 3 respectively. The reference was made with respect to 107 persons as per Annexure ‘A’ annexed with terms of reference, but the claim petition was filed by 42 persons, wherein the respondent No. 3/Union has taken the following stand:

“3. That the Principal Employer engaged Sh. Puran Singh and 107 others workmen for the work of watching of the buildings of their stadiums since 1982 onwards through M/s. Security Development Services Pvt. Ltd. as security guards/watch & ward

staff/Chowkidars etc. on the full time and a perennial nature of job and their work directly supervised and controlled by the Chief Security Officers and Assistant Security Officers of Sports Authority of India”.

4. That these workmen and directly engaged workmen by the Principal Employer themselves organised and became the members of a Trade Union of their choice viz. Sports Authority of India Kamgar Union and demanded abolition of contract system on the works of watching the buildings of Principal Employer and also demanded regularization of contract labour as well as other daily rated workers in the said establishment, the Principal Employer terminated the services of these concerned workmen.

5. That after the termination of services of these concerned workmen, the Principal Employer awarded the same permanent work to M/s Delhi Guards and Security Services (Regd.), New Delhi on 31.7.90 thereby rendering more than 200 contract labour dismissed and indulged in unfair labour practice.

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12. That the Contract Labour (Regulations & Abolition) Act 1970 also provides for abolition by the appropriate Govt. in appropriate cases as per clauses (a), (b), (c) and (d) of sub section (2) of Section 10 of the said Act.

13. That on 9.12.1976 the Central Govt. had issued a notification in pursuance of the power vested in them under Section 10(2) of the said Act whereby the Central Govt. prohibited employment of contract labour on and from the 1st March, 1977 for sweeping and watching of buildings owned or occupied by the establishment in respect of which under the Act is the Central Govt. A copy of the said notification is annexed hereto and marked as Annexure-I.

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16. That the employment of watch and ward staff/security guards/chowkidar is of perennial nature. There are regular workmen engaged by the Sports Authority of India including watchman/guards/chowkidars and the work of watch and ward/security guards requires employment of sufficient number of full time workmen by the management of Sports Authority of India bearing the Principal Employer has been continuously resorting to unfair labour practice as defined in the 5th Schedule of Industrial Disputes Act 1947 as also in flagrant violation of the provisions of Contract Labour (Regulations & Abolition) Act 1970 and the notice issued thereunder by engaging contract labour through contractors on the works/employment which is of a perennial nature.

17. That Sports Authority of India, Principal Employer wilfully and deliberately employs/engages contract labour through contractors to deny the workers the fruits and benefits of regular workmen and thereby indulged in unfair labour practice.

18. That there are regular watchman/chowkidars in the regular pay scale as permanent/temporary workmen employed directly by Sports Authority of India in the aforesaid establishments and their duties and responsibilities are similar to that of those workmen through contractors but they are not paid equal pay for equal work as provided in the Contract Labour (Regulations & Abolition) Act, 1970.

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20. That after the prohibition by Central Govt. vide notification dated 9.12.76 to engage contract labour through contractors by agreements, renewed from time to time is also illegal and unjust and contrary to labour jurisprudence.

21. That the action of the management terminating the services of these workmen and recruitment of

new employees through new contractors is illegal and unjustified.

22. That the notification issued by the Central Govt. prohibiting employment of contract labour in watching work is binding on the management of Sports Authority of India hence the relationship between the management of Sports Authority of India and these workmen engaged by the contractor remains that of employer and workmen and deemed to the workmen of Principal Employer.

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25. That the contractor is merely the agent of Principal Employer and he only did the work for selecting the workmen for doing the service of the watching the buildings of Stadiums of Sports Authority of India and distributing the salary/wages earned by each workman on monthly basis.

26. That all these so-called contract labour had been doing the work directly under the control of Chief Security Officer and Asstt. Security Officer of Sports Authority of India and these regular officers have been appointed to look after the work of maintaining and watching the buildings of Management i.e. Principal Employer.

