(2018) 05 RAJ CK 0204

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4304, 5198, 5746, 6258, 5846, 6140, 6363, 6368 of 2018

Ashish Kumar @APPELLANT@Hash State Bank of India

Date of Decision : 31-05-2018

Acts Referred:

Banking Regulation Act, 1949 — Section 23
Specific Relief Act, 1963 — Section 14
Constitution of India, 1950 — Article 12, 21, 226

Citation : (2018) 05 RAJ CK 0204

Hon'ble Judges : DR.PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Rajesh Panwar, Sukesh Bhati, Devendra Soni, M.S.Singhvi, Dr.Sachin Acharya

Final Decision : Allowed

Judgement

1. Since the present indictment under Article 226 of the Constitution of India, common in the instant batch of writ petitions,Â is in essence, mounted

against the common cause of action, that has arisen to the present petitioners, therefore, the present writ petitions have been heard analogously and

the present adjudication would answer the same.

2. Considering the subject matter of assailment and the analogy of the grounds thereof, dilation on the individual facts is considered inessential, and

therefore, the skeletal narration of the factual background, necessary and germane for appreciating and thrashing out the present lis, from the

pleadings of leading case being S.B.Civil Writ Petition No.4304/2018 and the relief clauses thereof, would suffice.

3. These writ petitions under Article 226 of the Constitution of India have been preferred claiming, in sum and substance, the following reliefs:

â??(a) The respondents may be directed to continue the petitioners on the post of Business Correspondent (BC) directly as are/were continuing for

last many years.

(b) The respondents may be directed not to terminate the services of the petitioners so as to replace contractual employees by other set of employees.

(c) The action of the respondents in corporatization of individual business correspondents may kindly be quashed and set aside.

(d) That the costs of the writ petition be also awardedin favour of the petitioner.

(e) That any other appropriate writ or order or direction which is favourable to the petitioner in the facts and circumstances of the case may kindly be

granted to the petitioner.â??

4. As the pleaded case of the petitioners would reveal, they are seeking continuation of their services as Business Correspondents, while questioning

the intervention of private contractor/placement agency/corporate companies, on the strength of the following circumstances:

(i) Guidelines of the Reserve Bank of India (RBI) provides toengageÂ theÂ IndividualÂ BusinessÂ Correspondents through private

contractor/placement agency/corporate companies.

(ii) On an earlier occasion as well, the respondents initiated similarkind of action by issuing circular, whereupon this Honâ??ble Court passed the

interim order directing continuance of the services of the petitioners, and thereupon, the respondents had withdrawn the said circular.

(iii) Engagement through private contractor/placement agency/corporate companies results into taking away of the financial benefits arising out of the

petitionersâ?? services.

(iv) The petitioners are rendering their services for last manyyears without any complaint and to the utmost satisfaction of the respondents authorities

as Individual Business Correspondents (v) Discontinuance of the engagement/ services of the directly engaged/serving individuals by private

contractor/placement agency/corporate companies has also been held as bad by this Honâ??ble Court.

5. The factors governing the respondents are the Guidelines issued by the RBI from time to time, as per the directions of the Government of India,

with the sole object to facilitate rendering of the banking services, amongst the public at large. The RBI has also issued the Guidelines pertaining to engagement of Business Correspondents/Business Facilitator for increasing the outreach of the Bank and to achieve greater financial inclusions.

6. In pursuance of the RBI Guidelines, the erstwhile State Bank of Bikaner & Jaipur issued an advertisement so as to engage the Business

Correspondent/Business Facilitator (BC) and prescribed the procedure for selection thereof. The Business Correspondents are also known by the

name of Service Provider and Bank Mitra.

7. In pursuance of the aforementioned advertisement, the petitioners submitted their application forms, and after scrutinizing such applications, the

respondents conducted the process of interview and document verification, which was followed by selection of the petitioners through the selection

committee, whereafter, their police verification was also conducted. Thereafter, the respondents issued appointment letters to the petitioners and

imparted training to them, so as to enable them to perform their work as Business Correspondents in an efficient and effective manner.

8. Thereafter, a service agreement (Annexure-4 of the writ petition) was executed between the respondents and the present petitioners, setting out

certain details pertaining to the terms and conditions, security deposits etc. On the basis of the said service agreement, the petitioners are still

continuing as Business Correspondents with the respondents.

9. In lieu of receiving the security deposits from the petitioners, the respondents provided POS Machine to the petitioners to carry out the banking

business in the remote areas, where the banking facilities were not available. The petitioners were also issued the identity and operator cards. The

respondents, in this series, have also kept with them an FDR of Rs.50,000/- as a security deposit made by the petitioners.

10. The working hours of such Business Correspondents were from 08:00 a.m. to 02:00 p.m., and they were allowed to render their services till 08:00

p.m. The respondents used to give Rs.3,000/- as salary, coupled with the commission, in lieu of petitioners providing maximum facilities to the villagers,

with a view to increase the banking business of the Bank.

11. In this manner, the petitioners have received the higher amount of the fixed salary and the commission. However, the salary of the Business

Correspondents has been enhanced by the respondents to Rs.5,000/-, and presently, the petitioners are getting a sum of Rs.5,000/- as minimum salary and the exceeded commission. The remuneration payable to the petitioners was increased as per the order of the Finance Department.

12. The petitioners were also required to get the several works done on behalf of the respondents, like opening the accounts, financial transaction,

getting FDRs, RDs payment under the Atal Pension Yojana, recovery of loan amount, payment in regard to the government project, opening of Jan

Dhan Accounts, etc.

13. In November, 2014, the online banking system has been introduced by the Banks, pursuant whereto, the petitioners were directed to perform their

work in accordance with the said banking system. For that purpose, the petitioners purchased the computer machines and other requisite accessories

for performing the online process of banking.

14. With a view to achieve efficiency in performance of the banking business, the then State Bank of Bikaner & Jaipur through Rural Self

Employment Training Institute, conducted the training programme for the Business Correspondents in the year 2015. Apart therefrom, the Indian

Institute of Banking and Finance conducted the online examination of the Business Correspondents, in pursuance whereof, the petitioners participated

in the process of such examination and were declared successful therein.

15. Thereafter, following the merger of the then State Bank of Bikaner & Jaipur in the State Bank of India on 01.04.2017, all its employees, including

the present petitioners were accordingly merged and were also treated as the employees of the State Bank of India. Pursuant to such merger, all the

assets of the then State Bank of Bikaner & Jaipur were also merged with the State Bank of India. During such merger proceedings, the consent was

taken from all the employees of the then State Bank of Bikaner & Jaipur to serve in the State Bank of India on the same terms and conditions

pertaining to fee, remuneration structure etc.

16. The Business Correspondents i.e. the present petitioners were verbally informed by their Zonal Manager and Branch Manager requiring them to

attend the meeting, scheduled to be held on 20.05.2017. Upon having attended the said meeting, it came to the knowledge of the petitioners that the

respondents were planning to discontinue the petitioners directly, while advising them to serve through the private contractor/placement

agency/corporate company. The said information was found to be authentic by the petitioners, upon their being supplied the copy of the

communications dated 18.05.2017 and 19.05.2017, when they received the messages from various private contractor/placement agency/corporate

companies regarding their joining, pursuant to their re-engagement as Business Correspondents.

17. The aforementioned communications would reveal that the services of the petitioners were to be continued through the various private

companies/corporate companies. The respondents directed and instructed the authorities concerned to disengage/terminate the services of the

petitioners or engage them through various private contractor/placement agency/ corporate companies. In fact, the petitioners, who have acquired vast

experience and have invested their valuable time and money, are willing to perform their work directly with the respondents, without there being any

intervention of the private contractor/placement agency/corporate companies.

18. Learned counsel for the petitioners submitted that the respondents have taken a decision in regard to corporatization of

Individual Business Correspondents, and for that purpose, the respondents have circulated the communication dated 16.02.2018 to various

administrative offices. The said communication has come to the knowledge of the petitioners recently, upon the respondents authorities having

informed the petitioners about their re-engagement through the private contractor/placement agency/corporate companies.

19. Learned counsel for the petitioners also submitted that the petitioners only wish to continue their engagement directly with the respondents, more

particularly, when there is no plausible reason for discontinuing the services of the Individual Business Correspondents, who are having vast

knowledge and experience and are also well versed and equipped with the machinery etc.

20. Learned counsel for the petitioners further submitted that the re-engagement of the petitioners with the private companies/corporate companies

would certainly result into reduction in the financial benefits, to which the petitioners are entitled, as they will take out their commission from the

amount, which is payable to the petitioners.

21. Learned counsel for the petitioners also submitted that the petitioners had made huge investments, not only in terms of money, but also their

precious time in the Scheme so introduced by the RBI, and apart therefrom, the petitioners have much hope from the welfare scheme introduced by

the RBI. Thus, the aforesaid action of the respondents is nothing, but an attempt to make such exercise of the petitioners to go in vain.

22. Learned counsel for the petitioners further submitted that the RBI Notification/Guidelines stipulated that the individual can be appointed and

continued as Business Correspondent, and thus, the respondents were not at all empowered to disengage/terminate the well experienced and trained

Business Correspondents, like the present petitioners, who have been rendering their services for last many years with dedication and loyalty to the

utmost satisfaction of the respondents, apart from investing their hard-earned money and valuable time, only with the legitimate expectation that their

services shall be continued directly with the respondents.

