

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE SANJAY KISHAN KAUL,
THE CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.A.No.875 of 2010

The General Manager,
Bharat Heavy Electricals Ltd.,
Ranipet.

... Appellant/
Petitioner

Vs.

1.Canteen Workers of BHEL,
represented by
the BHEL Canteen Workers Union,
(Regd.796/NAT) 282-N-Block,
Anna Nagar East,
Chennai - 102.

2.The Secretary,
Indco Service Society Ltd.,
BHEL, Factory Complex,
Ranipet - 632 406.

3.The Presiding Officer,
Labour Court,
Vellore.

... Respondents/
Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Act, against the order dated 04.01.2010 passed in W.P.No.10861 of 2000.

Writ petition filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records connected with ID.No.93/92 on the file of the third respondent and quash the award dated 17.12.99.

For Appellant ... Mr.Sanjai Mohan for
M/s.S.Ramasubramanian Associates

For Respondents ... Ms.R.Vaigai for
Mr.K.M.Ramesh for R.1

Mr.C.Manohar Gupta
for M/s.Gupta and Ravi for R.2

R.3 - Court.

* * * *

Date of Reserving the Judgment : 18.12.2014

Date of Pronouncing the Judgment : . . .2015

JUDGMENT

M.SATHYANARAYANAN, J.

The Management of Bharat Heavy Electricals Limited (in short 'BHEL'), Ranipet, Vellore District, is the appellant.

2. The first respondent herein raised an Industrial Dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947, which arose out of a collective dispute between the Canteen workers of BHEL - the first respondent and the appellant and the Indco Service Society Ltd., BHEL, Factory Complex, Ranipet - the second respondent, as to the claims made by the first respondent for their absorption as regular workers of BHEL.

3. The award dated 17.12.1999 was passed by the third respondent - Labour Court, Vellore, declaring that the Canteen workers of BHEL as regular workers of BHEL and they shall have such status from the date of demand with effect from 23.11.1987, with a further direction that they shall be fit-in incomparable grades/scales of regular workers of BHEL, subject to all the Service Rules, Regulations and Standing Orders and further that they are entitled to all the monetary benefits including the arrears of pay, subsequent pay revisions with effect from the effective date, i.e. 23.11.1987 and also service benefits with effect from the date to which the regular workers of BHEL are entitled to and other consequential reliefs.

4. The Management of BHEL/first respondent in the Industrial Dispute, challenging the legality of the said award, filed W.P.No.10861 of 2000. The said writ petition, after hot contest, was allowed in part on 04.01.2010, with a modification only with regard to the effective date and payment of differential values. However, the award of the Labour Court declaring the status of the Canteen workers of BHEL was confirmed. The Management of BHEL, aggrieved by the order dated 04.01.2010, passed in W.P.No.10861 of 2000, had filed this writ appeal.

5. The facts leading to the present litigation have been narrated in detail and in extenso in the impugned order passed in the writ petition and therefore, the relevant and material facts necessary for the disposal of this writ appeal, are stated as follows:

5.1. It is the case of the first respondent/claimant that the appellant herein is the occupier of the factory/BHEL Plant at Ranipet and in terms of Section 46 of the Factories Act, 1948, it had established a Canteen. The said Canteen was originally entrusted to a private contractor and later on, was entrusted to the second respondent. According to the first respondent - Canteen workers, the actual control and management of the Canteen vest only with the BHEL.

5.2. BHEL Canteen Workers Union which is espousing the cause of the Canteen workers, is the only union now functioning for their benefits.