27. That these workmen had been doing the work in the premises of the Principal Employer on the permanent nature of job and termination of their services and engagement of new hands through new contractors for the same work is contrary to the provisions of Standing Orders and provisions of Industrial Disputes Act, 1947”.

11. It was the stand of the petitioner in its reply that persons who have raised the dispute for the work of watching the buildings were employed through the respondent No. 4 as security guards/watch and ward staff/Chowkidars and it is the agency of the proprietor, who supervises

the deployment of the staff as per the general directions and requirements given by the petitioner and overall responsibility of the workmen is that of the Contractor, who alone is responsible for making payment to these respondents; grant of leave to them; take disciplinary action against them, where necessary and engaged them & to terminate as per law.

12. The Industrial Dispute culminated in the impugned award dated May 28, 1998 wherein the Labour Court has held as under:

“14. On behalf of the management on witness Sh.S.K.Saggar was examined who was Director with the management as MW2. He testified that he is not aware as to whether the management as a principal employer is registered under the Contract Labour (Regulation & Abolition) Act as required under Section 7 of the Act nor is aware whether the respondent No.2 & 3 have taken licence for supplying the contract labour as required under section 12 of the Act. He admitted that workmen were doing the security job at the various stadium. He also admitted that from 1982 to 31.7.90 the respondent No.2 was providing contract Labour.

15. So, on the abolition of the contract labour, the management was under the obligation to reinstate these workmen. Infact, the question of reinstatement also came up before the Hon'ble Supreme Court in the case of Air India Statutory Corporation (supra). In Para 66 of the aforesaid judgment the Hon'ble Supreme Court observed “in this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour, the linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant. Though there exists no specific scale

of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like Class 'D' employees".

16. These workmen were working as security guards so they are entitled to reinstatement as security guards or at the post at which they were working at that time and they are entitled to pay equivalent to those workmen who are in the regular employment of the management on the same post. Regarding back wages they are entitled to 30% of the back wages. Only those workmen who have signed the statement of claim are entitled for the benefits and others who have not signed the statement of claim a no dispute award is passed in respect of them. The reference is answered accordingly and award made".

13. It is the contention of Mr. Anil Grover, learned counsel appearing for petitioner that the claimants before the Labour Court were engaged by the respondent No. 4, who had been given the contract through a tendering process for watching and providing the security to the stadiums. According to him, in July 1990, the respondent No. 5 was engaged through the tendering process. According to him, no case of sham and camouflage has been set up by the respondent No. 3/Union before the Tribunal. According to him, till such time, the contract is held to be sham and camouflage, no relief could have been given. He would submit that the Labour Court has erred in relying upon the Judgment in the case of *Air India Statutory Corporation and Others Vs. United Labour Union and Others*, (1997) 9 SCC 377. According to him, the said judgment has been overruled by the Larger Bench of the Supreme Court in the case of *Steel Authority of India Ltd and Ors. Vs. National Union Water Front Workers and Others*, 2001 (7) SCC 1. He also submits that in the said judgment, the Supreme Court has set aside the notification issued on December 09, 1976.