23. Learned counsel for the petitioners has made the submission that the Honâ??ble Apex Court, in plethora of judgments, has categorically held that

one set of contractual employees cannot be replaced by another set of contractual employees, and upon such an inaction having been taken, the

Honâ??ble Courts, time and again, have protected the rights of such contractual employees. Thus, in the present case also, the present petitioners are

also entitled for protection of their legitimate rights, which are sought to be infringed by the respondents, by re-engaging the petitioners through

placement agencies, to work under the private/corporate companies.

24. Learned counsel for the petitioners has tried to strengthen the aforesaid submission on the ground that inspite of there being no complaint against

the petitioners pertaining to performance of their duties, an attempt is being made by the respondents to engage the petitioners through the placement

agencies, instead of continuing the petitionersâ?? services directly with the respondents.

25. Learned counsel for the petitioners has thus submitted that the respondents, without any cogent reason, are going ahead with the exercise of

discontinuing the services of the petitioners, directly with the respondents, as Business Correspondents by reengaging them through the placement

agencies. Moreover, the said exercise of the respondents would not serve any purpose, rather would be detrimental to the rights of the petitioners,

which would ultimately result into lack of zeal and enthusiasm amongst the contractual employees, like the present petitioners.

26. Learned counsel for the petitioners further submitted that the policy of the respondents for corporatization is per se wrong and illegal, for the

simple reason that such decision would certainly cause discontinuance of the services of Individual Business Correspondents, while retaining the

corporate entities, only keeping in view the convenience of the Bank. Such a decision of the respondents would certainly frustrate the very purpose of

the Scheme and the RBI Guidelines, which were issued in regard to extend/ outreach the banking facility to the rural folk, while giving attention on

individual/family basis, which could not be catered in an appropriate manner by the corporate entities.

27. Learned counsel for the petitioners also submitted that the goals set out by the respondents themselves at the time of engaging the Business

Correspondents, would not be achieved due to the corporatization sought to be done by them, while dispensing with the services of the petitioners.

Thus, the said policy of the respondents is violative of the Guidelines of the RBI itself, which were issued from time to time.

28. The next submission raised by learned counsel for the petitioners is that the RBI has taken number of initiatives for increasing the banking

outreach and ensuring greater financial inclusions, and the significant step, in that direction, was the Guidelines issued by the RBI in January, 2006 for

engagement of Business Correspondents by Banks for providing banking and financial services; the objective thereof was to aid the process of

financial inclusion and consequential extension of banking to the remotest areas of the country, so as to make them bankable. In this regard, the RBI

had issued the first notification on 25.01.2006 for all commercial banks requiring the Banks to ensure that the scheme so formulated is implemented in

its strict sense, keeping in view the objectives and parameters laid down therein and; all agreements/contracts with the customers shall clearly specify

that the Bank is responsible to the customers for the acts of omission and commission of the Business Correspondent/Business Facilitator.

29. As per learned counsel for the petitioners, the RBI issued notifications dated 24.04.2008, 30.11.2009 and 26.04.2010 in respect of all commercial

banks, whereby certain selected individual entities were permitted to be engaged as Business Correspondents. In yet another notification dated

27.08.2008, in point No.3 thereof, it has been clearly mentioned that where the individuals, under the permitted categories, have been appointed as

Business Correspondents, they cannot, in turn, appoint sub-agents.

30. The RBI vide the notification dated 26.04.2010, in point No.3 thereof, has clearly stipulated that on a review and with a view to provide more

flexibility to Banks, it has been decided to permit the banks to engage any individual, including those operating Common Service Centres (CSCs) as

Business

Correspondents, subject to Bankâ??s comfort level and their carrying out suitable due diligence as also instituting additional safeguards, as may be

considered appropriate to minimize the agency risks. 31. Learned counsel for the petitioners further submitted that a Master Circular dated 01.07.2014

also came to be issued by the RBI for all commercial banks, and the relevant paras thereof speak of Classification and the statutory guidelines issued

by the RBI; point (i) thereof speaks of Guidelines for engaging Business Correspondents, wherein clause (A) is in respect of eligibility

individuals/entities, and clause (C) is in regard to procedure for engaging the Business Correspondents.

32. Learned counsel for the petitioners has thus made out a case that the concept of the Business Correspondents was brought about only with the

aim of providing banking service over the areas, where the Bank could not reach, and for that purpose, the Individual Business Correspondents were

engaged by the banks so as to target the rural folk, and subsequently, the companies were permitted, which implies that two different cadres have

been made by the RBI for the purpose of Business Correspondents.

33. Lastly, learned counsel for the petitioners submitted that since the inception of the Business Correspondents, the RBI has always been very

specific and has stipulated, in its notifications, that the risk and liability would only be borne by the Bank and the Business Correspondents are

agents/employees of the Bank, which can be inferred on the basis of the duties enshrined, nature of the work, fees/commissions paid, procedure for

engagement i.e. via contract and conditions mentioned in the advertisement for appointment of the Business Correspondents.

34. In support of his submissions, learned counsel for the petitioners has relied upon the precedent law laid down by the Honâ??ble Apex Court in

GRIDCO Limited & Anr. Vs. Sri Sadananda Doloi & Ors. in Civil Appeal No. 11303 of 2011 (Arising out of SLP (C) No. 10164 of 2008) decided on

16.12.2011, relevant paras of which read as under:-

â??26. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a

notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the

contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to

be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law

relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no

longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is

entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that

would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court

acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a

more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to

be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do

well to respect the decision under challenge.

27. Applying the above principles to the case at hand,we have no hesitation in saying that there is no material to show that there is any

unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the

employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

28. It is also evident that the renewal of the contractof employment depended upon the perception of the management as to the usefulness of the

Respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The

Respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was

limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or

unequal bargaining power between the Appellant and the Respondent to call for an oversympathetic or protective approach towards the latter. We

need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those

who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial

to both the contracting parties and not otherwise.â??

35. Learned counsel for the petitioners has also placed reliance on the precedent law laid down by the Honâ??ble Apex Court in Hussainbhai,

Calicut Vs. Alath Factory Thozhilali Union, Kozhikode & Ors., reported in (1978) 4 SCC 257, relevant para of which reads as under:

â??5. 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 no consequence when, on lifting the veil or looking at the conspectus of factors

governing employment, we discern the naked truth, though Sniped 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 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 43A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the

maya of legal appearances.â??

36. Reliance has also been placed by learned counsel for the petitioners on the precedent law laid down by the Honâ??ble Apex Court in Balmer

Lawrie & Co. Ltd. Vs. Partha Sarathi Sen Roy, reported in (2013) 8 SCC 345, relevant para of which reads as under:-

â??30.Where the actions of an employer bear public character and contain an element of public interest, as regards the offers made by him, including

the terms and conditions mentioned in an appropriate table, which invite the public to enter into contract, such a matter does not relegate to a pure and

simple private law dispute, without the insignia of any public element whatsoever. Where an unfair and untenable, or an irrational clause in a contract,

is also unjust, the same is amenable to judicial review. The Constitution provides for achieving social and economic justice. Article 14 of the

Constitution guarantees to all persons equality before the law and equal protection of the law. Thus, it is necessary to strike down an unfair and

unreasonable contract, or an unfair or unreasonable clause in a contract, that has been entered into by parties who do not enjoy equal bargaining

power, and are hence hit by Section 23 of the Contract Act, and where such a condition or provision becomes unconscionable, unfair, unreasonable

and further, is against public policy. Where inequality of bargaining power is the result of great disparity between the economic strengths of the

contracting parties, the aforesaid principle would automatically apply for the reason that, freedom of contract must be founded on the basis of equality

of bargaining power between such contracting parties, and even though ad idem is assumed, applicability of standard form of contract is the rule.

Consent or consensus ad idem as regards the weaker party may therefore, be entirely absent. Thus, the existence of equal bargaining power between

parties becomes largely an illusion. The State itself, or a State instrumentality cannot impose unconstitutional conditions in statutory rules/regulations

vis-Ã -vis its employees in order to terminate the services of its permanent employees in accordance with such terms and conditions. (Vide Central

Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 :

1986 SCC (L&S) 429 : (1986) 1 ATC 103 : AIR 1986 SC 1571] , DTC v. Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S)

1213 : AIR 1991 SC 101] , LIC [LIC v. Consumer Education and Research Centre, (1995) 5 SCC 482 : AIR 1995 SC 1811] , K.C. Sharma v. Delhi

Stock Exchange [(2005) 4 SCC 4 : 2005 SCC (L&S) 496 : AIR 2005 SC 2884] and Punjab National Bank v. Astamija Dash [(2008) 14 SCC 370 :

(2009) 1 SCC (L&S) 673 : AIR 2008 SC 3182] .)â??

