

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.21548 OF 2002, 140 OF 2003 AND 25073 OF 2009

COMMON ORDER:

The Visakhapatnam Contract Labour Union is the petitioner in these three writ petitions. The petitioner states that it is espousing the cause of contract labour working in Steel Authority of India Limited (for short "SAIL").

The prayers in these three writ petitions read as follows:

W.P. No.21548 of 2002:

To call for and peruse the records pertaining to I.A. No.122 of 2002 in ITID No.5 of 1992 dated 21.10.2002 on the file of Industrial Tribunal-cum-Labour Court, Visakhapatnam and quash the order dated 21.10.2002 by issuing a writ of Certiorari.

W.P. No.140 of 2003:

To call for the records in I.A. No.96 of 2002 in ITID No.5 of 1992 dated 21.10.2002 on the file of 2nd respondent and quash the same by issuing a Writ of Certiorari.

W.P.No.25073 of 2009:

Prayed for Mandamus declaring the action of respondents/SAIL in not taking steps for engaging the members of the petitioner union in spite of representation as illegal, and consequently direct the respondents to engage the members of petitioner union in preference to fresh contract workers in

pursuance of tender notification reference No.VIZ/WH/HC/2009 dated 05.08.2009.

At the outset, the primary circumstances leading to the filing of these cases are adverted and thereafter, the averments in W.P. No.21548 of 2002 are stated. The learned counsel appearing for the parties have treated W.P. No.21548 of 2002 as the main writ petition and have agreed that the outcome of the companion writ petitions depends on the disposal of W.P. No.21548 of 2002.

The petitioner is a registered trade union consisting of 65 members. The members are stated to be working in SAIL as loading and unloading Operators under different contractors for several years. Government of Andhra Pradesh issued G.O.Ms.No.375 dated 05-06-1981 abolishing employment of contract labour in the processes or operations in the industries notified therein. Hindustan Steels (previously known as Hindustan Steels Operations) is covered by (II) and the engagement of contract labour for the following operations was prohibited.

1. Loading and unloading of wagons and stocking and loading of trucks.
2. Loading of rails into tractors
3. Watch and Ward.

The petitioner alleges that engaging contract labour in SAIL for the prohibited operations and continuing to engage the contract labour for prohibited operations firstly is illegal and further not treating the members of petitioner union as workmen of SAIL was arbitrary, illegal and discriminatory. Therefore, the petitioner filed W.P. No.12798 of 1989 for the relief of absorption of members of

petitioner trade union in SAIL as regular workmen. On 25.10.1989, the writ petition No.12798 of 1989 was disposed of by directing the State Government to refer the dispute of non-regularisation to the appropriate Industrial Tribunal/Labour Court for adjudication. It is further held that pending reference of the dispute, the members of petitioner union may be continued in employment in view of the fact that the contract between the respondent and the contractor was subsisting.

The members/contract labour filed W.P. No.442 of 1991 praying for direction to the State Government to refer the dispute of non-regularisation for adjudication by the Tribunal. The State Government issued G.O.Rt.No.1227 dated 05.06.1992 referring the said dispute to the Industrial Dispute for adjudication which reads thus:

“Whereas the Government of Andhra Pradesh is of opinion that an industrial disputes exists between the management of Steel Authority of India Limited, Sotckyard, Kancherapalem and their workmen represented by Visakhapatnam contract Labour Union, Visakhapatnam, in respect of the matters specified in the annexure to this G.O.

and whereas, in the opinion of the Government of Andhra Pradesh it is necessary to refer the said dispute for adjudication.

Now therefore in exercise of the powers conferred by clause (C) and the 1st provision to Clause (d) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Andhra Pradesh hereby refers the said dispute for adjudication to the Industrial Tribunal-cum- Labour Court, Visakhapatnam.

The Industrial Tribunal-cum-Labour Court shall submit its award, on the above dispute to the Government within a period of 6 months from the date of this G.O.”

I. Whether the demand of the Visakhapatnam Contract Labour Union, Visakhapatnam, for absorption of contract workers in loading and unloading operations at Stockyard, Kancherlapalem, of the contractor namely, Sri Krishna Engineering Works, Visakhapatnam as regular employees of Steel Authority of India Limited consequent on the abolition of employment of contract labour in loading and unloading operations in Steel Authority of India Limited, Stockyard Visakhapatnam as per G.O.Ms.No.375 LEN and TE LAB-II Department dated 05.06.1981 is justified.

II. If so to what relief the workmen are entitled? (emphasis added)

The dispute referred through G.O.Rt. dated 05.06.1992 has been taken on file as ITD No.5/1992 before the Industrial Tribunal.

SAIL filed W.P. No.851 of 1991 for Mandamus permanently restraining the State and the Assistant Commissioner of Labour and Licencing Authority from enforcing G.O.Ms.No.375 /81, LEN & TE (Labour-II), Department dated 05.06.1981. For convenience the outcome of W.P. No.851 of 1991 is referred at this stage of narration. On 04.03.2004, W.P.No.851 of 1991 was allowed and the operative portion of the order in W.P.No.851 of 1991 reads thus:

“No counter has been filed. However, the learned Government Pleader submits that the matter be left open

to Government to issue fresh notification in accordance with the rules.

Inasmuch as there is violation of Section 10(2) of the Act, without going into other issues of the case on merits, I am inclined to set aside the G.O.

Accordingly, the writ petition is allowed. G.O.Ms.No.375 dated 5.6.1981 is set aside. However, this order does not preclude the Government for issuing fresh notification as required under law if the Government so chooses. The relief in the Writ Petition is only confined to the petitioner and cannot be made applicable to other establishments. No costs”

It is a matter of record that the State Government filed WAMP No.1292 of 2010 in WASR No.91805 of 2010 against the order dated 04.03.2004 in W.P. No.851 of 1991. On 13.12.2013, the Division Bench declined to condone the delay and dismissed the WAMP. Therefore, the order dated 04.03.2004 in W.P. No.851 of 1991 has become final. The effect of these two orders is that the prohibition from engaging contract labour by SAIL is in operation.

