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**(2009) 09 AP CK 0029**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 477 of 2005**

Bharat Coco-Cola Bottling South and East Pvt. Ltd. (now  
called as Hindustan Coca-Cola Beverages Pvt. Ltd.)

**APPELLANT**

**Vs**

The Chairman, Industrial Tribunal-cum-Presiding Officer,  
Labour Court and Others

**RESPONDENT**

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**Date of Decision : 18-09-2009**

**Acts Referred:**

Andhra Pradesh Shops and Establishments Act, 1956 — Section 48  
Andhra Pradesh Shops and Establishments Act, 1988 — Section 48(1)  
Constitution of India, 1950 — Article 226, 227  
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10  
Industrial Disputes Act, 1947 — Section 10, 10(1), 2, 25(FF), 25F

**Citation : (2009) 09 AP CK 0029**

**Hon'ble Judges : R. Subhash Reddy, J**

**Bench : Single Bench**

**Advocate : C.R. Sridharan, for the Appellant; GP for Respondent Nos. 1, 4 and 5  
and K. Balagopal, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

R. Subhash Reddy, J.—The management of Bharat Coca-Cola Bottling South & East Private Limited, a Company registered under the Indian Companies Act, 1956, has filed this writ petition, challenging the validity of the Award, dated 20th July 2004, passed in I.D. No. 33 of 1999, by the Industrial Tribunal-cum-Labour Court, Ananthapur (hereinafter referred to as "the Tribunal").

2. The Government of Andhra Pradesh referred the following dispute to the Tribunal u/s 10(1)(c) of the Industrial Disputes Act, 1947:

Whether the Management of Bharat Coca-Cola Bottling South East Private Limited, Gajulapalli is justified in engaging Sri G. Israiel and 56 other workmen (shown in annexure) as contract labour when the same workmen were the employees of the previous management from whom the present management has taken over? If not, to what relief the workmen are entitled?

3. On considering the reference referred above, through the impugned Award, the Tribunal has answered it as follows:

The management of Bharat Coca-Cola Bottling South East Private Limited, Gajulapalli is not justified in engaging Sri G. Israel and 56 other workmen as contract labour and that they are entitled to be treated as casual labour under R-1 from the date of the transfer of the Unit from Respondent No. 1 to Respondent No. 2 and entitled for consequential benefits i.e. continuity of service.

4. The necessary facts, which led to the reference by the Government and consequential Award of the Tribunal, are as under:

The petitioner-Company is having one of its Bottling Units at Gajulapalli in Kurnool District. In the said Unit, the Company is engaged in the business of manufacturing, packing and sale of nonalcoholic beverages (soft drinks), and previously, this bottling plant was owned by the 3rd respondent-Industry. The petitioner-Company has purchased the bottling plant from the 3rd respondent under the Business Purchase Agreement, dated 27th October 1997. In terms of the agreement, 131 permanent employees, who were employed by the 3rd respondent-Industry, were taken into service in the petitioner-Company. When the Unit was under the control of the 3rd respondent, there were two Registered Unions. The majority Union was "Nandyal Annapurna Bottling Industries Employees and Workers Union (CITU)", with Registered No. 846. There was another Union, namely "Annapurna Bottling Company Workers Union", and after purchase of the Unit by the petitioner, this Union is renamed as "Coca-cola Bottling South-East Private Limited Workers Trade Union" i.e. respondent No. 2 herein.

5. Before transfer of the Unit in favour of the petitioner-Company, the majority Union i.e. "Nandyal Annapurna Bottling Industries Employees and Workers Union" has entered into settlement with the then management with regard to the wages of the workers, and after expiry of the period of earlier settlement, the Union has arrived at a wage settlement with effect from 01.01.1995 and a Memorandum of Settlement was reduced into writing, which was valid for a period of three years. But, before expiry of the said period, the 3rd respondent-Industry has transferred the Unit to the petitioner-Company pursuant to the Business Purchase Agreement, dated 27th October 1997. In the said agreement, the permanent employees were referred to as dedicated employees and their services were transferred to the petitioner-Unit. In the 2nd respondent-Union, there are about 56 casual employees and 29 piece-rate employees. The said Union has submitted a representation dated 24th of April 1998 to the Deputy Commissioner of Labour, Kurnool, stating that the petitioner-management is bent upon to terminate the services of the members of the Union, and is trying to convert them as contract workers. The Deputy Commissioner of Labour intervened in the matter and held a joint meeting on 06.05.1998, in which, discussions took place regarding charter of demands made by the 2nd respondent-Union about the casual workers. Since the conciliation efforts

between the 2nd respondent-Union and the management of the petitioner-Company are failed, and on the report of the Labour Commissioner, the Government referred the matter to the Tribunal for adjudication.