37. Reliance has further been placed by learned counsel for the petitioners on the judgment rendered by this Honâ??ble Court in Mahendra Kumar

Vs. Union of India & Ors. (S.B.Civil Writ Petition No.9291/2017 decided on 12.04.2018, relevant portion of which reads as under:-

â??7. After hearing learned counsel for the parties and perusing record of case, this Court finds that the petitioners, who are rendering contractual

service as Teacher/Warden at Government Residential School (Boys) under the Sarva Shiksha Abhiyan since 2012/2015. This Court is of the opinion

that such contractual service under Sarva Shiksha Abhiyan can be terminated only in accordance with the directions given by Honâ??ble Division

Bench of this Court in State of Rajasthan & Ors. Vs. Kusum Devi & Ors. (supra). Apparently, the precedent law does not permit contractual

appointments to be terminated on the ground of deputationist until the respondents themselves have sufficient number of persons on that posts working

for themselves. Counsel for the petitioner has clearly averred in petition that more than 50,000 posts of Teachers are still lying vacant with the State

Government. It is also noted by the Court that Teacher is a cadre where the respondents keep on making regular recruitment but there is always a

shortage of Teachers in the State.

8. In light of the aforesaid observation, the respondents are directed to continue petitioners on their contractual appointment on the same terms as they

were continuing, however, they can be

terminated by the respondents only if :-

(1) Their services are not proper;

(2) The Scheme/Project has come to an end; or(3) They are required to be replaced by regularly selected employees and also deputationist if the

respondents fill 90% posts of Teachers at a particular time.â??

38. Learned counsel for the petitioners has relied upon the judgment rendered by the Honâ??ble Allahabad High Court in Prabal Kumar

Kulshreshtha and 58 Others Vs. Bank of India and 3 Others (Writ-A No.18688/2016) decided on 09.05.2016, which reads as under:-

â??Heard Sri Ashok Khare, learned senior counsel, assisted by Sri Siddharth Khare, learned counsel for the petitioners and Sri R.V. Pandey, learned counsel for the respondents.

This petition has been filed by the petitioners, who claimed to have been engaged as Business

Facilitator/Business Correspondent since 2011. By an order passed on 16.3.2016, as well as consequential order passed on 18.3.2016, contained in

annexure-13 to the writ petition, such engagement of petitioners has been discontinued and contract of engagement has been terminated. The order

records that petitioners' engagement was on contractual basis, and as such, by virtue of clause 10.4 of the agreement, they are being disengaged.

While entertaining the writ petition following orders were passed on 26.4.2016:-

Submission is that persons similarly placed, as petitioners, have been engaged in the entire country, but it is only in Agra Region that they have been

disengaged without considering their individual performance.

Learned counsel appearing for the respondent bank submits that similar decisions have been taken throughout. He prays for and is granted three days'

time to obtain specific instructions in this regard. Put up as fresh on 2.5.2016.

Learned counsel appearing for the respondent bank has produced the instructions received from the Agra Branch of the bank. The instructions issued

under the signatures of Sri Dinesh Kumar, Senior Manager, reads as under:-

In accordance to the guidelines issued by DFS/GOI all the BC's/BF's working the bank must adopt the latest model for financial inclusion and who

fails to do so cannot be continued as BC's/BF's. On the bases off above our Zone terminated the services of the BC's/BF's working on contractual

bases and fail to adopt the latest financial inclusion model are terminated and those who migrated to the latest model are retained in Bank.

Although, according to respondents, the order of termination has been passed as the petitioners have failed to adopt latest financial model, but it is not

disputed by the respondents that working of petitioners has not been individually examined with reference to the guidelines adopted, before proceeding

to terminate contract of engagement. A subsequent communication dated 3.5.2016 produced by the counsel for the respondent bank reads as under:-

In this connection, we advise that these BC/BF were not doing the work of financial inclusion, a initiative of Government of India. These BC have

worked in the branch's premises while their primary responsibility is to work in the filed and provide doorstep transactional banking to the customers through ICT based devices (either HHDs or KIOSKs), a latest Financial Inclusion Model in terms of Bank

Circular No.106/166 dated 18.01.2013 (Enclosed). But they failed i.e. they have not purchased a single HHDs or KIOSKs machine after spending

such a long time (since 18.01.2013). BC Model is totally outsourced model. If any BC does not adopt latest model/bank's guidelines i.e. ICT based

devices, whole purpose of financial inclusion will be defeated. Without adopting ICT based devices (HHDs or KIOSKs), main aim to provide doorstep

transactional banking to the customers is not fulfil. In view of that, we have taken hard step and phased out them finally in accordance BC No.106/166

dated 18.01.2013.

We have terminated them as per extant guidelines of the bank/RBI with due procedure.

The guidelines in this regard are stated to have been issued on 18.1.2013. From the materials which have been brought on record before this Court, it

is apparent that the respondent bank has not examined functioning of the petitioners, individually, with reference to the work performed in the context

of the provisions contained in the guidelines. No reasons have been assigned, and therefore, the conclusion drawn in the instructions that petitioners'

working was not in accordance with the guidelines, is not liable to be sustained. Petitioners' contention that only in Agra Region such order has been

passed, has also not been taken into consideration.

Learned counsel for the respondent bank faced with the aforesaid situation submits that instead of keeping the matter pending, it would be appropriate

to dispose off the writ petition with liberty to respondents to act in accordance with law.

In the absence of any reasons and findings returned in the order, holding petitioners' working not to be in accordance with the guidelines framed, the

action of respondents, terminating their engagement, cannot be sustained. Consequently, the writ petition is allowed. The order dated 16.3.2016 and

18.3.2016 are set aside. It shall, however,Â beÂ openÂ forÂ theÂ respondentÂ bankÂ toÂ Â proceed, afresh, in accordance with law.â??

39. Assiduously controverting the aforesaid submissions made on behalf of the petitioners, Mr.M.S.Singhvi, learned Senior Counsel assisted by

Dr.Sachin Acharya for the respondents has raised the preliminary objection regarding maintainability of the present writ petitions, on the ground that

incorrect and false averments have been made therein.

40. Learned Senior Counsel for the respondents has harped upon the misstatement and concealment of materials facts on the part of the petitioners,

on the ground that the order dated 16.11.2017 passed in earlier set of litigation has been deliberately concealed by the petitioners, inasmuch as the

prayer clauses (a) and (b) have been declined by the said order, yet the same prayers have again been made by the petitioners. In support of this

submission, learned Senior Counsel has relied upon the precedent law laid down by the Honâ??ble Apex Court in Bhaskar

Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society & Ors., reported in (2013) 11 SCC 531, relevant paras of which read as

under:

â??42. While dealing with the conduct of the parties, we may also notice the submission of learned Counsel for Respondent No. 1 to the effect that

the Petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2nd May 2003 of the first application for extension

of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the Petitioners. It was submitted

that in view of the suppression, special leave to appeal should not be granted to the Petitioners.

43. Learned Counsel for the Petitioners submitted thatno material facts have been withheld from this Court. It was submitted that while the order

dated 2nd May 2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot

agree.

44. It is not for a litigant to decide what fact ismaterial for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all

the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July

2006 passed by the JCC, but that is not enough disclosure. The Petitioners have not clearly disclosed the facts and circumstances in which the order

dated 2nd May 2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. InHari Narain v. Badri Das AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate,

untrue or misleading statements, otherwise leave granted to an Appellant may be revoked. It was observed as follows:

â??9â?¦. It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken

not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes

statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by

making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the

Appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The Appellant will pay the costs of the

Respondent.â??

46. More recently, in Ramjas Foundation v. Union ofIndia the case law on the subject was discussed. It was held that if a litigant does not come to the

Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said:

â??21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in

any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also

to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to

protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or

by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.â??

47. AÂ mereÂ referenceÂ toÂ theÂ orderÂ datedÂ 2ndÂ May2003, en passant, in the order dated 24th July 2006 does not serve the

requirement of disclosure. It is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the

litigant to come up-front and clean with all material facts and then, on the basis of the submissions made by learned Counsel, leave it to the Court to

determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the Petitioners have not done this and must suffer the consequence thereof.

57. For the reasons mentioned above, we decline to grant special leave to appeal to the Petitioners for suppression of a material fact and direct the

Charity Commissioner to have a fresh look at the sale of the Trust land, subject matter of this petition, in accordance with the directions of the High

Court. However, we leave it open to the Charity

Commissioner to permit all the parties before it to submit fresh offers for the Trust land and if deemed necessary, a fresh public notice for sale of the

Trust land may be issued. On the basis of the bid given by Respondent No. 1 as disclosed to us in Court, we make it clear that the price for the sale of

the Trust land shall not be less than Rs. 3.87 crore.â??

41. The next submission of learned Senior Counsel for the respondent is pertaining to availability of the alternative remedy, on the ground that the

agreement dated 15.12.2017 executed between the State Bank of India and Shri Kishan (B.C.) contains Clause 11 regarding Arbitration. The said

Clause 11 reads as under:-

â??11. Arbitration:

11.1 Any and all disputes, controversies and conflicts(â??Disputesâ?) arising out of this Agreement or in connection with this Agreement or the

performance or non-performance of the rights and obligations set forth herein, or the breach, termination, invalidity or interpretation thereof shall be

referred to arbitration in terms of the Arbitration and Conciliation Act,1996 (Arbitration Act) or any amendments thereof. Prior to submitting the

Disputes to arbitration the parties shall make all endeavours to settle the dispute/ s through through mutual negotiation and discussions. In the event that

the said dispute/s are not settled within 30 days of the arising thereof as evidenced through the first written communication from any party notifying

the other regarding the disputes, the same shall finally be settled and determined by arbitration as above.

