

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

Hindustan Petroleum Corporation Ltd.
Vs.
Union of India & Ors.

Judgment On :- **23.12.2022**

They claimed to be workmen of Hindustan Petroleum Corporation Ltd., the appellant and working in its canteen in the Paharpur LPG plant. According to the appellant, they were not. They were all partners of M/s Ten Friends Caterers (the Caterer), who are doing business in the plant under permission from the appellant. As partners, they share the profit and loss of the partnership business.

By an order dated 30th June, 1998 under Section 10(1)(d) and 2A of the Industrial Disputes Act, 1947, the Central Government referred the following dispute to the Central Government Industrial Tribunal, Kolkata:-

“Whether the action of the management of M/s. H.P.C.L., Paharpur for regularizing the services of canteen employees at Budge Budge and not regularizing the services of the workmen working in the canteen under M/s. Ten Friends Caterers at Paharpur LPG is justified? If not, what relief the workmen are entitled?”

The presiding officer of the tribunal was a retired High Court judge. On 9th March, 2007 the tribunal held that from 30th June, 1998 these nine persons should be considered to be regular employees of the appellant, be regularized in service and be paid the arrears of salary and other monetary benefits after adjusting the salary and monetary benefit that they may have already received.....subject to the condition that they fulfil the criteria of minimum and maximum age limit and also were medically fit as per regulation of the HPCL. The action of the management in not regularizing their service was found to be unjustified.

Aggrieved, the appellant preferred a writ application in this court on or about 11th October, 2007. By the judgment and order dated 27th September, 2019 it was dismissed by a learned single judge of this court.

The learned judge came to the following findings:-

“24. In this case, the Tribunal considered the clauses in the agreement while ascertaining whether the canteen was an integral part of the establishment. On the facts and materials before it, the learned Tribunal pierced the veil and considered the agreements with the caterer in their entirety. Some of the clauses of the agreements which were specifically considered by the Tribunal to arrive at the decision are as follows.....

25. Considering the above clauses, it appears that the canteen services had been provided to the employees of the corporation for a long time. Food coupons were distributed amongst the workers to eat in the said canteen. The corporation had taken active interest in the day to day functioning of the canteen. The same caterer was awarded the contract over and over again for a long period of time and the nine (9) persons continued to work in the said canteen even between the renewals of the contract or award of fresh contract. The corporation also fixed the price, provided all utensils, furniture, electricity, gas, water, cutlery, crockery. The supervision of the canteen workers was also done by the corporation and at some point of time the provident fund deposits were also made by the corporation. On the appraisals of these facts the Tribunal came to a conclusion that the contract was just a mechanism employed by the corporation and the nine (9) persons were actually the employees of the Corporation itself. In my opinion, the Tribunal did not commit any error of law in relying upon the decision of **Parimal Chandra Raha (supra)**.

27. This court cannot undertake the exercise of re-assessing the evidence and drawing conclusions on the questions of fact, being fully aware that this Court is not exercising any appellate jurisdiction over the award passed by the Tribunal, presided over by a judicial officer. The finding of fact recorded by the fact finding authority, duly constituted for the purpose, cannot be disturbed for the mere reason that the same may have been based on materials on records or evidence not sufficient or credible in the opinion of this Court as long as they were based on some materials which were relevant for the purpose. The said finding of fact, should not ordinarily be interfered with even if this Court is of the opinion that another view could be possible taken.

30. The Tribunal thus came to the conclusion that the canteen was an integral part of HPCL and the workers were employees of HPCL. Excerpts from the award is reproduced below.....”