6. Before the Tribunal, it was the case of the 2nd respondent-Union that its members were the workmen working directly under the management of the 3rd respondent-Industry, and inspite of the fact that their services were to be continued as per the Business Purchase Agreement, dated 27th October 1997, inspite of the same, the petitioner-Management has converted them as contract labour, by engaging a Contractor. It is their grievance that as much as they were working directly under the control of the management in the 3rd respondent-Industry when the Unit was transferred pursuant to the Business Purchase Agreement, dated 27th October 1997, they continue to be the employees of the petitioner-Company in view of the purchase of business of the 3rd respondent-Industry. Precisely, it was their case that after purchase of the Unit, without issuing any notice and giving opportunity to them, they are converted as contract labour by the petitioner-Company, and as such, the same is not permissible.

7. The petitioner-Company herein has filed a detailed counter affidavit before the Tribunal. Mainly, it was the case of the petitioner-Company that the reference of dispute is not a valid one as the dispute referred to, does not fall within the categories prescribed either under Schedule II or Schedule III of the Industrial Disputes Act, 1947, and hence, is liable to be rejected straightway. It is also the case of the petitioner-Company that the members of the 2nd respondent-Union are not its workmen, and as such, there is no relationship of "employer" and "employee" between them, and therefore, no valid industrial dispute can exist between the 2nd respondent Union and the petitioner-Company. It was also the case of the petitioner that in view of the provision contained u/s 25(FF) of the Industrial Disputes Act, 1947, the workmen of the erstwhile transferor Company cannot seek any relief against the petitioner-Transferee employer, and if at all any claim is there, they can claim compensation only against the erstwhile employer, but on the ground that no notices were served, they cannot seek either employment under the petitioner-transferee Unit or any other relief. In the counter, it is stated that after taking over of the Unit pursuant to the Business Purchase Agreement, dated 27th October 1997, it has taken on its roles, 131 permanent employees, who were employed by the previous management, without any change in their service conditions, and after taking over of the plant, the petitioner never engaged any casual labour, as such, the question of alleged termination of 56 casual labourers, whom the 2nd respondent-Union represents, does not arise. In the counter, it is also stated that it has entrusted certain jobs like loading, unloading, house keeping, etc., to a duly licensed contractor by name Mr.P.Sudhaker Reddy, under an agreement, dated 19th January 1998, and that the 56 casual workmen might have been engaged by the above contractor for the purpose of carrying out the entrusted jobs.

8. Before the Tribunal, oral and documentary evidence was let in on behalf of the

parties. On behalf of the petitioner-management, MWs.1 and 2 were examined and documents in Exs.M-1 to M-8 were marked. On behalf of the 2nd respondent herein, WW-1 was examined and Exs.W-1 to W-10 were marked. Apart from the same, documentary evidence in Exs.C-1 to C-3 was also marked.

9. To answer the reference having regard to the pleadings on record, the Tribunal has framed the following five points for consideration:

1. Whether there is employer and employee relationship between the petitioner and the 2nd respondent?
2. What is the effect of transfer of Unit and whether the 56 casual labourers represented by the 2nd respondent-Union continue to work with petitioner or not?
3. Whether the petitioner-Company has a right to introduce contract labour system?
4. Whether the settlement dated 20th May 1998 is binding on the 2nd respondent?
5. Whether the reference is valid?