14. On the other hand, Mr. Varun Prasad, Advocate appearing for the respondent No. 3 would urge that the petitions filed by the Sports Authority of India are not maintainable inasmuch as the award having attained finality in the absence of any challenge, should be dismissed. In other words, he would state that the challenge in the Writ Petition (C) No. 5574/1999 is only to the recovery certificate issued by the respondent No. 1 and not the award dated May 28, 1998 in I.D. No. 194/1995. He had also taken me to some of the relevant paragraphs of Writ Petition (C) No. 5574/1999 i.e. Paras 14 to 17 to contend that the challenge in this writ petition by the petitioner is to the limited extent that the relief to the claimants before the Labour Court could not have been given for a period prior to December 1996. In support of his contention, he has drawn my attention to the order passed by this Court dated November 26, 2001 in Writ Petition (C) No. 5574/1999, wherein, it was represented on behalf of the respondent No. 3 that the award has not been assailed in the petition and therefore, finality has attached to the award and it will not, therefore be affected by order in *Steel Authority of India's case (supra)*. He has also referred to the order of the Division Bench of this Court dated January 29, 2008 in L.P.A. No. 2095/2006, which appeal was filed by the respondent No. 3 challenging the order dated January 27, 2005 of the learned Single Judge in Writ Petition No. 2482/2002, wherein the Division Bench had observed that the issue of maintainability of the writ petition in view of the decision of the Supreme Court in *Steel Authority of India's case (supra)*, shall be allowed to argue. In other words, the issue of maintainability is still open and need to be decided by this Court. Mr. Varun Prasad would also submit that the claimants would be entitled to the benefit from the date

of the Judgment in *Air India Statutory Corporation's case (supra)* i.e. December 06, 1996. In the last, he would submit that despite orders of this Court for grant of benefit under Section 17-B of the Act vide order dated October 26, 2004 whereby this Court has directed that the applicants shall be paid 30% of the last drawn wages from April 26, 2004, the petitioner has paid the said benefit only till November 2004. He would also state that the issue need to be decided that whether the claimants shall be entitled to the last drawn wages or the minimum wages as observed by this Court in the said order. It is his case that the claimants shall be entitled to the benefit of the arrears of Section 17-B of the Act and thus, arrears be paid keeping in view the notification issued by the appropriate Government under the Minimum Wages Act, 1948. On merit, it is his case that the Supreme Court in the case of *Steel Authority of India's case (supra)* has overruled the *Air India Statutory Corporation's case (supra)* prospectively. The award having attained finality, must be sustained. Mr. Varun Prasad would rely upon the Judgment of the Supreme Court in the case reported as *2013 (15) SCALE 131, BSNL Vs. Bhurumal* to contend that the claimants are the employees of the petitioner and their termination was illegal.

15. On the other hand, Mr. R.R.Ojha, Advocate appearing for the respondent No. 4 [writ petitioner in W.P.(C) 5745/1999] would submit that the respondent No. 4 was only a commission agent getting the commission for engagement of the claimants for the work of the petitioner. He would rely upon the Judgment in the case reported as *JT 1999 (2) SC 435, Secretary, Haryana State Electricity Board Vs. Suresh and Ors. etc.* to contend that on lifting the veil, there is no contract system as the work is of a perennial nature.

16. Having considered the submissions made on behalf of the parties, the first and foremost issue, which need to be decided in these batch of petitions is, whether, in view of the fact that *Air India Statutory Corporation case (supra)* having been over-ruled by the Supreme Court in *Steel Authority of India's case*, prospectively, the industrial dispute has rightly been decided, placing reliance on *Air India Statutory Corporation case (supra)* and further, the award having attained finality, the petitions are not maintainable and need to be dismissed.

17. In this regard, I reproduce the relevant paragraphs in the case of *Steel Authority of India's (supra)* as under:

“ (2) (a).....

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12.1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

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

18. A perusal of the paragraph reproduced above would reveal that the directions given by the Industrial Adjudicator or any Court for