“Both the appointment of the contractor and the tenure of the contract is as per the stipulation made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served are dictated by the Corporation. It also shows that all the workers of the canteen have been working in the canteen continuously for a long time by the aforesaid mechanism employed by the Corporation to supervise and control the working of the canteen. The infrastructure for running the canteen viz. the premises, the furniture, electricity, water etc. are supplied by the Corporation to the managing agency for running the canteen. It also cannot be disputed that the canteen services is essential for the efficient working of the workmen and the officers of the Corporation working at Paharpur LPG Plant of HPCL. In the circumstances, it is very much clear that the canteen has become a part of the establishment of the Corporation and the so called contract from time to time are in reality the agencies of the corporation and are only a veil between the Corporation and the canteen workers. There thus is no room for doubt in coming to the conclusion that these canteen workers who have claimed the relief for their regularization are in fact the employees of the Corporation.”

34.....In this case, the Tribunal arrived at the conclusion that the nine (9) persons who were working in the canteen at Paharpur were workmen of HPCL and granted them the relief of being treated at par with the canteen workers in Budge-Budge. In the decision of Nihal

Singh (supra), the Apex Court held that Uma Devi (3) (supra) cannot be become a licence for exploitation by the state or its instrumentalities.

38. Thus, I do not find that the award is either perverse or suffers from error apparent on the face of record. The Tribunal did not commit any procedural irregularity. The award does not call for any interference. The award is upheld.

40. The writ petition is dismissed.”

Hence this appeal.

AWARD

The award of the tribunal can be analysed in the following way:-

Two witnesses on behalf of the workmen deposed that those nine persons were employees of the appellant, deputed in the canteen to run it. The food, cooking utensils, crockery, cutlery, fuel, oven, furniture and fixtures were all supplied by the appellant. These employees were in charge of running it for the employees. Their attendance register is maintained by the appellant. Their wages were also paid by them. Contributions towards provident fund and ESI scheme are also made by the appellant. However, they have acknowledged the existence of an agreement between M/s Ten Friends Caterers and the appellant.

On the other hand, conflicting evidence was adduced by an officer of the appellant stating that M/s Ten Friends Caterers was running the canteen. The appellant was not covered by the ESI scheme. The caterers pay contribution towards the scheme. EPF contribution is paid by ten employees of the caterer including the nine employees. The caterer is responsible for engaging the employees and to comply with ESI, EPF and minimum wages requirement. All raw materials are supplied by the caterer.

Numerous documents were also produced before the tribunal, the important ones of which were:-

Sheet of wages dated 13th July, 2000 for the month of June, 2000, the agreement dated 14th March, 1993 between the appellant and Ten Friends Caterers, the agreement between the parties dealing with the quality of food, the prices at which the food, tea, coffee are to be determined by the appellant, EPF contribution challans, recruitment rules for “induction level posts at HPCL”, certificate dated 5th June, 1989 issued by Kolkata Municipal Corporation to Ten Friends Caterers.

The tribunal in the impugned award has come to the following findings:-

- a) Further to an agreement executed between the management and the Ten Friends Caterers, the appellant ran a canteen in a part of Paharpur LPG plant;
- b) The canteen would supply food to the employees of the appellant;
- c) The appellant would make available without charge to the caterer furniture, utensils, gas oven, crockery, cutlery, electricity, tables, chairs and so on;
- d) The canteen was made exclusively for the employees of HPCL and nobody else was allowed;
- e) As the number of employees in the Paharpur unit was less than 250, it was not obligatory for the appellant to establish and run a canteen in the premises, under the Factories Act, 1948. However out of its “non-statutory obligation for canteen services” owed to the employees, it ran the canteen there. The canteen is run under the direct supervision and control of the management through the contractor;
- f) An attendance register is also maintained by the appellant.
- g) The contractor is only an agent of the management.

SUBMISSIONS:-

Most central to the case is the fact whether these nine persons were workmen of the appellant, or are they partners and employees of Ten Friends Caterers, a contractor which has nothing to do with the organization.