11.2 The place of arbitration shall be at Jodhpur(Place of Execution) and the language used in the arbitral proceedings shall be English. Arbitration

shall be conducted by a mutually appointed sole arbitrator. If the parties are unable to agree upon a sole Arbitrator, each Party shall appoint one

arbitrator and the two arbitrators so appointed by the Parties shall appoint the third arbitrator, who shall be the Chairman of the Arbitral Tribunal.

11.3 The arbitral award shall be in writing andsubject to the provisions of the Arbitration and Conciliation Act, 1996 shall be enforceable in any court

of competent jurisdiction.

11.4 Pending the submission to arbitration and thereafter, till the Arbitrator or the Arbitral Tribunal renders the award or decision, the Parties shall,

except in the event of termination of this Agreement or in the event of any interim order/award is granted under the afore stated Act, continue to

perform their obligations under this Agreement.â??

42. Learned Senior Counsel for the respondents has also

raised the submission regarding disputed questions of fact and the claim not determinable under Article 226 of the Constitution of India. In support of

this submission, learned Senior Counsel for the respondents has placed reliance on the precedent law laid down by the Honâ??ble Apex Court in

Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors., reported in (2001) 7 SCC 1, relevant paras of which read as

under:-

â??108. The next issue that remains to be dealt with:

B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master

and servant between him (the principal employer) and the contract labour emerges.

109. Mr. Shanti Bhushan alone has taken this extreme stand that by virtue of engagement of contract labour by the contractor in any work of or in

connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract

labour. We are afraid, we are unable to accept the contention of the learned Counsel. A careful survey of the cases relied upon by him shows that

they do not support his proposition. 110. In The Maharashtra Sugar Mills's case (supra), the question that fell for consideration of this Court was

whether the contract labour was covered by the definition of 'employee' under the Bombay Industrial Relations Act, 1946 and, therefore, should be

treated as employees of the appellant-sugar mills. There contractors were engaged by the appellant for carrying on certain operations in its

establishment. The contractors were to employ contract labour (workers) for carrying out the work undertaken but they should have the approval of the appellant, although it was the obligation of the contractors to pay wages to the workers. However, the contract labour engaged by the contractors

got the same amenities from the appellant as were available to its muster roll workers. An industrial dispute arose in respect of the payment of wages

to the contract labour engaged by the contractors which, along with other disputes, was referred to the Industrial Court by the Government. The

reference was contested, as being not maintainable by the appellant on the plea that the contractors' workers were not 'employees' within the meaning

of the said Act. The term 'employee' is defined in the said Act to mean

â??any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes a person employed by a

contractor to do any work for him in execution of a contract with an employer within the meaning of Sub-clause (e) of Clause (14)â??.

It was on the basis of the definition of the terms ""the employer"" and ""the employee"" the contract labour engaged by the contractors was held to be

employees of the appellant. The decision in that case cannot be read as holding that when a contractor engages contract labour in connection with the

work of the principal employer, the relationship of master and servant is created between the principal employer and the contract labour.

111. In Shivanandan Sharma's case (supra), the respondent-Bank entrusted its cash department under a contract to the treasures who appointed

cashiers, including the appellant - the head cashier. The question before the three-Judge Bench of this Court was: was the appellant an employee of

the Bank ? On the construction of the agreement entered into between the Bank and the treasurers, it was held that the treasurers were under the

employment of the Bank on a monthly basis for an indefinite terms as they were under the complete control and direction of the Bank through its

manager or other functionaries and, therefore, the appointees including the appellant (nominees) of the treasures, were also the employees of the

Bank, this Court laid down.

â??If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and

efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master.â??

We do not think that the principle, quoted above, supports the proposition canvassed by the learned Counsel.

112. The decision of the Constitution Bench of thisCourt in Basti Sugar Mills' case (supra) was given in the context of reference of an industrial

dispute under the Uttar Pradesh Industrial Disputes Act, 1947. The appellant Sugar Mills entrusted the work of removal of press mud to a contractor

who engaged the respondents therein (contract labour) in connection with that work. The services of the respondents were terminated by the

contractor and they claimed that they should be reinstated in the service of the appellant. The Constitution Bench held.

â??The words of the definition of workmen in Section 2(z) to mean ""any person (including an apprentice) employed in any industry to do one skilled

or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied"" are by

themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor or

the management. Unless however, the definition of the word 'employer"" included the management of the industry even when the employment was by

the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would

not be an industrial dispute between ""employer"" and workmen. It was with a view to remove this difficulty in the way of workmen employed by

contractors that the definition of employer has been extended by Sub-clause (iv) of Section 2(i). The position thus is: (a) that the respondents are

workmen within the meaning of Section 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a

contractor with whom the appellant-company had contracted in the course of conducting the industry for the execution by the said contractor of the

work of removal of presumed which is ordinarily a part of the industry. It follows therefore, from Section 2(z) read with Subclause (iv) of Section 2(i)

of the Act they are workmen of the appellant-company is their employer.â??

113. It is evident that the decision in that case alsoturned on the wide language of statutory definitions of the terms ""workmen"" and ""employer."" So it

does not advance the case pleaded by the learned Counsel.

114. In the Saraspur Mills's case (supra), the questionwas whether the respondents engaged for working in the canteen run by the Co-operative

Society for the appellant company were the employees of the appellant-Mills. The respondents initiated proceedings under Section 79 of the Bombay

Industrial Relations Act, 1946 for payment of D.A. in terms of the award of the Industrial Court. The appellant contested the claim on the ground that

the respondents were employees of the co-operative society and not of the appellant. A two-Judge Bench of this Court approached the question from

the point of view of statutory liability of the appellant to run the canteen in the factory and having construed the language employed in the definitions of

employee"" and ""employer"" in Subsections (13) and (14), respectively of Section 3 of the Act, and the definition of ""worker"" contained in Section 2(i)

of the Factories Act and having referred to the Basti Sugar Mill's case (supra), held that even though in pursuance of a statutory liability the appellant

was to run the canteen in the factory, it was run by the cooperative society as such the workers in the canteen (the respondents) would be the

employees of the appellant above. This case falls in Class (iii) mentioned above.

115. In a three-Judge Bench decision of this Court inHussainsainbhai's case (supra), the petitioner who was manufacturing ropes entrusted the work

to the contractors who engaged their own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they

were denied employment. On reference of the at dispute by the State Government, they succeeded in obtaining an award against the petitioner who

unsuccessfully changed the same in the High Court and then in the Supreme Court. On examining various factors and applying the effective control

test, this Court held that though there was no direct relationship between the petitioner and the respondent yet on lifting the veil and looking at the

conspectus of factors governing employment, the naked truth, through draped in different perfect paper arrangement, was that the real employer was

the management not the immediate contractor. Speaking for the Court, Justice Krishna Iyer observed thus:

â??Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local

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.

Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in

real life terms, by another. The management's adventitious connections cannot ripen into real employment.â??

This case falls in Class (ii) mentioned above.

116. The above discussion amply justifies rejection ofthe contentions of Mr. Shanti Bhusahan by us.

117. We find no substance in the next submission ofMr. Shanti Bhushan that a combined reading of the definition of the terms 'contract

labour,''establishment' and 'workman' would show that a legal relationship between a person employed in an industry and the owner of the industry is

created irrespective of the fact as to who has brought about such relationship.

118. We have quoted the definitions of these termsabove and elucidated their import. The word 'workman' as defined in wide terms. It is a generic

term of which contract labour is a species. It is true that a combined reading of the terms 'establishment' and ""workman' shows that a workman

engaged in an establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could

not be correct of contract labour. The circumstances under which contract labour could be treated as direct workman of the principal employer have

already been pointed out above. 119. We are not persuaded to accede to the contention that a workman, who is not an out worker, must be treated as

a regular employee of the principal employer. It has been noticed above that an out worker falls within the exclusionary clause of the definition of

workman.' The word 'out worker' connotes a person who carries out the type of work, mentioned in Sub-clause (c) of Clause (i) of Section 2, of the

principal employer with the material supplied to him by such employer either (i) at his home or (ii) in some other premises not under the control and

management of the principal employer. A person who is not an out worker but satisfies the requirement of the first limb of the definition of 'workman'

would by the very definition fall within the meaning of the term 'workman.' Even so, if such a workman is within the ambit of the contract labour,

unless he falls within the aforementioned classes, he cannot be treated as regular employee of the principal employer.

120. We have also perused all the Rules and Formsprescribed thereunder. It is clear that at various stages there is involvement of the principal

employer. On exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate creation of direct

relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied upon the provisions of

the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiorari much less can such a relationship be found to exist from the Rules

and the Forms made thereunder.

121. The leftover contention of Ms. Indira Jaisinghmay be dealt with here. The contention of Ms. Indira Jaisingh that the principles of contract law

stricto sensu do not apply to the labour and management is too broad to merit acceptance.

