

Sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3150 OF 2017

WITH

WRIT PETITION NO.3188 OF 2017

Godrej & Boyce Manufacturing
Company Limited,
Pirojshanagar, Vikhroli,
Mumbai-400 079.

... Petitioner

vs.

1. Engineering Workers' Association,
Rasayani. Tilak Road, Dadar,
Mumbai-400 014.
2. M/s. Mazda Services,
Humraj Building, Sasex Road,
Byculla, Mumbai-400 027.

... Respondents

WITH

WRIT PETITION NO.3189 OF 2017

Godrej & Boyce Manufacturing
Company Limited,
Pirojshanagar, Vikhroli,
Mumbai-400 079.

... Petitioner

vs.

1. Engineering Workers' Association,
Rasayani. Tilak Road, Dadar,
Mumbai-400 014.
2. Mechclean (Formerly known as
Devraj Enterprises),
B-2. Prerana, S.V. Road,
Santacruz (W), Mumbai-400 054.

... Respondents

Mr. Bharat Goyal a/w Atman Mehta, Ms. Vaishali Shah i/b. Haresh Mehta & Co.
for the Petitioner.

Ms. Nayana D.Buch i/b. Mr. Shailesh K. More for respondent No. 1.

Mr. Avinash Jalisatgi I/b. Vaibhav Jagdale for respondent no.3.

CORAM : A.K. MENON, J.

RESERVED ON : 27TH FEBRUARY, 2019

PRONOUNCED ON : 2ND MAY, 2019

JUDGMENT

1. These petitions were disposed by a Judgment dated 29th August 2018.

The Judgment was challenged in Civil Appeal Nos.11063-11068 of 2018. While the principal challenge was on behalf of the Petitioner – Godrej & Boyce Manufacturing Company Limited, one Civil Appeal each came to be filed by Mazda Services and Mechclean Services, who are respondent No.3 in the original petitions. The Judgment upheld the Award of the Industrial Court partly directing the petitioner to absorb the workmen employed through the contractor – Mazda Services and pay them difference in wages. At the same time, the portion of the impugned judgment directing the petitioner to make payment of lumpsum amount of Rs.5 lakhs per employee was set aside.

2. At the hearing of the Civil Appeals, the challenge mounted was on the

basis that there is a factual error in the Judgment inasmuch as instead of quoting the portion of the reference, the operative portion of the award was quoted. This was held to be an error apparent on the face of the record and the petitions have been remanded for fresh hearing on merits.

3. On 5th February, 2019 it was noticed that six Civil Appeals had been filed; three by the original petitioners—the principal employer and of the other three Civil Appeals, two were filed by M/s. Mazda Services and the third Civil Appeal by M/s. Mechclean the 3rd respondent in the respective petitions (“the Contractors”) neither of whom had challenged the impugned orders of the Tribunal. They approached the Supreme Court directly by filing the Civil Appeals. Since the contractors were not represented, notice had to be issued to them to obviate a possible challenge on that ground. Post service of notice, appearance has been entered on behalf of the Contractors. The counsel for the petitioner submitted today that the second respondent in each of these petitions, being the recognized Union, was not a necessary party and leave was granted to delete them. They have since been deleted from the array of parties.

4. Counsel for all the parties state that they would only file written submissions instead of advancing oral arguments. I have permitted them to do so. The parties have since filed common written submissions in three petitions along with a few judgments. I have, therefore, proceeded to consider these submissions. The facts being similar, reference is being made to Writ Petition No.3188 of 2017, because it is on this basis that common written submissions were made. I clarify that none of the parties have advanced any oral arguments.

Factual Background

5. The challenge in these three petitions is to three final awards in three references. All the awards are dated 2nd March, 2017. The petitioner is an engineering company engaged in the business of manufacturing of compressors, locks, material handling equipment, office, home furniture, office equipment, precision equipment, security equipment, tooling, white goods etc. Respondent no. 1 is the contesting respondent and is a trade union which represents workmen engaged by the respondent no.3 with whom the petitioner has reportedly entered into a contract for execution of various jobs. The respondent no.1 union and the workmen are hereafter referred to as “the respondents”. The respondent no. 2 is a recognized union said to represent workmen which has been dropped from the array of parties. Respondent no.3 said to be

the contractors are referred to as "Contractor".

6. The petitioner claims that on 29th December, 1999 it entered into a job rate contract with the contractor, initially for twelve months for carrying out tasks which were casual, intermittent and of sporadic nature. The contract is said to have been renewed from time to time depending on requirements. The jobs inter alia were mechanized floor cleaning of Shop Floor area, sweeping, dusting and mopping of the office area which are stated to be not of a regular nature because their frequency varied. Some tasks were daily, others were weekly and fortnightly.
7. The contractor was required to employ his own labour and exercise direct supervision and control over his workmen and inter alia be responsible for compliance of labour laws including Employees' State Insurance Act (ESI), Provident Fund Act (PF), Workmen's Compensation and Minimum Wages Act. The Contractor is believed to have obtained a license under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA Act). The petitioner had also registered under the said Act. The petitioner has contended that since the workmen were engaged by the Contractor, there was no privity of contract between the petitioner and the workmen. The Contractor had control over the work force and their daily routines including the power to take

disciplinary action. Leave was also sanctioned by the contractors.

8. The Respondent-workmen filed a complaint under the MRTTP & PULP Act being Complaint (ULP) 520 of 1995 claiming to be absorbed as part of the petitioner's work force. The complaint was dismissed by the Industrial Court as not maintainable. The workmen thereafter raised an Industrial dispute before the Office of the Commissioner of Labour claiming permanent posts, payment of difference in wages and other benefits which the employees of the petitioner company enjoyed. The demands made by the workmen were referred to the Tribunal in Reference(IT)no.15 of 2006. Another group of 171 workmen said to be engaged by the contractor Mazda Services had filed Reference No. 82 of 2003 making similar claims. These two References along with the third Reference bearing no.81 of 2003 which forms subject matter of Writ Petition No.3189 of 2017 filed by M/s. Mechclean came to be heard together.
9. The respondents on the other hand contended that the work carried out by them was regular work part of the main process of the petitioners' business and the contract between the petitioner and the Contractor was sham and bogus. Work was allotted and supervised by the petitioners. Leave, transfers and placements were also decided by the petitioners'

supervisors and the respondents are carrying out regular work, perennial in nature but were being discriminated against in terms of status and wages and benefits. In terms of documents, the respondents relied upon the following (i) ESIC cards of two persons seeking delivery challans, (ii) log report of the Composite Effluent Treatment Plant, (iii) inter office memos of September 1997, (iv) attendance sheets of Uday Raj Yadav, (v) a letter issued by Godrej & Boyce P.F. along with a cheque in relation to dues of one Basudev Yadav, and (vi) a requisition for gate entry pass of Maruti Udyog Ltd. issued to employees, (vii) Requisition letters for gate entry passes, (viii) gate entry passes for three employees at Reliance Industries Ltd. and ONGC for employees of the petitioner, and (ix) Lastly a payment slip in favour of one A.S. Bhangare issued by the petitioners.