Mr. Arijit Chowdhury, learned Senior Advocate of the appellant submitted, citing **Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N and Ors.** reported in **(2004) 3 SCC 514** (Paragraph 37), that there were certain tests by which it could be known whether a person was workmen or not. Showing us Clause 15 of the agreement, learned senior counsel submitted that it would show that the staff of the canteen was provided by the catering organization and not by the appellant. To determine the fact whether a particular person was an employee or not, one ought to investigate who appointed him, who makes the payment of wages, who could command work and obedience from him, punish him for any default or have the power to dismiss him. The appellant did not have any control over the work done by these persons, no officer of the Corporation supervised their work, they were not subject to the directions of the Corporation. Neither the Corporation had any power to punish anyone of them or to dismiss them from service. The said respondents were not paid any wages but only shared the profit amongst themselves.

Learned Counsel said, citing **Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N and Ors.** reported in **(2004) 3 SCC 514** that one who asserts the relationship of employer and employee has the burden of proving it. (Paragraph 47) and that the respondent alleged workmen had failed to show by successfully undergoing the above tests that they were employed, controlled, managed, supervised and subject to the disciplinary control of the appellant.

Learned Counsel tried to overcome the decision in **Parimal Chandra Raha and Ors. Vs. Life Insurance Corporation of India and Ors.** reported in

1995 Supp (2) SCC 611 by contending that in that case whether the applicants before the court were workmen or not was not in issue. What was in issue was admittedly the Corporation had given its employees facilities to run the canteen business and the canteen workers claimed parity of pay and service conditions with other employees on equal pay for equal work principle. In this case, the very status of the said respondents is in question.

He also submitted that **Hussainbhai, Calicut vs. Alath Factory Thezhilali Union, Kozhikode and Ors.** reported in **(1978) 2 LLJ 397** and **Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors.** reported in **(2001) 7 SCC 1** did not apply to the case because the canteen was independent of the establishment run by those nine persons in partnership with one another sharing the profits and by supply of the furniture, articles and gadgets necessary to run the canteen.

On the issue of regularization, Mr. Chowdhury showed us **U.P. Power Corporation Ltd. and Anr. Vs. Bijli Mazdoor Sangh and Ors.** reported in **(2007) 5 SCC 755** where the Supreme Court said that in the absence of an employer employee relationship, the regularization of employment following the case of Uma Devi [See **Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.** reported in **(2006) 4 SCC 1**] did not arise. If the facts for operation of the principle in Uma Devi, as stated in Paragraph 45 of that judgment, are proved, the adjudicator could modify the reliefs so as to result in regularization of the workmen.

Mr. Dutta, learned Counsel appearing for the respondent alleged workmen first took us through the written statement filed by the union before the tribunal. Based on the written statement, he made the following submissions:-

- a) The concerned nine persons were workmen of the appellant;
- b) They were continuously working with the organization;

- c) The organization malafide intended to deprive them of their legitimate rights;
- d) The agreement with Ten Friends Caterers was a “fake contract” with a “fictitious Contractor”;
- e) The premises where the canteen is situated is owned by the appellant;
- f) The utensils, fuel, light, furniture, raw materials are supplied by the appellant;
- g) The concerned workmen are under the direct control and supervision of the management “in terms of administration and finance”;
- h) They are covered by the ESI and provident fund schemes. The contribution of the appellant was made with the ESI and PF authority as part of their statutory organization;
- i) The appellant has a statutory obligation to maintain canteens;
- j) The employees of other canteens run by the appellant are treated as regular employees. Only the employees of the Paharpur unit are not. The work done by these workmen are permanent and perennial in nature and incidental to the main business of the appellant;
- k) The said employees are entitled to regularization.

DISCUSSION

Mr. Justice Desai in **Workmen of the Food Corporation of India vs. Food Corporation of India** reported in **(1985) 2 SCC 136** defined a “workmen” under the Industrial Disputes Act, 1947 as one employed in any industry under an express or implied contract of service for cash or kind as consideration. The relationship was viewed as one of command and obedience. However, his lordship clarified that employees of a contractor were not workmen.

