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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.06.2017

DELIVERED ON : 17.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.2330 of 2017

and

W.M.P.(MD) Nos.1955 and 4111 of 2017

The Executive Director,
Bharat Heavy Electricals Limited,
Tiruchirapalli - 620 013.

... Petitioner

Vs.

1. Central Government Industrial Tribunal - cum -
Labour Court,
Shastri Bhavan, Chennai.

2. The Secretary,
BHEL Vala Oppandha Thozhilalar Nala Sangam,
5, Dheen Complex, 1st Floor,
Thiruverumbur, Tiruchirapalli - 620 014.

3. The Special Officer,
BHEL Labour Contract Society,
24, Building, BHEL,
Tiruchirapalli - 620 014.

... Respondents

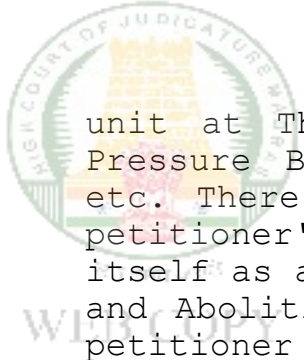
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order dated 11.01.2017 made in Preliminary Point in I.D.No.121 of 2015 on the file of the Central Government Industrial Tribunal - cum - Labour Court, Shastri Bhavan, Chennai the first respondent herein and to quash the same.

For Petitioner	: Mr.A.V.Arun
For R2	: Mr.D.Veerasekaran, Senior Counsel for Mr.N.Ilango
For R3	: Mr.Y.Prakash

ORDER

The above Writ Petition is filed challenging the order dated 11.01.2017 passed on the Preliminary Point in I.D. No.121 of 2015 on the file of Central Government Industrial Tribunal / Labour Court, the first respondent herein.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner is a Central Public Sector Undertaking and it has got one of its manufacturing Unit at Thiruchirapalli. The petitioner started its commercial operation in the year 1964 and the



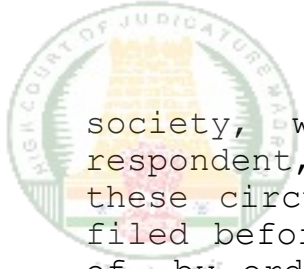
unit at Thiruchirapalli is engaged in the manufacturing of High Pressure Boiler, Boiler components, valves, seamless steel tubes etc. There are more than 8,700 permanent employees working in the petitioner's undertaking. The petitioner herein has registered itself as a principal employer under the Contract Labour (Regulation and Abolition) Act 1970. It is also specifically contented by the petitioner that the petitioner has engaged about 98 contractors who were deploying about 2,500 contract labourers on an average every day.

3. The second respondent in this Writ Petition is a Trade Union, whose members are contract employees deployed by the third respondent society. The third respondent is therefore one of the contractors and they possess a valid license under the Contract Labour (Regulation and Abolition) Act 1970. The third respondent is registered as a Cooperative Society undertaking various contract works by deploying its member labourers to specific works relating to maintenance of buildings, white washing, loading and unloading, sanitation and Sweeping, horticulture etc.

4. The petitioner states that it has directly engaged the third respondent, which is an independent legal entity and registered under the Tamil Nadu Co-operative Societies Act, 1983. It is specifically stated by the petitioner that the third respondent is not only providing employees to the petitioner, but also to other institutions, like HAPP, BHEL Employees Cooperative Bank, NIT and other institutions. The Government of Tamil Nadu is appointing Special Officers / Administrators, whenever the Board was abolished or suspended and it is on this occasion, the Special Officers appointed by the Government have to take care of the day-to-day affairs of the third respondent Cooperative Society.

5. The petitioner submitted that a representation was given by the second respondent dated 12.07.2014 before the Chief Labour Commissioner (Central) to enquire into the aspects of service rendered by the workman of the third respondent so as to treat it's members on par with the regular employee of the petitioner. The Assistant Labour Commissioner (Central), Puduchery, conducted conciliation under the Industrial Disputes Act, 1947. The conciliation ended in failure and a report was submitted by the Assistant Labour Commissioner (Central) to the Government on 13.01.2015. However, the Government of India, on appreciation of entire facts, declined to make a reference stating that there is no employer-employee relationship between the petitioner and the second respondent.

