IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

WRIT APPEAL NO.399 OF 2019 (L-TER)

BETWEEN:

M/s. BOSCH LIMITED
NAGANATHAPURA PLANT
POST BOX No.6887
ELECTRONICS CITY P.O.
BENGALURU-560 100
REPRESENTED BY Mr. P.L. MATHEW
SENIOR GENERAL MANAGER
(HUMAN RESOURCES)
NOW REPRESENTED BY GANESH B.
FACTORY MANAGER

...APPELLANT

(BY SRI. K. KASTURI, SENIOR COUNSEL FOR
SMT. K. SUBHA ANANTHI, ADVOCATE)

AND:

LABOUR THROUGH KARNATAKA RAKSHAK
AND GENERAL WORKERS UNION
REPRESENTED BY ITS PRESIDENT
No.43, M.I.G. 2ND FLOOR
2ND STAGE, K.H.B. COLONY
BASAVESHWARA NAGAR
BENGALURU-560 079

…RESPONDENT

(BY SMT. MAITREYI KRISHNAN, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER OF THE LEARNED SINGLE JUDGE DATED 14.01.2019, IN WP No.41072/2012 (L-TER) AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.11.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This writ appeal is filed challenging the order dated 14.01.2019 passed by the learned Single Judge in W.P.No.41072/2012 (L-TER) and the order dated 04.04.2009 and the award dated 23.08.2012 passed by the II Additional Labour Court, Bengaluru (hereinafter referred to as the 'Labour Court' for short) in Reference No.32/1998.

2. We have heard Smt. K. Kasturi, learned Senior Counsel as instructed by Smt. Subha Ananthi, learned counsel appearing for the appellant and Smt. Maitreyi Krishnan, learned counsel appearing for the respondent.

3. It is submitted by the learned Senior Counsel appearing for the appellant that the appellant is a Company engaged in manufacturing automobile accessories, with it's registered office in Bengaluru and a plant at Naganathapura. A dispute was raised by an external union on behalf of security guards employed through contractors at the appellant's Naganathapura plant, seeking regularization/absorption of these guards. The matter was referred to the Labour Court as Reference No.32/1998, where the parties submitted their claim statements. On 05.10.2000, the Labour Court framed preliminary issues regarding maintainability of the dispute, following which evidence was led by both the parties.

4. It is submitted that during the proceedings, MW-1, representing the Management, was cross-examined. Additional witnesses for the workmen were examined; the cross-examination of WW-3 was completed on 10.06.2008. The appellant sought permission to lead further evidence, which was opposed by respondent on 17.06.2008. On 08.07.2008, the Labour Court rejected this application and

the same was challenged in W.P.No.10243/2008, wherein this Court, by order dated 04.08.2008, reserved liberty to the appellant to challenge the Labour Court's order, post the final award and remanded the matter for adjudication. The numerous documents were submitted as evidence, including certificates of registration, contractor lists and agreements (Ex.M1 to Ex.M6). Additional exhibits included service contracts with security providers, wage statements and correspondence with the Labour Commissioner. Key evidence was marked without objections, such as the certification of contractors (Ex.M3), Form-20 regarding contract work (Ex.M6) and settlement agreements between the appellant and its contractors (Ex.M16).

5. It is further submitted that on 04.04.2009, the Labour Court held that the dispute, despite issues of improper espousal was maintainable due to community of interest and employer-employee relationship between the appellant and the security guards. The appellant challenged order of the Labour Court in W.P.No.27075/2009 but later withdrew the petition, reserving right to contest the order,

post final award. The respondents filed W.P. No.32767/2009, resulting in this Court remanding the case to the Labour Court to address the issue of a sham contract and pass a final award. Additional evidence was recorded and several witnesses were examined, including representative - Mr.Col.Kolhatkar, from M/s. Terrier Security Systems (MW2), Unique Detective Services and Guardwell Detective Services. Contracts and related documents were marked as exhibits (Ex.M25 to M79), covering details of contract extensions, financial transactions and statutory compliance. Specific exhibits, such as Ex.M67 (acknowledged extended contracts) and Ex.M73 (contractor bills), provided detailed accounts of operations and payments.