Dattu, J. in **Balwant Rai Saluja and Anr. Vs. Air India Limited and Ors.** reported in **(2014) 9 SCC 407** recognized the following tests to establish an employer employee relationship:

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

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

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case.”

In Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N. and Ors.

reported in **(2004) 3 SCC 514**, the Supreme Court reiterated the tests in the following way:-

“37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; e) the extent of control and supervision; (f) the nature of the job, e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.”

It also added that he who asserts that he is a workman has to prove it. The burden of proof lies on him.

Next, I propose to discuss a series of cases. I would call them the canteen cases. I can even go to the extent of saying that the principles of law laid down by the courts relating to running of canteens and engagement of staff in industrial establishments and their status are special to that particular type of employment and has to be viewed and interpreted accordingly. Apart from the above, some special tests have been prescribed by the court to assess whether the persons employed in those canteens can be called the

employees of the organization, even when the canteens are being run by a cooperative or by a partnership firm or even by an individual contractor.

In **Hussainbhai, Calicut and Alath Factory Thezhilali Union, Kozhikode and Ors.** reported in **(1978) 2 LLJ 397**, though not a canteen case, but having an influence on the later decisions relating to canteens, Mr. Justice Krishna Iyer speaking for the Supreme Court laid down the duty of the court to lift the veil of a contractor created by the employer to hide or camouflage the real relationship between itself and the employees and to project as if the workers were working under an independent contractor as his employees.

A landmark case on the subject is **Parimal Chandra Raha and Ors. Vs. Life Insurance Corporation of India and Ors.** reported in **1995 Supp (2) SCC 611**. Mr. Justice Sawant delivering the judgment of the Supreme Court pronounced the following principles:- If a canteen is required to be maintained in an establishment under the Factories Act, 1948 for the use of employees, such a canteen becomes part of the establishment. The workers who are engaged there become part of the establishment. Even if there is no statutory obligation, the agreement or arrangement between the management and the employees cast an obligation on the employer to maintain a canteen. In such a situation also the canteen became part of the establishment as it is treated as part of the service conditions. Whether the canteen is provided by the employer as a part of the service conditions depends on the nature of the service, whether it is available as a matter of right to the employees, the number of employees availing of this service, the hour and length of time during which the service is available, the control of the employer in providing, maintaining, supervising and controlling the service, it is always a question of fact to be determined by the court. On the other hand, if the canteen is run by a contractor, independent of the organization having its own staff, own control and management, at the command of the contractor, the contractor being paid the contract amount

for running the service or allowed to retain a whole or portion of the collection as his remuneration, then the employees of the contractor are rendering contract for service and not contract of service and cannot be treated as employees of the company.

In this case before the Supreme Court, the contractor was running the canteen. He had entered into a contract with the management, the terms whereof were similar to those in the contract between the appellant and Ten Friends Caterer in our case.

The Supreme Court came to the conclusion that “the Corporation has a dominating share in dictating the terms of the contract.” The canteen committees were controlled by the corporation. “The benefits of canteen facilities have become the conditions of service” and that the running of the canteen was incidental to the running of the business of the corporation. Canteen service had been provided by the corporation for a long time. The terms of the contract suggested that they were in the nature of directions to the contractor. The prices of the items served, the place and the manner in which they were to be cooked and served were dictated by the corporation. In the view of the court, the canteen had become part of the establishment of the corporation. The contractor was in reality the agent of the corporation and a veil between the corporation and the canteen workers.

Again in **Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N and Ors.** reported in **(2004) 3 SCC 514**, the Supreme Court ruled that the question to be determined was whether an employee was a canteen worker, was employed in a contract of service or contract for service and whether a contractor had been set up by the employer “by way of a smoke screen with the view to avoid its statutory liability.”