absorption of contract labour following the judgment in *Air India Statutory Corporation's case (supra)* shall hold good where such directions have been given effect to and has become final. It is not the case of the respondent No. 3/claimants that the impugned award has been implemented in their favour. It is true that the petitioner initially filed a Writ Petition (C) No. 5574/1999 limited against the issuance of recovery notice by the respondent No. 1, without impugning the award. This Court cannot ignore the fact that in the said petition, the petitioner did say that it reserves its right to challenge the award passed by the Labour Court. When such a right has been reserved, it can be inferred that the petitioner had no intention to give effect to the award of the Labour Court in favour of the claimants before the Labour Court. It is not a case of the respondent No. 3/claimants that the petitioner had not challenged the award at all. The Division Bench has granted liberty to the parties to argue the said issue before this Court while deciding main writ petition. Suffice to state that phraseology '*attained finality*' has to be read in conjunction with the subsequent words '*and/or it has been implemented*'. The intention of the Supreme Court is also clarified in Para 4 where the Supreme Court has used the word '*where such a direction has been given effect to and it has become final*'. It is clear that the Supreme Court intended that those cases where the orders of the Industrial Adjudicator/any other Court or the High Court have been implemented and the contract labour has been absorbed, those cases would not be re-opened. It is not one such case where the claimants before the Labour Court have been absorbed. This Court is of the view that the Judgment of the Supreme Court in *Steel Authority of India's case (supra)* would be applicable while deciding the issue which falls for

consideration in these writ petitions. The submission of Mr. Varun Prasad, Advocate is liable to be rejected.

19. Further it is noted that the claim petition filed by the respondent No. 3 proceed on a premise that the petitioner herein is the “*principal employer*”. It is also the case of the claimants that the petitioner being a principal employer had wilfully and deliberately engaged contract labour through contractors to deny the fruits of benefit of regular workmen and thereby indulge in unfair labour practice. It was their case that in view of the prohibition by the Central Government in terms of the notification dated December 09, 1976 to engage contract labour through contractors, the renewal from time to time of the contract is illegal and unjust. Meaningfully read, the respondent No. 3 concedes to the fact that the petitioner was a “*principal employer*” and the respondent Nos. 4 and 5 were the “*contractors*”. Further, it is noted that it is not the case of the respondent No. 3 that the contract entered by the petitioner with respondent Nos. 3 and 4 is “*sham and camouflage*”. I may only note that the scope of judicial review in a matter like this, has been spelt out by the Supreme Court in the case of *Steel Authority of India’s case (supra)*, wherein the Supreme Court has inter alia held that the Industrial Tribunal/Court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with the various beneficial legislations so as to deprive the worker of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, then the so called contract labourer will have to be treated as the employees of the

principal employer.

20. The aforesaid view has been followed by the Supreme Court in the case reported as (2002) 3 SCC 433, *Nitinkumar Nathalal Joshi & Ors Vs. Oil & Natural Gas Corporation Ltd.* and in (2002) 4 SCC 609, *Municipal Corporation of Greater Mumbai Vs. K.V.Shramik Sangh.*

21. It is true that the reference in the present case was made before the Judgment of the Supreme Court in the case of *Steel Authority of India Ltd. (supra)*. In fact, the award was also rendered before the Judgment in that case. It appears that there was no occasion for respondent No. 3/claimants to set up a case of the contract being “sham/camouflage”. They proceeded keeping in view the ratio of the Judgment of the Supreme Court in the case of *Air India Statutory Corporation (supra)*. In the absence of any pleadings to the effect that the contract is “sham and camouflage” and also an admission that the petitioner is a “principal employer” and the respondent Nos. 4 and 5 contractors, such pleadings can be considered the foundations for determining the rights of the parties, so also against the maker. So it can be said that it is not the case of the respondent No. 3 that the contract of the petitioner with respondent Nos. 4 and 5 is sham and camouflage.

22. That I note that the Labour Court in the impugned award had primarily relied upon the Judgment of the Supreme Court in *Air India Statutory Corporation's case (supra)*. The Labour Court relied upon the notification dated December 09, 1976 and which was also considered by the Supreme Court in *Air India Statutory Corporation's case (supra)* for granting relief to the claimants, which is clear from the relevant paras i.e. paras 14, 15 and 16, which are reproduced as under:

14. As noted, the appellant, to start with, was a statutory authority but pending appeal in this Court,

due to change in law and in order to be in tune with open economy, it became a company registered under the Companies Act. To consider its sweep on the effect of Heavy Engineering case (1969) 1 SCC 765 on the interpretation of the phrase “appropriate Government”, it would be necessary to recapitulate the Preamble, Fundamental Rights (Part III) and Directive Principles (Part IV) — trinity setting out the conscience of the Constitution deriving from the source “We, the people”, a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity, are assured to every citizen in a socialist, democratic Bharat Republic. The Constitution, the Supreme law heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience. Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than the words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth. Preamble of the Constitution, as its integral part, is designed to realise socio-economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer

stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio-economic justice assured in the Preamble, Articles 14, 15 and 21 and the Directive Principles of the Constitution. This extract is taken from Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 at page 401

15. The Founding Fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to everyone in Bharat Republic. The State under Article 38 is enjoined to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39(a) provides that the State shall direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood; clause (d) provides for equal pay for equal work for both men and women; clause (e) provides to secure the health and strength of workers. Article 41 provides that within the limits of its economic capacity and development, the State shall make effective provision to secure the right to work as fundamental with just and humane conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the workman and common man can secure and realise

economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them, these are fundamental facets of life. Article 43-A, brought by the 42nd Constitution (Amendment) Act, 1976 enjoins upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 46 gives a positive mandate to promote economic and educational interests of the weaker sections of the people. Correspondingly, Article 51-A imposes fundamental duties on every citizen to develop scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount interest of the community is essential. Article 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are sentinel on the qui vive of the rights of the people, in particular the poor. The judicial function of a court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspective, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to

the workmen a reality lest establishment of an egalitarian social order would be frustrated and constitutional goal defeated.

This extract is taken from Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 at page 402

16. Keeping this broad spectrum in view, let us consider whether the interpretation given in Heavy Engineering case (1969) 1 SCC 765 is consistent with the scheme and spirit of the Constitution. In Rajasthan SEB v. Mohan Lal (1967) 3 SCR 377, a Constitution Bench, comprising the learned Judges who formed the Bench in Heavy Engineering case (1969) 1 SCC 765, considered the issue of interpretation and Bhargava, J. speaking on behalf of the majority, had held that “other authority” within the meaning of Article 12 of the Constitution need not necessarily be an authority to perform governmental functions. The expression “other authority” is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental functions or the “functions under the control of the Government”. It is not necessary that some of the powers conferred be governmental sovereign functions to carry on commercial activities. Since the State is empowered under Articles 19(1)(g) and 298 to carry on any trade or business, it was held that the Rajasthan State Electricity Board was “other authority” under Article 12 of the Constitution. The significance of the observation is that an authority under the control of the State need not carry on governmental functions. It can carry on commercial activities. At this juncture, it is relevant to keep at the back of our mind, which was not brought to the attention of the Bench which decided Heavy Engineering case (1969) 1 SCC 765, that Article 19(2) of the Constitution grants to the State, by clause (ii) thereof, monopoly to carry on, by the State or by a corporation owned or controlled by the State, any trade, business, industry or service whether to the

exclusion, complete or partial, of citizens or otherwise. The narrow interpretation strips the State of its monopolistic power to exclude citizens from the field of any activity, to carry on any trade, business, industry or service, total or partial. A reverse trend which would deflect the constitutional perspective was set in motion by the same Bench in Praga Tools Corpn. v. C.V. Imanuel (1969) 1 SCC 585, 24 days prior to the date of decision in Heavy Engineering case (1969) 1 SCC 765; in which it was held in main that writ under Article 226 would not lie against a company incorporated under Companies Act and the declaration that dismissal of the workmen was illegal, given by the High Court was set aside. But the operation of the above ratio was put to stop by the Constitution Bench decision in Sukhdev Singh v. Bhagatram (1975) 1 SCC. In that behalf, the interpretation given by Mathew, J. in a separate but concurrent judgment is of vital significance taking away the State action from the clutches of moribund common law jurisprudence; it set on foot forward march under public law interpretation. Mathew, J. had held that the concept of State had undergone drastic change. It cannot be conceived of simply as a cohesive machinery wielding the thunderbolt of authority. The State is a service corporation. It acts only through its instrumentalities or agencies of natural and juridical person. There is a distinction between State action and private action. There is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State with an advent of the welfare State. The framework of the civil service administration became increasingly insufficient for handling new tasks which were often of a specialised and highly technical character. Development of policy of public administration, through separate corporations which would operate largely according to business principles and were separately accountable though under the Memorandum of