6. It is submitted that the Labour Court, after completing the evidence on the issue of a sham contract, passed an award on 23.08.2012, declaring the contract as sham. This decision granted the respondent-Union benefits, including regularization and arrears of wages. The appellant contested the findings of the Labour Court, asserting that

the evidence, particularly Exs.M1 to M18, was not adequately considered in an order dated 04.04.2009. The appellant further highlighted its financial difficulties, citing losses of 7.2% in turnover for the year 2008, with spark plug operations recording fluctuating financial results over the years (losses of 4.59% in the year 2006, profit of 2% in the year 2007 and 0.1% in the year 2008). The global recession compounded challenges, leading to operational shutdowns for extended periods. Despite these constraints, the decision of the Labour Court imposed additional financial liabilities on the appellant. In the light of these developments, it is also submitted that the contractual arrangements in security services were not abolished and maintained that the findings of the Labour Court were unsustainable.

7. It is contended by the learned senior counsel appearing for the appellant that the issues raised by the appellant are comprehensively addressed by several judicial precedents, including the full bench judgment of this Court in ***Steel Authority of India Limited v. Steel Authority of***

India Ltd. Contract Workers Union and Others**,** reported in ***(Full Bench) Vol.80 FJR KAR 149***, the Constitution Bench judgment of the Apex Court in ***Steel Authority of India Ltd. and Others, v. National Union Water Front Workers and Others*****,** reported in ***2001 (2) LLJ SC 1087***, and other relevant rulings such as ***Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha and Others*****,** reported in ***1995(2) LLJ SC 790, Dena Nath and Ors. v. National Fertilizers Ltd.*** reported in ***(1992 (1) LLJ SC 289, R.K. Panda and Others v. Steel Authority of India and Others*****,** reported in ***Vol.85 FJR SC 140*** and in ***Food Corporation of India and Others v. Presiding Officer, Central Government Industrial Tribunal cum-Labour Court-1, Chandigarh and Others*****,** reported in ***2008 (1) LLR 391*** and ***International Airport Authority of India v. International Air Cargo Workers' Union an Another*****,** reported in ***2009 LLR SC 923***. The appellant asserts that the judgment of the learned Single Judge contradicts these precedents and the factual record, particularly, regarding

the relationship between the appellant and the contract labour represented by the respondent - Union. The learned Single Judge erred by affirming the Labour Court's conclusion that an employer-employee relationship existed between the appellant and the contract labour. The learned Single Judge, failed to properly exercise the jurisdiction to quash the erroneous award and order of the Labour Court, which were not supported by the law or facts.

8. It is further contended that the learned Single Judge also committed a similar mistake as the Labour Court in holding that there was a community of interest between the persons raising the dispute. According to the appellant, such a community of interest is only applicable when an union of the employer supports the cause of its employees, as clarified by the Apex Court in ***Bombay Union of Working Journalists and Others v. "Hindu", Bombay and Another*****,** reported in ***Vol.XXI FJR 207*****;** and ***Gujarat Electricity Board'***s case *(supra)***.** However, in this case, there was no such Union representation for the contract labour. The learned Single Judge failed to recognize that the

individuals named in the order of Reference were never employed from 01.04.1989, as claimed by the respondent. This factual inaccuracy led to a wrongful conclusion by both the Labour Court and the learned Single Judge.