The Hon'ble Supreme Court in *AIR India Statutory Corporation v. United Labour Union and others*¹ considered the scope, object of the Contract Labour (Regulation and Abolition) Act (37 of 1970) (for short 'the CLRA Act') and laid down as one of the principles which is the appropriate Government viz. State or Central Government to refer disputes to Industrial Tribunal for adjudication.

SAIL bearing in view and also relying upon the principle laid down in *AIR India case* (1 supra) filed writ petition No.29865 of 1997 challenging G.O.Rt. No.1227 dated 05.06.1992. On 03.11.1997, the challenge to G.O.Rt.No.1227/1992 failed, SAIL filed Writ Appeal

¹ AIR 1997 SC 645

No.80 of 1998 against order in W.P. No.29865 of 1997 dated 03.11.1997. The Writ Appeal was admitted and later on transferred to Hon'ble Supreme Court as T.C. No.1 of 2000. T.C.No.1 of 2000 tagged with Steel Authority of India Limited v. National Union Water Front Workers² (for short SAIL case')

On 30.08.2001, a Constitution Bench of the Hon'ble Supreme Court rendered decision in SAIL case and has extensively considered the object, scope and safeguards under the CLRA Act, and overruled the decision of Apex Court in Air India case (1 supra).

The T.C. was heard and disposed of by the common order dated 30.08.2001 and the order reads thus:

"Writ Appeal No.80 of 1998 on the file of the High Court of Judicature at Andhra Pradesh was transferred to this Court and numbered as T.C.No.1 of 2000. The writ appeal is directed against the order of learned Single Judge dismissing W.P.No.29865 of 1998 on 03.11.21997. The petitioner questioned the competence of the State Government to make reference of the industrial dispute to the Labour Court at Visakhapatnam. It will be open to the Labour Court to decide the question whether the reference was made by the appropriate Government on the basis of the main judgement. Transferred Case No.1 of 2000 (Writ Appeal No.80 /1998) is dismissed accordingly.

The learned counsel for either sides have relied upon the conclusions recorded in Paragraph 124 in SAIL case, hence to avoid repetition the conclusions are excerpted hereunder:

² (2001) 7 SCC 1

“The upshot of the above discussion is outlined thus: (1)

(a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government,

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

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government : (1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;

(2) having regard to

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

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

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the afore-said requirements of [Section 10](#), it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

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

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

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade

compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

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

While matters stood thus and when the stay against hearing of I.D. was vacated, the 2nd respondent has taken up the I.D. for consideration. At that stage of the matter, SAIL filed I.A. No.122 of 2002 under Section 11 of the Industrial Disputes Act,1947 (for short 'the I.D. Act') to reject the reference in G.O.Rt. No.1227 dated 05.06.1992. The case of SAIL for rejecting the dispute is that at the instance of petitioner herein the State Government issued G.O. Rt.No.1227 dated 05.06.1992 referring the dispute for decision. The premise for reference is G.O.Ms.No.375 dated 05.06.1981. Now the decision in Air India case (1 supra) was reversed by the Apex

Court in SAIL case (2 supra) on the entitlement of absorption and it is held as follows:

“We are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the concerned establishment on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment.”

Therefore, it is contended that the parties to the Industrial Dispute are parties to the Judgment in SAIL case (2 supra). In Paragraph 124 of SAIL case (2 supra), the 2nd respondent is directed to dispose of the dispute as per the main judgment. According to the main judgment, as absorption is not one of the options even in the event of prohibition of engaging contract labour in an industry or operations, the reference is specific and the 2nd respondent, in view of the categorical pronouncement in SAIL case (2 supra) rejects the dispute by passing nil Award.

On the other hand, the petitioner opposed the rejection of industrial dispute. The petitioner relies upon Paragraph 124 in the SAIL case (2 supra) to canvass that by operation of Paragraph 124 (5) of the reported judgment, the 2nd respondent decides whether the contractor has been interposed in engaging workers etc. Petitioner further contends that W.P.No.29865 of 1997 was dismissed on 03.11.1997, Writ Appeal No.80 of 1998 is transferred as TC No.1 of 2000 and the T.C. is also dismissed. Therefore, it is contended that SAIL having accepted not to question the legality of G.O.Rt. No.1227/1992 cannot now ask for rejection of the I.D., but the other aspects are gone into by 2nd respondent. Briefly stated, according

to petitioner, the dispute is subsisting, the 2nd respondent has jurisdiction and prayed for rejecting the prayer in I.A. No.122 of 2002. The 2nd respondent after considering rival submissions through the order under challenge in W.P. No.21548 of 2002 allowed the I.A. and dismissed I.D. The operative portion of the order dated 21.10.2002 reads thus:

“The observation of Their Lordship relating to T.C.No./2000 is “W.A.No.80/98 on the file of the High Court of Judicature of A.P. was transferred to this court and numbered as T.C.1/2000. The Writ Appeal is directed against the order of the learned single judge dismissing W.P.No.29865/98 on 13.11.97. The petitioner questioned the competency of the State Government to make reference of the industrial dispute to the Labour Court at Visakhapatnam. It will be open to the Labour court to decide the question whether the reference was made by the Appropriate Government on the basis of the main judgement. Transferred Case No.1/2000 (W.A.No.80/98) is dismissed accordingly.”

So far competency of State Government to make reference to this tribunal is concerned it is set at rest in view of the memo filed on 19.12.2001 in the main I.D. on behalf of the management, conceding State Government is the appropriate Government.

It appears the management is tempted to the observations made by Their Lordship in the above decision, “the concept of automatic absorption of the contract labour on issue of notification under Sec.10 prohibiting the employment of contract labour in an establishment, is neither alluded to the report of the joint committee of the parliament on the Central Labour (Regulation and Abolition) Bill, 1967 or in the statement of objects and reasons of the Act. The Scheme of the Act is to regulate conditions of workers in contract labour system and to provide for its abolition by the appropriate Government as provided under Sec.10 of the Contract

Labour (Regulation and Abolition) Act. The various regulatory and welfare measures provided under the various provisions of the Act clearly speak treatment of contract labourer as employees of the contractor and not of the principal employer.”