5.3. The sum and substance of the claim made by the first respondent/claimant is that in terms of Section 46 of the Factories Act, 1948, BHEL is to provide and bound to maintain a Canteen for the use of its factory workers and thus, it is a statutory Canteen and the responsibility to run the same, vests only with the occupier, namely, BHEL. Originally, the services of a private contractor were engaged to run the Canteen. On experiencing certain difficulties, BHEL themselves initiated and started the second respondent Society. The day-to-day administration is carried out by the staff of BHEL and the officials and it is run exclusively for the purpose of BHEL and the office of the second respondent is also located inside the factory premises and the Management of BHEL is in the helm of affairs of the society. The persuasive control exercised by BHEL over the affairs of the second respondent Society, according to the first respondent, borne out by the fact that the President of the Society continues to be a nominee of BHEL at all times and no election shall be held to the said post. The expenditure incurred such as, purchasing of articles to provide food, etc., to the workers of the BHEL, are provided by BHEL and all necessary accommodations to house the Canteen, furnitures, utensils, electrical energy, etc., are provided by BHEL out of their own funds. The wages of Canteen workers are fixed from time to time and it is paid through the second respondent Society and the quantum of bonus payable to the workers of the Canteen is also equivalent to that of the employees of BHEL.

5.4. It is further case of the first respondent/claimant that the Canteen workers are covered under various legislations, namely, (a) the Factories Act, 1948; (b) the Bonus Act, 1965; (c) the Payment of Gratuity Act, 1972; (d) the Payment of Wages Act, 1936; (e) The Minimum Wages Act, 1948; (f) the Employees Provident Fund and Miscellaneous Provisions Act, 1952; (g) the Employees State Insurance Act, 1948; (h) the Workmen Compensation Act, 1926;

(i) the Industrial Disputes Act, 1947 and (j) the Industrial Employment (Standing Order) Act, 1946.

5.5. The sum and substance of the case projected by the first respondent/claimant is that the labour contract through the second respondent Society is not a genuine one and it is only a sham and nominal arrangement between BHEL and the second respondent Society, so as to prevent the workers of the Canteen to be regularly absorbed as regular workers of BHEL and denial of conferment of benefits as payable to the regular employees of BHEL.

5.6. The appellant/first respondent Management has filed it's counter statement, contending among other things that it had entered into a written agreement with the second respondent Society on the terms to be stipulated therein and the second respondent Society is a separate and legal entity by virtue of it's constitution and registration as a Co-operative Society and it has it's own bye-laws.

5.7. It is further contended by the appellant/first respondent Management of BHEL that the Management of the second respondent Society is vested with the Board of Directors and the second respondent is accountable to the Registrar of Industrial Co-operative Societies in it's entirety. The admission and expulsion of members shall be in terms of the bye-laws of the Society and the functioning of the said Society and service conditions of the employees/workers, is totally independent and not connected to that of the employees of BHEL. BHEL is nothing to do with their administrative functions.

5.8. It is further pleaded in the counter statement that the second respondent Society has also obtained a separate licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, which has been issued by the appellant/first respondent Management and the workers in the services of the second respondent Society were neither directly nor indirectly have any lien over the appellant/first respondent Management of BHEL in terms of their employment. In terms of the Contract Labour (Regulation and Abolition) Act, 1970, the second respondent Society is the Principal employer under the contract and under such circumstances, the Canteen workers cannot become the employees of the appellant/first respondent Management of BHEL, as it would amount to total abrogation of the said provisions of the Act and also by virtue of the fact that the second respondent Society being the contract labour, it's workers cannot be brought under the provisions of the Factories Act, 1948 and therefore, they cannot claim the status as the regular employees of BHEL. Therefore, the appellant herein/first respondent in the claim petition, prayed for the dismissal of I.D.No.93 of 1992.

5.9. The second respondent - Indco Service Society Ltd.,

has also filed it's counter contending that it is the Society

registered under the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The membership of the Society is mainly of those whose lands were acquired by the Government under the Land Acquisition Act and who were employed under the contractors engaged for Canteen, sanitation at BHEL premises, Ranipet. It is the specific stand of the second respondent Society that the dominate nature of work in BHEL is wholly different from that in Canteen and the Canteen workers neither have the expertise nor the experience for being employed in BHEL and they cannot claim to be on par with the employees of BHEL. The second respondent Society also took a stand that it functions and owes it's existence to the contract entered into with BHEL and prays for passing of the award accordingly.