9. It is also contended that the learned Single Judge incorrectly concluded that the appellant's case was settled by a prior Labour Court ruling regarding the employer-employee relationship, which could not be challenged. However, the issue of employment from 1989 was never applicable, as the relevant evidence from 1990 onward—provided by witnesses such as Mr. P.L.Mathew (MW-1), Mr. Jaffer Khan (MW-5) and Mr. Kolhatkar (MW-2) - was disregarded by the learned Single Judge. The learned Single Judge failed to consider the actual evidence, particularly from the contractors and their supervisors, who clearly testified that the contract labour, were employed by the contractors and supervised by them. The appellant further highlights that even disciplinary actions were taken by the contractors, which disprove the claim of a direct employer-employee relationship with the appellant.

10. It is contended that the learned Single Judge's assumption that the contract labour arrangement was a mere facade and that badges and uniforms provided by the contractor could somehow establish an employment relationship with the appellant was fundamentally flawed, as it overlooks the actual employer-employee relationship between the contract workers and their contractors. The learned Single Judge wrongly ignored the documentary evidence regarding payment of statutory benefits like Provident Fund and ESI, etc., which were duly made by the contractors, not the appellant. Therefore, the orders of the Labour Court dated 04.04.2009, the award dated 23.08.2012 and the subsequent order of the learned Single Judge dated 14.01.2019, should be set aside in the interest of justice.

11. It is contended that the admissions made by WW-1, which were noted in the order of the learned Single Judge dated 14.01.2019, have been ignored, despite their clear implications. These admissions explicitly establish that the respondent-Union is contract labourers. The respondent-

Union have worked under three different contractors since their initial appointment, as per the order of Reference dated 07.02.1998. Furthermore, the question of granting regularization as sought by the respondent-Union does not arise, as there has been no abolition of contract labour in the field of security, nor does the law prohibit the engagement of contract labour in such capacities. Therefore, the findings of the Labour Court and the learned Single Judge are erroneous and should be set aside.

12. It is further contended that the evidence presented by WW-2, Mr. Shivashankar, confirms that the three defendants in O.S.No.242/1997 are indeed contract labourers. In his cross-examination, Mr. Shivashankar admitted that contract supervisors regularly supervised the security personnel, which further corroborates the claim that the respondent-Union was employed under contractors. The observation by the learned Single Judge that the 72 workmen have been working with the appellant - Company since its inception is contrary to the evidence of MW-1, who stated that the respondent - Union were engaged only from

the dates specified in the order of Reference. This finding is unsupported by the evidence on record and must be set aside. Similarly, the statement in paragraph No.27 of the order regarding the duty roster and names of shift-in-charge requires further clarification, as it fails to consider the involvement of contractors in supervising the work of the respondent - Union, as confirmed by MW-5, Mr. Jaffer Khan.

13. It is contended that WW-1 admitted that the respondent-union were not members of MICO Karmikara Sangha and that the Management of the second party was responsible for paying the salaries to the respondent-union. This significant admission was disregarded by the Labour Court and the learned Single Judge. Moreover, WW-1's statement regarding lack of licenses for security contractors, including M/s.Terrier Security Systems, Guardwell or Unique, is contradicted by the evidence on record, rendering this claim baseless and unsupported. The learned Single Judge's observation that the attendance registers for various periods bear the initials of MW-1, P.L. Mathew, is flawed, as it does not align with the documentary evidence or the cross-

examination testimony of WW-1, who identified the signatures as belonging to Mr. L.P. Rao. This discrepancy in signatures, particularly between those of Mr. P.L. Mathew and Mr. L.P. Rao, has not been addressed adequately by the learned Single Judge or the Labour Court.