Balwant Rai Saluja and Anr. Vs. Air India Limited and Ors. reported in **(2014) 9 SCC 407** concerned workmen engaged in statutory canteens of Air India. These canteens were run by the contractor, HCI which was a wholly owned subsidiary of Air India. The canteens were run in the

premises of Air India. In this case, Justice Dattu delivering the judgment of the bench expressed the view that just because a canteen had to be set up by the employer under the statutory obligations under the Factories Act, 1948, the workmen in those canteens did not become the employees of that organization, if those workmen were employed by a contractor engaged by the employer to run the canteen. The Factories Act, 1948 governed the relationship of the employer with those working in the canteens for the purposes of the Act only. But these rights and obligations imposed by the said Act did not automatically convert these employees into workmen of the principal employer unless the tests as prescribed by the court and enumerated above in my judgment were fulfilled. In that case, his lordship held that although Air India had some degree of control over its subsidiary, the contractor, it was not that pervasive or deep so as to create an employer employee relationship. The concept of “piercing the corporate veil” should be restricted in its operation so as to be employed when it appears from the facts that the contractor is just a “camouflage” or “sham”. In that case the veil had to be pierced to discover the true employer.

The court refused to recognize the workers in the subsidiary of Air India as the employees of the latter.

The court recognized the employment of contract labour under Contract Labour Regulation Act. The Supreme Court in **Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors.** reported in **(2001) 7 SCC 1** but only in extraordinary cases where the employment of the contractor was under a contract which was “sham and nominal”, the court would proceed to pierce the veil and discover the real employer.

The decision of the Supreme Court in **Balwant Rai Saluja and Anr. Vs. Air India Limited and Ors.** reported in **(2014) 9 SCC 407** makes a slight departure from its ruling in **Parimal Chandra Raha and Ors. Vs. Life Insurance Corporation of India and Ors.** reported in **1995 Supp (2) SCC 611** and **Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of T.N**

and Ors. reported in **(2004) 3 SCC 514**. The 2014 decision is by a three judges bench whereas the ratio of the other Supreme Court judgments except **Hussainbhai, Calicut** and **Alath Factory Thezhilali Union, Kozhikode and Ors.** reported in **(1978) 2 LLJ 397** were by two judges benches. The judgment in the 1978 case was by a three judges bench.

In **Balwant Rai Saluja and Anr. Vs. Air India Limited and Ors.** reported in **(2014) 9 SCC 407** even if a canteen was set up under a statutory obligation, it did not follow that it became part of the establishment. The tests as prescribed by the decision had to be passed by the workmen to qualify as workmen of the organization. Even supervision or control by the principal employer would not suffice. It may be for maintenance of standards and quality which did not convert the workmen employed by the contractor in the canteen to an employee of the principal employer.

CONCLUSIONS

When the issue is whether a workman employed in a canteen of an organization are to be treated as its workmen, what are the tests to be applied and the principles to be followed? First of all, it is to be seen whether the status of the canteen is such that all the employees of the organization or a section of the employees as a whole avail of its facilities, which should be large scale and on a permanent basis. The presence of the canteen should be such that any reasonable person would treat it as an integral part of the establishment. The canteen may be run by a contractor. Theoretically, he might also employ the workmen engaged there. It has to be shown that the contractor has got no independent status. He is just a name lender who works at the instance of the employer. Whom he would employ, on what conditions he would employ, the disciplinary rules governing such employment, whether the appointments, control, supervision and dismissal of the employees are dictated by the employer. Then comes the manner of running the canteen. The type and quality of food to be served, the amount to be served, the menu, the price, the

manner of cooking, serving and so on are controlled by the employer. Then comes the facilities. One has to see who provides the space, the furniture and fixtures like tables, chairs, utensils, crockery, cutlery, the raw materials for preparation of food and son. Does the employer have a predominant role in providing this? These are all questions of fact. They are usually determined by the tribunal. If it is proved that the employer controlled all these activities, then the canteen was the part of the establishment, belonging to the employer and the employees working there were to be treated as employees of the organization. The veil of a contractor worn by the employer had to be pierced, if necessary.