10. The petitioner contend that these employees are engaged by the Contractor with whom the petitioner company has entered into a valid contracts for execution of various jobs. The contracts were valid and the dispute is actually regarding abolition of contract labour which only be raised under the Contract Labour (Regulation and Abolition) Act. The Contractor was been assigned tasks of cleaning of paint booths, chimneys, grills, lifting and segregating, shifting of scrap, cleaning of paint tanks, cleaning and refilling of acid tanks and cleaning of fixtures

such as hooks, conveyors etc. The Contractor was were required to exercise direct supervision over the workmen engaged by them and the Contractor is said to have complied with all labour legislation.

11. The petitioner relies upon a few contracts dated 5th February, 1987, 21st September, 1991, 14th September, 1994 and 28th February, 1995 said to be entered into between the petitioner and Mazda Services, 5 purchase orders issued between 17th February, 2003 to 14th February, 2007 to the contractors, numerous acknowledgment slips signed by the employees during December 2004, February 2005, December 2006 and May 2007 and 7 Advance Receipts for numerous amounts paid in advance between 24th December, 2004 and 25th June, 2007. In addition there are about 60 receipts of bonus is paid which are said to be signed by the employees acknowledging receipt of bonus from the contractor on various dates between 1st April, 2000 to 31st March, 2006. There is also a summary P.F. contributions made to the P.F. authorities by the contractor in respect of the employees once again which covers the period 1st April, 2003 to 31st March, 2007.

12. The submissions make references to the deposition of Kamlesh Devman Mishra, the witness of respondent no.1 union who has deposed that he was not aware of terms and conditions of the contract between the

petitioner and Mazda Services nor the nature of work performed by Mazda Services. The witness denied that record of privilege leave and muster roll register was maintained by the contractor but he had no proof to show that the company maintained these records. The witness also had no records to establish that he had been working with the company for 8 hours a day. A similar deposition of the second witness Gurunath Ramchandra Bhovad was recorded. Specific reference was made to the contract between the petitioner and Mazda Services. The witness was unaware of the same. The witness is also unaware of any settlement signed between the recognized union and the workman.

13. My attention has been drawn to the deposition of the petitioner company's witness Mr. Kersi Elavia in which he claims that the petitioner and the contractor had entered into contracts from 1999 onward. The company's witness has deposed to the nature of the jobs, overall responsibilities of the contractor to comply with statutory requirements including as to ESIC, PF HRA, workmen's compensation, Minimum Wages Act, and the payment of wages made to the workman, so also the supervisory control vested with the contractor. The witness has deposed to the validity of the contracts and has denied the employee- employer relationship.

14. It is submitted that among the documents filed by respondent no.1 are the ESIC cards of one Dinkar Shivnekar and Tukaram Jagtap, letters addressed to the late Vasudev Yadav and PF letters issued to Mr. Vilas Shinde. It was contended that ESI contributions made by the petitioner company at the relevant time would not entail that the workmen were employees of the petitioner. It is contended that definition of the term “workman” under the Employees Estate Insurance Act (ESI) includes a workman employed by the Contractor and there was a statutory obligation to comply with the ESI Act. The remittances made by the petitioner would not entail that workman employed by the Contractor become employees of the petitioner. It was contended that the primary responsibility of making ESI contributions vests in the principal employer. Reference being made to Section 40 of the ESI Act and Regulation 30 of the P.F. Scheme. That being a statutory liability the petitioner could not avoid this responsibility till the year 2003 when this Court ruled in the case of *Bharatiya Kamgar Sena v/s. Udhe India Ltd.*¹. A similar view were taken in *Deccan Workers Union v/s. G.P. Reddy*² and *Hindustan Petroleum Workers Union v/s. Hindustan Petroleum Corpn. Ltd.*, by the Andhra Pradesh & Madras High Court respectively. The petitioner contended that these decisions were ignored by the tribunal.

This submission is incorrect since the Tribunal has dealt with the

1 2008 I LLJ 871

2 2004 III LLN 916

submission at paragraph 64 of the impugned award.

15. It was further submitted that the delivery challans relied upon by the respondents merely show that the concerned workman carried out certain packing activities and that they were involved in the manufacturing process. As far as the Effluent Treatment Plant and the log report relied upon by the respondents are concerned, it is submitted that the tribunal had failed to consider the fact that the water discharged from the plant would have to be used for the purposes of gardening activities which were not performed by permanent workmen. Reliance was placed upon entry memos dated 1st September, 1997 to show that one Suresh Gaikwad worked for 26 days in August 1997 under a contractor named Mr. Kersi Randeria. It was submitted that the said Gaikwad had worked under the contractor Mazda Services and therefore it did not establish any direct relationship with the petitioner company.

16. As regards the attendance records of the respondents was concerned, the petitioner has contended that they were prepared by the construction department and sent to the personnel department only for keeping the records of attendance to settle the final bills. Apropos the requisition letters for gate passes issued by the company's customers, it was contended that certain contracts were awarded to the petitioner which

had appointed the contractor for carrying out certain jobs and that the facts would not establish an employer–employee relationship.

17. The contention of the learned counsel for the petitioner is that the observation of the learned Industrial tribunal was to the effect that the contractor was not registered under the Maharashtra Shops and Establishments Act and therefore unable to get registered under the P.F. Scheme. The petitioner submitted that the tribunal had not considered the fact that prior to 21st May, 2005 the contractor was not registered with the commercial establishment but he had already obtained ESI and PF certification in the year 2003. It was contended that the belated registration of the contractor would at best be the violation of the Shops and Establishments Act. The tribunal observed that there were no written contracts between the parties but it did not take into consideration the agreements dated 5th February, 1987, 23rd September, 1993, 14th September, 1994 and 28th February, 1995 besides the purchase orders referred to above issued by the petitioner to the contractor for execution of various works. The observation of the tribunal in paragraph 38 of the award in Reference (IT)No. 81 of 2003 to the effect that the contractor has not produced any document nor to disclose service conditions of the workmen concerned and/or disciplinary action taken against him.