14. In support of the contentions raised, the learned Senior Counsel placed reliance on the following decisions:-

- ***The Workmen of the Food Corporation of India v. M/s. Food Corporation of India*** reported in ***1985(2) LLJ SC 4;***
- ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N. and Others*** reported in ***(2004) 3 SCC 514;***
- ***Steel Authority of India Ltd. v. Union of India and Others*** reported in ***2006 (3) LLJ SC 1037;***
- ***Tumkur Poura Karmikara Sangha (Regd.), Tumkur v. Municipal Council, Tumkur and Another*** reported in ***2009(4) LLJ 709 (Kant);***
- ***General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal and Another*** reported in ***(2011) 1 SCC 635;***
- ***Bhartiya Kamgar Sena v. Udhe India Ltd and Another*** reported in ***2008 (1) LLR 344;***

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- ***Himmat Singh & Others v. I.C.I. India Ltd. & Ors,*** reported in ***2008 (1) LLR 357;***

- ***The Management of Madura Mills Company Limited v. The Presiding Officer, Industrial Tribunal, Madras and Others*** reported in ***1973 (2) LLJP 341;***

- ***Cement Corporation of India Ltd. v. Presiding Officer, Labour Court-cum-Industrial Tribunal, Hissar and Others*** reported in ***2010 (2) LLJP 548 (P & H);***

- ***National Thermal Power Corporation and Others v. Badri Singh Thakur and Others*** reported in ***(2008) 9 SCC 377;***

- ***Steel Authority of India Ltd. v. Union of India and Others*** reported in ***2006 (4) LLN 651;***

- ***Madras Refineries Limited and Others v. The Chief Commissioner for Persons with Disabilities and Others*** reported in ***2012 (3) LLN 399 (Mad.);***

- ***Bharath Electronics Contract Labour Union and Others v. M/s. Bharath Electronics Limited,*** reported in ***ILR 2012 KAR 1653;***

- ***The Management of BWSSB, Cauvery Bhavan and Others v. M. Mahadeva and Others*** reported in ***2016 LLR 36;***

- ***Balwant Rai Saluja and Another v. Air India Ltd and Others*** reported in ***2014 LLR 1009;***

- ***Workmen of Motor Industries Company Limited v. The Management of Motor Industries Company Limited, by Order dated 21.01.2010*** *passed in* ***Writ Petition No.32767 of 2009 (L-RES);***

- ***Chief Engineer, Hydel Project and Others v. Ravinder Nath and Others*** reported in ***(2008) 2 SCC 350;***

- ***Kiran Singh and Others v. Chaman Paswan and Others*** reported in ***AIR 1954 SC 340;***

- ***A.R. Antulay v. R.S. Nayak and Another*** reported in ***AIR 1988 SC 1531;***

- ***Milkhi Ram v. Himachal Pradesh State Electricity Board*** reported in ***(2021) 10 SCC 752;***

- ***The Management of Kalpana Theatre etc. v. B.S. Ravishankar Major and Others*** reported in ***AIR 1995 Kar 426;***

- ***Caparo Engineering India Ltd v. Ummed Singh Lodhi and Another by Order dated 26.10.2021*** *passed in* ***Civil Appeals No.5829-5830 of 2021;***

- ***State of M.P. and Others v. Visan Kumar Shiv Charan Lal*** reported in ***AIR 2009 SC 1999;***

- ***Tammanna D. Battal and Others v. Miss Renuka R. Reddy and Others*** reported in ***AIR 2009 Kar 119;*** *and*

- ***Kirloskar Brothers Limited v. Ramacharan and others*** reported in ***(2023) 1 SCC 463.***

15. It is contended by the learned counsel appearing for the respondent that initially the Labour Court held that the dispute was maintainable and confirmed that 72 workmen employed in the Watch and Ward Department were directly employed by the appellant and issued an Award dated 23.08.2012, affirming that the 72 workmen were the direct employees of appellant - Company and entitled to absorption into the workforce. The Award granted consequential benefits, including pay scales, arrears and other benefits specified therein to these workmen. The appellant, dissatisfied with these findings, filed W.P.No.41072/2012, which was dismissed by the learned Single Judge dated 14.01.2019.