10. The Tribunal, by recording a finding that there is no specific denial of claim of the 2nd respondent-Union that its members were engaged as casual workers by the 3rd respondent-Industry and also giving due weight-age to the evidence of WW-1 and the documents in Exs.C-1 to C-3 and W-1 to W-10, has held that there was an employer-employee relationship between the 3rd respondent-Industry and the members of the 2nd respondent-Union. On the 2nd point, mainly on the ground that the 56 casual labourers, who are represented by the 2nd respondent-Union, were not put on notice before transfer of their services, the Tribunal has held that even after transfer of the Unit, the said workers continued to work with the petitioner. On the third point, interpreting the terms of the Settlement under Ex.W-3, which provides for a Clause for regularisation of casual workers, the Tribunal has held that the said settlement is binding on the previous employer i.e. the 3rd respondent, as such, the petitioner, who is a purchaser of the Unit, now cannot say that there are no casual workers on the date of transfer, and taking all the circumstances into consideration, it has held that the petitioner-Company is not justified in introducing the contract system. Coming to the 4th point, the Tribunal, while interpreting the settlement under Ex.M-5, has held that the settlement arrived at between the petitioner and the BCCS Union, is not binding on the 2nd respondent-Union. While holding that the reference is valid, on the 5th point, the Tribunal has held that Sri G. Israiel and 56 workmen cannot be treated as contract labourers and that management of the petitioner-Company is not justified in terming them as contract labour and they are entitled to be continued as casual labour.

11. Heard Sri C.R. Sridharan, learned Counsel for the petitioner-Company and Sri K. Bala Gopal for the 2nd respondent-Union.

12. It is contended by Sri C.R. Sridharan that the order of reference is nothing but a reflection of the demand for abolition of contract labour system and such a dispute/issue is totally beyond the purview of the Industrial Tribunal-cum-Labour Court. It is further submitted that the 56 casual workers are never the workmen of the petitioner-Company. Further, the dispute raised by the 2nd respondent-Union is not covered by either Schedule II or Schedule III of the Industrial Disputes Act, 1947, as such, the reference was to be rejected by the Tribunal. Lastly, it is submitted that the Tribunal below has exceeded its jurisdiction conferred under the provisions of the Industrial Disputes Act and ordered the reference contrary to the evidence and material on record, resulting in direction to the petitioner-management to take the said 56 casual employees of the erstwhile management as workmen of the petitioner Unit. The learned Counsel has placed reliance on several judgments of this Court and Apex Court, which can be referred to while dealing with his contentions.

13. Per contra, it is submitted by Sri K. Balagopal, learned Counsel appearing for the 2nd respondent-Union, that having regard to the fact that the 56 casual employees whose cause was taken up by the 2nd respondent-Union, were admittedly the employees of the 3rd respondent-Unit, and in that view of the matter, without issuing any notice and without making any reference to the said employees in the Business Purchase Agreement, dated 27th October 1997, the management of the 3rd respondent or the petitioner cannot dispense with their services and convert them to contract labour. It is submitted that the agreement entered into by the management of the petitioner-company with Contractor by name Mr. P. Sudhaker Reddy to avail certain services is only to create an intermediary by depriving the rights of the workmen who were engaged by the 3rd respondent-Industry. It is submitted that the dispute raised was within the purview of the provisions of the Industrial Disputes Act, 1947, and when the members of the 2nd respondent-Union were deprived of continuity of service and when steps are being taken by the petitioner-management for conversion of their services into contract labour, the dispute was rightly raised, and that the reference ordered does not amount to abolition of contract labour, as pleaded by the petitioner. It is further submitted that while considering the reference u/s 10(1)(c) of the Industrial Disputes Act, the reference is to be answered by keeping in mind the pleadings of the parties on record, as such, having regard to the totality of the circumstances, the Tribunal, while considering various provisions of the Industrial Disputes Act and the evidence on record, by recording factual findings, has passed the impugned Award, as such, it cannot be said that such an Award is illegal or arbitrary, so as to interfere with the same in exercise of powers under Article 226 of the Constitution. The learned Counsel has also referred to certain decided case law in support of his argument, which will be referred to at appropriate place.