It is true this observation of Their Lordship goes to the root of the case on hand by touching letter and spirit of the terms of reference made by the Government to this Court. Considering notification under Sec.10(1) of Contract Labour (Regulation and Abolition) Act Their Lordship observed, “The impugned notification issued by the Central Government on December, 1996 does not specify the requirements of Sec.10. It is quashed but we do so prospectively i.e. from the date of this judgement.”

It was also observed in para 122(iv) of the judgement.

“we overrule the judgment of this court in Air India’s case prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India’s case 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 it as becomes final.”

In the case on hand the matter is pending and therefore the reference is not yet answered at all. Therefore, the question of absorption of the workmen is not there in the case on hand as such, it cannot be said that the said observations of the Hon’ble Supreme Court is prospective and there is no application. Intention of Their Lordship is that in case contract labourers were already absorbed and regularised in view of the judgment rendered in Air India’s case, the position will be disturbed in case the judgment is followed. Therefore, Their Lordship observed application of the judgment prospectively only. In view of specific observation of Their Lordship, “automatic absorption of contract labour by principal employer is not contemplated under the Contract Labour (Regulation and Abolition) Act.

The reference made to this Court ipso-facto answered. This Tribunal cannot go beyond the scope of reference. Under the circumstances, the point is answered by allowing the petition.

19. In the result, the petition is allowed and each party is directed to bear its own costs."

The petitioner filed I.A. No.96 of 2002 in ITID No.5 of 1992 praying for reopening the matter to afford opportunity to workmen to adduce evidence. For the sake of brevity, it is observed that the gist of the objections raised in the counter filed in I.A. No.122 of 2002 constituted the basis for the prayer to reopen the matter and afford opportunity to workmen to adduce evidence. Likewise, the stand of SAIL in I.A. No.122 of 2002 is reiterated as counter to I.A. No.96 of 2002. Hence for brevity the pleadings in I.A.No.96 of 2002 are not referred.

The 2nd respondent through order dated 21.10.2002 dismissed the application and the operative portion reads thus:

"This petition is closed as infructuous since in ITID No.5 of 1992, nil award is passed."

Hence, writ petition No.140 of 1992.

While writ petition No.21548 of 2002 is pending, SAIL issued tender notification dated 05.08.2009 inviting tenders for handling Iron and Steel materials at Visakhapatnam warehouse of Steel Authority of India Limited, Central Marketing Organisation. The grievance of petitioner is that SAIL is entrusting loading and unloading handling of Iron Steel etc to a third party agency and

the inaction of SAIL in engaging members of petitioner union in spite of representation, is illegal, arbitrary and unconstitutional.

The SAIL filed counter affidavit and has taken preliminary objections to the maintainability of the writ petition and also the right and entitlement of members of petitioner union for engaging as labour in the loading and unloading operations.

Averments in writ petition No.21548 of 2002:

After referring to the circumstances till the filing of transfer case and the decision of Apex Court in SAIL case (2 supra) the petitioner alleges that SAIL through its counsel represented before the 2nd respondent on 19.12.2001 that the management is not questioning the reference made to the Labour Court. Therefore, G.O. Ms. No.375 dated 05.06.1981 and the reference in G. O. Rt. No.1227 dated 05.06.1992 cannot be questioned at that stage of hearing I.D. It is asserted that in view of SAIL case (2 supra), it is essential for the workmen to adduce evidence on their behalf to consider the question whether the contractor has been interposed 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 near ruse/camouflage to evade compliance of beneficial legislation and deprive the workers the benefits of those beneficial legislation. If the workmen on the contrary can demonstrate that the contract is not genuine and also a camouflage and the employment of contract labour is a ruse the labour Court having regard to the principles laid down by the Apex Court in SAIL case (2 supra) could mould the relief. It is stated

I.A. No.96 of 2002 was filed for adducing evidence on behalf of workman. When I.A. No.96 of 2002 is pending, SAIL filed I.A. No.122 of 2002 to reject the reference made in G.O.Rt.No.1227 dated 05.06.1992 on the ground that in view of the law declared by the Apex Court in SAIL case (2 supra) the contract labour cannot claim automatic absorption as employees of Principal employer and the very reference does not survive. The grounds against the order impugned are that the reference in G.O. Rt.1227 dated 05.06.1992 had attained finality in view of the orders in SAIL case (2 supra) particularly in Para No.124 while disposing of T.C. No.1 of 2002. The representation of counsel for management on 19.12.2001 has given quietus to the debate on legality on G.O.Ms.No.375 dated 05.06.1981 and G.R.Rt.No.1227. The SAIL case (2 supra) is prospective but not retrospective. It is further pointed out that the Industrial Tribunal/2nd respondent failed to appreciate that the dispute is pending before it before the pronouncement of judgment in SAIL case (2 supra). According to petitioner, the issue for consideration in ITID No.5 of 1992 is whether the contractor has been interposed or is a mere camouflage. Therefore, the petitioner prays for setting aside the order in I.A. No.122 of 2002.

The 1st respondent through its Manager filed counter affidavit and the stand of the 1st respondent is that the writ petition is completely misconceived, for the order impugned in the writ petition is passed by following SAIL case (2 supra) and the writ petition does not point out an error apparent on the face of record or that the 2nd respondent lacked the jurisdiction to pass the

impugned order. It is stated that the respondent has undertaken reorganisation of its business activities and therefore, in implementation of such reorganization has decided to discontinue the operations at stockyard of South Eastern Railway, Waltair. The very reference of dispute through G.O.Rt.No.1227 does not survive. The attempt of petitioner virtually amounts to enlarging the scope of reference by introducing altogether a different and independent issue for decision by Industrial Tribunal and such course is impermissible in law. The 2nd respondent has no jurisdiction or power to keep the reference pending and entertain the issues which are definitely not ancillary or incidental to the dispute referred to it. The order of 2nd respondent in I.A. No.122 of 2002 for all purposes is followed the ratio laid down by the Apex Court in SAIL case (2 supra). The 1st respondent in great detail refers to merits of the matter and as the counsel confined their submissions to the outcome of instant dispute In the light of SAIL case (2 supra), I am not proposing to refer to several averments in the counter affidavit. The 1st respondent prays for dismissing the writ petition.