18. It is submitted that the tribunal had also omitted to consider the settlements of February 2005 and 31st December, 2010 between the contractor and the recognized union and that various documents relied upon in the list of documents filed by the petitioner such as ESI compliance, attendance registers, leave documents, payments made by the contractor have also not been considered. Specific attention was drawn to the fact that the tribunal had taken a view that the work performed by the workmen concerned were prohibited by the provisions of Contract Labour (Regulation and Abolition) Act conceded that the contract between the principal employer and contractor was sham and bogus and that contract labour was not prohibited by law and it is only the appropriate authority under section 10 of the Contract Labour (Regulation & Abolition) Act which can consider the abolition of contract labour. In any event, the Industrial tribunal could not do so in the reference at hand. Section 10(1) of the Contract Labour (Regulation & Abolition) Act specifically provides that the appropriate government may, after the consultation with the Central or State Government Board, as the case may be, prohibit the employer from engaging contract labour but prior to such steps being taken certain factors such as the nature of work carried on in the establishment and whether such work is perennial or not or whether it can be done through regular employees

would have to be gone into. It will, inter alia, have to be considered whether it was necessary to employ whole time workers or full time workers.

19. One other submission on behalf of the petitioner is that the tribunal had failed to consider the decision of the Supreme Court in *Steel Authority of India Ltd. (SAIL) v/s. National Union of Water Front Workers and others*³ specific reference has been drawn to paragraph 121 (5) of the said judgment in which it is observed that “upon issuance of a notification prohibiting contract labour, the industrial adjudication would have to consider whether the contract has been interposed on the grounds of having undertaken to produce any given result for the establishment under a genuine contract or whether it was a camouflage to evade compliance with relevant legislation and in order to deprive workers of benefits thereunder.” Moreover, if it was found that the contract is not genuine, the contract labourers would have to be considered as employees of the principal employer who shall be directed to regularize the services of contract labour. Attention is also drawn to the observations in paragraph 22 of the judgment of the Supreme Court in *Steel Authority of India Ltd. v/s. Union of India and Ors.*⁴ in which the Supreme Court considered the contention that the contract was sham

3 2001 3 LLJ 349

4 2006 III LLJ 1037

and bogus, relying upon the earlier in 2001 judgment of SAIL which observed that the industrial adjudicator would have to determine the issue, in the event, beside the issue comes. Even if it is held that the contract awarded by the management was a sham one, the employees of the contractor will be held to be direct employees of the management. In that case the workmen before the Labour Court or in writ proceedings were represented by the same union and a clear stand had been taken that they were workmen of the Contractor, it was mutually a destructive plea which was impermissible and the Court observed that common law principles of estoppel, waiver and acquiescence would apply to industrial adjudication as well thus. In the judgment of *Bharatiya Kamgar Sena v/s. Udhe India Ltd.*⁵ the tribunal came to the conclusion that the workmen were not only performing the chores of house keeping but also work similar to other employees, inter alia, observing in paragraph 20 “merely because the employees were doing some other work, other than house keeping could not change the nature of relationship between the company and workmen”.

20. On behalf of the petitioner it is also submitted that the burden of establishing that the contract was sham and bogus was not upon the petitioner but upon the respondents who had failed to discharge that

5 2008 ILLJ 371

burden. There was no evidence that the work carried out was of a perennial nature and linked to the main process or to show that the company was paying salaries to the employees and that there was no evidence that the contract was sham and bogus. It is contended that such crucial aspects in the evidence led by the petitioner were ignored by the Industrial tribunal. The submissions of the petitioner also referred to the fact that the documents sought to be relied upon by the union were not proved yet the Court relied upon the same without proof. Furthermore, it is contended that while considering the documents 2006 onward the tribunal omitted to consider the documents pertaining to the period 15th April, 2002, 14th January, 2003 and the documents for the period 2001–02. Thus, authenticity of the documents has not been disputed. The entry passes used by the Reliance Industries Ltd. and Maruti Udyog Ltd. are stated to be primarily for identification and security purposes and for no other.

21. On the aspect of compensation awarded, it is submitted that compensation was unjustified and contrary to law especially since there was no employer–employee relationship. It was further submitted that the decision of this Court in *Shipping Corporation of India Ltd. v/s. Bavta Hotel Aur Bakery Mazdoor Union & Anr. decided in Writ Petition no.6250 of 2011* was clearly distinguishable on facts. It is submitted on

behalf of the petitioner that the distinguishing features are that the canteen workers were required to be absorbed by successive contractors, even if the Contractor changed canteen workers were to be continued in employment upto the age of 60 years. Salaries were disbursed by the employer, medical reimbursements were made directly and all wage revision matters were being addressed by the petitioner company. On this basis, it is submitted that there was complete and pervasive administrative control vested with the Shipping Corporation. Secondly, the High court concluded that the officers of the corporation were exercising control over the canteen workers. The benefit of warm clothing allowance and house building allowance had been given to the canteen workers. Minutes of meeting dated 13th February, 2001 of the corporation with the union showed that the corporation had agreed to absorb the workmen. Lastly the wages of the employees were paid by the Shipping Corporation. It is on this set of facts the petitioner submitted that the decision in SCI was distinguishable. The impugned order it is submitted is based on a different set of facts incomparable with that of SCI and therefore the remand is sought on behalf of the petitioner. The petitioner thus seeks a remand to the Industrial Court.

22. On behalf of the petitioner, reliance is placed on;

(i) Bharatiya Kamgar Sena v/s. Udhe India Ltd. and Anr.⁶

(ii) Steel Authority of India Ltd. V/s. Union of India & Ors.⁷

(iii) Steel Authority of India Ltd. V/s. National Union Water Front Workers & Ors.⁸

23. In view of the fact that on behalf of respondent no.3- Contractor, Mr.

Jalisatgi has tendered written arguments which adopts the petitioners' submissions, it would be appropriate to consider his submissions at this stage. The aspect of the allegedly incompetent reference has been now canvassed. According to the contractors, perusal of the reference demonstrates that it presupposes that the contract entered into between the petitioner and the respondent is illegal. It is contended that the words through the device of the contract is a definite indicator that the appropriate government had pre-determined that the contract was sham and bogus. In other words, the executive authority acting under Section 12(5) of the Industrial Disputes Act had adjudicated the contract as illegal sham and bogus. The Appropriate Government had reached a definite conclusion and such an action is beyond the powers of the appropriate authority and therefore the reference is bad.