125. The upshot of the above discussion is outlined thus:

(1)(a)Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate

Government in relation to an establishment, will depend, in view of the definition of the expression ""appropriate Government"" as stood in the CLRA

Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it

pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of

banking or insurance company ? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation

to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b)After the said date in view of the new definition of that expression, the answer, to the question referred to above, has to be found in Clause (a) of

Section 2 of the Industrial Disputes Act; if (i) the concerned Central Government company / undertaking or any undertaking is included therein eo

nomin, or (ii)any industry is carried on (a) by or under the authority of the Central Government or, (b) by railway company; or (c) by specified

controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated; will be the appropriate Government.

2(a) A Notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any

establishment has to be issued by the appropriate Government:

(1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and

(2) having regard to

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

(ii) other relevant factors including those mentioned in Sub-section (2) of Section 10 (b) Inasmuch as the impugned notification issued by the Central

Government on December 9, 1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the

date of this judgment and subject to the clarification that on the basis of this judgment no order passes or no action taken giving effect to the said

Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise

attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic

absorption of contract labour on issuing a notification by appropriate Government under Sub-section (1) of

S. 10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer

cannot be required to order absorption of the contract labour working in the concerned establishment. (4) We overrule the judgment of this Court in

Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/ any Court including High Court, for

absorption of contact labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or

modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an

industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question

whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply

of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial

legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so-called contract

labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the

concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment

has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any

establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he

shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age

appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as

to academic qualifications other than technical qualifications.

126. We have used the expression ""industrial adjudicator"" by design as determination of the questions aforementioned requires inquiry into disputed

question of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. therefore, in such

cases the appropriate authority to go into those issues will be Industrial Tribunal / Court whose determination will be amenable to judicial review.

In the result:

C.A. Nos. 6009-10/2001 @ SLPs (C) Nos. 12657-58 of 1998â??

43. Learned Senior Counsel for the respondents has also made arguments on merits of the case. The first argument in this series is to the effect that

no employer-employee relationship exists in the present case. In regard to this submission, learned Senior Counsel for the respondents has submitted that the Guidelines (Annexure-1) empowers the Banks to formulate their own policy for engaging the Business Correspondents with the approval of

their Board of Directors.

44. Learned Senior Counsel for the respondents has also referred to Clause-2 the aforementioned Guidelines (Annexure-1) captioned as â??Eligible

individuals/entitiesâ??. The relevant sub-clause

(i) of the said Clause 2 reads as under:-

â??2. Eligible individuals/entities

The banks may engage the following individual entities as B.C.

(i) Individuals like retired bank employees, retired teachers, retired government employees and exserviceman, individual owners of kirana/medical/Fair

Price shops, individual Public Call Office (PCO) operators, agents of Small Savings schemes of Government of India/Insurance Companies,

individuals who own Petrol Pumps, authorized functionaries of well run Self Help Groups (SHGs) which are linked to banks, any other individual

including those operating Common Service Centres (CSCs);

45. Learned Senior Counsel for the respondents has also drawn the attention of this Court towards clauses 2.2, 2.3, 6, 15.14 and 15.15 of agreement

dated 15.12.2017 (Annexure-R/1) and submitted that the Business Correspondents are entitled to operate by themselves or through their

employees/sub-agents/sub-contractors.

46. The said clauses 2.2, 2.3, 6, 15.14 and 15.15 of agreement dated 15.12.2017 (Annexure-R/1) read as under:-

â??2.2Â Â SP shall ensure that their agents/employees/sub-contractors.

(a) are holding minimum qualifications of 12th pass for selecting them in the capacity of agent or employee. Otherwise, SP shall obtain prior

concurrence from the Regional Office of the Bank.

(b) regular services are offered to the customers atthe service outlets of the Bank.

(c) are properly trained to handle with care, theirresponsibilities particularly aspects like soliciting customer, hours of calling, privacy of customer

information and informing the correct terms and conditions of the products offered etc.

(d) adhere to extant instructions on Fair PracticesCode for lending as also code for collection of dues as Recovery Agent subject to qualifying DRA

training and obtain certification for collection of dues and repossession of security. It is essential that they refrain from action that could damage the

integrity and reputation of the Bank.

(e) shall not resort to intimidation or harassment ofany kind either verbal or physical against any person in their debt collection efforts, including acts

intended to humiliate publicly or intrude the privacy of the borrowersâ?? family members, referees and friends, making threatening and anonymous

calls or making false and misleading representations.

(f) SP shall ensure that due diligence is done onselected agents/employees and also obtain their police verification before their appointment.

(g) Shall not engage in levying service charges overand above the Bankâ??s advised rates. SP will be liable for any such actions of

agents/employees/subcontractors.

(h) Are having interoperable devices with updatedspecifications released by the Bank/IBA/RBI or any other agency.

2.3Â SP may render the services through SubContractors subject to the condition that SP shall obtain prior written approval of the Bank before

engaging Sub-Contractor(s). Notwithstanding approval of the Bank for Sub-Contracting SP shall remain liable to the Bank for acts/omissions of Sub-

Contractors. Before engaging Sub-Contractor, the Service Provider shall carry out due diligence process on subcontracting/sub-contractor to the

satisfaction of the Bank and Bank should have access to such records. In the event of sub-contracting, the SP shall ensure that suitable documents

including confidentiality agreement are obtained from the subcontractor and the SP shall ensure that the secrecy and faith of Bankâ??s

data/processes is maintained.

6. Relationship Between the Parties:-

6.1 It is specifically agreed that the SP shall act asindependent service provider and shall not be deemed to be the Agent of the Bank except in respect

of the transactions/services which give rise to Principal Agent relationship by implication.

6.2 Neither SP nor its employees, agents, representatives, Sub-Contractors shall hold out or represent as agents of the Bank. None of the employees, representatives or agents of SP shall be entitled to claim permanent absorption or any other claim or benefit against the Bank.

15. Miscellaneous:

15.14 SP shall ensure that all the appointed agents oremployees undergo mandatory training and certification as per the policy decided by the Bank.

15.15 SP ensures that his agents or employees conduct all the Banking transactions online on realtimeÂ basisÂ andÂ provideÂ printedÂ receiptÂ

forÂ all transactions to customers.â??

47. Learned Senior Counsel for the respondents has made a categorical submission that the service jurisprudence never envisages that an employee

will be able to delegate its function to a third person, and thus, the same itself clearly shows that no employer-employee relationship is there in the

present set of facts.

48. In support of his arguments on merits, learned Senior Counsel for the respondents has placed reliance on the judgment rendered by the Division

Bench of Honâ??ble Gujarat High Court in Gulamrasul Habibhai Badi & Ors. Vs. State Bank of India (SBI) & Ors. (LPA No.1146/2017 decided on

11.10.2017) as well as the judgment rendered by the Division Bench of Honâ??ble Allahabad High Court in Diwaker Prasad Pandey & Ors. Vs.

Union of India & Ors. (Writ-C No.5359/2018 decided on 08.02.2018), relevant portions of which reads as under:-

Gulamrasul Habibhai Badi & Ors. Vs. State Bank of India (SBI) & Ors. (supra):

â??15. From the aforesaid decisions, it can be said that if the appointments which have not been made according to the constitutional scheme are

regularised, that would amount to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme

adopted by the people of this country. If the person is not appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the

Constitution of India, such appointment cannot be regularized.

16. However, at this stage, we would like to clarifythat in fact the present petitioners are not at all employees of the respondent-bank. As discussed

hereinabove, they have entered into an agreement with the respondent-bank as a service provider for running business on the commission basis. There

is no employer-employee relationship between the petitioners and respondent-bank and therefore there is no question of claiming regularization or similar pay scale which the regular employees of the respondentbank are getting.

17. Learned senior advocate Mr.Oza has placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of Dhirendra Chamoli

(supra). However, the said decision would not render any assistance as in the present case, as discussed hereinabove, an agreement is entered into

between the petitioners and the respondent- bank by which the petitioners agreed to render the services as service provider and thereby they are

appointed as BCs. The terms of the agreement and the scheme are already discussed hereinabove and therefore the said decision would not be

applicable to the facts of the present case.

18. Similarly, the decision rendered by the Hon'bleSupreme Court in the case of Surinder Singh and another (supra) relied upon by the petitioners

would not be applicable to the facts of the present case as in the said case, it is held that the Central Government, the State Governments and all

public sector undertakings are expected to function like model and enlightened employers and they are liable to pay equal pay for equal work to all the

daily rated employees. However, in the present case, as discussed hereinabove, the petitioners are not employed by the respondent-bank but they are

acting as service provider as per the agreement entered into with the respondent-bank. It is also required to be noted that the nature of duties

performed by the petitioners is different than the regular employees employed by the respondent- bank. Therefore, this decision is not applicable to the

facts of the present case.

19. Similarly, the decision rendered by the Hon'bleSupreme Court in the Jagjit Singh (supra), the Hon'ble Supreme Court has reiterated the principle of

equal pay for equal work and observed that the same be extended to temporary employees differently designated such as work charge, daily wage,

casual, adhoc, contractual and the like. We cannot dispute the aforesaid propositions laid down by the Hon'ble Supreme Court. However, in the

present case, there is no employer-employee relationship between the parties and the petitioners are not employed as discussed hereinabove and

therefore the said decision is not applicable to the facts of the case.