16. It is also contended that the order passed by the learned Single Judge is within the jurisdiction and powers conferred under Article 227 of the Constitution of India. Consequently, an intra-court appeal against such an order is barred under Section 4 of the Karnataka High Court Act, 1961. This position was upheld in the decision of the this Court in ***Management of Bharath Fritz Werner Ltd. vs***

Bharath Fritz Werner Karmikara Sangha by order dated ***29.06.2022*** in ***W.A.No.497/2022,*** where it was held that the orders under Article 227 are not the subject to intra-court appeal.

17. It is contended by the learned counsel appearing for the respondent that the workmen were employed at the Naganathapura Plant of the appellant - Company from its inception on 01.04.1989, as corroborated by the claim statement and the admissions of MW-1 in evidence. It is a settled legal principle that admitted facts do not require additional proof. Further, it was highlighted that the appellant lacked the requisite registration certificate under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'CLRA Act') at the time of appointment. The certificate dated 21.04.1994, and subsequent agreements with contractors starting 25.08.1995, suggests the absence of any lawful contractual relationship during the relevant period.

18. It is contended that the contract between the appellant and the purported contractor was a sham and

merely a cover-up after the workmen began asserting their rights. Evidence showed that the appellant exercised complete supervision and control over the workmen, including wage disbursement, allowances and contributions to ESI and PF. MW-1 was testified to collect and distribute these payments on behalf of the appellant. These factors collectively demonstrated that the appellant was the actual employer of the workmen, undermining the claim of a contractual arrangement.

19. With regard to the authorities furnished by the learned senior counsel appearing for the appellant, it is contended as follows:-

> *(i)* ***Steel Authority of India v. Steel Authority of India Ltd. Contract Workers Union and Ors. [Col 80 FJR Kar Page 149]:*** *In this case, the question before the Court was when the principal employer had a registration certificate, and the contractor did not have a licence, whether the workers would be deemed to be the employees of the principal employer. In fact, it is noted therein "From the above it is clear that there is a bar against a principal employer from employing contract labour without being registered under Section 7"(Para 16). In the instant case, the appellant did not have a registration certificate under Section 7 and there was no*

agreement entered into. Hence the said judgment is clearly distinguishable and cannot be relied upon.

(ii) ***Dena Nath and Others. v. National Fertilizers Ltd. [1992 (1) LLJ SC Page 289]:*** *The Hon'ble Supreme Court in this case was considering the powers of the High Court in respect of abolition of contract under Section 10 of the Contract Labour Act, and hence the same is not relevant in the instant case.*

(iii) ***Workmen of Food Corporation of India v. Management of Food Corporation of India [1985(2) LLJ SC Page 4]:*** *This case lays down the law that when a worker has been employed by an employer, he cannot thereafter be shifted to a contractor, and such action would be void, and the worker would continue to be employed by the original employer. The instant Authority supports the case of the respondent workmen [Para 15]*

(iv) ***R.K. Panda and Ors. v. Steel Authority of India and Ors. [Vol.85 FJR SC 140]:*** *This judgment is in regard to regularization of the workers, and not in regard to sham contracts and hence is not applicable in the instant case.*

(v) ***Gujarat Electricity Board v. Hind Mazdoor Sabha [(1995) 5 SCC 27]:*** *In this case, the law has been laid down that when the contract is sham and not genuine, the workmen of the so-called contract can themselves raise an industrial disputes (Para 53). This clearly shows that the Respondent workmen had the locus standi to raise the industrial dispute*

(vi) ***Steel Authority of India v. Union of India (2006)12 SCC 233:*** *The case is in regard to abolition of contract labour under Section 10 and hence cannot be relied upon herein."*

20. It is further contended that the other authorities relied upon are clearly distinguishable on facts and have no bearing on the instant case. Hence, it is prayed that the appeal be dismissed.