6 2008 I LLJ 371

7 2006 III LLJ 1037

8 2001 II LLJ 1087

24. The Contractor has then adverted to the answer to issue no.1 which the tribunal holds affirmatively as the maintainability of the reference. It is contended that the Industrial Tribunal had not dealt with the issue of maintainability since it was not espoused by the workman or the petitioner. Secondly, the recognised union had not espoused the industrial dispute/reference. It is appropriate to mention at this stage that the recognised union-respondent no.2 has now been dropped from the array of parties in these writ petitions. It is contended that the tribunal did not deal with the issue of the recognized union the involvement of the powers and authority of the recognized union qua the contract workers. It is contended that the finding on issue no.1 is liable to be set aside since the dispute was not espoused by direct workers of the petitioner but by contract workers through the unrecognized union.

25. The Industrial Tribunal has not considered the decision of the Supreme Court in *Gujarat Electricity Board case 1995 (I) LLR 1967*. Secondly, when there is a recognized union, the Industrial Tribunal has not taken into consideration the provisions of the MRTU & PULP Act which have no relevance. The Industrial Tribunal had failed to appreciate that it had erroneously concluded that the recognized union not having entered

into a settlement on behalf of the contract labour was not relevant. That the basic reason for industrial tribunal to assume jurisdiction in the matter as to whether the contract workers should be absorbed because the contract is sham and bogus. It is submitted that the recognized union is operating in the establishment, the demands of the contract labour could have been espoused only by the recognized union. However, since this aspect was not canvassed by the recognized union in this Court this issue need not detain us. According to Mr. Jalisatgi the Industrial Tribunal had erred in taking into consideration irrelevant aspects. On the second issue as to whether the contract between the petitioner and the respondent is sham or bogus, the burden of proof was cast upon the first respondent union. In this respect, reliance is placed paragraph 47 and 49 in Workmen of Nilgiri Co-operative Society v/s. State of Tamil Nadu⁹. This decision in turn refers to N.C. John v/s. Secretary Thodupuzha Taluka, Shop Commercial and Establishment Workers' Union (LAB vol.VI 402) and Swapan Das v/s. First Labour Court of West Bengal Labour (LAB IC).

26. The Contractor also relies upon the judgment in General Manager, (OSD) Bengal Nagpur Cotton Mills, Rajnandgaon v/s. Bharat Lal & Anr.¹⁰

9 (2004) 3 SCC 514

10 (2011) 1 SCC 635

and A.I. Railway Parcel and Goods Porter's Union v/s. Union of India¹¹. This judgment held that the burden was upon the first respondent to plead and prove that the contract was a camouflage or a ruse, which burden the first respondent has failed to discharge and the evidence of Kamlesh Mishra also fails to discharge such burden.

27. The Contractor had also relied upon paragraph 10 in General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v/s. Bharat Lal & Anr.¹² which holds that if the Industrial adjudicator finds that a contract between the principal employer and the contractor to be sham and camouflage to deny benefits, there are two well recognized tests to find out whether the contract labour was direct employee of the principal employer; firstly whether the principal employer pays the salary instead of the contractor; and secondly whether the principal employer is controlling and supervising the work of the employee. In that case the Industrial Court had answered both questions in the affirmative. Citing this it was contended that the respondents had failed to satisfy these two tests and the Contractor was paying the wages for the employees and supervision was also by the Contractor. Reliance is also placed on the observation of the Supreme Court in paragraph 11 of the same judgment it considers the expression "control and supervision" as

11 (2003) 11 SCC 590

12 (2011) 1 SCC 635

explained in *International Airport Authority of India v/s. International Air Cargo Workers' Union* which considers the aspect whether the contract was for supply of labour and whether labour supplied by the contractor will work under the direction, supervision and control of the principal employer. The first test is to see who pays the salary and it is for the employee to aver and prove that he was paid salary by the principal employer and not the contractor. In that case the first respondent did not discharge that onus. Even as far as the second test is concerned, the employee did not establish that he was working under direct control and supervision of the principal employer and Industrial Court misconstrued the meaning of the term 'control and supervision' and held that as the officer of the appellant were giving the instructions to the first respondent who was working as a guard, he was deemed to be working under the control and supervision of the appellant.

28. In *International Airport Authority* case the Supreme Court observed that the contract is for supply of labour which was required to work under the direction and control of the principal employer that would not make a worker a direct employee, if the salary was paid by the Contractor and if the right to regulate the employment is with the Contractor and the ultimate supervision and control lay on the Contractor. The principal

employer only controls and directs the work to be done by the contract labour, when such labour is assigned or allotted or sent to him but it is the direct employer who chooses whether the worker is to be assigned or allotted to the principal employer. In other words the worker is an employee of the contractor under whose ultimate supervision and control it will be decided whether the employer-employee relationship would not come and for how long work and subject to what conditions. Only when the contractor assigns or sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but this described as secondary control, the primary control is with the contractor.

29. In *Bengal Nagpur Cotton Mills (supra)* the Supreme Court has observed that the Industrial Court ought to have held that the first respondent was not a direct employee of the appellant. Reliance is also placed by the Contractor on :

(1) *Haldia Refinery Canteen Employees Union & Ors. v/s. Indian Oil Corporation Ltd.*¹³

(2) *Ram Singh and others v/s. Union Territory, Chandigarh & Ors.*¹⁴

(3) *Bharatiya Kamgar Sena v/s. Udhe India Ltd.*¹⁵

13 (2005) 5 SCC 51

14 (2004) 1 SCC 126

15 2008 I LLJ 371

30. In the case of Haldia Refinery Canteen Employees Union, reliance was placed on paragraph 18 of the judgment which observed that the appellants were employees of a canteen contractor because the settlement arrived between the contractor and the workmen in the presence of the Assistant Labour Commissioner at certain terms and conditions between the workmen and the contractor. The respondent neither was a party to either of the settlement and therefore it was indicative of the fact that the workman was treated themselves to be employees of the contractor. Therefore it is contended that the third respondent and its workers had entered into two settlements and these settlements with the recognised union and thus the workmen were not employees of the Petitioner.