Writ petition No.140 of 2003:

I have perused the affidavit and counter affidavit of petitioner and first respondent respectively and after taking note of the averments made therein, the legal grounds and objections, this Court is of the view that the averments in this writ petition need not be restated, for they are substantially same or similar to the averments in writ petition No.21548 of 2002.

W.P. No. 25073 of 2009:

The petitioner refers to interim orders passed by this Court in W.P.M.P. No.26989 of 2002 in W.P. No.21548 of 2002, the orders in W.P.M.P. No. 3740 of 2002 and finally the order passed by the Division Bench of this Court in W.A. No.527 of 2003 on 01.04.2003. It is further alleged that in the year 2000, Railways did not permit the 1st respondent to operate loading and unloading in the stockyard for the reason that Railways are constructing new coach maintenance complex and remodelling the yard to accommodate more number of local trains. In view of refusal by Railways from 2002 onwards, the respondent company started entrusting loading and unloading work to a consignment Agent. The petitioner union therefore prayed for a direction to continue the services of members of petitioner union by the consignment Agent till the disposal of the main writ petition.

The 1st respondent/SAIL filed counter affidavit stating that the party to whom the handling work is entrusted acts as the Agent of SAIL for storage and handling of iron and steel material for establishments by employing own labour and equipment, therefore, the consignment agent engaging the union members does not arise. SAIL is now constructing its warehouse at Auto Nagar at Visakapatnam and likely to open the warehouse within a short period. SAIL issued tender notification No.BYZ/WH/2009 dated 05.08.2009 for appointing contract labour for handling iron and steel material at Visakhapatnam warehouse and Central Marketing Organization. In view of entrustment of loading and unloading work to a contractor, the works cannot be entrusted to members of

petitioner union. Hence, the writ petition for a direction to engage the services of the members of petitioner union.

The respondents have raised several objections on the maintainability of writ petition. Respondents/SAIL raised objections on the probability of several members of petitioner union working from the dates stated by them in the writ affidavit and annexures. It is replied that the writ prayer without challenging the tender process is illegal and not maintainable. It is contended that the members of petitioner union have no right to pray for consideration of their cases by the contractor who will be finally entrusted with the work of handling operations at the warehouse and at the yard. Therefore, SAIL prays for dismissing the writ petition.

Sri M.Keshava Rao appearing for petitioner contends that G.O.Rt.No.1227 dated 05.06.1992 is on account of orders passed by this Court in writ petition Nos.12798 of 1989 and 442 of 1991. The engagement of contract labour was prohibited by G.O. Ms. No.375 dated 05.06.1981 therefore the members of petitioner union are entitled for absorption as workmen in SAIL. He further contends that the counsel for SAIL in 2001 has gone on record by stating that SAIL does not question the legality of either G.O.Ms.No.375 dated 05.06.1981 or G.O.Rt.No.1227 dated 05.06.1992. He contends that ITD No.5 of 1992 could not be disposed of having regard to the orders passed by this Court in W.P. No.29865 of 1997 read with Writ Appeal No.80 of 1998. Therefore, even assuming that Air India case (1 supra) was reversed in SAIL case (2 supra), the members of petitioner union are entitled to get the industrial dispute referred for

adjudication and decided by the labour Court. Therefore, the labour Court is bound to hear and dispose of the reference in accordance with the guidelines covered by paragraph 124(5). Further, it is contended that the Apex Court dismissed Transferred Case No.1 of 2000 with a direction to dispose of the reference in accordance with the main judgment i.e. SAIL case (2 supra). Therefore, according to him, the industrial dispute can be disposed of only on merits after evidence is adduced but not by following paragraph Nos. 124(3) and (4) of SAIL case (2 supra). He further contends that while considering the prayers in I.A. No.96 and 122 of 2002, G.O.Ms.No.375 was in operation and therefore, the rejection of I.D. is illegal, amounts to refusing to exercise the jurisdiction conferred on 2nd respondent. He further contends that the union in its representative character can espouse the cause of contract labour and therefore, even if the union is the petitioner before the 2nd respondent, the dispute cannot be wound up by the labour Court by accepting the prayer in I.A. No.122 of 1992. He relies upon Indian Airports Employees Union v. AIR India³. Therefore, he prays for setting aside the orders impugned in writ petition Nos.21548 of 2002, 140 of 2003 and further prays for a direction to SAIL to engage members of petitioner union either as contract labour or workmen.

Si C.R. Sidharan learned senior counsel contends that the petitioner has not made out any ground attracting the jurisdiction of this Court to issue a writ of Certiorari against the orders impugned in W.P. No.21548 of 2002. He contends that G.O.Rt.No.1227 dated

³ 1997 ILLJ 1027

05.06.1992 was issued on the premise of abolition of contract labour through G.O. Ms. No.375 dated 05.06.1981. Therefore, the industrial dispute referred for adjudication proposes to deal with the demand of petitioner for absorption of its members who are working as contract labour in loading and unloading operations is justified or not. Without prejudice to other legal contentions, he argues that the SAIL filed writ petition No.851 of 1991 for Mandamus permanently restraining the State and the Assistant Commissioner of Labour from enforcing G.O.Ms.No.375 dated 05.06.1981. On 04.03.2004, a learned Single Judge allowed the writ petition insofar as SAIL is concerned. The order in writ petition No.851 of 1991 is confirmed on appeal by a Division Bench of this Court. Therefore, the very basis for consideration of absorption i.e. G.O.Ms.No.375 dated 05.06.1981 is for all purposes erased and does not operate vis-à-vis SAIL is concerned. Therefore, the labour Court has no basis legal or factual for examining whether claim for absorption of contract labour exist or not. He further relied on paragraph No.124 (4) & (5) of SAIL case, which read thus,