Association or Articles of Association become the arm of the Government. Though their employees are not civil servants, it being a public authority and State Corporation, therefore, is subject to control of the Government. The public corporation, being a corporation of the State, is subject to the constitutional limitation as the State itself. The governing power, wherever located, must be subject to the fundamental constitutional limitations. The Court, therefore, had laid the test to see whether the Corporation is an agency or instrumentality of the Government to carry on business for the benefit of the public. Thus, the ratio in Praga Tools case (1969) 1 SCC 585 that no writ would lie against the Corporation is no longer a good law. Though Corporation is not a statutory body, as it is not an authority, it is an instrumentality of the State.”

23. Suffice would it be to state that the Supreme Court in *Steel Authority of India Ltd. case (supra)* has held as under:

“53. The impugned notification issued by the Central Government on 9-12-1976, reads as under:

“S.O. No. 779(E).— In exercise of the power conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from the 1-3-1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government:

Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multi-storeyed buildings where such cleaning or

maintenance operations cannot be carried out except with specialised experience.”

A glance through the said notification makes it manifest that with effect from 1-3-1977, it prohibits employment of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment in respect of which the appropriate Government under the said Act is the Central Government. This clearly indicates that the Central Government had not adverted to any of the essentials, referred to above, except the requirement of consultation with the Central Advisory Board. Consideration of the factors mentioned above has to be in respect of each establishment, whether individually or collectively, in respect of which notification under sub-section (1) of Section 10 is proposed to be issued. The impugned notification apart from being an omnibus notification does not reveal compliance with sub-section (2) of Section 10. This is ex facie contrary to the postulates of Section 10 of the Act. Besides, it also exhibits non-application of mind by the Central Government. We are, therefore, unable to sustain the said impugned notification dated 9-12-1976 issued by the Central Government.

103. While this was the state of law in regard to the contract labour, the issue of automatic absorption of the contract labour came up before a Bench of three learned Judges of this Court in Air India case (1997) 9 SCC 377. The Court held: (1) though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer; (2) the Act did not intend to denude the contract labour of their source of livelihood and means of development by throwing them out from

employment; and (3) in a proper case the court as sentinel on the qui vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has a constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer. Justice Majmudar, in his concurring judgment, put it on the ground that when on the fulfilment of the requisite conditions, the contract labour is abolished under Section 10(1), the intermediary contractor vanishes and along with him vanishes the term "principal employer" and once the intermediary contractor goes the term "principal" also goes with it; out of the tripartite contractual scenario, only two parties remain, the beneficiaries of the abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other, who is no longer their principal employer but necessarily becomes a direct employer for erstwhile contract labourers. The learned Judge also held that in the provision of Section 10 there is implicit legislative intent that on abolition of the contract labour system, the erstwhile contract workmen would become direct employees of the employer in whose establishment they were earlier working and were enjoying all the regulatory facilities under Chapter V. in that very establishment. In regard to the judgment in Gujarat Electricity Board case (1995) 5 SCC 27 to which he was a party, the learned Judge observed that he wholly agreed with Justice Ramaswamy's view that the scheme envisaged by Gujarat Electricity Board case (1995) 5 SCC 27 was not workable and to that extent the said judgment could not be given effect to. 104. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning or conclusions.

105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of the CLRA Act”.

24. On a perusal of the aforesaid paragraphs, it is revealed that the

Supreme Court in *Steel Authority of India's case (supra)* has set aside the notification dated December 09, 1976. That apart, it has inter alia held that prohibition of contract labour would not automatically lead to absorption of contract labour. It also held that the consequence of violation of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 is explicitly provided under Section 23 and 25 of the said Act and absence of a registration/licence would not entail automatic absorption.