31. In Ram Singh and others (supra) paragraph 15 and 16 laid down certain tests. In paragraph 15, the Supreme Court observed that control is an important aspect but not the sole test and an integrated approach is required and it must be examined where they were integrated with the employer's concern or remained apart from it.

32. Nilgiri Co-operative Marketing Society (supra) has set out the following

tests in paragraph 37:

“(a) who is the appointing authority?

(b) who is the pay master?

(c) who can dismiss, how long alternative service lasts, extent of control and supervision, nature of the job, nature of establishment and the right to reject.

It is submitted that the respondents have failed these tests.

33. Reliance was also placed in Steel Authority of India (supra) in paragraph 119 (5) wherein the Court observed that while issuing a prohibitory notification under section 10(1) of the Contract Labour Act the authority would have to consider whether the contract was a mere ruse, camouflage to evade compliance with various beneficial legislation and deprive the workers of the benefit thereof. The tribunal has not rendered any findings on failure to comply with any statute. It is further submitted that the tribunal has erroneously concluded that the contractor did not produce any documents to establish service conditions since copies of two settlements dated 11th February, 2005 and 31st December, 2010 entered into between the contractor and Godrej & Boyce Shramik Sanghatana laid down service conditions of service contractors. In my view these are aspects which have been considered

by the impugned Award.

34. In UDHE India (supra) reference was made to paragraph 20 of the judgment of this Court wherein the Court observed that merely because employees were doing work other than house-keeping would not by itself change the nature of the relationship between the company and the workman. The reference to this observation does not come to the assistance of the contractors. In that case the Court was of the view that documents produced on record revealed that the company did not have any supervisory control over the workman.

35. Similarly as far as gate passes issued to workman by Reliance Industries Ltd. and Maruti Udyog Ltd. were concerned, they were only for identification and security purpose and the tribunal failed to draw the appropriate inference. It is also contended that the findings of the tribunal to the effect that the workers were carrying on work of perennial nature was purely on conjecture and surmise. It is contended that the tribunal had not specified what work was done by the workers or in which manufacturing process they were working. The findings are vague and not based on sound judicial principles. Thus the findings of the tribunal that the principal employer controlled and supervised the

work is vague. In substance, it is contended by the contractors that the tribunal failed to take into consideration that the burden of proof was upon the respondent no.1 which it failed to discharge and the tribunal ought not to have burdened the petitioner. It is contended that the impugned award suffers from errors apparent on the face of the record and therefore deserves to be set aside.

36. On behalf of the contesting Respondents, it is submitted that the only reason for the remand is the inadvertent quotation of the impugned order instead of the terms of reference. The relevant ground canvassed by the petitioner in the writ petitions are essentially grounds (b) and (c) which are reproduced below:

“(b) that the learned Industrial tribunal traversed beyond the scope of the terms of the reference made to the learned industrial tribunal by the appropriate government whereby the learned tribunal was only required to confine itself to the terms of reference and examined as to whether the first party no.1 shall take into its employment the 171 workmen who were working through decide of the respondent no.3 contractor M/s. Mazda Services w.e.f. 30-05-1995 and pay them the difference in wages and other benefits as paid to the regular workmen of the 1st party no.1 and continued to pay the same thereafter.

(c) that the learned Industrial tribunal failed to take into consideration the fact that the order of reference made to

the learned Industrial tribunal nowhere provided that the learned Industrial tribunal was required to adjudicate the issue as to whether the contracts between the petitioner and respondent no.3 contractor were sham and bogus.”

37. The respondents contend that the petitioner did not press these two grounds after perusing the judgment of this Court in SCIL v/s. Lal Bavta Hotel Aur Bakery Mazdoor Union¹⁶ which has attained finality. The respondents further submitted that in Shipping Corporation of India the reference was worded like in the present case and that the point of maintainability of the reference was not pressed during the hearing. It is contended that instead of pointing out the fact that maintainability was not being questioned, the petitioner took advantage of the fact that the judgment dated 29th August, 2018 did not record the fact that the challenge to the maintainability of the reference was given up. I find this submission to be correct inasmuch the issue of maintainability of the reference was not canvassed although in the first round counsel did make reference to the inappropriate wording of the reference which he submitted could have been correctly worded.

38. It is also submitted that Reference (IT) no.81 of 2003, 59 workers have to be made permanent from 19th June, 2003 with all benefits, the total period is 13 years 6 months as of 2016 in reference (IT) No. 82 of 2013,

16 2016 (5) AIR 443

117 workers are to be made permanent with effect from 18th January, 2006. The comparative statement of salaries and wages paid by the petitioner as against the permanent employees of the petitioner is also referred to which covers the period January 2003 to December 2016. This Court is not concerned with the quantification at this stage and that will be a matter of execution of the award, in the event that I hold in favour of the respondents. I may observe that construction of an order of reference has been considered in *Remington Rand of India (1973) Labour Industrial Cases 1323 Calcutta* which relied upon *India Paper Pulp Company Ltd. V/s. India Paper Pulp Workers Union 1949 (1) LLJ 258 (FC)* in which case it was observed that the construction of an order of reference will be easy or difficult depending on whether or not the document has been skillfully drawn and that appropriate government should frame orders carefully. Suffice it to say that none of the parties were confused by the Reference. They knew exactly what it meant and conducted their cases accordingly. The pleadings and submissions will bear testimony to this. There is no merit in the petitioners' contentions that the reference presented a fait accompli.

39. Apropos the issue of compensation, it is submitted that the award of Rs.5 lakhs for employees was not an adhoc figure but a lump sum granted considering the fact that the employees have both continuously worked

for 20 years, that if the arithmetical computation was resorted to the amount payable would be much higher that the tribunal struck a balance and quantified the amount at Rs.5 lakhs. In view of the above, it is submitted that the contracts are sham and bogus. The Industrial Disputes Act would apply the Contract Labour (Regulation and Abolition) Act, 1970 will have no application. Reliance is placed on the following judgments:

- (1) The Shipping Corporation of India Ltd. V/s. Lal Bavta Hotel Aur Bakery Mazdoor Union and Anr.
- (2) Bharat Forge Limited, Pune v/s. Maharashtra General Kamgar & Ors.
- (3) Secretary, Haryana State Electricity Board v/s. Suresh & Ors.
- (4) Hindustan Coca Cola Bottling S/w. Pvt. Ltd. V/s. Bhartiya Kamgar Sena & Ors.
- (5) Ashok Jadhav & Ors. V/s. The Bombay Dock Labour Board & Ors.