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

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of

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

to declare that with the issuance of a notification under Section 10 of CLRA Act, automatic absorption of contract labour in any establishment is not envisaged under the Act. He lays emphasis on “consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment” and submits that there is no issue for decision by Industrial Tribunal. Therefore, according to him, G.O.Ms.No.375 dated 05.06.1981 is not subsisting as on date. Alternatively, on the date when the applications are disposed of the labour Court could not have considered the dispute of abolition of contract labour in loading and unloading and consequential prayer of absorption of contract labour into SAIL. Therefore, the orders passed by the 2nd respondent cannot and could not be interfered with by this Court. In other words, he contends that a writ Court does not issue futile writs and in support thereof places reliance on State Bank of Patiala

v. S.K. Sharma⁴. Mr.C.R.Sidharan further contends that the petitioner does not have *locus standi* to canvass the grievance, even assuming the members of petitioner union are engaged as contract labour in loading and unloading operations by SAIL for, for such consideration arises in an individual dispute raised by contract labour. He relies upon Employers of Express Newspapers (Private) Ltd v. Labour Court, A.P.,Hyderabad⁵ which followed the decision reported in The Bombay Union of Journalists v. The Hindu⁶ and Gujarat Electricity Board v. Hind Mazdoor Sabha⁷. He further contends that the labour Court cannot traverse beyond the scope of reference and now consider an issue which would have been taken up for consideration, if a dispute is individually raised by the contract labour. He places reliance upon Hochtief Gamman v. Industrial Tribunal, Bhubaneshwar, Orissa⁸ and Senior Regional Manager HPCL Secunderabad v. P.O. Industrial Tribunal-I, Hyderabad⁹. As against the prayers in writ petition Nos.21548 of 2002 and 140 of 2003, he contends that order of reference would not constitute a valid industrial dispute within the meaning of Section 2 (K) of I.D. Act for want of employer and employee relationship and places reliance on Workmen of The Food Corporation Of India v. M/S Food Corporation Of India¹⁰. As regards the prayer in writ petition No.25073 of 2009 the prayer for Mandamus is not available as far as engaging contract labour is

⁴ AIR 1996 SC 1669

⁵ AIR 1963 AP 223

⁶ 1962 SCR (3) 893

⁷ (1995) 5 SCC 27

⁸ AIR 1964 SC 1746

⁹ 2002 (2) ALD 462

¹⁰ (1985) 2 SCC 136

not prohibited, the prayer for any relief beyond the statutory requirement of the CLRA Act does not arise. He prays for dismissing W.P. Nos.21548 of 2002, 140 of 2003 and 25073 of 2009.

I have heard learned counsel, perused the material available on record and now the points for consideration are:

1. Whether the petitioner union has made out a case for interfering with orders dated 21.10.2002 in I.A. Nos.96 and 122 of 2002?

2. Whether the Industrial Dispute referred through G.O.Rt.No.1227 dated 05.06.1992 subsists for decision in view of SAIL case (2 supra) and order in W.P. No. 851 of 1991?

3. Whether the petitioner union can expand and canvass the dispute referred under Section 10 of the I.D. Act by treating the reference as Industrial Dispute under Section 2 A(2) of the I.D. Act?

Points 1 to 3:

Let me first very briefly refer to the reasons given by the 2nd respondent while allowing I.A. No.122 of 2002.

The 2nd respondent referred to the order of Apex Court in T.C. No.1 of 2000. Thereafter, assuming that the State Government is competent to make reference in view of Memo dated 19.12.2001, the 2nd respondent proceeded to take note of the following observations from SAIL case (2 supra)

“The concept of automatic absorption of contract labour on issue of notification under Section 10 prohibiting the employment of contract labour in an establishment is neither alluded to the report of the joint committee of the Parliament on the Contract Labour (Regulation & Abolition) Bill 1967 or in the statement of objects and reasons of the Act. The scheme of the Act is to regulate the conditions of workers in the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the Contract Labour (Regulation and Abolition) Act. Various regulatory and welfare measures provided under the various provisions of the Act clearly speak about treatment of contract labourers as employees of the contractor and not of the principal employer and referred to overruling **Air India**’s case (1 supra) and has taken note of the prospective overruling and proceeded to decide whether ITID No.5 of 1992 can be proceeded with or not. The 2nd respondent concluded that automatic absorption of contract labour by principal employer is not contemplated under the CLRA Act.

Against the above findings, the contention of Mr.Keshava Rao is that the 2nd respondent has given effect to sub paras (3) and (4) of Para 124 of SAIL case (2 supra) and refused the relief of absorption. According to him, the Tribunal is under obligation to follow the procedure stipulated in paragraph No.124 sub para (5) of SAIL case (2 supra) which reads as follows:

“(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment

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

On the other hand, Mr. C.R.Sidharan contends that the dispute referred is whether the demand of petitioner for absorption on the abolition of employment of contract labour in loading and unloading is justified or not. According to him, even assuming as first argument that contract labour in loading and unloading in SAIL is abolished still according to SAIL case that does not lead to automatic absorption of workmen working under a contractor. The industrial dispute referred through G.O.Rt.No.1227 is substantially based on abolition of employment of contract labour vide G.O.Ms.No.375 dated 05.06.1981. Therefore, according to him, the demand for absorption cannot be a dispute for reference or at this stage of matter a decision at all in view the law declared by the Apex Court in SAIL case (2 supra). On the contention that the 2nd respondent is required to examine 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 mere ruse/camouflage does not arise for consideration by reference to paragraph 124 (5) and are to be read and

appreciated in the light of the law laid down by the Apex Court in Gujrat Electricity Board case (7 supra), for Gujrat Electricity Board case envisages examination of these issues in a dispute raised by contract labour but not by union. He further contends that the very basis of the industrial dispute is traceable to G.O.Ms.No.375. Though on the date of disposing of I.A. No.122 of 2002, G.O.Ms.No.375 vis-à-vis the SAIL was concerned was in force. In view of the order in W.P. No.851 of 1991 dated 04.03.2004, he submits that the very abolition of contract labour in loading and unloading in SAIL is set aside. Once the Government Order prohibiting employment of contract labour is set aside by this Court, the basis for reference of industrial dispute namely the abolition of employment of contract labour in loading and unloading abolition in SAIL is effaced. According to him, in view of the dicta laid down by the Apex Court in SAIL case (2 supra) absorption of contract labour with the issuance of notification of prohibition or abolition does not arise. Therefore, the findings are justifiable and for additional reason namely that when writ prayers are considered G.O.Ms.375 dated 05.06.1981 does not operate and consequently there is no abolition of engagement of contract labour in SAIL.