5.10. In the course of the enquiry before the Labour Court, on behalf of the Canteen workers, W.W.1 and W.W.2 were examined and Exs.W.1 to W.17 were marked. On behalf of the Management, the Supervisor of the Canteen was examined as M.W.1 and Exs.M.1 to M.10 were marked.

5.11. The Labour Court, on consideration of the claim statement, counter statement and on appreciation of oral and documentary evidence, has passed an award, accepting the claim of the Canteen workers/first respondent herein. The Management of BHEL made a challenge to the said award in W.P.No.10861 of 2000 and it was partly allowed on 04.01.2010 by modifying the date of conferment of benefits, however, the main prayer sought for by the workers of the Canteen, as awarded by the Labour Court, has been confirmed and hence, this writ appeal.

6. The written submissions were filed on behalf of the appellant as well as by the first respondent.

7. Mr.Sanjai Mohan, learned Counsel for the appellant/first respondent Management of BHEL has invited the attention of this Court to Volumes I and II of typed set of documents as well as to the written submissions and contended as follows:

7.1. The second respondent Society is a separate legal entity and comprises of several shareholders who are workmen/members of the said Society itself and the affairs of the Society are managed and administered by it's own Board of Directors, who are elected at the general body meeting of the Society as per the bye-laws.

7.2. The Directors of the second respondent Society are all elected amongst the members/employees of the second respondent Society. Though the President of the second respondent Society is an official of BHEL, as per the bye-laws, in the absence of any materials to show that the Directors/Office Bearers were pressurised to tow the line of BHEL, it cannot be said that the President is controlling the functions and affairs of the Society

and the workman witness, namely, Mr.Nedunchezian, is an elected member of the Board of Directors.

7.3. The Government of Tamil Nadu has abolished the Board of various Co-operative Societies and appointed the Special Officers and in respect of the second respondent Society also, the Special Officer was appointed by the Government of Tamil Nadu right from the year 1988.

7.4. The Society being the independent body, is having share capital and has also Balance Sheet and Profit and Loss Account for each and every financial year ended on 31.03.1993 and it has also made investments. The Society is being run based on the resolutions passed by the Board of Directors and bye-laws were also provided for payment of dividends.

7.5. Exs.W.5 to W.7 would disclose that reimbursement of the cost representing wages of the employees of the second respondent Society and therefore, it cannot be said that the Management of BHEL fixes and determines the salary payable to the employees of the second respondent Society in the disbursement of the salary also done by the second respondent Society.

7.6. The Management of BHEL never appoints the employees of the second respondent Society and the recommendation cannot be construed as a positive direction or control over the affairs of the Society with regard to the appointment of its employees.

7.7. Simply because the utensils and other things to run the Canteen are provided by BHEL and further the fact that the Canteen is located inside the factory premises, cannot lead to the inference that the Management of BHEL, is having absolutely control/dominance over the affairs of the second respondent Society.

7.8. As per Rule 70 of the Tamil Nadu Factories Rules, the Managing Committee shall be constituted by the occupier of the factory for the purpose of fixation of Menu and rates and it is a statutory obligation in terms of the above said Rule cast upon the occupier, namely, BHEL.

7.9. The contributions made by the Management of BHEL under the Employees State Insurance Act, cannot lead to the inference that the workers of the Canteen are deemed to be the regular employees of BHEL for wages. Under the said Act, it is a statutory liability cast upon the principal employer to make the statutory contributions even in respect of the contract labourers and in fact, the second respondent Society has registered with the Provident Fund Department and is also having separate code. Similarly, the health and safety of the workers employed in the Canteen, is also the responsibility of the occupier of the factory under the Factories Act, 1947.

7.10. The supervisors of BHEL as well as the second respondent Society are supervising the works of the Canteen workers/employees.