14. To consider the rival contentions of the learned Counsel for the parties, at the outset, it is appropriate to note certain important aspects, which have a bearing on the issue to be decided in the present writ petition. Even according to the

claim of the 2nd respondent-Union, the workmen were working as casual labourers with the 3rd respondent-Industry prior to purchase of Unit by the petitioner-Company pursuant to the Business Purchase Agreement, dated 27th October 1997. Though a copy of the agreement is not filed before the Tribunal, but during the course of hearing of the writ petition, I have perused a copy of the said agreement, shown by the learned Counsel for petitioner. While purchasing the business concern of the 3rd respondent-Unit, in terms of the agreement, the petitioner has absorbed all the permanent employees, who were on the rolls of the 3rd respondent-Unit up to 5th of January 1998. Thereafter, the petitioner-Company has entered into an agreement on 8th January 1998 with a contractor by name Mr.P.Sudhaker Reddy for the purposes of carrying out certain non-core activities such as loading, unloading, house keeping, etc., and in turn, the contractor has applied for license on 15th of January 1998 under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and thereafter, an agreement was entered into by the petitioner and the said contractor on 19th January 1998, to provide the above services. Only in the representation dated 16th of March 1998, addressed by the General Secretary of the Annapurna Bottling Industries Employees and Workers Union, it was alleged that the transferor i.e. respondent No. 3 and the petitioner have introduced the contract system, and one of the demands was to abolish such system.

15. All through, the demand was under the premise that pursuant to the Business Purchase Agreement, the services of casual labourers were also transferred by the 3rd respondent-transferor in favour of the petitioner-Company, therefore, the petitioner-Company has engaged a contractor only to convert such casual labour into contract labour. Except the presumption of continuity of said workmen as casual labour under the petitioner, there was no other basis for the Tribunal below for coming to the conclusion that the services of such workmen were continued under the management of the purchaser petitioner-Company. In fact, the crucial witness i.e. WW-1, who was examined on behalf of the 2nd respondent-Union, has clearly admitted that they have not filed any documentary evidence to show that they continued to work in favour of the petitioner-Company after the change of management. In spite of the same, by drawing inference from the circumstances, the Tribunal below has held that the petitioner continued to engage the services of the said workers even after transfer of the Unit.

16. In the case of the very petitioner, in an earlier judgment 2002 (1) ALD 1031 in identical circumstances, while considering the rights of the employees of the transferor Company after transfer of the Unit, a Division Bench of this Court has held that if there is no relationship of employer and employee, no dispute exists for reference under the provisions of Section 10(1)(c) of the Industrial Disputes Act, 1947. In the said judgment, it is further held that the casual employees cannot be thrust upon the purchaser for employment, in the absence of any employer and employee relationship.

17. Further, in the case of Hindustan Coca-Cola Beverages (P) Ltd. v. Authority u/s 48(1) of the A.P. Shops and Establishments Act, 1988-cum-The Assistant Commissioner of Labour 2001 (4) ALD 518, a Division Bench of this Court, while interpreting the provision u/s 48 of the A.P. Shops and Establishments Act, 1956, vis-a-vis, the provision u/s 25(FF) of the Industrial Disputes Act, 1947, has held that when there is a transfer of business, the employees who are removed by way of disciplinary action by the transferor, cannot be ordered to be reinstated into service in the transferee Company.

18. In the case of Board of Directors of the South Arcot Electricity Distribution Co. Ltd. v. N.K. Mohammed Khan, etc. 1970 (21) FLR 174, when the South Arcot Electricity Distribution Company Limited was taken over by the Government in exercise of powers under the Madras Electricity Supply (Acquisition) Act, 1954, and when there was a claim by the employees of the Company, claiming retrenchment compensation u/s 25(FF) of the Industrial Disputes Act, the Hon'ble Supreme Court has held that the right under Clause 25(FF) is conferred on the basis of legal fiction that the workmen are deemed to have been retrenched unless their services are continued in accordance with the condition laid down in the proviso to the said Section. In this judgment, it was further held;

In these circumstances, the conclusion is irresistible that the claim u/s 25-FF of the Act to compensation accrues to the workmen against the previous employer under whom he was employed until the date of transfer. In the present case, therefore, the right to receive compensation clearly accrued u/s 25-FF of the Act against the Company and there was, therefore, no difficulty in the Labour Court exercising jurisdiction on that basis.

19. In the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , the Hon'ble Supreme Court has held;

The effect of Section 25-FF which is explained by this Court in Anakapalli Co-operative Agricultural and Industrial Society Limited v. Workmen [1963] 1 Supp SCR 730, is, so far as it is relevant, as follows: (i) the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination; (ii) in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employees. No claim can be made against the transferee of the said concern; (iii) By the present Section 25-FF the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso, and (iv) Since Section 25-FF provides for payment of benefit on the basis that the services of the employees stand terminated, neither fair play nor social justice would justify the claim of the employees that they ought to be re-employed by the transferee.