The learned tribunal has gone into these issues in detail. Witnesses for the employees as well as for the employer have been examined and cross-examined. Voluminous documents have been admitted and considered. The tribunal has come to a view that the canteen was part of the establishment. Although there was an agreement between Ten Friends Caterer and the organization, it was “smoke screen” according to the tribunal. The nine so called partners of Ten Friends Caterer, described in the partnership firm, were in reality workmen in the canteen. The space was provided by the organization, electricity, utensils, crockery, cutlery, tables, chairs, raw materials for preparation of food were supplied by the employer. The prices were also determined by them. The appointment, control, supervision and the right of dismissal of the employees was reserved by the employer. The appellant had included the nine workmen in the canteen in the employees’ provident fund scheme for its employees. They were also under ESI. Concurrently, the partnership firm also seems to have opened similar accounts for the nine workmen. In other words, the appellant had real control over the functioning of the canteen and over the service of its employees. Hence, according to the tribunal, the nine workmen were to be treated as employees of the canteen.

Now, to what extent can this court as a court of appeal interfere with those findings? We are not an ordinary court of appeal but a court of appeal hearing an appeal from an order passed by this court in exercise of its writ jurisdiction, challenging the award of the tribunal.

An authoritative exposition of the law was made by Mr. Justice Gajendragadkar in **Syed Yakooob vs. K.S. Radhakrishnan and Ors.** reported in **AIR 1964 SC 477**:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the

Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam and Kaushalya Devi v. Bachittar Singh.)

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”*

The Supreme Court in **Calcutta Port Shramik Union vs. The Calcutta River Transport Association and Ors.** reported in **AIR 1988 SC 2168** opined that the courts exercising the power of judicial review should as far as possible uphold the award made by the tribunal. A “hyper technical” approach of “picking holes here and there” ought to be avoided.

In **Eastern Coalfields Ltd. Vs. Union of India and Ors.** reported in **(2009) 4 CHN 394** a division bench of this court of which I was a member had laid down the following:-

“14. An award of an Industrial Tribunal is final under the Industrial Disputes Act, 1957. The power of the Writ Court to interfere with such award is very limited. It is now trite that a Writ Court can interfere with decisions made by subordinate adjudicating authorities if that authority has refused to exercise jurisdiction vested in it or has exceeded its jurisdiction. Such jurisdictional error is made when the authority considers a matter which it had no power to entertain or in considering a matter, it takes into account issues which ought not to have taken into account or does not take into account issues which, it ought to have taken into account. However an order can be interfered with if some mala fide is involved in making the consideration. Furthermore, if the order passed is so unreasonable or palpably wrong or perverse that no reasonable authority could have passed the order, the Court will certainly interfere. A subordinate Tribunal is entitled to take a plausible view, even if that view is not shared by the Court or may not be correct. In such cases the Court will not interfere.”

Hence, the award of the Industrial tribunal is more or less final on facts. The court exercising jurisdiction under Article 226 of the Constitution would interfere with the award if there was an error of law on the face of the award. In other words, if the award proceeded on the basis of a statement of law which was erroneous and going to the root of the matter and proceeded to adjudicate the dispute on such erroneous premise, the court would intervene. That would be taken as failure on the part of the tribunal to exercise its jurisdiction properly. Or if the award appeared to be palpably wrong the court would interfere. It would also set aside the award if it came within the whirlpool principle, that is to say, if it was inter alia, in breach of

the principles of natural justice. The court would also interfere with the award if it was shown that it was the product of corruption or bias on the part of the tribunal.

The impugned award is well reasoned. The learned judge has taken a view. It is certainly a plausible view on facts. The conclusion reached by the learned judge was after due observance of procedure. The findings of fact and the conclusions reached can by no stretch of imagination be called unreasonable or perverse. There is no allegation against the tribunal of corruption or bias or of non-compliance with the principles of natural justice.