6. Aggrieved by the above order, refusing to refer the dispute, the second respondent filed a Writ Petition in W.P.(MD) No.9271 of 2015 before this Court. In the Writ Petition, the petitioner herein was not impleaded. Even the third respondent



society, which is the employer of the members of the second respondent, was not made as party in the said Writ Petition. In these circumstances, the Writ Petition in W.P.(MD)No.9271 of 2015 filed before the Principal Bench of this Court came to be disposed of, by order dated 31.07.2015, directing the Central Government to make a reference to the Tribunal for its determination. Subsequently, without hearing the petitioner or the third respondent contractor, the Government had simply referred the issue for adjudication as follows:

"Whether the demand of BHEL Valaga Oppanda Thozhilalar Nala Sangam (BHEL Contract Labour Union), Trichy, to absorb and regularize the members of the BHEL Complex Cooperative Labourers is legal and justified? If yes, what relief the workmen are entitled to?"

The order of reference dated 04.09.2015, clearly shows that the Government did not independently apply its mind, but followed the direction given by this Court in W.P.(MD)No.9271 of 2015.

7.The petitioner challenged the order of reference in W.P.(MD)No.34247 of 2015 before this Court and obtained an order of stay. Simultaneously, the petitioner herein filed an appeal in W.A.No.1667 of 2015 against the order passed in W.P.(MD)No.9271 of 2015, referring the matter for adjudication before the Central Government Industrial Tribunal. The writ appeal in W.A.No.1667 of 2015, was disposed of on 10.12.2015, on the following lines.

"....5.Having considered all the facts, we are of the view that all the observations made in respect of the merits of the case have to be deleted and the Tribunal shall be given liberty to proceed with the matter in accordance with law. Accordingly, all the observations made in respect of the merits of the case stand deleted and the Tribunal is at liberty to proceed with the matter in accordance with law and on its own merits de hors the observations made in the impugned order."....

8.Based on the order passed in W.A.No.1667 of 2015, the interim stay granted in W.P.No.34247 of 2015 was vacated by order dated 07.01.2016. Thereafter, the petitioner filed a Writ Appeal in W.A.No. 163 of 2016 challenging the order vacating the stay granted earlier. The Honourable Division Bench of this Court disposed of the Writ Appeal in W.A.No.163 of 2016 along with W.P.No.34247 of 2015 in a common order dated 28.07.2016 with the following direction:

".....9. Be that as it may, in the present W.P.No.34247 of 2015 filed by the Management, though initially they obtained an order of stay against the impugned order of reference, the order of stay having been vacated by the learned single Judge, in the light of the observations made by the Division Bench in W.A.No.1667 of 2015 dated 10.12.2015, giving rise to the filing of W.A.No.163 of 2016, during the course of the proceedings, as the learned senior counsel for the third respondent-contract labourers



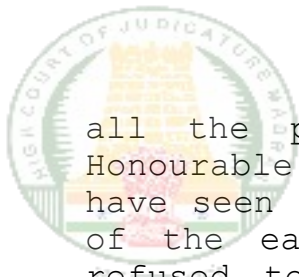
has agreed that the Industrial Tribunal can decide whether the order of reference made by the Central Government is maintainable or not, as a preliminary issue, we feel that it would be proper for the parties to agitate the matter before the second respondent-Industrial Tribunal in accordance with law. Accordingly, without going into the merits, we direct the second respondent-Central Government Industrial Tribunal cum Labour Court to entertain the dispute on the preliminary issue as to whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. Both the parties, namely, the Management and the contract labourers are at liberty to approach the second respondent-Industrial Tribunal and to raise all the contentions available to them. The matter may be taken up by the second respondent-Industrial Tribunal within a period of one month from the date of receipt of a copy of this order. With these observations, both the writ appeal and the writ petition are disposed of accordingly. Consequently, C.M.P.No.2297 of 2016 and M.P.No.1 of 2015 are closed. No costs."

9. It was, thereafter, the petitioner filed a detailed counter before the Central Government Industrial Tribunal, Chennai, in I.D.No. 121 of 2015 and raised the preliminary issue regarding the maintainability of the order of reference. The third respondent also filed a counter before the Central Government Industrial Tribunal supporting the stand taken by the petitioner. After hearing all the parties, the Central Government Industrial Tribunal, by order dated 11.01.2017, gave a preliminary finding that there exists an industrial dispute, justifying the reference to the Tribunal. The Tribunal observed that the appropriate Government could not decide the contentious issue, whether the employer-employee relationship does or does not exist between the petitioner and the members of second respondent. According to the Tribunal, the only course open to the Government was to make a reference in this case. The present Writ Petition is filed challenging the order of the Central Government Industrial Tribunal dated 11.01.2017.