That being the position in law u/s 25-FF, the former employees of the Company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for re-employment.

20. From the above referred decisions, coupled with the plain language u/s 25-FF of the Industrial Disputes Act, 1947, it is clear that where the ownership or management of an undertaking is transferred whether by agreement or by operation of law, from the employer in relation to that undertaking to the new employer, every workman, who has been in continuous service for not less than one year in that undertaking immediately before such transfer, shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the employee has been retrenched. However, said Section operates subject to conditions in the proviso. But when there is a dispute with regard to transfer of workmen, and when it is a categorical case of the transferee undertaking that certain casual employees were not transferred by virtue of the Business Purchase Agreement, in the absence of any clear evidence and material on record, the Tribunal has grossly erred in presuming that their services were continued. If at all there is violation of provisions contained u/s 25-FF of the Industrial Disputes Act, it is a case for claiming compensation against the transferor, but, on the ground that such employees were not put on notice, the Tribunal erred in drawing a presumption that they continue to be the employees of the petitioner-transferee Company.

21. Once this Court comes to the conclusion that they are not continued as workmen in the transferee Company, the further question arises whether is there any dispute within the meaning of Industrial Disputes Act, for adjudication. As evident from the very definition of "Workman" and "dispute", it is clear that it is beyond the purview of the dispute for reference by the Government u/s 10 of the Industrial Disputes Act, and even the Tribunal has erred in granting the relief through the impugned Award. Once the workmen are not persons employed by the petitioner-management consequent to transfer of 3rd respondent-Industry, they are not entitled to raise any dispute, more so, by calling it as an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.

22. From the oral and documentary evidence on record, it is clear that consequent to purchase of business pursuant to the Business Purchase Agreement, only the employees, who were on the roles of the 3rd respondent-Industry as regular employees, were transferred, and there is no reference to the casual labourers represented by the 2nd respondent-Union, in the absence of which, there was no embargo on the part of the petitioner-Company to entrust such jobs which were being undertaken by the casual employees in the erstwhile Company, by appointing a Contractor, as such, they entered into an agreement with one Mr.P.Sudhaker Reddy, to provide services in some non-core activities of the petitioner-Company.

23. Upon a perusal of the Award, it is clear that the Tribunal has proceeded

wrongly on the presumption that the petitioner-management entered into an agreement with the Contractor on 19th January 1999, but the said finding is factually incorrect and as per the evidence on record, it is clear that after entering into Business Purchase Agreement on 27th October 1997, after the contractor has applied for license under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the petitioner-Company has entered into an agreement on 19th January 1998, but not on 19th January 1999, as recorded by the Tribunal at several places. In that view of the matter, the services of 56 casual employees were engaged only by the Contractor, and at no point of time, the said workmen were engaged by the petitioner-Company so as to plead that they are the workmen of the petitioner-Company to raise an industrial dispute. As much as there is no relationship of employer and employee existing between the petitioner-Company and the 56 casual workers, the very reference made by the Government is per se illegal, and consequently, the Tribunal also has no jurisdiction to deal with such an aspect.

24. While considering the reference referred by the Government, the 1st respondent-Tribunal has answered the reference by holding that the management of the petitioner-Company is not justified in engaging the Contractor Mr.P.Sudhaker Reddy for carrying out certain non-core activities. Such answering by the Tribunal is nothing but declaration of abolition of contract labour, which is not permissible while considering the reference made by the Government.

25. In the case of Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, , the Hon''ble Supreme Court has held;

One thing is clear - if the employees are working under a contract covered by the Contract Labour (Regulation & Abolition) Act, then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant-Company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate Industrial Tribunal or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act.