The learned trial judge has also found so and upheld the award. We find no reason to interfere with the impugned judgment and order. We dismiss the appeal vacating all interim orders.

No order as to costs.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

(I. P. Mukerji, J.)

Biswaroop Chowdhury, J :-

I have perused the judgment delivered by my learned brother and agree with the findings and conclusions. However, I intend to add the following grounds.

This appeal is directed against an order passed by a Learned Single Judge of this Court in rejecting the prayer of the appellant/writ petitioner to set aside the award passed by Learned Central Government Industrial Tribunal answering the reference made by the Central Government under Section 10 (1) (d) and 2A of the Industrial Disputes Act, 1947 in favour of the

respondent no. 4. The reference made by the Central Government is as follows:

“Whether the action of the management of M/S HPCL Paharpur for regulating the services of central employees at Budge-Budge and not regularizing the services of the workman working in the canteen under M/S. Ten Friends Caterers at Paharpur LPG is justified? If not what relief the workmen are entitled.”

It is the contention of the appellant that as the number of employees in the Paharpur unit was less than 250 it was not obligatory for the appellant to establish and run a canteen in the premises under the Factories Act 1948. However, inspite of its non obligation canteen services’ are provided to the employees. As per the respondent no-4 the canteen is seen under the direct supervision and control of the management through the contractor. An attendance register is also maintained by the appellant. The contractor is only an agent of the management.

The appellant/writ petitioner has assailed the order passed by Learned tribunal on the grounds that are as follows:

I. The Order dated 30-06-1998 is bad on account of non-application of the mind by the appropriate Government.

II. The presiding Officer committed an error of Law apparent on the face of the record in relying on the decision reported in 1995 II LLJ. having regard to the differences in fact between those in that case and the case before it.

III. The Learned tribunal misconstrued the agreement between the petitioner and Ten Friends caterer and thereby committed an error of Law apparent on the face of the record.

IV. The Learned tribunal drew impermissible reference from the evidence between it in coming to the conclusion that the canteen had become part of the petitioner’s establishment at the Paharpur Plant

particularly in view of the workmen's statements that the petitioner provided canteen facilities only and thereby committed an error of Law apparent on the face of the record.

V. The Learned Tribunal failed to consider the petitioner's case that the persons working in the canteen at the Paharpur Plant were not the workmen of the contractors but the contractors themselves.

Now at the very outset the ground of challenge with regard to the non application of mind by the appropriate Government in making reference it is necessary to consider the provisions contained in Section 10 (1) (d) of the Industrial Disputes Act.

Section 10 (1) (d) of the Industrial Disputes Act provides as follows:

1. Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at any time by order in writing.
 - a) 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.

Now in order to consider the extent of power of the appropriate government to refer a dispute or matter to Industrial Tribunal it is necessary to consider some judicial decisions.

The government cannot go into the merits of the dispute its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and the employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

In the case of **The Management of Kirloskar Electric Co. Ltd. Vs. The Workmen of Kirloskar Electric Co. Ltd. and Ors.** reported in (1974) 2 LLJ 537, the Hon'ble Court observed as follows:

"When the 'appropriate government' makes a reference of an industrial dispute for adjudication it does not decide the question of fact or Law. The

only condition which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the government is satisfied about, this question it acquires jurisdiction to refer the dispute for adjudication.”

In the case of **India Tourism Development Corporation Vs. Delhi Administration** reported in **1982 Lab IC 1309**, the Hon’ble Court observed as follows:

“However, the condition precedent to the formation of such opinion that there should be an existing or apprehended ‘industrial dispute’ is imperative and the recitals of the existence or apprehension of the Industrial dispute cannot preclude the Judicial review from going behind those recitals and in determining whether in fact there was any material before the ‘Appropriate Government’ and if there was whether the Government applied its mind in giving to the conclusion that an industrial dispute was in existence or was apprehended and it was expedient to make the reference.”