10. The learned counsel appearing for the petitioner submitted his arguments in the following lines:

a. Since the Honourable Division Bench of this Court has granted liberty to the petitioner to raise all the contentions available before the Tribunal, including the issue, regarding the maintainability of reference, the Tribunal went wrong and gave its finding based on assumption and conjectures, ignoring the material documents produced by the petitioner.

b. The Tribunal failed to consider the point whether the Government has satisfied itself about the existence of industrial dispute before making reference. The Central Government Industrial Tribunal failed to decide the preliminary issue with reference to



all the points raised by the petitioner, as directed by the Honourable Division Bench of this Court and the Tribunal ought to have seen that the order of reference was given without taking note of the earlier order of the Government, whereby the Government refused to refer the issue to the Central Government Industrial Tribunal, after coming to the conclusion that there is no employer-employee relationship between the petitioner and the members of the second respondent on the basis of same materials.

c. The Tribunal failed to consider the important aspect of the case namely, the fact that the second respondent never took the plea before the Government earlier that the contract between the petitioner and the third respondent is sham and nominal. When the second respondent described the employees only as members of the third respondent and they never claimed any right as a regular employee of the petitioner, the second respondent estopped from projecting a new case before the Tribunal.

12. Sum and substance, the learned counsel for the petitioner tried to impress upon the Court by his arguments that the first respondent considered the case based on the contentions that were raised before the Tribunal for the first time. Hence, the maintainability of reference ought to have been considered only on the basis of what has been pleaded by the second respondent before the Government in the application.

13. The third respondent filed a detailed counter supporting the stand taken by the petitioner. The specific stands taken by the third respondent are as follows:

"...3. The petitioner Company has awarded contracts for availing services like housekeeping, cleaning of tables, serving of tea, coffee etc., delivering tapals, horticulture, maintenance of its buildings like white washing, loading and unloading, sanitation and sweeping etc., Based on the FORM I issued by the petitioner, 3rd respondent Society obtained License in terms of Contract Labour (Regulation and Abolition) Act, 1970 from ALC (Central) for engagement of its members in the petitioner Company.

4. I submit that the 3rd respondent Co-operative Society is an independent body functioning as per its bye-laws, amended from time to time, which governs the various aspects of membership, objectives and further its functions are also governed by the directions given by Registrar of Co-operative Societies and the decisions are arrived by way of resolutions. As per by-law, membership of the society was open to those adult labourers who hail from 10 villages viz. Thuvakkudi, Navalpattu, Thiruverumbur, Krishnasamuthiram, Koothappar, Salomadeve, palanganangudi, Thirunedungulum, Pappakkurichi and



Valavanthankottai, irrespective of any educational qualifications and entry of membership was accordingly made by the then Board of the society from time to time. The amendments made from time to time in the bye-laws have also been duly certified by the Registrar of Co-operative Societies. Removal of members is also governed by the bye-laws and the powers vested with elected board or the special officer as the case may be. Whether the elected body controls or special officer controls the affairs of the society, the overall supervision and control is exercised by the Co-operative Department of the Tamil Nadu Government and its accounts are audited by the Co-operative Audit Officer of the Tamil Nadu Government and the same is approved by the Assistant Director (Co-operative Audit). The members of this respondent are also shareholders of this respondent Co-operative Society and are also labourers who are paid wages and other benefits by this respondent.

5. There are at present around 284 members who are not working for this respondent, while retaining membership. Some of the members are engaged by this respondent for carrying its contractual obligations with other Institutions and they are paid wages and allowances for the work done by them and also being extended all the benefits, similar to that of members except thrift deposit and share holding in this respondent.

6. I submit that from among the members, some are working as supervisors who exercise control and supervision over the members. Earlier overall supervision and control over the members employed by the Co-operative Society was carried out by the Board and after its discharge by the Government of Tamil Nadu and consequent to appointment of Special Officer under the Tamil Nadu Co-operative societies (Appointment of Special Officers) Act, 1976, the supervision and control has been exercised by the Special Officer.