40. I have considered the written arguments on behalf of the parties. The submissions on behalf of the petitioner in support of the petition and upon remand were restricted to the points urged in the written arguments. No oral submissions were advanced. I have already adverted to the fact that the remand has caused on account of the fact that in paragraph 34 of the judgment dated 29th August, 2018, the operative

portion of the impugned order passed in Reference (IT)no.15 of 2006 instead of the terms of reference. That was the only limited challenge before the Supreme Court. As a result of the remand, the respondent no.3 contractors have entered appearance and filed their submissions. The order of reference reads thus;

“Company shall take into its employment the 99 workmen who are working through the device of the contractor M/s. Mazada Services and whose names here later impleaded as complainants in complaint (ULP)No.520 of 1995 w.e.f. 30.5.1995 and to pay them the difference in wages and other benefits as paid to the regular workmen of the company and to continue to pay the same thereafter.” (sic)

41. There was no serious challenge to the maintainability of the reference except to state that the reference was improperly worded and the Industrial Tribunal was presented with a fait accompli inasmuch as, built into the reference, was a suggestion that the Industrial Tribunal must decide in a particular way. I have considered the submissions on behalf of the petitioner that the reference itself suggests the manner in which the Industrial Tribunal is to decide it, but the contention lacks merit. While the language of the reference may be wanting in lucidity, the

intention is clear. In this behalf, in *India Paper Pulp Company Ltd. V/s. India Paper Pulp Workers Union*¹⁷ the Federal Court observed that the form of a reference is required to indicate the existence of dispute and that the reference of the dispute is made to the tribunal and further that the order of the reference may not be satisfactorily drafted and that the appropriate government should be careful while framing the order of reference. The Court also observed that it is sufficient if the existence of a dispute and the fact that the dispute is referred to the tribunal is recorded. The Court must read it as a whole and determine whether in effect the order makes such a reference and that the dispute is to be adjudicated. In my view the Industrial Court has correctly interpreted the order of reference. In *TISCO Ltd. V/s. State of Jharkhand*¹⁸ the Supreme Court occasion to observe in paragraph 16 as follows;

“16. The Industrial Tribunal / Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in a number of cases including in National Engg. Industries Ltd. vs. State of Rajasthan. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real / exact nature of “dispute” between the parties”.

17 1949 SCC Online FC 8

18 2014 (1) SCC 536

42. The real test in my view is whether the Industrial tribunal was misled by the language in the order. In my view there is nothing to suggest that the Industrial tribunal has proceeded on a incorrect understanding of the order of reference. Objections on that count were therefore raised. The Industrial tribunal had framed issues which were faithful to the issues before it. The issues are reproduced below for ease of reference;

“(1) Does the 2nd party union proves that, the reference raised by it, is maintainable even when recognized union is functioning in the undertaking of 1st party?”

(2) Whether the contract between the first party no.1 Principal Employer and first party no.2 Contractor is sham and bogus?

(3) Does the 2nd party prove and justify the demands in reference?

(4) What order?”

43. The Industrial tribunal found that the reference was maintainable and the maintainability of the reference was not seriously contested by the petitioner, even on remand. The impugned order has proceeded to deal with the merits and observes that the workmen in question were engaged for long years even prior to the contract. The evidence led was found to be wanting. It failed to reveal the circumstances under which

the contractors were engaged. In fact the written statement filed by the contractors makes reference to demand from “workmen employed by the company”. Although it was contended that the contractor had engaged supervisors and had provided uniforms and shoes and identity cards, the evidence on record is to the effect that workmen were engaged in the premises of clients of the petitioner such as Maruti Udyog Ltd., Reliance Industries Ltd., ONGC ESIC cards issued to some of these employees showed that the appointments dated back to 1994. None of these were satisfactorily explained by the petitioner. When juxtaposed with the contention of the petitioner that the workers were only engaged for purposes of cleaning and house keeping duties there is no reason for the aforesaid persons to be deputed to the third party companies as employees of the petitioner.

44. For all practical purposes the employees identified by their identity documents to be deputed by the petitioner will be treated as such, viz. as employee of the petitioner not of the contractors. If the petitioner has represented to all concerned that the employees are deputed by the petitioner, they cannot be heard to contend that the employees deputed under identity badge of the petitioner are employees of the Contractors. There is no evidence that has been led by the petitioner or respondent

no.3 to explain the scope of duties of the workmen engaged by respondent no.3. Even assuming in favour of the petitioner, it is not possible to accept the contention of the petitioner apropos the applicability of the Contract Labour (Regulation and Abolition) Act.

45. In the present case, the workmen had initially approached the Labour Court under the MRTU & PULP Act. However, since their application was not entertained they were constrained to approach the Industrial tribunal. In my view therefore the contention that the lis would be subject to provisions of the Contract Labour (Regulation & Abolition) Act cannot be accepted even otherwise it is the petitioner's own case that the matter should now remanded to the Industrial tribunal for fresh consideration.

46. At the trial stage, the contention of the petitioner was that the workmen were carrying out the job of maintenance at the factory, delivery of material assembly and packing of material. The impression sought to be created is that they are getting these tasks done through a contractor who has employed his own employees. However, the instances brought out in evidence of employees operating under the petitioners' name at third party organizations has established the correctness of the first

respondents case. The evidence of Mr. Kersi Elavia is telling. In his cross examination he has admitted that some employees are working since 1986 and he was unaware whether the contractor had given appointment letters to these workmen. It is not the case of the petitioner that the contractors were in place since 1986 since admittedly even at that stage there is no evidence of such contractor having been appointed. This would lead to the inescapable conclusion that the workmen were indeed engaged by the petitioner using the device of the contractor. The evidence of Mr. Kersi Randeria the partner of the Contractor also reveals that the third respondents /contractors had engaged supervisors and administrative staff and the contractor claimed to exercise over all control over those persons. These supervisors would monitor the attendance of workmen employed by the contractor and make payments purportedly as provided for under the Contract Labour (Regulation & Abolition) Act, 1970. The contractors have not led any evidence in support of their claim that supervisory and administrative staff were engaged. This very witness admitted during cross examination claimed that he had started his own business in 1986 after resigning from the service of the petitioner. The attempts of the petitioner to steer clear of the decision of this Court in SCI (supra) cannot succeed since there are bound to be minor factual differences when parties engaged workmen

and continue to retain such workmen over a number of years depriving them of the status of permanency. No doubt in SCI the position was more severe inasmuch as the same body of workmen would continue to work in the Canteen notwithstanding the repeated change of contractor(s). This was an admitted position. No attempt was made to mask the method of operating the canteen.