7.11. The first respondent has failed to produce any substantial material to show that the Management of BHEL/appellant herein is exercising the disciplinary control for taking disciplinary action against the workers of the Canteen.

8. It is the vehement submission of Mr.Sanjai Mohan, learned Counsel for the appellant/Management of BHEL that the recent judgment rendered by the Honourable Supreme Court in Balwant Rai Saluja v. Air India Ltd. reported in (2014) 9 Supreme Court Cases 407, fully supports the case of the appellant/Management of BHEL and in the light of the said authoritative pronouncement, the appeal deserves to be allowed and hence, prayed for setting aside the impugned order passed in the writ petition as well as the award passed by the third respondent - Labour Court.

9. Per contra, Ms.R.Vaigai, learned Counsel assisted by Mr.K.M.Ramesh, learned Counsel for the first respondent, would contend that the tests or principles laid down in Balwant Rai Saluja v. Air India Ltd. reported in (2014) 9 Supreme Court Cases 407 cited above, merely reiterate the tests laid down in the judgments in (i) M.M.R.Khan v. Union of India reported in 1990 Supp SCC 191; (ii) Parimal Chandra Raha v. LIC reported in 1995 Supp (2) SCC 611; (iii) Indian Petrochemicals Corporation Ltd., v. Shramik Sena reported in (1999) 6 SCC 439; and (iv) Hussainbhai v. Alath Factory Thezhilali Union reported in (1978) 4 SCC 257 and the tests and the principles are as follows:

"(i) Nature of employment - Whether the canteen workers were continuously employed despite change of contractors.

(ii) Whether the field of choice to appoint the workers is limited to ex-canteen workers - in other words, the contractor has no free hand to choose anyone to be employed as canteen worker.

(iii) Whether the contractor can independently take disciplinary action or the discretion is limited by the principal employer.

(iv) Whether the wages and other emoluments of the canteen employees are fully reimbursed by the principal employer.

(v) Whether the principal employer determines the conditions of service like hours of work, rates of wages, allowances, bonus, etc.

(vi) Does the principal employer contribute to social security like, PF, Medical Insurance and Gratuity?

(vii) Whether the bylaws of the contractor or the terms of contract provide for overall administrative control by the principal employer.

(viii) Whether the terms of the contract contain directions to the contractor about the manner of rendering canteen services.

(ix) Whether the canteen was run "departmentally" by the principal employer.

(x) Whether the primary control in running the canteen vested with the principal employer.

(xi) Whether the objects of forming the society or agency of the contractor was mainly to provide service the principal employer.

(xii) Whether the contractor is a worker's cooperative society.

(xiii) Whether the contractor has any other independent economic operations and existence.

(xiv) Whether the contractor is a mere representative of the workers and there is no independent existence other than being a worker."

10. It is the vehement and forceful submission of the learned Counsel for the first respondent that the above facts and circumstances have to be considered in determining the employer and employee relationship and one should adopt a pragmatic approach and the majority of the tests or principles laid down in the above said judgments are fulfilled, then, a conclusion can be safely reached that the alleged contract projected by the appellant/first respondent Management, is nothing but sham and nominal to deprive the workers of the Canteen, their permanency and other statutory benefits.

11. It is further submission of the learned Counsel for the first respondent that the Labour Court has passed a well considered and a spoken award in favour of the first respondent/workmen and on a challenge made to the said award by the appellant/first respondent Management in W.P.No.10861 of 2000, the grounds put forth by the appellant herein were repelled and on an in-depth analysis of the factual background and legal position, the learned Judge has dismissed the writ petition and confirmed the award passed by the Labour Court and since the findings recorded in favour of the first respondent/workmen are concurrent in nature, this Court in exercise of it's power under Clause 15 of the Letters Patent, may not interfere with the same and prayed for the dismissal of this writ appeal with exemplary costs.