21. In support of the contentions raised, the counsel placed reliance on the following decisions:-

- ***Radhey Shyam and Another v. Chhabi Nath and Others*** reported in ***(2015) 5 SCC 423;***
- ***Kiran Devi v. The Bihar State Sunni Wakf Board and Others, by Order dated 05.04.2021 passed in Civil Appeal No.6149 of 2015;***
- ***K.V. Shetty v. The Sr. Vice President, by Order dated 26.02.2020 passed in W.A.No.100215/2017 (L-RES);***
- ***The Alahar Co-operative Credit Service Society v. Sham Lal*** reported in ***LAWS(SC)-1996-5-120;***
- ***The Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi*** reported in ***AIR (37) 1950 SC 188;***

- ***Caparo Engineering India Ltd v. Ummed Singh Lodhi and Another by Order dated 26.10.2021 passed in Civil Appeals No.5829-5830 of 2021;***

- ***M/s. Mitra S.P. (P) Ltd. & Another v. Dhiren Kumar, by Order dated 22.07.2022 passed in Special Leave Petition (Civil) Diary No(s).15875/2022;***

- ***Gurushanth Pattedar v. Mahaboob Sbahi Kulburga Mills and Another*** reported in ***ILR 2005 KAR 2503;***

- ***Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, by Order dated 19.11.1979 passed in C.A.No.1212 and 2237 of 1978;***

- ***Shyam Narayan Prasad v. Krishna Prasad and Others*** reported in ***(2018) 7 SCC 646;***

- ***Shankar Chakravarti v. Britannia Biscuit Co. Ltd and Another*** reported in ***AIR 1979 SC 1652;***

- ***Union of India v. Varma (T.R.), by Order dated 18.09.1957 passed in Civil Appeal No.118 of 1957;***

- ***The Management of M/s. Stumpp, Schule and Somappa Springs Pvt. Ltd. v. Sri. U. Mallikarjuna, by Order dated 21.10.2024 passed by WA No.1685 of 2018 (L-TER);***

- ***Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) v. Dharam Pal Prem Chand (Saugandhi)*** reported in ***1965 SCC OnLine SC 128;***

- ***M/s. Tata Chemicals Ltd v. The Workmen, Rep by Chemicals Kamdar Sangh*** reported in ***(1978) 3 SCC 42;***

- ***Gujarat Electricity Board, Thermal Power Station, UKAI, Gujarat v. Hind Mazdoor Sabha and Others*** reported in ***(1995) 5 SCC 27;***

- ***Hussainbhai v. The Alath Factory Tezhilali Union and Others*** reported in ***AIR 1978 SC 1410;***

- ***Dharangadhara Chemical Works Ltd v. State of Saurashtra and Others*** reported in ***AIR 1957 SC 264;***

- ***Shivnandan Sharma v. The Punjab National Bank Ltd*** reported in ***AIR 1955 SC 404;***
- ***Secretary, H.S.E.B. v. Suresh and Others*** reported in ***(1999) 3 SCC 601;***

- ***Indian Petrochemicals Corporation Ltd. and Another v. Shramik Sena and Others*** reported in ***AIR 1999 SC 2577;***

- ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another*** reported in ***AIR 2000 SC 1508;***

- ***M/s. Bharat Heavy Electrical Ltd. v. State of U.P. and Others*** reported in ***AIR 2003 SC 3024;***

- ***The Management of National Aerospace Laboratories v. Engineering & General Workers Union and Another*** reported in ***ILR 2015 KAR 349;***

- ***Aeronautical Development Agency and Others v. Nanjamma and Others*** reported in ***2012 SCC OnLine Kar 8840;***

- ***Hindustan Petroleum Corporation Limited and Others v. Shivananda and Others*** reported in ***MANU/KA/0683/2016;***

- ***Sankar Mukherjee and Others v. Union of India and Others*** reported in ***1990 (Supp) SCC 668;***

- ***Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma, dead by L.Rs., and Others*** reported in ***AIR 2011 SC 3546;***

- ***Sudarshan Rajpoot v. Uttar Pradesh State Road Transport Corporation*** reported in ***(2015) 2 SCC 317;***