The contention of Mr.Keshava Rao that evidence on the nature of contract is allowed to be let in, though at the first look appears to be persuasive, however, after carefully going through the SAIL case (2 supra) and the conclusions arrived at therein, this Court is of the view that the relief of absorption of contract labour with the abolition of contract labour in view of Air India case (1

supra) is no more available. Secondly the law declared by Apex Court is that neither Section 10 of the CLRA Act nor provisions in the Act whether expressly or by necessary implication provide for automatic absorption of contract labour on a notification being issued by appropriate Government under sub section (1) of Section 10 of the Act prohibiting employment of contract labour, in any process, abolition or other work in any establishment. It is further held the principal employer cannot be required consequently to order absorption of contract labour working in the concerned establishment. (Emphasis added)

From the above, it is evident that the enquiry or exercise, the 2nd respondent proposes to undertake on the reference made through G.O. Rt No.1227 dated 05.06.1992 considers the relief of absorption of contract labour in SAIL as principal employer, such relief according to the declaration of law in SAIL case (2 supra) is unavailable.

The efficacy or effectiveness of industrial dispute as on date centres around G.O. Ms. No. 375 dated 05.06.1981 i.e. whether it is subsisting or not. The case of petitioner is that the SAIL filed memo dated 19.12.2001 accepting the competence of State Government as appropriate Government to refer the dispute of absorption to 2nd respondent. Therefore, the objection viz. additional ground by reference to order of this Court in W.P. No.851 of 1991 now canvassed by the SAIL should not and ought not to be entertained by this Court. It is already noticed that SAIL filed writ petition No.851

of 1991. On 04.03.2004, the writ petition was allowed and confirmed by the Division Bench on 13.12.2013. The effect of order of this Court in W.P.No.851 of 1991 is that insofar as the SAIL is concerned, the prohibition imposed through G.O.Ms.No.375 dated 05.06.1981 is set aside. Therefore, for all purposes, the very basis which constituted for reference of industrial dispute ceased to subsist. Therefore, even though these dates and events are subsequent to the order dated 21.10.2002 in I.A. No.122 of 2002, this Court cannot ignore the legal effect of these orders and direct 2nd respondent to undertake examination more particularly without any result thereon. The other objection of Mr.Keshava Rao in this behalf is that SAIL filed writ petition No.29865 of 1997 challenging the G.O.Rt. No.1227 dated 05.06.1992 and writ was dismissed on 03.11.1997. While disposing of TC No.1/2000, Writ Appeal No.80 of 1998 against writ petition No.29865 of 1997 was also dismissed. Therefore, the challenge laid to G.O.Rt. No.1227 was unsuccessful.

I have difficulty in accepting the reply of Mr.Keshava Rao on legal implication of the orders in W.P.No.29865 of 1997 read with Writ Appeal No.80 of 1998, for writ petition No.29865 of 1997 was filed basing on the law declared by the Apex Court in Air India case (1 supra) on who is the appropriate Government for reference of a dispute. Air India case (1 supra) is overruled by the Apex Court in SAIL case (2 supra). Therefore, even otherwise the issue of appropriate Government raised by reference to Air India case (1 supra) does not survive for consideration. Further in TC No.1/2000, the Hon'ble Supreme Court specifically directed the labour Court to

decide the question as to whether the reference was made by the Appropriate Government on the basis of the main judgment. In the considered view of this Court, the very memo dated 19.12.2001 on which the petitioner is relying upon as to who is appropriate Government is a non-issue. Therefore, what is accepted by SAIL cannot be confused with what is being seriously contested by SAIL from the beginning by reference to the Act. Therefore, the objection raised by the petitioner is untenable and accordingly rejected.

Mr.Keshava Rao further contends that as directed by paragraph 124(5) in SAIL case (2 supra), the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment and decide the same as matter of fact. The contention raised by the petitioner is directly answered by decision of Apex Court in Gujarat Electricity Board case (7 supra) and the relevant portion reads as follows:

“The legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labour in the principal establishment on the abolition of the contract labour, fearing that such provision would amount to forcing the contract labour on the principal employer and making a contract between them. The industrial adjudicator however is not inhibited by such considerations. He has the jurisdiction to change the contractual relationships and also make new contracts between the employer and the employees under the ID Act. It is for this reason that in all cases where the contract labour is abolished, the industrial adjudicator, depending upon the facts of the case will

have the authority to direct the principal employer to absorb such of the workmen of the erstwhile contractor and on such terms as he may determine on the basis of the relevant material before him. Hence the legislature could have provided in the Act itself for a reference of the dispute with regard to the absorption of the workmen of the erstwhile contractor to the industrial adjudicator after the appropriate Government has abolished the contract labour. That would also have obviated the need to sponsor the dispute by the direct workmen of the principal employer. That can still be done by a suitable amendment of the Act.”

Therefore, keeping in view the above ratio decidendi, this Court has difficulty in accepting the contention that the 2nd respondent at the instance of petitioner ought to have allowed the prayer for leading evidence by petitioner union on the genuineness of contract entered into from time to time for providing contract labour to SAIL by different contractors.

The further contention of petitioner is that the scope of dispute can be expanded and to meet the ends of justice, the 2nd respondent can be directed to decide the expanded dispute and grant appropriate relief to the members of petitioner union.

I have perused the decisions which Mr.C.R.Sidharan has relied upon to contend that Visakhapatnam Contract Labour Union firstly is not a union recognised by the SAIL and secondly the enquiry into whether the contract is genuine or not can be taken up at the instance of contract labour as an individual dispute and not by a union. The citations on which he relies upon are as follows:

In Hochtiff Gammon case (8 supra), it was held as follows:

“In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under Section 10. It is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in Section 10. One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a Tribunal for adjudication. In other words under Section 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with matters appearing to be connected with, or relevant to, the said dispute. In that sense the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under section. 18(3)(b) as it now stands.