12. The learned Counsel for the second respondent has adopted the submissions made by the learned Counsel for the appellant/first respondent Management and it is also to be pointed

out that even in the counter filed in I.D.No.93 of 1992, it supported the case of the appellant/first respondent Management.

13. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials available on record in the form of the typed set of documents and the judgments.

14. In Balwant Rai Saluja v. Air India Ltd. reported in (2014) 9 Supreme Court Cases 407, the facts of the case would disclose that in view of the difference of opinion by two Honourable Judges and by referral order dated 13.11.2013 reported in (2013) 15 SCC 85, the Civil Appeals are placed before the Three Judges Bench of the Honourable Supreme Court for consideration and decision and the question arose was "Whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment?"

15. The Honourable Supreme Court while considering the reference, has noted that the difference of opinion is with regard to the liability of the principal employer running the statutory canteen and further regarding the status of the workmen engaged thereof and framed the main issue for consideration, i.e., "Whether the workers engaged on a casual or temporary basis by a contractor, namely, Hotel Corporations of India Ltd., to operate and run a statutory canteen, under the provisions of the 1948 Act, on the premises of a factory Air India, can be said to be the workmen of the said factory or corporation?"

16. The learned respective Counsel for the appellant, namely, Balwant Rai Saluja and another and the Management, namely, Air India Ltd., and others, made elaborate submissions by inviting the attention of the Honourable Supreme Court to many judgments rendered by it, especially, the following judgments:

(i) National Aluminium Co. Ltd. v. Ananta Kishore Rout reported in (2014) 6 SCC 756;

(ii) Indian Petrochemicals Corporation Ltd. v. Shramik Sena reported in (1999) 6 SCC 439;

(iii) Parimal Chandra Raha v. LIC reported in 1995 Supp (2) SCC 611;

(iv) M.M.R.Khan v. Union of India reported in 1990 Supp SCC 191;

(v) Hussainbhai v. Alath Factory Thezhilali Union reported in (1978) 4 SCC 257; and

(vi) Ahmedabad Mfg. and Calico Printing Co. Ltd. v. Workmen reported in (1953) 2 LLJ 647.

17. In paragraph 41, the Honourable Supreme Court expressed it's agreement with the principle laid down in Indian Petrochemicals Corporation Ltd. v. Shramik Sena reported in (1999) 6 SCC 439, wherein it has been held in paragraph 22 that ".... the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the 1948 Act only and not for all other purposes."

18. The Honourable Supreme Court observed that the statutory obligation created under Section 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, must be restricted only to the Factories Act, 1948 and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc. and thereby, repelled the contentions put forth by the learned Counsel for the employers that the employees of the statutory canteen ipso facto become the employees of the principal employer.

19. In paragraphs 45 and 47, the Honourable Supreme Court has referred to the decisions in Hussainbhai case reported in (1978) 4 SCC 257 and M.M.R.Khan case reported in 1990 Supp SCC 191 respectively and in paragraph 49, expressed it's agreement with the view expressed in M.M.R.Khan case and observed that in M.M.R.Khan case, the reasoning came to be based on the Railway Establishment Rules and the relevant administrative instructions issued by the Government of India and by virtue of the same, it has been made mandatory that the complete administrative control of the canteen be given to the Railway Administration and such mandatory obligations are not present in the instant case and held that the given case cannot be said to be a precedent on the general proposition as regards the status of employees of a statutory canteen established under the 1948 Act.

20. In paragraph 50, after referring to Parimal Chandra Raha case (cited supra), wherein it has been held that the canteen would become a part of the principal establishment and therefore, the workers employed in such canteens would be the employees of the said canteen and having noted the same, it was opined that while arriving at the said conclusion laid emphasis on the contract between the corporation and the contractor, whereby it was shown that the terms of the said contract were in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees and it was also found that majority of the workers had been working in the said canteen continuously for a long time, whereas the intermediaries were changed on numerous occasions. (emphasis supplied.)