- ***ONGC Ltd v. Petroleum Coal Labour Union and Others*** reported in ***AIR 2015 SC 2210;***

- ***BEML Limited v. The President Mysore Divison General Labour Association and Others*** reported in ***MANU/KA/1132/2015;***

- ***State of Bombay and Others v. Hospital Mazdoor Sabha and Others, reported in 1960 SCC OnLine SC 44;***

- ***M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd v. The Labour Appellate Tribunal of India, IIIrd Branch, Lucknow and Others*** reported in ***AIR 1964 SC 737;***

- ***Harjinder Singh v. Punjab State Warehousing Corporatio,*** reported in ***(2010) 3 SCC 192;***

- ***Sangram Singh v. Election Tribunal Kotah and Another*** reported in ***AIR 1955 SC 425;***

- ***Syed Yakoob v. K.S. Radhakrishnan and Others*** reported in ***AIR 1964 SC 477;***

- ***Management of Mysore Paper Mills Limited, Bhadravathi v. General Secretary, Mysore Paper Mills Workers' Association (Work Order), Bhadravathi*** reported in ***.2009 SCC OnLine Kar 222;***

- ***Management of Mysore Paper Mills Ltd., v. General Secretary Mysore Paper Mills Workers Association (Work Order) by Order dated 18.01.2012 passed in Writ Appeal No.2148/2009 (L-RES);***

- ***Commissioner of Income Tax (Central) v. B.N. bhattacharjee and Another*** reported in ***(1979) 4 SCC 121;***

- ***Workmen of Motor Industries Company Limited v. The Management of Motor Industries Company Limited by Order dated 21.01.2010*** *passed in* ***Writ Petition No.32767 of 2009 (L-RES)*** *and*

- ***State of Maharashtra v. Labour Law Practitioners' Association and Others*** reported in ***(1998) 2 SCC 688.***

22. Having considered the contentions advanced, we are of the opinion that though extensive contentions are

raised with regard to the legality of the findings of the learned Single Judge as well as the Labour Court, the actual point for consideration lies in a very narrow compass. In view of the conflicting judgments on the point of maintainability of the writ appeal, we have examined the judgment of the learned Single Judge, we find that in the instant case, the findings of the Labour Court are challenged not only on the grounds available under Article 227 of the Constitution of India but on merits as well. We are therefore of the opinion that the exercise undertaken by the learned Single Judge could have been under Article 226 of the Constitution of India and as such, it would not be proper to non-suit the appellant on maintainability. We therefore proceed to consider the appeal.

23. It is an admitted fact that a new factory was established by the Management which started functioning in the year 1989. The said new plant was admittedly a separate and distinct establishment as defined under the CLRA Act. The establishment had obtained registration under the CLRA Act as a principal employer only on 21.04.1994.

This fact is not disputed even before us in these proceedings. The Labour Court had specifically entered a finding to this effect on the basis of the pleadings and the evidence on record. The learned Single Judge has also specifically noticed this fact. Even in appeal, the appellant has no case, on facts, to the contrary.

24. It is not in dispute that the CLRA Act is enacted to regulate the employment of Contract Labour and to provide for its abolition in certain circumstances. It is undoubtedly, a social welfare legislation enacted for the welfare of labourers, whose conditions of service are unsatisfactory and is therefore required to be liberally construed. Socio-Economic legislation which is aimed at social or economic policy changes, the interpretation should not be narrow and should prospectively favour the weaker and poor class.

25. Section 7 of the CLRA Act, reads as follows:

> ***"7. Registration of certain establishments****.-(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the*

registering officer in the prescribed manner for registration of the establishment:

Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed."

26. Section 9 of the CLRA Act, reads as follows:

*"**9. Effect of non-registration**.-No principal employer of an establishment, to which this Act applies, shall-*

(a) in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be."