7. I humbly submit that as per the bye-laws of the 3rd respondent Society, between 1978-87, the Board of this respondent Society consisted of 4 representatives, out of which 2 persons were nominated by the Co-operative Department and 2 persons were by the petitioner. Subsequently, during 1987-89, out of the 10 Board of Directors were nominated by the petitioner. Further during 1989-90, the Co-operative Department dissolved the Board and appointed an official from Co-operative



Department as Special Officer. Again in 1990-91, out of 10 representatives in the Board, 6 were elected directly from among the members and 4 were nominated by the petitioner. During 1991-96, the Co-operative Department discharged the Board and appointed an official from Co-operative Department as the Special Officer. In 1996-97, out of 8 Directors, 6 were elected and two were nominated by the petitioner. In 1997-2001, out of 7 Directors, 6 were elected and 1 nominated by the petitioner. From 2001 to 2015, the Co-operative Department appointed an official from the petitioner Company as a Special Officer as per provisions of the appointment of Special Officers Act 1976.

8. I humbly submit that minutes dated 31.10.1996 would reveal that the affairs of this respondent Society are always carried out by the 'Board', which includes the members/labourers. From time to time, elections were conducted by Co-operative Department for the post identified in the bye-law. Similarly, as per the bye-laws, nominated BHEL employees were admitted as President, Secretary or Director as the case may be. I submit that to the best of my knowledge, none of the members have challenged the bye-laws or nomination of BHEL officials to the Board or appointment of special officer. In as much as the Special Officer or Administrator is appointed by the Government of Tamil Nadu by exercising powers under the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act, 1976. I have been discharging my duties as Administrator in view of the mandate given by the Government of Tamil Nadu.

9. I humbly submit that, the 2nd respondent had suppressed the fact that the Board of the Society consisted of its elected representatives, whenever elected board was in place. It is because of the decision of the Government, whenever elections were not held after the completion of the term, the Co-operative Department appointed either its own officials or BHEL officials as Special Officers, who were discharging the functions of this respondent Society under the supervision and control of Registrar of Co-operative Societies. I submit that whether to conduct elections for the Co-operative Societies or not is a decision taken by the Co-operative Department.

10. I humbly submit that, the whole dispute arose



after the enactment of recent amendment to the Co-operative Act, which mandated administration of all Co-operative Societies through elected body. From 2013, State Government has been directing all Co-operative Societies, including the 3rd respondent Society to conduct elections, and the election was declared for this respondent also in 2013. For the reasons best known to the members of this respondent Society, they declared their decision to desist from election and none of the members submitted nomination.

11. I humbly submit that , subsequently in the year 2014, the registered trade unions of this respondent Society including the 2nd respondent jointly made representation before the Government for stopping the election stating that they have initiated legal proceedings seeking permanency in the petitioner Company. The 8 trade unions of this respondent Society including the 2nd respondent had written clearly to the Registrar of Co-operative Societies to restrain from conducting election.

12. Thus, it is clear that the present situation was due to concerted joint action by all the 8 trade unions, who sabotaged election notification issued by the Co-operative Department and only with an ulterior motive to allege that this 3rd respondent Society is controlled by the officials of the petitioner Company. Having done so, the 2nd respondent is estopped in making a hue and cry that this 3rd respondent Society is camouflaged one and is controlled by the petitioner Company. Had the election been conducted successfully in 2013, no such plea is possible in the year 2014 (the year in which conciliation proceedings were initiated by the 2nd respondent).

13. Now, for the smooth functioning of the Society in the interregnum period, the Government had appointed an official from the petitioner Company as its Administrator, since the elections for filling the Board could not be held due to Non- Co-operation from the Trade Unions, including the petitioner union working in the establishment of this respondent. The appointment of Administrator by the Government is an interim arrangement only till the elections are successfully held for 11 seats in the Board of Directors of the 2nd respondent. Hence, the 1st respondent ought to have examined all these



14. At the time of admission, this Court granted interim stay on 10.02.2017 of all the proceedings in I.D.No.121 of 2015, on the file of the first respondent.