25. Insofar as the judgment of the Supreme Court in *BSNL case (supra)* relied upon by Mr. Varun Prasad is concerned, the same is not applicable in the facts of this case for more than one reason (i) A finding of fact arrived at in *BSNL case (supra)*, that the respondent was directly working under the administrative control of the appellant, whereas in the case in hand, the Labour Court, primarily relied upon the notification dated December 09, 1976, which prohibited contract labour, to establish the relationship between the petitioner and the claimants; (ii) the learned Single Judge had held, BSNL even though took the plea that the respondent was engaged through Contractor, the agreement was not produced, the contractor was not summoned as a witness. BSNL failed to prove that the consolidated amount was paid to the contractor and the contractor used to pay the wages to the workman. Further the respondent in BSNL case was shown as a Government Servant, whereas in the cases in hand, the contract agreement is admitted by the respondent No.3/claimants. In fact respondent No.3/claimants addresses the petitioner as "Principal Employer". Their case primarily was in view of the notification that they are the employees of the petitioner, purely a legal issue, which now stands decided in *Steel Authority of India's case*.

There is no finding based on facts, as was in BSNL case. In fact it appears that no attempt was made to prove the relationship on facts, at least there is no finding in that regard.

26. In view of the aforesaid position of law, the award dated May 28, 1998 of the Labour Court cannot be sustained, so also the recovery certificate dated April 06, 1999.

27. Whether the aforesaid should be the conclusion insofar as the writ petition filed by the contractor namely M/s. Security Development Services Private Limited (respondent No. 4) i.e. W.P.(C) 5745/1999. The stand of the respondent No. 4 is primarily, that the award of the Labour Court is directed against the Sports Authority of India so also the claim of the Union. The termination by the respondent No. 4 has not been challenged. In the absence of any relief prayed against the respondent No. 4 i.e. the contractor, the award must be construed to mean that no relief has been claimed/granted against it. The recovery certificate issued against it, is illegal need to be set aside.

28. The question which also need to be considered is, despite order of this Court dated October 26, 2004 in W.P.(C) 2482/2002 disposing of application under Section 17-B of the Act directing to pay the claimants 30% of the last drawn wages from April 26, 2004 and which has been paid only till November, 2004 and the issue as to whether the claimants are entitled to the last wages drawn or the minimum wages, whichever is higher is kept open and the fact that the petitioner had paid the benefit to the claimants between April to November, 2004, it would be its liability to pay the benefits from that date till this date. The law on the benefit under Section 17-B of the Act is quite well settled. The Supreme Court insofar as the cases of *Dena Bank Vs. Kiritikumar T. Patel*, 1999 2 SCC

106 is concerned, held that workman would be entitled to the benefit of last wages drawn or the minimum wages, whichever is higher. This Court is conscious of the fact, wages over and above the last wages drawn are refundable, but keeping in view the fact, despite order dated October 26, 2004 for payment of 30% of the last wages drawn, have not been paid to the applicants for the last almost nine years, I deem it appropriate to direct that the claimants would be entitled to 30% of the last wages drawn or the minimum wages whichever is higher from December 2004 till date from the petitioner and the petitioner shall release the said benefit only to those claimants, who have filed affidavits along with C.M. No. 7347/2004, within a period of six weeks from the receipt of the order.

29. I, set aside the award dated May 28, 1998 in I.D. No. 194/95 and recovery certificate dated April 06, 1999, issued against the petitioner and respondent No. 4. W.P.(C) No. 5574/1999 and W.P.(C) No. 5745/1999 are allowed, and W.P.(C) No. 2482/2002 is also allowed with the directions as given in para 28 above.

30. No costs.

(V.KAMESWAR RAO)
JUDGE

MARCH 12, 2014

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