27. In the instant case, the Labour Court was faced with a situation where the principal employer did not have

registration under Section 7 of the CLRA Act and the alleged contractor did not have license at the relevant time. The workmen had raised a specific contention that the contract was a sham document and that they were as a matter of fact being employed directly by the principal employer. After considering the extensive documentary and oral evidence on record, the Labour Court came to a conclusion that the contract entered into was sham. The decisions in ***Dena Nath***'s case (supra), and ***Steel Authority of India Ltd***'s case (supra), would not, in our opinion, stand in the way of the Labour Court entering into a factual finding in a dispute raised by employees specifically on the question whether the contract was a sham document. True, a Constitutional Court may not be justified in finding that the employees are the direct employees of the principal employer only because the contractor did not have a license or the principal employer did not have registration. But the Labour Court, after appreciation of evidence, would be fully within its jurisdiction in coming to such a conclusion on the basis of such evidence.

28. The Apex Court in ***Dena Nath***'s case (supra), specifically held that in the absence of a notification prohibiting contract labour under Section 10, it is not for the High Court to issue directions deeming the contract labour as direct employees. However, question has to necessity or bona fides of employment of contract labour can be referred to as an industrial dispute and the Labour Court/Industrial Tribunal can give appropriate directions to the principal employer.

29. The Labour Court has considered the issue and has specifically found that the registration under Section 7 of the CLRA Act was obtained by the establishment only on 21.04.1994. It was also found that the contractor did not have due license under the CLRA Act. After taking note of the evidence, the Labour Court came to the conclusion that the workmen engaged for carrying out security duty could only have been direct employees of the principal employer. The direct supervision exercised by the principal employer and the admissions made by the Management witnesses were specifically considered by the Labour Court to come to

this conclusion. We notice that it is only in 1996 that the first contract was entered into between the principal employer, who had due registration under Section 7 of the CLRA Act and a contractor who had due license under the CLRA Act. Therefore, the contention of the appellant that the contract labourers in question were not engaged in the year 1989 and were engaged only in 1992 would make no difference to the situation since in 1992 also, the specific finding is that the contract, if any, was only a sham document.

30. Though the learned senior counsel appearing for the appellant attempted to draw our attention to the details of the evidence led before the Labour Court, we are of the opinion that re-appreciation of the evidence led before the Labour Court would be impermissible by the learned Single Judge exercising jurisdiction under Articles 226 and 227 of the Constitution of India and indeed by us in an intra-Court appeal in these proceedings. The contention that the Union which espoused the cause of the workmen was not the recognised Union of the establishment would also be of no

avail in a case, where the specific contention is that the contract relied on by the Management is sham. In such circumstances, it is clear that the workmen can themselves raise the dispute. The contentions, if any, taken by the workmen in an earlier suit would also not make any difference to the situation since the Labour Court which is the adjudicating authority empowered to decide an industrial dispute considers and decides the dispute raised before it on the basis of the evidence led by both sides.

31. It is trite law that an award of the Labour Court, which is rendered after considering the evidence placed on record is not liable to be lightly interfered with by the Constitutional Court exercising the power of judicial review. The Apex Court in the case of ***State of Andhra Pradesh and Others v. S. Sree Rama Rao*** reported in ***1963 SCC OnLine SC 6***, has held that, "It is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence." It is only when the findings arrived at by the Labour Court are patently illegal, totally unreasonable or

perverse that the Constitutional Court would be justified in interfering with such findings. It is also clear that what is being exercised is not any power of appeal since no such appeal is contemplated under the provisions of the statute.

32. We notice that the learned Single Judge has considered the contentions of the appellant and has found that the findings of the Labour Court cannot be said to be perverse or unreasonable. On a consideration of the contentions advanced and the materials on record, we are of the opinion that the findings of the learned Single Judge do not call for interference. The appeal fails and the same is accordingly ***dismissed***.

Pending IAs, if any, stand *disposed of*.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

cp*