15. The second respondent in the Writ Petition filed a petition to vacate the interim stay granted earlier on 10.02.2017. In the counter affidavit, filed by the second respondent along with the petition to vacate the stay, it is indicated that there is no factual dispute with regard to the events. The contentions of the second respondent in the counter affidavit are as follows :

(a) The members of the second respondent are the employees of the petitioner and the Society is nothing but an organ of the petitioner.

(b) It is only the petitioner, who created the second respondent through its own organ by appointing DGM and AGM from its own office.

(c) The contention of the petitioner that the third respondent is the employer of the members of the second respondent union is contrary to the real facts and it is only the petitioner, who nominated the Special Officer to the third respondent and no election was conducted as contemplated under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The members of the second respondent union have right to go to the factory premises and work continuously without break. Therefore, the petitioner cannot plead that the third respondent is a separate entity.

(d). Though the petitioner and the third respondent were not added as parties in the earlier Writ Petition filed by second respondent, the petitioner filed a Writ Appeal in W.A.No.167 of 2015 and accepted the order passed by the Honourable Division Bench of this Court. Hence, the petitioner cannot plead that some prejudice was caused to the petitioner and the order of reference pursuant to the direction of this Court in the earlier Writ Petition is not binding on the petitioner. When the Special Leave Petition in SLP (C) Nos.26891 and 26892 of 2016, were dismissed, confirming the Judgment passed in W.A. No.163 of 2016, the petitioner is bound by the order of this Court. Having regard to the finding of the Tribunal, that the Government cannot decide finally whether the contract is genuine or not and whether the employer-employee relationship does or does not exist between the petitioner and the members of the society, the order of Tribunal is unassailable. The main issue whether the members of the second respondent union are the employees of the petitioner and whether the contract between the petitioner and the third respondent is sham and nominal can be decided by the Tribunal at a later stage. However, for the purpose of deciding whether the order of reference is justified or not has to be decided only on the basis of *prima facie* opinion at that stage. The Government is not expected to conduct a rowing enquiry and the issue has to be ultimately decided only by the Tribunal. The



order of Tribunal is a well considered order and the contention of the petitioner that the Tribunal has not applied its mind is not appropriate.

(e). Since the Tribunal considered the scope of Section 10 of the Central Labour (Regulation and Abolition) Act, 1975 and Section 10 of the Industrial Disputes Act, 1947, the findings arrived at based on the appreciation of material and facts cannot be faulted. Apart from other points, the counter has also elaborated the factual aspects regarding the relationship and contentions of the members of the second respondent association before the Tribunal to seek regularization.

16. The short question that arose for the consideration before this Court at this stage is whether the order of Tribunal on the preliminary issue is valid or not.

17. The learned counsel for the petitioner and the learned Senior Counsel for the respondents have accepted the principles reiterated by the Honourable Supreme Court in the case of **Steel Authority of India Limited vs. National Union Waterfront Workers and others**, reported in **2001 7 SCC 1** and the judgment of the Honourable Supreme Court in the case of **International Airport Authority of India vs. International Air Cargo Workers Union and others** reported in **2009 13 SCC 374**. In the second case, [International Airport Authority of India's case] the Honourable Supreme Court, while reiterating the view taken by the Honourable Supreme Court in the first case, referred to above, has held as follows :

".....30. When the learned Single Judge considered the matter, the legal position was governed by the decision in Gujarat Electricity Board vs. Hind Mazdoor Sabha², partly modified by Air India Satutory Corporation vs. United Labour Union¹. By the time the Division Bench decided the writ appeal, the decision of the Constitution Bench in Steel Authority of India Ltd., vs. National Union Waterfront Workers (for short 'SAIL'³) had been rendered, but on account of the short gap between the two dates, the Division Bench did not notice the decision in SAIL³.

31. In Gujarat Electricity Board, this Court held : (SSC pp.56 & 63, paras 42 & 53)

"42..... the exclusive authority to decide whether the contract labour should be abolished or not is that of the appropriate Government under the said provision. It is further not disputed before us that the decision of the Government is final subject, of course, to the judicial review on the usual grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate Government under Section 10 of the Act arises only where the labour contract is genuine and the question whether the contract is genuine, or not



can be examined and adjudicated upon by the court or the industrial adjudicator, as the case may be. Hence in such cases, the workmen can make a grievance that there is no genuine contract and that they are in fact the employees of the principal employer.