21. In paragraph 52, the Honourable Supreme Court expressed the view that to ascertain whether the workers of the Contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the test of complete administrative control is to be applied and it would also be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen.

22. After referring to various decisions including the decision in Nalco case reported in (2014) 6 SCC 756 (cited supra), wherein it was opined that the proper approach would be to ascertain whether there was a complete control and supervision of the appellant, namely, Nalco and concluded in paragraph 65, as hereunder:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision, i.e. whether there exists complete control and supervision."

23. The Honourable Supreme Court, on the facts of the case, has considered the plea urged by the learned Counsel appearing for the appellant, namely, Balwant Rai Saluja, that the Court should pierce the veil and declare that HCI is a sham and a camouflage and in paragraph 74, held that 'the said principle should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.'

24. The Honourable Supreme Court has also taken note of the objects of HCI, as provided under its memorandum of association, to ascertain whether the appellants herein would be entitled to other benefits and rights such as regularisation and would have to apply the test of employer-employee relationship and concluded that the management of business of HCI is under its own Board of Directors and the issue relating to the appointment of the Board of Directors of HCI by Air India would be a consequence of statutory obligations of a wholly-owned subsidiary under the 1956 Act.

25. In paragraph 82, it was observed that as per the present facts, it would not be a fit case to pierce the veil and for piercing the veil of incorporation, mere ownership and control is not a sufficient ground and it should be established that the control and impropriety by Air India resulted in depriving the appellant workmen herein of their legal rights.

26. The Honourable Supreme Court, after taking note of all the relevant factors, in paragraphs 88 to 90, concluded as follows:

"88. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

89. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

90. In terms of the above, the reference is answered as follows : The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

91. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs. Ordered accordingly."

27. It is to be pointed out at this juncture that the decision of the Honourable Supreme Court in Balwant Rai Saluja v. Air India Ltd. reported in (2014) 9 Supreme Court Cases 407, (cited supra) came to be rendered on 25.08.2014 and the impugned order herein passed in the writ petition was delivered on 04.01.2010 and by placing heavy reliance on this decision, the learned Counsel for the appellant/first respondent Management

would contend that the facts leading to the filing of this writ appeal are almost similar to that of the facts narrated in the above cited decision and therefore, prayed for setting aside the impugned judgment passed in the writ petition in W.P.No.10861 of 2000, with consequential order setting aside the award dated 17.12.1999, passed in I.D.No.93 of 1992 by the Labour Court.

28. This Court has gone through the decision in Balwant Rai Saluja v. Air India Ltd. reported in (2014) 9 Supreme Court Cases 407 (cited supra) and is of the considered view that the earlier decisions which came to be rendered on the very same question, have not been overruled, but distinction was made only on facts.

29. The facts of the present case would disclose that in the year 1986, the appellant/first respondent Management, namely, BHEL, appointed a private contractor to run the staff Canteen and on experiencing certain difficulties, the appellant herein has initiated proposal and supported the second respondent Society, namely, Indco Service Society Limited.

30. Ex.M.3 is the bye-laws of the second respondent Society and the oral and documentary evidence let in before the trial Court, would disclose that the office of the second respondent Society is located in the factory premises of BHEL and the President of the said Society is always a nominee of BHEL and in fact, there is no election to the said post at all. There is also not much generation of internal funds and in fact, the major portion of the funds, are provided by BHEL to run the Canteen which caters to the needs of it's staff and workforce. BHEL also provided all necessary accommodations, such as, providing furnitures, crockeries, utensils, cutleries, water supply, electrical energy and fuel to run the Canteen and once again, it is out of the funds provided by BHEL.

31. The wages of the Canteen workers as well as bonus payable to them, are also determined by BHEL. No doubt, the Management of BHEL has exhibited the keenness to provide food, etc., at the door step of the factory premises and therefore, housed the Canteen inside the campus itself.