Therefore, an Order of reference is open to judicial review if it is shown that the Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. Thus, upon considering the language of Section 10 (1) (d) it is clear that the Order of reference can be challenged in judicial review. In the instant case the appellant has chosen not to challenge the Order of reference in judicial review. Thus it is not open for the appellant/writ petitioner to take the plea that the order of reference by the appropriate Government is bad in Law. Moreover, it appears from record that prior to sending the matter to the appropriate Government steps were taken by the Assistant Labour Commissioner to settle the dispute between the parties and as the settlement failed the Additional Commissioner referred the matter to the appropriate Government itself for necessary reference along with necessary orders in

the proceedings. Hence, it cannot be presumed that the appropriate Government did not apply its mind in making the reference.

Now with regard to the contention of the appellant about the Order passed by the Learned Single Judge of this Court in Writ Petition No. 1256 of 2007 that Learned Trial Judge erred in Law and facts in failing to consider that the canteen at Paharpur LPG plant of HPCL, is a non statutory canteen and various quotations are submitted by caterers and contractors it is necessary to consider some judicial pronouncement.

In the case of **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Ors. vs. M/s Gopi Nath & Sons and Ors.** reported in **1992 Supp (2) SCC 312**, the Hon'ble Supreme Court observed as follows:

“But here what was assailed was the correctness of findings as if against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

In the matter of **State of Madhya Pradesh and Ors. vs. M.V. Vyavsaya & Co.** reported in **(1997) 1 SCC 156** the Hon'ble Supreme Court observed as follows:-

“It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the Court does not go into the merits of the decision taken by the authorities concerned but only ensures that the decision is arrived at in accordance with the principles of

natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court normally does not go into or adjudicate upon the disputed questions of fact. Yet another principle which has been repeatedly affirmed by this Court is that a person who solemnly enters into a contract cannot be allowed to wriggle out of it by resorting to Article 226 of the Constitution.”

Upon considering the award passed by the Learned Tribunal and upon considering the facts of the case it is clear that the Learned Tribunal after considering the materials before it and upon granting opportunity to adduce evidence to both the parties, arrived at the conclusion. Learned Single Judge while disposing the writ application rightly observed that the writ Court cannot undertake the exercise of re-assessing the evidence and drawing conclusions on the question of fact being fully aware that this Court is not exercising any appellate jurisdiction over the award passed by the Tribunal presided over by a judicial officer. Now with regard to the contention of the appellant that the canteen at Paharpur Plant is a non-statutory canteen it is to be kept in mind that the workmen did not seek any writ of Mandamus directing regularization but made representation to the competent authority which tried to resolve the dispute but as settlement failed the matter was moved before appropriate Government for necessary reference and thus the matter was referred to Industrial Tribunal for adjudication. A writ of Mandamus cannot be issued what is not provided expressly under law, but in case of settlement/adjudication of Industrial Dispute the main objective is Industrial peace. The Industrial Dispute Act is a beneficial legislation and its object is to see that labourers do not face undue hardship.

It has been held in different judicial pronouncements that “industrial law has to be interpreted and applied in the perspective of part IV of the Constitution the benefit of a reasonable doubt on the law and facts if there be such doubt must go to the weaker section of the labour.”

Although Canteen at Paharpur Plant is a non statutory Canteen but the fact that Hindustan Petroleum Corporation Ltd is maintaining statutory canteen in other units and treating the canteen employees as the employees of the undertaking the Learned Tribunal has not committed any error for the purpose of industrial peace and to prevent hardship of canteen employees at Paharpur Plant by directing their regularization. Hindustan Petroleum Corporation Ltd which is deemed to be a state under Article 12 of the Constitution has discretion not to run any canteen where employees are not more than 250 but once it chooses to run canteen for a considerable period it should not discriminate between canteen employees of one unit and canteen employees of another unit.

Thus I agree with the conclusion arrived at by my learned brother.

(Biswaroop Chowdhury, J.)