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53.(ii) If the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act."

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

32. Gujarat Electricity Board² was partly overruled in Air India¹ in regard to the question whether on abolition of contract labour system, the contract labour have to be automatically absorbed by the principal employer, this Court held as follows in Air India¹ : (SCC pp.435 & 440, paras 58 & 66)

"58..... The moment the contract labour system stands prohibited under section 10(1), the embargo to continue as a contract labour is put an end direct relationship has been provided between the workmen and the principal



employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor.....

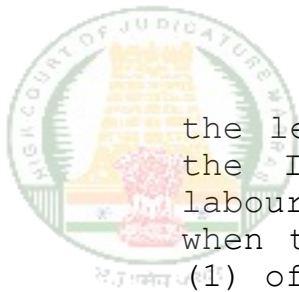
66..... The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the [employer]."

33. A course correction, if we may use that expression, was applied by the Constitution Bench, in SAIL. This Court made it clear that neither section 10 nor any other provision in CLRA Act provides for automatic absorption of contract labour on issuing a notification by the appropriate government under section 10(1) of the CLRA Act and consequently the principal employer cannot be required to absorb the contract labour working in the establishment.

34. This Court in SAIL³ further held that on a prohibition notification being issued under section 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider 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 as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham or nominal and merely a camouflage, then the so called contract labour will have to be treated as direct employees of the principle employer and the industrial adjudicator should direct the principle employer to regularize their services in the establishment subject to such conditions as it may specify for that purpose. On the other hand if the contract is found to be genuine and at the same time there is a prohibition notification under section 10(1) of CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age.

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35. As noticed above, SAIL³ did not specifically deal with



the legal position as to when a dispute is brought before the Industrial Adjudicator as to whether the contract labour agreement is sham, nominal and merely a camouflage, when there is no prohibition notification under section 10(1) of CLRA Act.

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36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

18. The decision above has made the position clear that even without the abolishment of contract labourers under Section 10 of the Central Labour (Regulation and Abolition) Act'1975, it is open to the contract labourers to raise a dispute contending that the contract between the principal employer and the contractor is sham and nominal and if such a dispute is raised, the Industrial Tribunal has jurisdiction to decide the dispute. In other words, when the dispute is raised by the contract labourers that they were the direct employees of the principal employers, the Industrial Tribunal has to decide whether the contract between principal employer and the contractor is sham and nominal and merely a camouflage. The Central Government Industrial Tribunal can grant relief to the contract labourers, after finding that the contract between the principal employer and the contractor is sham and nominal.

19. The learned counsel for the respondent placed reliance on the judgments of the Honourable Supreme Court in the case of **D.P. Maheshwari vs. Delhi Administration and others** reported in **AIR 1894 SC 153**, where the Honourable Supreme Court has held as follows:

".....We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have



arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues....."

20. The said judgment was also followed by the learned single Judge of this Court in the case of **Shrine Basilica of Our Lady or Health Veilakanni, under the control of Diocese of Tanjore Society vs. State of Tamil Nadu and others** in **W.P No.13034 of 1999**, by order dated 12.01.2009. It is true that the Honourable Supreme Court has expressed serious concern about the delay on account of the preliminary issue being raised at various stages and the unnecessary delay on account of such preliminary issues leading to woeful consequences particularly when it is detriment of those who can ill afford to wait. In the present case, the members of the second respondent are only claiming certain benefit on par with regular employees and the decision on the preliminary issue is inevitable, in view of the direction of this Court in the Judgment passed in **W.P No. 163 of 2016** dated 28.07.2016.

<https://hccs.courts.gov.in/ccservices/>

21. In the present case, the main contention of the



petitioner is about the maintainability of the reference. The learned counsel for the petitioner strenuously submitted that before the Assistant Labour Commissioner (Central) Ministry of Labour and Employment, the second respondent submitted a representation on 12.07.2014. In the representation, it can be seen that the second respondent described the members of third respondent as contract labourers and not as regular employees of the petitioner. It is their grievance that the members of the second respondent were entitled to most of the benefits, which are given to the employees of the petitioner and that they are not equally treated on par with regular employee in the petitioner's organization. In other words, that they wanted equal pay and regularization of service on par with the regular employees and to give them the benefits that are given to the regular employees of the BHEL. As a contract labour union or as a Union representing the contract labours, the representation was made claiming certain benefits and to get equal pay and regularization of service etc., on par with the regular employees of the BHEL.

