

**(1990) 01 MAD CK 0098**  
**In the Madras High Court**  
**Case No : Writ Petition No. 150 of 1989**

Ashok Leyland Ltd.

APPELLANT

Vs

Government of Tamilnadu

RESPONDENT

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**Date of Decision :** 05-01-1990

**Acts Referred:**

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 21  
Industrial Disputes Act, 1947 — Section 10, 2

**Citation :** (1991) 1 LLJ 113

**Hon'ble Judges :** K.S. Bakthavatsalam, J

**Bench :** Single Bench

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## Judgement

1. The petitioner challenges the order of the Government passed in G.O. Ms. No. 2746, dated 12th December, 1988, referring the dispute under S. 10 of the industrial Disputes Act, 1947 (Central Act XIV of 1947). The dispute is between the employees of the third respondents and the third respondent. Reference made by the Government is as follows :

"Whether the demand that the security guards under contractors are eligible to get the same wages and other benefits enjoyed by the regular security guards of the Ashok Leyland, Ltd., is justified, if so to give appropriate directions".

2. The petitioner alleges in the affidavit that the reference is not competent as far as the petitioner is concerned and it could not be made against the petitioner who admittedly is not the employer of the security guards concerned. It is also alleged that there is no dispute that the security guards are all employees of the third respondent and as such the Government has made the reference without jurisdiction, at any rate against the petitioner herein.

Sri. Sanjay Mohan, the learned counsel for the petitioner, strongly argues that the dispute against the petitioners-company cannot be referred under the Industrial Disputes Act. When the petitioner-company is not an employer and the fourth respondent are not the workers under S. 2(s) of the Industrial Disputes Act, i.e. the sum and substance of the arguments of Sri Sanjay Mohan is that the

workmen of the third respondent are not the employees so far as the fourth respondent is concerned. The learned counsel further argues that the petitioner's liability is only under S. 21 of the Contract Labour (Regulation and Abolition) Act, 1970 (Act, 37 of 1970). The learned counsel refers me to rule 27(v)(a) of the Tamil Nadu Contract Labour (Regulation and Abolition) Act, 1970, i.e., that if there is dispute, it has to be decided by the authority as prescribed under S. 10 of the Act and as matters stand, the petitioner is not an employer as far as the workers who were working under the third respondent. The learned counsel refers to the decision of the Supreme Court in *Workmen of Food Corporation of India v. Food Corporation of India* 1985-II-LLJ-4. The Supreme Court in that case has categorically held that when the contract system is in vogue the workmen employed by the contractor certainly are not the workmen of the corporation in that case. In my view, the principle enunciated by the Supreme Court in this decision fully applies to the facts of this case.

4. The learned counsel also refers to another decision in *Employers in relation to Punjab National Bank v. Ghulam Dastagir* 1978-I-LLJ-312 to show that when a person is not a workman, the reference to the industrial dispute was without jurisdiction. In that case, Justice Sri Krishna Iyer observed as follows (p. 313) : "The reference assumes what really is the most contested point in the case as to whether Sri Ghulam Dastagir was the driver of the said bank. By definition, a workman means any person employed in any industry and so the basic jurisdictional issue is as to whether the respondent-workman was a person employed by the Bank. If he was, his termination was illegal. If he was not, the reference to the industrial dispute was without jurisdiction. The industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the Bank. Consequentially, a direction for reinstatement together with back wages was made".

5. Sri. Fenn Walter, the learned counsel for the fourth respondent, does not dispute the legal contentions raised by Sri Sanjay Mohan, the learned counsel for the petitioner. The law is settled on this aspect and as such the impugned order with regard to the petitioner alone is bad and will stand quashed. The reference in other respects will stand against the third respondent.

6. Sri. Sanjay Mohan, the learned counsel for the petitioner, also undertakes before this court that whatever award passed by the labour Court against the third respondent, it will bind the petitioner-company. He also says the petitioners-company shall not try to wriggle out of the award is occasion warrants, under the Act 37 of 1970. The petition shall stand partly allowed. No costs.