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The next contention raised by Mr. Chatterjee is that M/s Hindustan Steel Ltd. is a necessary party because it is the said concern which is the employer of the respondents and not the appellant. In either words, this contention is that though in form the appellant engaged the workmen whom the respondent union represents, the appellant was acting as the agent of its principal and for adjudicating upon the industrial dispute referred to the Tribunal by the State of Orissa, it is necessary that the principal, viz., M/s Hindustan Steel Ltd. ought to be added as a party. In dealing with this argument, it is necessary to bear in mind the fact that the appellant does not dispute the respondent Union's case that the workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s Hindustan Steel Ltd. is a question incidental to the industrial dispute which has been referred under section. 10(1)(d). This dispute is a substantial dispute between the appellant and M/s Hindustan Steel Ltd. and cannot be regarded as incidental in any sense, and so, we think that even this ground is not sufficient to justify the contention that M/s Hindustan Steel Ltd. is a necessary party which can be added and summoned under the implied powers of the Tribunal under [section. 18\(3\)\(b\)](#).

In *Employers of Express Newspapers (Private) Ltd. Case* (5 *supra*), it was held as follows:

“ It was held by the Supreme Court in [New India Motors \(P\) Ltd., New Delhi v. K. T. Morris](#) (AIR 1960 SC 875), that an individual dispute could not become an industrial dispute at the instance of the aggrieved individual himself and that there should be a dispute between the employer on the one hand and his employees acting collectively on the other. This rule is contained in the following remarks of their Lordships :

"It is well settled that before any dispute between the employer and his employee or employees can be said to be an industrial dispute under the Act, it must be sponsored by a number of workmen or by a Union representing them. It is not necessary that the number of workmen of the Union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot become an industrial dispute at the instance of the aggrieved individual himself."

It is thus clear that there cannot be an industrial dispute unless the cause of the aggrieved workmen or group of workmen is taken up by some of the workmen employed in the establishment. If the cause of the victimised workmen is not taken up by some of the other employees of the employer, the dispute remains an individual dispute and not an industrial dispute."

Therefore at the instance of petitioner union the individual dispute, if any, between Contract Labour and Principal Employer cannot be agitated or decided.

Mr.Sidharan further contends by placing reliance upon Senior Regional Manager HPCL Secunderabad case (9 supra) that the industrial Tribunal cannot and could not expand or change the complexion of dispute referred to it. The dispute fails for any reason including the reason stated above, the same cannot be cured by directing 2nd respondent to suitably expand the dispute referred by

the Government. He relies upon the following paragraphs in Senior Regional Manager HPCL Secunderabad case (9 supra).

“The functions of an Industrial Tribunal are quasi-judicial but it is not a civil Court. It has not the inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of reference. In other words, the Tribunal has to function within the limits imposed upon it by the Act and has to act according to its provisions. In adjudicating upon an 'industrial dispute', the Tribunal cannot arrogate to itself powers which the Legislature alone can confer or do something which the Legislature has not permitted to be done. In [R.S. Ramdayal Ghasiram Oil Mills v. Labour Appellate Tribunal](#), [1963] II LLJ 65 (SC) and [West Bengal Press Workers and Employees Union v. Eighth Industrial Tribunal](#), [1974] II LLJ 404 (SC), the Supreme Court held that the Industrial Tribunal acquires jurisdiction to adjudicate upon an 'industrial dispute' only after it has been referred to it. In other words, without such a reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute. Wherein an order referred an industrial dispute to a Tribunal under [Section 10\(1\)](#) of the Act, the 'appropriate Government' has specified the points of dispute for adjudication, the Tribunal shall confine the adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its adjudication to the points specifically mentioned and anything which is incidental thereto. It is well settled that the order of reference by which an industrial dispute is referred to the Labour Court or Industrial Tribunal for adjudication gives jurisdiction to the Labour Court or the Tribunal, as the case may be, to deal with the merits of dispute. This position is well settled by the judgment of the Supreme Court in [Jhagrakhand Collieries \(P\) Limited v. Central Government Industrial Tribunal](#), [1960] II LLJ (SC), and several other judgments to follow. The jurisdiction of the Tribunal being limited to

the matters referred to it by the Government, it would have no right to travel outside the reference, and proceed to adjudicate the matters not referred to it. This position is also well settled by a catena of decisions of the Apex Court including [Gouri Sankar Chatterjee v. Texmaco Limited and Ors.](#), 2000 (8) Supreme 519, [Workmen of British India Corporation Limited v. British India Corporation Limited](#), [1965] 11 LLJ 433 (SC), [Delhi Cloth and General Mills Company Limited v. Its Workmen](#), [1967] 1 LLJ 423, the [Jaipur Udyog Limited v. The Cement Work Karmachari Sangh, Sahu Nagar](#), [1972] 1 LLJ 437, and [Firestone Tyre and Rubber Company of India Private Limited v. Workmen](#), [1981] 11 LLJ 218, to cite a few.

An Industrial Tribunal is the creature of the [Industrial Disputes Act](#). Sub-section (4) of [Section 10](#) delineates the perimeter of the jurisdiction of the adjudicatory authorities viz., the Labour Court, the Industrial Tribunal or the National Tribunal to adjudicate. The word "jurisdiction" means authority to decide or the legal authority of a Court or Tribunal to do certain things. An Industrial Tribunal being creature of the Act, its jurisdiction is confined by the Act, thereby meaning that the Tribunal will have no jurisdiction, to adjudicate upon any dispute or lis to which the Act does not apply. Further, the jurisdiction of the Tribunal has been limited by the provisions of [Section 10\(4\)](#) to confine its adjudication to "the points specified in the order of reference and matters incidental thereto." Where by reason of any limitation imposed by statute, a Tribunal lacks jurisdiction to entertain any particular matter, neither acquiescence nor consent of the parties can confer jurisdiction on it. In other words, a party cannot confer jurisdiction where it does not exist because no amount of consent, acquiescence or waiver can create it or confer it. Nor can a party take away the jurisdiction of the Tribunal by way of objection where it exists. [In United Commercial Bank Limited v. Their Workmen](#), [1951] 1 LLJ 621, Kania, C.J., speaking for the Supreme Court observed:

"Nor can consent give a Court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. No appearance or consent can give a jurisdiction to a Court of limited jurisdiction which is does not possess. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The distinction clearly is between the jurisdiction to decide matter and the ambit of the matters to be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the question is of the jurisdiction of the Tribunal to make the award no question of acquiescence or consent can affect the decision."