22. During the conciliation proceedings between the petitioner and the second respondent, a detailed reply was given by the petitioner in response to the representation of the second respondent. In response to the same, a further representation was submitted by the second respondent. It is seen that in the representation dated 25.08.2014, it is alleged that the third respondent Society is part and parcel of BHEL union and the administration of the third respondent Society is in the hands of the Special Officer, who is none other than the Senior Manager (HR) of the petitioner.

23. Even in the representation of second respondent, it is the contention of the second respondent that the third respondent Society was formed by the management of BHEL in the year 1978, with an intention to provide employment in and around the area of the BHEL. However, it is not stated anywhere that the members of the third respondent society were directly employed by the petitioner. The second respondent reiterated the factual position that the actual work done by the contractor workers is similar to the regular employee of BHEL. Having regard to the nature of grievance, the main objection of the petitioner is that second respondent who had not claimed any relationship as employer and employee between the petitioner and members of second respondent cannot seek reference. Even to the second representation, the petitioner submitted a reply on 14.10.2014, reiterating that no valid industrial dispute has been raised by the union, requesting the conciliation proceedings by the Assistant Labour Commissioner (Central) to be dropped. The third respondent Society also submitted a representation on 06.12.2014, specifically pointing out that whenever the members of the Society raised an industrial dispute or strike, they had negotiation only with the management of the Society to settle the same. It is further reiterated that the members of the Society through their Trade Union entered into wage limit settlement with the management of the



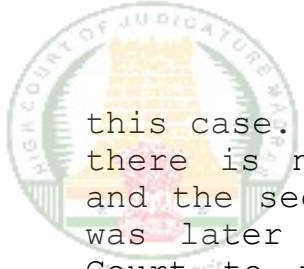
Society periodically. The agreement relating to bonus and the other allowances payable to the members of the Society were also annexed to the representation. From the reading of the representation of the second respondent, it can be seen that the second respondent has all along requested the petitioner to regularize the services of the members of the third respondent Society and to pay wages and other benefits on par with the regular employees of BHEL, because of the fact that they are doing same work similar to the regular employees of BHEL and not on the basis that the members of second respondent are employed by the petitioner. The conciliation ended in a failure and a report was submitted under Section 12(4) of the Industrial Disputes Act, 1947. Referring to the failure of Conciliation Report, the Central Government refused to refer the dispute over adjudication by passing an order in the following lines:

"I am directed to refer to the Failure of Conciliation Report No.8/28/2014/PDY dated 13.01.2015 from the ALC (PUDUCHERY) received in this Ministry on 28.01.2015 on the above mentioned subject and to say that, *prima facie*, this Ministry does not consider this dispute fit for adjudication for the following reasons:

"It is reported that there is no direct employer-employee relationship exists in the instant dispute as the members belong to the society and they are fulfilling the contractual obligation. Therefore, there is no locus-standi to raise an Industrial Dispute as the same is not supported by Law either under the ID Act, 1947 or under the Contract Labour (Regulation & Abolition) Act, 1970. Hence, the case is not found fit for reference" Therefore the case is not recommended for adjudication by the CGIT."

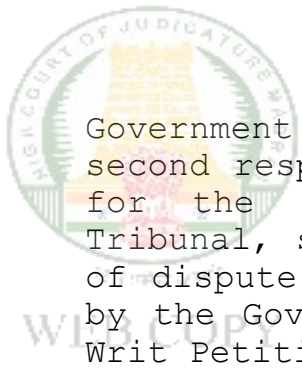
24. However, pursuant to the direction of this Court in W.P.No.9297 of 2016 dated 31.07.2015, the Central Government referred the dispute for adjudication to the Central Government Industrial Tribunal. At the time of referring to the Tribunal on 04.09.2015, the Central Government did not refer to any other facts except the order passed by this Court in the Writ Petition on 31.07.2015.