47. In the instant case, there is no evidence of frequent change of contractors but the body of workmen were engaged apparently since 1986 and onward have continued to the same. There is no evidence that has been adduced to show that this workmen brought in by the contractor at the material time and from time to time. The Industrial Court had no difficulty in coming to the conclusion that the facts in the present case met the test of complete integration with the establishment of the petitioner and indeed the Industrial tribunal cannot be faulted. The impugned order has marshalled all the facts before it and the evidence led by the parties.

48. In relation to the evidence led by the first respondent in support of their contention that they were employees of the petitioner, one of the aspects that was urged is that documents such as ESI cards showing the name of

the petitioner company, so also delivery challans and copies of attendance records filed by the respondents. The witnesses were all subjected to cross examination. Nothing was elicited that would support the petitioners' case. The witness stood by his version. He denied that he was employed by third respondent and contended that he was a permanent employee of the petitioner. In particular the ESI cards issued to Dinkar Harishchandra Shivnekar and Tukaram Jagtap indicated the names of the employers. These are indicative of the fact that the workmen were engaged by the petitioner. No other reason has been provided as to why the name of the petitioner is appears on those document.

49. The perusal of the documents filed on behalf of the respondents for instance the ESIC card of Dinkar Shivnekar along with code number that of Tukaram Jagtap also indicates his code number with the petitioner company even considering that these of ESIC cards of 1996. The Inter office memos are attendance records of "Contract workmen working in Maharashtra Branch plant no.11". They direct the construction department of the petitioner to release wages for the month. One of these inter office memos shows that Suresh Kisan Gaikwad had worked for certain number of days for cleaning and washing ostensibly under

Mazda Services and M/s. Kersi Contractor but these are inter office memos are on the letterhead of the petitioner's "Personnel Department" and it refers to two different contractors one M/s. Kersi Contractor and second M/s. Mazda Services. If these workers were indeed the workmen of the contractors it would be contractors who would issue the attendance record. However, in this case the petitioner had maintained the attendance records of the two persons said to be contract workmen viz. Udayraj Yadav and Yankappa Gatappa and have suggested that payment that be made. They are forwarded by the petitioner to the construction department headed by Mr. Elavia who was also the petitioners' company's witness. Likewise, further memos issued by the personnel department also authorises payments to be made to these persons. On the other hand if the attendance recorded was only for being conveyed to the Contractors for making payments, they would have been addressed to the Contractor(s) and not to the personnel department of the petitioners.

50. The identity card issued to Mr. Manoj Kumar and Kamlesh Mishra by Reliance Industries Ltd., RPL as well as Maruti Udyog Ltd., and one issued to Prem Dubey clearly mention the name of the petitioner as the "contractor" and the employee concerned the "contractor's worker".

Furthermore, Kamlesh Mishra's permanent address is shown as "H-30/14, Godrej Company Vikhroli" clearly indicating that he was a resident of the petitioners' housing colony. As far as the entry permit issued to Prem Dubey is concerned, there is one permit issued in respect of entry at Maruti Udyog Ltd. Gurgaon, and yet another one which pertains to ONGC. The document indicates that Mr. Dubey whose name appears at sr.no.12 was permitted to enter the ONGC premises and the responsibility lay with the petitioner under whose seal and signature the passes have been issued. In the present case, I have no doubt that the employees concerned were fully integrated into the petitioner organization. In the case at hand I am of the view that primary control is with the petitioners. The evidence is to the effect that some of them have been in employment of last 20 years and applying the primary control test, it would establish the petitioner as the employer. This is ably demonstrated by the identity cards issued to the workmen deputed to those third party entities and the inter office memos recording attendance and recommending payment.

51. Bharat Forge Limited, Pune (supra) holds that Section 10(1) does not require the Appropriate Government to consider whether a dispute is raised by a recognised union or not and therefore it cannot be said that

an unrecognized union has no locus at the very threshold of raising a dispute. Although the petitioner has sought to assail the terms of the reference to the effect that it is suggestive of the manner in which the reference is to be decided, ground (b) in the petition proceeds on the basis that the tribunal had *“traversed beyond the scope of the reference”*. It further states that tribunal was *“only required to confine itself to the terms of the reference.”* Thus, although the counsel have attempted to suggest that the reference was not maintainable and bad, the petition does not proceed on that basis. It is therefore clearly an afterthought. The scope of the challenge was not subject matter of any serious argument before the Industrial Court. The other issue pertain to the Contract Labour (Regulation and Abolition) Act is not at all relevant in the facts of the instant case. The reference to applicability of the said Act is a red herring. Although the other grounds taken up seek to suggest that the documentation relied upon by the respondents does not establish that the petitioner was managing the workers, and therefore schedules the reference to the various volumes and analysis which I have referred to above, indicates otherwise.

52. As regards the challenge in Civil appeal no.11064 to 11066 of 2018 by Mazda Services before the Apex Court challenging the order and

judgment of this Court dated 29th August, 2018. Mazda Services did not challenge the award of the Industrial tribunal in the High Court and they did not appear when these petitions were first heard though impleaded. Separate appeals were also filed by Mazda Services along with M/s. Mechclean Contractor and respondent no.3 in Writ Petition no.3189 of 2017. The contractors had then given up their challenge to the impugned judgment. It is another matter altogether that upon remand the respondent no.3 has entered appearance and has filed written submissions. It was contended by the respondents that the contractors have no locus to appear before this Court at this stage, since they had not challenged the order of Reference or Award and have caused appearance to be entered only after all the writ petitions were finally heard. Without prejudice the afore-stated, the respondents submit that the awards in the three writ petitions were based on the evidence on record and they duly analyze the documentary and oral evidence. The conclusions of the Industrial Tribunal are pure findings of fact and no interference is called for. The respondents contended that they have produced and conclusively proved the relevant numerous documents which are exhibited as Exhibit U-20 to U-31. These exhibits include the ESIC cards issued to the aforesaid Dinkar Harishchandra Shivnekar and Tukaram Jagtap, the deliver challans prepared by store keeper, log report of the

Composite Effluent Treatment Plant, inter office memos certifying the workmen named Suresh Gaikwad, the attendance record maintained by the company, the letter issued by the petitioner company to legal heirs of the ex-employee Subhash Sawant, requisitions letters for gate pass, letter issued to Vilas Shinde, the gate pass issued by Reliance Industries Ltd. and Maruti Udyog Ltd. and the payments slip referred to above all of which comprising 33 pages.