32. It is also to be noticed that the Canteen exclusively caters to the needs of the workforce of BHEL and no outsiders can be utilised the services of the Canteen and even the workers of the Canteen can enter the factory premises only on valid authorisation.

33. In paragraph 52 of the impugned order passed in the writ petition, the learned Judge framed the issue as to whether the second respondent Society was sham and nominal has to be considered in the light of the Factories Act, 1948 and Rules made

thereunder and while answering the said issue, the relevant provisions of the bye-laws of the second respondent Society, such as, (a) Membership; (b) Admission of Membership; (c) Board of Management; (d) General Body; (e) Business; and (f) Disposal of Net Properties, have also been taken into consideration.

34. In paragraph 53(iii) of the impugned order speaks about the Board of Management and the Board of Directors of the second respondent Society consists of seven Directors and out of seven, three Directors are nominees of BHEL and one Director is the nominee of the State Government and three Directors are Worker Member nominees and the Members of the Board of Directors other than the nominees of BHEL and State Government shall be elected by the General Body for a period of three years from amongst the members.

35. The bye-laws were also amended subsequently and as per the said amendment, the President and Vice President of the second respondent Society shall always be the nominees of BHEL and as already pointed out, no election is contemplated for the said posts and it pertains only to election of three Directors among the workers of the Canteen. The President of the second respondent Society, who is also the nominee of BHEL, has given the power of 'casting vote'.

36. In paragraph 55 of the impugned order, it has been noted by the learned Judge that "However, very strangely by way of an amendment to the by-laws, BHEL has retained the power to nominate the President and Vice President. The President is the principal functionary in the day-to-day management of the Society. The President discharges his functions through the Secretary. The Secretary has no other independent powers except to execute the decision taken by the Board. Therefore the presence of a paid Secretary or an officer on deputation from the Government will not suggest that the management of the Society vests only on the Chief Executive Officer."

37. The learned Judge has also taken note of the minutes of the meetings of the Board of Directors, marked as Ex.M.9 and noted the following features:

(i) Recruitment of workers to the Society will be done in consultation with Personnel and Administration Department of BHEL;

(ii) Enhancement of the daily wages to the workers to Rs.25/- per day and receipt of a lumpsum grant of Rs.3,400/- per month for the payment of cooking allowance at the rate of Rs.3/- per day per head for the 25 kitchen staff and 6 Supervisors and Night duty allowance of Re.1/- per day per head for the workers attending to the duty in Night Shift Canteen.

(iii) To pay a sum of Rs.5/- per day as wage arrears for the period from 01.09.1989 to 27.11.1989 to all the workers and staff of the Society together with a lumpsum amount of Rs.300/- each as per Board Resolution dated 10.08.1990 and as per M/s.BHEL letter dated 07.08.1990.

(iv) The Management of BHEL has agreed to pay over time wages in respect of four employees on account of break-fast service introduced in their shift and also taken note of Exs.W.2 and W.5 wherein the Management of BHEL has sanctioned ex-gratia of Rs.4,500/- to the second respondent Society and fixed the wages payable to the workmen of the Society and agreed to pay the same.

38. The learned Judge further noted that at times of difficulties, the BHEL also sanctioned amounts and the request made by the second respondent Society to pay higher wages to the workers was taken into consideration by BHEL.

39. The oral and documentary evidence let in by the workmen as well as the Management were also taken into consideration by the learned Judge and this Court has also gone through the testimonies of the witnesses, namely, W.W.1 - Nedunchezian; W.W.2 - Muthusamy (Management witness) and M.W.1 - Thangaraj (Workmen witness).

40. This Court, under normal circumstances, may not consider the oral evidence let in by both the parties at this stage. However, in view of the submissions made with regard to the core issue that the contract through the second respondent Society is nothing but sham and nominal, it is constrained to consider the same.