25. Having regard to the final order that was passed by the Honourable Division Bench of this Court, Central Government Industrial Tribunal cum Labour Court has to decide the preliminary issue, whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. The Central Government earlier decided the issue on merits only on the basis of the representation of the second respondent before the Labour Commissioner and the Conciliation Failure Report submitted by the Labour Commissioner. Having regard to the jurisdiction and authority of the Central Government exercising its powers under the Industrial Disputes Act, the Government has to consider, whether any industrial disputes exists on the facts of



this case. The Central Government has earlier formed an opinion that there is no employer-employee relationship between the petitioner and the second respondent (Contract labourers). However, this issue was later decided differently, as there was a direction by this Court to refer the dispute to the Central Government Industrial Tribunal. By virtue of direction of the Honourable Division Bench of this Court, in the order passed in W.A.No.163 of 2016 and W.P.No.34247 of 2015, the preliminary issue that was required to be decided is whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. At the time of reference before the Government, the contention of respective parties were only in the form of representations made by both parties before the Labour Commissioner / Conciliation Officer and the issue regarding reference was to be decided on the basis of materials made available before the Government. The case of the second respondent before reference was not similar to the case, now projected before this Court and before the Central Government Industrial Tribunal. The scope of the enquiry by the Central Government Industrial Tribunal, pursuant to the direction of the Honourable Division Bench of this Court is only to decide the preliminary issue, with reference to the facts that were made available before the Government at the time of seeking reference not on the basis of the improved version, which was projected subsequent to the reference. However, it is also open to the Central Government Industrial Tribunal to decide whether the second respondent can be permitted to bring additional facts before the Central Government Industrial Tribunal to decide the preliminary issue.

26. It cannot be seen that the Central Government Industrial Tribunal has decided the preliminary issue on the basis of statements that are filed subsequent to the reference. It is also seen that the Central Government Industrial Tribunal has not finally decided whether the contract is genuine and whether the employer-employee relationship does or does not exist between the petitioner and the members of the Society. Since it is admitted that for referring a matter to the Central Government Industrial Tribunal, the appropriate Government is not a mere post office, the Central Government has to form an opinion, whether there is any dispute even in relation to the existence of employer and employee relationship. In the present case, from the materials that were made available to the Central Government, at the time of seeking reference, it is not clear whether there exists a dispute regarding the existence of the employer and employee relationship between the petitioner and the second respondent. If the Central Government is of the opinion that there exists a dispute, then thinks are different. It is not really expected from the Central Government Industrial Tribunal to ignore this aspect. Hence the Central Government Industrial Tribunal is required to decide as to whether there exists a dispute regarding the existence of employer-employee relationship between the petitioner and the second respondent at the time of seeking reference before the Government. It is also required for the Central



Government Industrial Tribunal to go into the issue whether the second respondent can be permitted to raise such an important issue for the first time before the Central Government Industrial Tribunal, so as to justify the reference, even though the existence of dispute is not *prima facie* made out when the reference was made by the Government as per the direction of this Court in the first Writ Petition filed by the second respondent.

27. Having regard to the facts narrated by both parties, this Court is of the firm opinion that the Central Government Industrial Tribunal has failed to consider two important issues, above referred to which are relevant and important to decide the preliminary issue, as per the direction of this Court. Hence, this Writ Petition is allowed and the impugned order is set aside and the matter is remitted to the Central Government Industrial Tribunal, Shasthri Bhavan, Chennai, to decide the preliminary issue whether the order of reference made by the Central Government is maintainable, after framing the two issues that were referred to in the previous para and then decide the preliminary issue one way or the other after giving adequate opportunities to both sides. The Tribunal is directed to pass appropriate orders on the preliminary issue within a period of three months from the date of receipt of a copy of this order and then to proceed further in accordance with law. This Writ Petition is allowed with the above directions. Consequently the connected W.M.P.(MD) Nos.1995 and 4111 of 2017 are closed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. Central Government Industrial Tribunal - cum -
Labour Court,
Shastri Bhavan,
Chennai.

2. The Secretary,
BHEL Vala Oppandha Thozhilalar Nala Sangam,
5, Dheen Complex, 1st Floor,
Thiruverumbur,
Tiruchirapalli - 620 014.

3. The Special Officer,
BHEL Labour Contract Society,
24, Building, BHEL,
Tiruchirapalli - 620 014.

CMR/GS

JS/KK/SAR.1/1.8.2017/18P-4C

Order made in
W.P. (MD) No.2330 of 2017
and

W.M.P. (MD) Nos.1955 and 4111 of 2017
17.07.2017