20. In the case of Gajaji Gopalji Jadeja (supra), theborder wing home guards were duly recruited, selected and appointed after public notice, physical

test as well as oral and written test and thereafter they were enrolled as part time border wing home guards. They have been engaged in full time

duty, round the clock and throughout the year, fully trained personnel. In the facts of the said case, the Division Bench held that they are entitled to all

the service benefits discussed in the said order. However, in the facts of the present case, the said decision would not be applicable.

21. Lastly, learned counsel Mr.Oza has placed relianceupon a decision rendered by the Division Bench of this Court in the case of Shree Yogakshem

Foundation for Human Dignity (supra). However, in the said case, the concerned candidates were recruited on various permanent posts by giving

advertisement and after following complete selection procedure. The State Government by issuing resolution dated 16.2.2006 and 29.4.2010, declared

the policy to appoint the concerned persons on permanent posts on fixed pay basis. While examining such issue, the Division Bench of this Court

modified the resolutions and gave certain directions to the State Government. However, learned senior counsel Mr.Oza has fairly submitted that the

aforesaid decision rendered by the Division Bench of this Court is stayed by the Hon'ble Supreme Court in the Special Leave Petition filed by the state

Government which is still pending. Even otherwise, as discussed hereinabove, the said decision would not be applicable to the facts of the present

case.

22. In view of the aforesaid discussion and in view ofthe reasoning recorded by the learned single Judge, we are of the view that learned single Judge

has not committed any error while dismissing the petition which requires any interference in the present appeal. Accordingly, the present appeal is

dismissed. Consequently, the civil applications are also dismissed.â??

Diwaker Prasad Pandey & Ors. Vs. Union of India & Ors. (supra):

â??6. Considered the submissions of the learned counsel for the parties. Admittedly the engagement of the petitioners was in pursuance to the

agreement executed, which was time to time renewed. However, subsequently, the decision was taken that the Individual Business Correspondent

should work with Central Service Providers. After expiry of the agreement of individual Business Correspondence, the Bank may or may not extend

the agreement for extra period. Further, in case of those Business Correspondence including the petitioners, agreements have expired. Hence the

direction was given to stop opening of the account and further advised that they may convert themselves as Central Service Provider, if they were

interested to work as Business Service Providers. If the Bank was not interested to take facility of Business Correspondents and the period was

expired then it is not a fit case to issue a writ of mandamus to the Bank to renew the agreement because it is a purely contractual service.

7. Under such circumstances, it is not a fit case tointerfere in the matter under Article 226 of the Constitution of India by issuing a writ of certiorari or

a writ of mandamus.

8. Accordingly, the present writ petition is herebydismissed.â??

49. Learned Senior Counsel for the respondents has also made the submission regarding the nature of engagement of the present petitioners to be

contractual, and thus, harped upon the fact that the present matter is not relating to service jurisprudence. Moreover, as per learned Senior Counsel for

the respondents, there is no challenge pertaining to the terms of the contract in the present case, fixing the term in para 1.2 of the document

Annexure-R/1. The said para 1.2 reads as under:-

â??1.2Â This Agreement shall be in force for a period of 5 months from the date of its execution, unless terminated by the Bank by notice in writing

in accordance with the termination clauses of this Agreement. The services of service provider will be reviewed after 5 months.â??

50. Learned Senior Counsel for the respondents has also referred to Clause 10 of the Agreement (Annexure-R/1), which provides for term and

termination. The relevant clauses 10.6 and

10.7 thereof, reads as under:-

â??10.6Â In the event of termination of the Agreement or on the expiry of the term/renewed term of this Agreement, the Service Provider shall

render all reasonable assistance and help to the Bank and any new contractor engaged by the Bank for the smooth switch over and continuity of the

Services or if so required by the Bank take all necessary steps to bring the Services to a close in a prompt and orderly manner.

10.7Â Upon termination or expiration of this Agreement, all rights and obligations of the Parties hereunder shall cease, except:

(a) such rights and obligations as may have accruedon the date of termination or expiration;

(b) the obligation of confidentiality; and

(c) any right which a Party may have under the Application Law.â??

In support of this submission, learned Senior Counsel for the respondents has relied upon the judgment rendered by this Honâ??ble Court in Union of

India & Ors. Vs. Om Prakash (D.B.Civil Special Appeal No.117/1998 decided on 05.02.1998), relevant portion of which reads as under:-

â??8. Having heard the learned counsel and having perused the record. We are of the view that the petitioner was totally based on contractual

relationship and raised purely contractual disputes. It has not been the case of the petitioner that the contract for operation of the â??trollyâ?? or the

vending license was governed by any statutory Rules. After the license had expired on March 31, 1995 no written agreement was entered into and the

petitioner continued to operate the â??trollyâ??. When this came notice to the authorities they stopped the operation on June 4, 1996. Apparently,

they were prepared to regularise the operation by getting an agreement entered into for period up to March 31, 1996. Hence the earlier petition was

disposed of by directing the petitioner to present before the Divisional Railway Manager and execute agreement for that period.

9. It is not the petitionerâ??s case that it was obligatoryon the Railway Authorities to renew the license for further period at the option of the

petitioner or automatically. The agreement for vending license, Annexure/1 to the petition makes it clear that it was only a license for a period of five

years commencing from April 01, 1990. Renewal for subsequent period was at the discretion of the Railway Administration. It is also provided in the

agreement that either party shall be at liberty to terminate the agreement without assigning any reason, on giving three months notice in writing to do

so and the licensee would be entitled to refund of the monthly sum paid for unexpired period. If the same had been paid. This clearly means that the

Railway Authorities under the contract had right to terminate the agreement even before expiry of the period of five years. In such a situation, to say

that they were obliged to renew it for a further period, would not be proper. In our opinion, while extending the period granted for consideration of

renewal of licence on September 26, 1997, the learned Single Judge clearly exceeded his jurisdiction when he made the extension conditional upon

grant of provisional license to the petitioner up to October 20, 1997. He had clearly become functus officio after having disposed of S.B. Civil Writ

Petition No.2261 of 1997 and he, at the most could have extended the period for consideration of renewal but could not have added something to the

original direction given in S.B. Civil Writ Petition No.2261 of 1997.

10. In such circumstances, we feel that the remarks ofthe learned Single Judge in the impugned order that the refusal to renw the license was unfair,

arbitrary and unsustainable at law were not justified. His observation, that the mater was not being sent for reconsideration before the authorities for

renewal of license â??considering the manner in which and the conduct in which t he orders have been passed giving scant regards to the Courts

Ordersâ? are also not justified. There was no specific direction and there could not legally be any to renew the licence. The direction to consider

renewal cannot be construed. As direction to renew the licence and the Railway Administration was free to refuse renewal of licence after due

consideration. There was therefore no question of the Authorities paying scant regard to the Court Order.

11. So far as reasons for refusal to renew, as alreadyseen under the agreement it was not obligatory to give reason. There is no material on record to

hold that the renewal to renew was malafide or arbitrary. The learned Single Judge therefore clearly erred in renewing the agreement himself for a

further period of five years.

12. We therefore, allow this appeal and set aside theOrder of the learned Single Judge, holding that the petition was not entertainable as it was based

on contractual relationship and also holding that no direction could be given in exercise of Article 226 for renewal of a contract against the terms of a

contract agreement. The petition deserves to be dismissed and is hereby dismissed. No order as to costs.â??

51. Learned Senior Counsel for the respondents has also made submission in respect of the Guidelines issued by the RBI, which is Annexure-1 of the

writ petition. The said Guidelines envisage framing of policy for engaging the Business Correspondents by the concerned Banks; the same are based

on pure commercial transactions. As per learned Senior Counsel for the respondents, even otherwise, such Guidelines have been issued under Section

23 of the Banking Regulation Act, 1949, whereunder the RBI only issues permission to a Bank to have its operation at a particular place etc.

Moreover, the Guidelines issued by the RBI are inter se between the Banks and the RBI, and no mandamus can be issued to enforce these

Guidelines. In this regard, learned Senior Counsel for the respondents has placed reliance on the precedent law laid down by the Honâ??ble Apex

Court in Oriental Bank of Commerce Vs. Sunder Lal Jain & Ors., reported in (2008) 2 SCC 280, relevant portion of which reads as under:-

â??12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and

Ors. [1978]1SCR375 , after referring to the earlier decisions in Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer

[1966]1SCR120 ; Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College (1962)ILLJ247SC and Dr. Umakant Saran v. State of

Bihar (1972)IILLJ580SC , this Court observed as follows in paragraph 15 of the reports:

â??15.â?¦ There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory

duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a

writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within

the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown

that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. â?¦ In the

instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to

4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding

and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under

Article 226 of the Constitution and the High Court was not competent to issue the same.â??

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of

some-statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant bank to declare their account as NPA from 31st March, 2000 and apply R.B.I. guidelines to their case.