Further, Fazal Ali, J., observed:

"Consent cannot give jurisdiction in respect of subject-matter though it might cure a mere irregularity."

The jurisdiction of the Industrial Tribunal being by virtue of the Act and limited by the terms of reference under [Section 10](#), it would not be open to the workers and the management to confer jurisdiction upon the Tribunal on a question not covered by the reference. The mere fact that an objection was not taken before the Tribunal, would not give its jurisdiction if it inherently had no jurisdiction. An Industrial Tribunal is not a Court of general or residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the orders of reference. In other words, it is an ad hoc Tribunal with ad hoc jurisdiction to determine specific industrial disputes. The Tribunal has to confine itself to the pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off at a tangent disregarding the pleadings and reach any conclusion that it thought as just and proper, as held by the Supreme Court in [Parry and Company Limited v. P.C. Lal](#), [1970] II LLJ 429 (SC).

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In the light of the well settled principles emerging from the decided cases, what has to be seen by us in this writ

appeal is whether the declaration made by the Industrial Tribunal that the workmen concerned are entitled to pay-scales on par with regular employees with from 1-12-1999 could be said to be a decision of the Industrial Tribunal on a matter incidental to the point referred to it by the Government of India. It cannot be gainsaid that the relief of regularisation and relief to claim wages on par with regular employees are two independent legal remedies. The considerations which go into the decision-making in granting these two reliefs would also vary. The relief granted to the workmen that they are entitled to pay-scales on par with regular employees is undoubtedly is on the assumption that the workmen concerned did/do discharge same functions and duties attached to the regular post. The question whether it is so or not, it is trite, is an incidence of fact. In the first place, the Central Government has no referred the dispute relating to entitlement of the workmen concerned to pay-scales on par with regular employees. Secondly, the question whether workmen concerned perform same duties and functions on par with regular employees, being a question of fact, such a question shall be resolved only by permitting the parties to adduce evidence and after appreciation of such evidence. Thirdly, even in the course of adjudication of the reference, the Industrial Tribunal though chose to frame points for adjudication/determination did not frame the point relating to the entitlement of the workmen concerned to pay-scales on par with regular employees. [In State of Haryana v. Jasmer Singh](#), 1996 (8) Scale 263, commenting upon the principle of 'equal pay for equal work', the Supreme Court has opined that that principle is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same organisation; the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders of office or post bring to their job although the designation of the job may be the same.

There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. Therefore, we are of the considered opinion that Industrial Tribunal has exceeded its jurisdiction in declaring that the workmen concerned are entitled to pay-scale on par with regular employees particularly because that was not a term of reference and further the Tribunal itself did not frame any issue relating to that entitlement of the workmen.

From the above discussion, this Court is of the view that the order of 2nd respondent in I.A. No.122 of 2002 is in accordance with the principle laid down by the Hon'ble Supreme Court in SAIL case (2 supra) and the relief of absorption as it stood during the period i.e. Air India case (1 supra) and SAIL case (2 supra) cannot and could not have been considered by the 2nd respondent and rightly the I.A. No.122 of 2002 was allowed. The order in I.A. No.122 of 2002 can be sustained for the additional reasons namely that G.O.Ms.No.375 dated 05.06.1981 by virtue of decision of this Court in writ petition No.851 of 1991 is not subsisting vis-à-vis SAIL that the I.D. has been referred at the instance of union and the enquiry contemplated by paragraph of 124 (5) in SAIL case (2 supra) firstly cannot and could not be directed to be examined by 2nd respondent for it amounts to changing the complexion of dispute referred to it and secondly these issues arise for consideration in an individual dispute raised by contract labour.

The summary of above discussion is as follows:

- (i) The rights and benefits of contract labour are governed by the provisions of CLRA Act.
- (ii) The abolition of contract labour in an industry or operation automatically does not result in absorption of contract labour by the Principal Employer.
- (iii) Due to the difference in scope and extent of adjudication in dispute raised by a contract labour or a dispute raised by the union, the relief of regularisation cannot be considered in a dispute canvassed by the union and is examined by industrial adjudicator in the dispute raised by the contract labour in the light of directions issued in SAIL case.
- (iv) The Industrial Tribunal/Labour Court has to confine its consideration to the dispute referred by appropriate Government and has no inherent jurisdiction to expand the dispute or decide matters not referred to Industrial Tribunal by the appropriate Government.

For the above reasons, the points are answered against the petitioner and in favour of SAIL/respondent No.1 in W.P. No.21548 of 2002.

The petitioner in W.P. No.25073 of 2009 prays for relief of engaging the members of petitioner by SAIL.

This Court is of the view that having regard to several objections raised by 1st respondent in the counter affidavit filed in

this behalf, if the members of the petitioner union have a case for absorption on the ground that the services rendered by a contract labour are perennial in nature etc., the case has to be worked out by raising a dispute in accordance with law before the competent forum. Therefore, the prayer for a direction to engage the services of members of petitioner at the instance of petitioner union cannot be considered by this Court as the same amounts to deciding a fact in issue in favour of contract labour under Article 226 of the Constitution of India, without proper trial and consideration by the Industrial Adjudicator.

Therefore, it is open to contract labour to raise a dispute for adjudication on these aspects, if they are so advised. The lis between the parties has been pending for more than two and half decades. The contract labour are engaged by SAIL either by virtue of order of this Court or due to work exigencies arising in the course of operations and provided employment to these contract labour. Now the writ petitions are decided basing on the law declared in SAIL case (2 supra). The contract labour should not be denied what they have been otherwise provided namely, engaging as contract labour by SAIL on account of dismissal of writ petition. SAIL is a public sector undertaking and this Court has no reason to doubt that the outcome of the writ petitions is not treated as a circumstance for not engaging contract labour i.e. the members who are working for SAIL and are members of petitioner union as and when exigencies require. Therefore, while engaging contract labour, the services of the contract labourers whose cases are

canvassed in these writ petitions ought not to be denied or deprived the normal expectations from SAIL. For the above reasons and having regard to the detailed discussions, the writ petitions fail and accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

S.V.BHATT,J

Date: 21.04.2017
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