41. The Management to sustain their defence has examined their Supervisor namely Thangaraj as M.W.1 and in paragraph 63, the learned Judge has extracted the entire cross-examination of M.W.1 and also compared the facts of the decision in Indian Petrochemicals Corporation Ltd., v. Shramik Sena reported in (1999) 6 SCC 439 and the present case and in paragraph 71, took pains to prepare a comparative table and concluded that BHEL took a decision to enhance the wages and played a major role in the affairs of the Management of the second respondent Society and more importantly, the wage revision.

42. The learned Judge further found that two Assistant Supervisors are functioning as Supervisors in the Canteen and six other workers of BHEL are working as godown in-charge as well as attenders of the Canteen and in paragraph 73 also has taken note of the additional factors and it is extracted below:

"ADDITIONAL FACTORS IN BHEL CASE:-

73.(a) The persuasive control is always with BHEL on account of their strategic position in the Board of Management. The President and Vice-President would be nominated only by BHEL. It was not possible for the workers to become the President or Vice-President of the Society at any point of time. The by-laws were suitably amended and a specific clause was inserted to the effect

that only the nominees of BHEL could become the President and Vice-President of the Society.

(b) Appointments in the canteen were restricted to the family members of BHEL employees.

(Employment notification dated 9.1.1988 - Ex.W.9)

(c) BHEL recommends the candidature for appointment in Canteen. (Ex.W.10).

(d) Disciplinary proceedings were initiated at the instance of BHEL against the workman of the Society.

(Minutes dated 20.11.1990 - Ex.M.9)

(e) Wages to be paid to the workers of the canteen including revision of wages were decided only by BHEL. (Minutes dated 6.1.1990)

(f) The entire provisions, vegetables and other materials were supplied only by BHEL.

(g) Materials were kept in the custody of BHEL.

(h) Supervisors, Assistant Supervisors, godown incharge and attenders were deputed only by BHEL.

(i) The wage revision to the employees of the canteen were made only after wage revision given to the BHEL employees."

43. The second respondent Society has exercised only minimal control and almost all administrative functions and exercise of control over the employees of the second respondent Society, are in the hands of the appellant/first respondent Management.

44. It is very pertinent to point out at this juncture that the workers continue to be employed under the services of the private contractors and thereafter, under the services of the second respondent Society for very long time and Ex.W.1 - Letter dated 12.06.1986 contains the background facts leading to the formation of the second respondent Society.

45. Thus, this Court is of the view that the appellant/first respondent Management is having complete and effective administrative control and supervision over the employees of the second respondent Society.

46. The Labour Court has made an in-depth analysis of the case of both the parties and also considered the oral and documentary evidence in proper perspective and concluded that the workmen of the second respondent Society are entitled to the relief prayed for.

47. In the impugned judgment, which is the subject matter of challenge in this writ appeal, the learned Judge took great

pains and made independent appraisal of the facts pleaded, oral and documentary evidence and concluded that the findings rendered by the Labour Court, cannot be said to be done without iota of evidence. The only modification done to the award passed by the Labour Court is that the learned Judge has directed the absorption to take with effect from 17.12.1999 with 50% of differential wages and the said modification has not been put to challenge by the workmen.

48. It is well settled position of law that the scope of interference by this Court in the award passed by the Labour Court even at the first instance, is very limited unless it is demonstrated that the findings are perverse or based on no evidence.

49. This Court, on an independent application of mind to all the materials placed before it, is of the considered view that there is no error apparent, infirmity or lack of jurisdiction to interfere with the well considered findings rendered in the impugned order passed in the writ petition which confirmed the award passed by the Labour Court.

50. In the result, this Writ Appeal is dismissed, confirming the order dated 04.01.2010 passed in W.P.No.10861 of 2000. However, the parties are directed to bear their costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rsb

To

The Presiding Officer,
Labour Court,
Vellore.

1 cc to M/s. Gupta and Ravi, Advocate, Sr. 7059
1 cc to mr.k.M. Ramesh, Advocate, SR. 7040

W.A.No.875 of 2010

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