13. The High Court, therefore, erred in issuing a writ of mandamus directing the appellant bank to declare the respondents' account as NPA from 31st

March, 2000 and to apply the RBI Guidelines to their case and communicate the outstandings which shall be recoverable by quarterly installments

over a period of two years. The later part of the order passed by the High Court wherein a direction has been issued to stay the recovery proceedings

and the recovery certificate issued against the respondents has been cancelled is also wholly illegal as the decree passed by the DRT had attained

finality and proceedings for execution of decree could not be stayed in an independent writ petition when the respondents had not chosen to assail the

decree by filing an appeal, which is a statutory remedy provided under Section 20 of Recovery of Debts Due to Banks and Financial Institutions Act,

1993.â??

52. Learned Senior Counsel for the respondents has further submitted that there is no averment made in the present writ petitions laying challenge to

the policy of the State Bank of India on the ground of violation of the RBI Guidelines; nor there is any challenge to the contracts entered into by the

individual persons with the Bank. Moreover, the policy of the State Bank of India has been framed in view of ever increasing number of cases of

fraud by individual Business Correspondents. As per learned Senior Counsel for the respondents, the term in the contract contains stipulation regarding

the period of contract and its expiry. The liberty granted by this Honâ??ble Court in the earlier litigation was as per law i.e. arbitration clause

contained in the agreement. However, no liberty was granted to file fresh writ petition.

53. Learned Senior Counsel for the respondents however, submitted that Section 14 of the Specific Relief Act clearly provides that the specific

performance of a contract cannot be granted where compensation can be adequate relief, which eventually arises only when there is a challenge to

the termination/cancellation of the contract. Learned Senior Counsel for the respondents further submitted that in terms of Section 14

(1)(c), the contract which in its nature is determinable cannot be specifically enforced. The engagement, in the present case, being for a fixedÂ period,Â the same comes to an end automatically unless renewed.

54. Section 14 of the Specific Relief Act, in extenso, reads as under:-

â??14. Contract not specifically enforceable.-

(1) The following contracts cannot be specifically enforced, namely:-

(a) a contract for the non-performance of which compensation in money is an adequate relief

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or

otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which in its nature determinable;(d) a contract the performance of which involves the performance of a continuous duty which the court

cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically

enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has

refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3)Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the

following cases:â?

(a) where the suit is for the enforcement of a contract, â?

(i) to execute a mortgage or furnish any other securityfor securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lendor is willing to advance the remaining part of the loan in terms of the contract;

or

(ii) to take up and pay for any debentures of acompany;

(b) where the suit is for,â?

(i) the execution of a formal deed of partnership, theparties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:â?

(i) the building or other work is described in thecontract in terms sufficiently precise to enable the court to determine the exact nature of the building or

work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for

nonperformance of the contract is not an adequate relief; and

(iii) the defendant has, in persuance of the contract,obtained possession of the whole or any part of the land on which the building is to be constructed

or other work is to be executed.â??

55. Lastly, learned Senior Counsel for the respondents has referred to a letter dated 27.09.2017 issued by the Indian Banks Association and submitted

that the present writ petitions have no legs to stand. Moreover, as per learned Senior Counsel for the respondents the said letter dated 27.09.2017, in

no manner, suggests that the Banks at any stage agreed that the employeremployee relationship exists with the Business Correspondents. In fact, the

Banks always took the stand that no employer-employee relationship existed. Learned Senior Counsel for the respondents also submitted that service

of notice by the Employees Provident Fund Organization is not a finding, whereas findings have already been recorded by the Division Benches of

Honâ??ble Gujarat High Court and Honâ??ble Allahabad High Court, as aforementioned, which were to the effect that no employer-employee

relationship exists between the Business Correspondents and the Banks.

56. The contentious pleadings and the assiduous submissions founded thereon have been duly assayed, alongwith the precedent laws cited at the Bar.

57. This Court finds that the order dated 16.11.2017 passed by this Honâ??ble Court in S.B.Civil Writ Petition No.6462/2017 (Nitin Kumar Agrawal

& Ors. Vs. The State Bank of India & Ors.), whereby the writ petitions were dismissed as having become infructuous, however,Â with liberty to the

petitioners to take appropriate remedies against the future action, putting their arrangement to peril, in accordance with law, as also the fact that the

adjudication in the earlier writ petition was not done on merits of the case, the same cannot be said to operate as res judicata in the present case.

58. In Noharlal Verma v. Distt. Coop. Central Bank Ltd., reported in (2008) 14 SCC 445, the Honâ??ble Apex Court has held that the earlier

application preferred by the appellant therein became infructuous; the earlier application was not decided on merits, and therefore, this does not

operate as res judicata. The relevant para of the said judgment reads as under:

â??18. So far as res judicata is concerned, in our opinion, the appellant is right in submitting that the Tribunal was not justified in holding that the

application filed by the appellant was barred by res judicata. It is clear from the facts stated hereinabove that the application was filed by the appellant

to the Joint Registrar, Raipur. It was pending. Meanwhile, however, District Bastar had its own Registry and hence, an application was submitted to

the District Registrar, Bastar. The application preferred by the appellant to the Joint Registrar, Raipur, in the circumstances, became infructuous. It

was not decided on merits. As per settled law, such decision does not operate as res judicata. The High Court was, therefore, right in coming to the

conclusion that the Tribunal was in error in dismissing the application on the ground of res judicata. That part of the order passed by the Tribunal was,

therefore, rightly not approved by the High Courtâ??.

59. The question pertains to the livelihood, and thus, the rights of the petitioners to agitate the action, diminishing their rights protected under Article 21

of the Constitution of India, cannot be denied, while availing the remedy of writ, which obviously is available to the petitioners in such circumstances.

60. InÂ OlgaÂ TellisÂ &Â Ors.Â Vs.Â BombayÂ Â Municipal Corporation & Ors., reported in (1985) 3 SCC 545, the Honâ??ble Apex Court

has laid down the following precedent law:-

â??32. . . . . . . .Â .The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be

extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law.

That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the

means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of

depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in

accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it

possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to

livelihood and you shall have deprived him of his life. . . . . So unimpeachable is the evidence of the nexus between life and the means of

livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of

livelihood. That is the context in which it was said by Douglas, J. in Baksey[347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most

precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious

freedom. â??Lifeâ?, as observed by Field, J. in Munn v. Illinois [(1877) 94 US 113] means something more than mere animal existence and the

inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by

this Court in Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329] .â??

61. In the present case, the respondents have denied the employer-employee relationship; but by way of Scheme, the RBI, which is the Apex

Institution of Banking in this country, under a common policy approach regarding banking services, has taken an initiative, in the related exercise, for

increasing the banking outreach and ensuring greater financial inclusions, which has to be followed by all Nationalized and Private Banks of the

country.

62. The significant policy decisions were also taken and the Banks were accordingly permitted to engage Business Correspondents on certain terms

and conditions, after adopting a regular selection process, which includes an advertisement and also laying down of the eligibility conditions therefor.

63. The Business Correspondents were of two types, namely, (i) Corporate Business Correspondents and (ii) Individual Business Correspondents, and

the aim of having Individual Business Correspondents was to reach to the far flung areas where a branch or regular employee of the Bank may not prove to be financially viable. The Individual Business Correspondents were engaged by the Banks so as to target the rural folk and the companies

were permitted with the intention of further intensifying the process of outreaching the banking services to the remotest and unbankable areas.Â The

terms and conditions for engaging the petitioners clearly reveals employer-employee relationship between the Business Correspondents and the

Banks.

64. The eligibility of individuals like retired persons, owners of kirana store/ medical/Fair Price shops would not have any affect on the nature of work

performed by the petitioners being the contractual appointees, as the various relevant documents indicate that the petitioners have been given

appointment on the conditions, which have been stipulated by the Bank itself.

65. As far as entitlement of the Business Correspondents to work in that capacity is concerned, the same is part of the contractual condition to

strengthen their hands for completing the tasks of making inroads through the rung of citizens, who are otherwise not accessible to the mainstream

banking.

66. On a careful reading of the RBI Guidelines, it is revealed that the same have been issued under Section 23 of the Banking Regulation Act, 1949,

and such Guidelines are supposed to be a guiding factor to the Banks of this country, and thus, were to be applied by the Banks without any violation

thereof.

67. The national spectrum of Banking, which has a statutory influence of the RBI, clearly reflects that the Business Correspondents were required, in

terms of the policy of Banking, to reach the last line of the citizens, who may be inaccessible due to rural existence, geographical conditions,

economically under developed clusters, far flung areas and other difficult to banking zones.

68. The rising trend/pattern of the State functionaries hiring and using contractual/ad hoc employees for carrying out perennial jobs for years

altogether and dispensing with their services like completely disposable commodities, amounts to an unfair dilution and negation of the precious

constitutional guarantees. No State can be allowed to violate inviolable fundamental rights guaranteed by the Constitution of India.

69. The precedent laws cited by learned counsel for the petitioners clearly

indicate the settled legal proposition that one set of contractual employees

cannot be replaced by another set of contractual employees, unless their conduct and performance is under the cloud. Such contractual employees

could be replaced by regularly selected employees by the employer, and further, if the scheme or project, in which such employees are working itself

comes to an end.