53. The evidence of Mr. Bhovad specifically deals with the fact that he had worked continuously at plant no.7 of the petitioner and was charge sheeted on 28th August, 2010 and treated as a permanent employee of the petitioner for the purpose of disciplinary action. He was later dismissed from service. It is possible to contend that the evidence of dismissed employee is not relevant but one must not lose sight of the fact that the deposition thereof relied upon by the respondents having elicited in cross examination in which he reiterates having worked in plant no.7 was working on perennial tasks and disciplinary action was taken by the petitioner and not the contractors.

54. It is contended that all these were conclusively proved and hence relief granted on the basis that these were treated permanent employees till their age of superannuation. It is contended that the Industrial Tribunal

correctly held that the contract between the petitioner and third respondent/contractor were sham and bogus and therefore lump sum compensation was awarded. The parties have led oral evidence and the cross examination of Kersi Hormusji Elavia has inter alia revealed that some of the workers of the contractors were working continuously from 1986 and that before 2003 the contractor did not even have any ESI and PF Code since the petitioner company had covered this aspect. The respondents rely on oral evidence of the employees who were in continuous service all of which read together clearly reveal that the employees were entitled to benefits under the awards. My specific attention has been drawn to the evidence of Gangadhar Anant Patkar and Gurunath Ramchandra Bhovad both of whom had deposed that they were regularly working for the petitioner and for a number of years. Reference is made to the cross examination at page.105 and 111 of the petition in this respect. Evidence has been gone into by the Industrial Court which has arrived at a conclusion. The contractors have chosen not to challenge those findings and the contractors have not filed any petition in this Court but had chosen to file the SLP's. Even furthermore There is no justification and today seeking to expand the scope of the challenge which is essentially by the petitioner company.

55. In *Haryana State Electricity Board (supra)* the Supreme Court considered section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and held on facts that the contract system was a mere camouflage and a smoke screen. It will be appropriate at this stage to consider the decision of the Supreme Court in *Hussainbhai, Calicut v/s. Alath Factory Thozhilali Union, Kozhikode and others*¹⁹ in which the Supreme Court was considering the tests to be applied for ascertaining an existence of employer-employee relationship and observed as under;

“ The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact; the employer. He has economic control over the workers' subsistence, skill and continued employment. If he for any reason, chokes off, the worker is, virtually; laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship Ex contractu is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different, perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local

19 AIR 1978 SC 1410

conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer based on Articles 38, 39, 42, 43, and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

Applying this test the findings of the Industrial Court cannot be faulted.

56. Among the contentions taken up by the petitioner is one that the tribunal has failed to take into consideration that the contractor was not registered as a commercial establishment under the Maharashtra Shops & Establishments Act yet obtained ESI and PF codes for the year 2003. Further it is contended that non-registration would amount to only breach of the Shops & Establishments Act. One another contention is that the tribunal had failed to take into consideration numerous contracts issued by the petitioner to the contractor and the settlements of the 2005 and 2010 between the contractor and the second respondent union. These are all aspects which the impugned order is already considered. The impugned order has taken into account the aspect of the settlements in paragraph 36 and 37 of the impugned award, maintainability of the reference were therefore answered in the affirmative. The allotment of P.F. and ESI codes has also been dealt with in issue no.2. So also the issue pertaining to the licence under Shops &

Establishments Act have been dealt with in paragraph 39 to 41 and 46. The so called contracts to which the petitioner adverted to in the submission in paragraph 9(iii) have also been dealt with paragraph 42 of the impugned judgment. The settlements referred to in paragraph 9(v) have also been dealt with as aforesaid. As far as the advances paid by the contractors are concerned, the impugned award has considered this aspect in paragraph 44 and 45. Thus, in my view all aspects have already been dealt with in the impugned award.

57. The fact that maintainability was not agitated before me in the first round is evident from the fact that in the written submissions now filed upon remand on 20th February, 2019 question the maintainability of the reference which ground is seen to have been abandoned because the request now is to remand the matter to the Industrial tribunal for fresh decision in a time bound manner because the "*Tribunal has failed to appreciate documentary evidence*".

58. This is the second remand the petitioner seeks and I may observe here that the impugned orders have been passed upon remand by this Court pursuant to orders passed in Writ Petition nos.819 of 2015, 820 of 2015 and 821 of 2015 dated 11th August, 2015 liberty was granted to the parties to lead additional evidence at that stage but obviously neither

party led further evidence. The petitioner and the contractor were free to lead evidence at that stage but today they seek to avoid the rigour of the impugned order by canvassing a second remand. The impugned order has considered the evidence before it and concluded that the workmen were being retained in their posts during perennial nature of work and to the device of the contract. Opportunities were granted to the parties to support their respective cases. As a matter of example, at that stage the petitioner and respondent no.3 were unable to explain as to how the workers identity cards bearing the Godrej name as contractors were deputed to other organizations. It is obvious that the petitioner would have had contractual relationship with Reliance Industries Ltd., Maruti Udyog, ONGC and others and were deputing these workmen as their own since such companies were recipients of services of the petitioner. Those three entities listed above could not be concerned with whether or not the workmen were direct employees of the petitioner or were employees of a Contractor. The impugned order has dealt with the merits of the case in the right perspective.

59. In conclusion, the grant of compensation at Rs.5 lakhs was not based on any factual assessment of compensation with the workmen were entitled to. It is an adhoc figure which in my view could not be justified in the fact situation and in that view of the matter while I find no reason to

interfere with the impugned order of the Industrial tribunal holding the contracts to be sham and bogus, I am of the view that the order awarding compensation is however liable to set aside.

60. In the circumstances, I pass the following order;

- (i) The orders dated 2nd March, 2017 impugned in these writ petitions to the extent it directs payment of compensation at Rs.5 lakhs each of the workers towards arrears of difference in wages and benefits, is set aside.
- (ii) In all other respects, the impugned orders call for no interference.
- (iii) Writ petitions are allowed to this limited extent.
- (iv) The petitioner shall comply with the rest of the impugned order within a period of eight weeks from today.
- (v) No orders as to costs.

(A. K. MENON, J.)