70. The precedent law laid down by the Division Bench of this Honâ??ble Court in State of Rajasthan Vs. Kusum Devi & Ors. [D.B.Civil Special

Appeal (Writ) No.1231/2017 decided on 20.03.2018], which has been referred by this Court in the judgment rendered in Mahendra Kumar & Anr.

Vs. Union of India & Ors. (supra) cited by learned counsel for the petitioners andÂ asÂ reproducedÂ hereinabove,Â throwÂ much weight behind

the petitioners.

71. In the instant case, the employers falling under the definition of â??Stateâ?? under Article 12 of the Constitution of India have clearly deployed a

mechanism to exploit the masses of this country by undermining their right to livelihood by imposing conditions, which admittedly, do not provide for the

protection and strength of a regular appointment, but even take away the basic protection available to contractual employees. The law is now well

settled that until the contractual appointment continues to fulfill the task, for which such contractual appointees have been appointed and the work is

being done satisfactorily, the rights of such contractual appointees normally need to be protected to this extent, unless they are being sought to be

replaced by regularly selected employees, or the project/scheme under which they are working itself comes to an end.

72. The present case in hand is not a case where the work being discharged by the Business Correspondents has to come an end, but the only thing is

that they are being placed under the corporates, which would only render them exposed to the exploitative tendencies of a corporate entity, particularly

in light of the fact that the corporate entity itself would not have any stake in the institution, and thus, the institutional welfare of its employees would

never be its prerogative.

73. The impugned action of the respondents also runs contrary to the very purpose, for which the Business Correspondents were employed.

Admittedly, the accessibility and reach of banking services is far from adequate in the rural and remote areas. The push of government policies to

expand the net of banking services and dispensing benefits/grants/subsidies through the banking channel, has given a new impetus to the purpose and

role of Business Correspondents. The reality and challenges of rural/remote areas have not diminished in any manner. The Corporates, who as a

model operate on considerations of profitability and commercial viability, cannot even be expected to further the cause of banking access to all in

remote/rural areas. The States functionaries cannot be allowed to shun their constitutional responsibilities and goals, while continuing to operate as

biggest players in a particular segment. 74. This Court also finds that the judgments cited by learned Senior Counsel for the respondents do not apply

in the present facts and circumstances, as the writ jurisdiction is a wide jurisdiction and cannot be ousted merely on the ground that conditions, which

have been laid down in respect of the contractual appointment, were such that the employer Banks can wash away their hands from their

responsibility to take work from the Business Correspondents in their direct supervision. Even if there is a risk factor, then also the Banks have to find

ways to minimize those risks; however, they cannot ride over the shoulders of the poor Business Correspondents to bring them in the corporate arena,

as the recent examples have shown that the corporate houses are not fully risk proof and they have caused fabric damageÂ toÂ theÂ banking

system ofÂ this country, more than the one caused by the individuals.

75. Thus, the argument of learned Senior Counsel for the respondents that to plug the loopholes and risks in the individual Business Correspondents,

the corporatization of the same is being permitted, does not hold good, as it is common knowledge that some of the corporate houses have caused

huge damages to the fabric of the banking structure of this country at the cost of a poor man and the society at large.

76. The argument of learned Senior Counsel for the respondents regarding non-existence of the employer-employee relationship, in the precedent law

so cited, would not hold good in the present set of facts and circumstances, as in these cases the Banks have admittedly issued advertisement and

invited the petitioners to work as Business Correspondents with the Banks on particular terms and conditions, which include eligibility criteria as well.

77. The petitioners in this case are not seeking regularization in the public

employment. The petitioners are merely seeking that their services may not

be transferred to the corporate entities, as it would defeat the purpose of their employment, create scope for exploitation and would render the

petitioners very weak and their right to livelihood would also be denuded of fundamental protections.

78. Learned Senior Counsel for the respondents has harped upon the alternative remedy, but this Court has seen that there is consistency in the law

laid down by the Honâ??ble Apex Court from time to time that every case where right to livelihood is at stake, the same calls for intervention in the

writ jurisdiction.

79. The judgment rendered by the Honâ??ble Gujarat High Court inÂ Prabal Kumar Kulshrestha and 58 Others Vs. Bank of India and 3 Others

(supra), although reproduced hereinabove, but reiteration of the relevant portion thereof would be apposite, and the same reads as under:-

â?? From the materials which have been brought on record before this Court, it is apparent that the respondent bank has not examined functioning of

the petitioners, individually, with reference to the work performed in the context of the provisions contained in the guidelines. No reasons have been

assigned, and therefore, the conclusion drawn in the instructions that petitioners' working was not in accordance with the guidelines, is not liable to be

sustained. Petitioners' contention that only in Agra Region such order has been passed, has also not been taken into consideration.

Learned counsel for the respondent bank faced with the aforesaid situation submits that instead of keeping the matter pending, it would be appropriate

to dispose off the writ petition with liberty to respondents to act in accordance with law.

In the absence of any reasons and findings returned in the order, holding petitioners' working not to be in accordance with the guidelines framed, the

action of respondents, terminating their engagement, cannot be sustained. Consequently, the writ petition is allowed. The order dated 16.3.2016 and

18.3.2016 are set aside. It shall, however, be open for the respondent bank to proceed, afresh, in accordance with law.â??

80. It would also be apt to reiterate the relevant portion of the judgment rendered by the Honâ??ble Gujarat High Court in Gulamrasul Habibhai Badi

& Ors.Vs. State Bank of India (SBI) & Ors. (supra), and the same reads as under:

â??15. From the aforesaid decisions, it can be said that if the appointments which have not been made according to the constitutional scheme are

regularised, that would amount to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme

adopted by the people of this country. If the person is not appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the

Constitution of India, such appointment cannot be regularized.

16. However, at this stage, we would like to clarify that in fact the present petitioners are not at all employees of the respondent-bank. As discussed

hereinabove, they have entered into an agreement with the respondent-bank as a service provider for running business on the commission basis. There

is no employer-employee relationship between the petitioners and respondent-bank and therefore there is no question of claiming regularization or

similar pay scale which the regular employees of the respondentbank are getting.â??

The said judgments cannot be read against the present petitioners, as it is clear that the petitioners do not fall under the class of â??Service

Providerâ??, but have been specifically brought into the contractual regime of employees to profess the banking amongst the underprivileged and

inaccessible class of economy, and thus, they cannot be denied their right to continue as Business Correspondents - until the project continues and until

their performance is found to be satisfactory or unless they are being sought to be replaced by regular selected employees - simply on the ground that

they were only service providers.

81. We are in agreement with the learned counsel for the petitioners to this extent that the Service Provider is a person, who provide requisite services

- lock, stock and barrel - on being paid, whereas in this case, the employer is paying an amount to the petitioners for getting several works done, which

include opening the accounts, financial transaction, getting FDRs, RDs payment under the Atal Pension Yojana, recovery of loan amount, payment

with regard to the government project, opening of Jan Dhan Accounts, etc., and thus, the same are the banking jobs, which on behalf of the Banks, are

being conducted by the petitioners as Business Correspondents, and thus, it cannot be said that the petitioners are merely service providers to the

Bank, as in fact, they are providing banking services to the customers on behalf of the Banks.

82. The respondents have failed to show even a single reason as to why the petitioners are being placed in the hands of the corporate companies and

as to what was the need of taking such action so as to bring them under such arena, more particularly, when the petitioners are providing satisfactory

services to the respondents.

83. ItÂ isÂ notÂ theÂ caseÂ ofÂ theÂ respondentsÂ thatÂ Â the petitionersâ?? services are not satisfactory and they are not able to

perform the tasks, which have been assigned to them by the respondents.

84. The respondents have further failed to satisfy this Court, on the strength of the relevant RBI Guidelines, as to the function of the Business

Correspondents, like the present petitioners, which could be performed by the corporate entities in a better way.

85. The individuals having the requisite skills and vast experience in the related field were required to utilize their skills and experience to outreach the

banking services to those areas, where the banking system would ordinarily not even be existing, which is a daunting task, and the same is being

performed by the petitioners to the utmost satisfaction of the respondents, and thus, when the petitioners are providing satisfactory services to the

respondents, they should not be saddled with the unfair practice of putting them in the hands of corporates, which could be exploiting these employees,

as the corporates do not have direct stakes in these employees, which would encourage them to provide satisfactory remuneration and working

conditions to them.

86. The network of Business Correspondents has been created by the RBI Guidelines and circulars issued from time to time. This Court finds that the

constitutional mandate requiresÂ the relevance of the various communications and the policy in vogue as reflected in the RBI circulars need to be

strengthened, lessening the gap between have and have nots, so as to achieve the desired goals to outreach the banking services to the areas, where

the banking services do not even exist.

87. In light of the aforesaid observations and the aforementioned precedential backdrop, the present petitioners need to be protected, and therefore,

the present writ petitions are allowed to the extent that while quashing and setting aside the action of the respondents of corporatization of the present petitioners as Individual Business Correspondents, the respondents are directed to continue the petitioners as Business Correspondents directly with

them, as they are continuing for last many years and the respondents are also directed not to terminate the services of the petitioners so as to replace

them by another set of contractual employees or Corporate Business Correspondents, unless there is a performance deficit on the part of the

petitioners.