26. Further, in the case of Sk. Ali and others Vs. Managing Director, Bharat Heavy Plates and Vessels Ltd., and another, , a Division Bench of this Court has held;

The matter is no longer res integra having regard to the various decisions of the Apex Court as also this Court that in the event of the contractors been appointed by a Company in terms of the provisions of the Act, question of regularisation of the services of the contract labourers by the principal employer would not arise. In such a case, in the event, a representation is made before the appropriate Government for abolition of contract labour, a notification must be issued by the

appropriate Government in terms of Sub-section (1) of Section 10 of the Act. A bare perusal of the aforementioned provisions clearly show that it is only the appropriate Government which can issue such notification and it is not for the Court to do so. In *Gammon India Limited v. Union of India* 1974 (20) FLR 406, it has clearly been held by the Apex Court that after coming into force of the said Act, it is only the appropriate Government which can issue a notification and even the Industrial Courts are precluded from passing any award in this regard.

27. Similar view was also taken by the Hon''ble Supreme Court in the case of *Vegoils Private Limited Vs. The Workmen*, . In para 38 of the judgment, the Supreme Court held;

The question naturally arises what is the effect of the Central and the State Acts regarding the jurisdiction of the Industrial Tribunal to entertain and adjudicate upon a dispute regarding abolition of contract labour. The Central Act had received the assent of the President on September 5, 1970 before the date of the award, though the said Act has come into force only with effect from February 10, 1971. The State Act was already in force at the time when the award was passed. Though we are not inclined to accept the extreme contention of Mr.Pai that the Industrial Tribunal, in view of these two enactments, had no jurisdiction to adjudicate upon the dispute regarding abolition of contract labour.

28. Similarly, in the case of *B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others*, , the Hon''ble Supreme Court has observed as under;

...Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered u/s 10 of the Act.

29. Further, in the case of *Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others*, the Hon''ble Supreme Court has observed that after coming into operation the Contract Labour (Regulation and Abolition) Act, 1970, the authority to abolish the contract labour is vested exclusively in the appropriate Government which has to take its decision in accordance with the provisions of Section 10 of the Act.

30. Though the learned Senior Counsel Sri K.Balagopal, appearing for the 2nd respondent-Union has relied upon a judgment of this Court in the case of *Sirpur Paper Mills, Ltd. Vs. Industrial Tribunal and Others*, , wherein, a Division Bench of this Court has held that the dispute raised by permanent workmen working under the employer for abolition of contract system of work and absorption of labour employed by contractors as permanent workmen, falls within the definition of the "Industrial Dispute". But, whether a dispute falls within the

definition of "industrial dispute" or not, is to be examined with reference to facts of each case. In the above referred case, the dispute was raised by permanent workmen working under the employer when the employer was getting work done through contractors. In the present case, it is the case of the petitioner that the members of the 2nd respondent Union are not even casual workmen as much as their services were not transferred pursuant to the Business Purchase Agreement entered by the 3rd respondent in favour of the petitioner. In that context, the judgment referred above will not render any assistance in support of the argument advanced by the learned Counsel for the 2nd respondent-Union.

31. The learned Counsel has further relied upon a judgment of the Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, , wherein, while considering the scope of the reference u/s 10(1)(d) of the Industrial Disputes Act, it was held by the Supreme Court that the Tribunal cannot widen the scope of the inquiry beyond the terms of the reference.

32. Reliance is also placed on another judgment of the Supreme Court in the case of Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, , wherein it was held that it is not for the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India, to substitute one finding for another, and similarly, one punishment for the other. But however, in the same judgment, it is held that it is not to be understood as denial of this power to the High Court in every type of case.

33. Similarly, in the case of Management of Singareni Collieries Ltd. Vs. Industrial Tribunal (C) Hyderabad and Others, , a learned Single Judge of this Court has discussed the scope of interference with the orders of Industrial Tribunals and held that the High Court cannot convert itself into an appellate Court over the Tribunals constituted under Special Legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon the question of fact decided by those Tribunals.

34. Further, in the case of Eifco Oil Engine Industries, Coimbatore Vs. Labour Court, Coimbatore and another, , a Division Bench of Madras High Court has discussed the scope of interference and has held that merely because another view is possible, same is not a ground to interfere with the orders of the Labour Court.

35. Though the learned Counsel for the 2nd respondent-Union has placed reliance on the judgments referred above with regard to the scope of interference by this Court under Article 226 of the Constitution, but whether such interference is called for or not, is to be decided having regard to the facts and circumstances of each case. In the case on hand, having regard to the plea taken by the petitioner-Company that the members of the 2nd respondent-Union are not at all appointed by it after purchase of 3rd respondent-Unit pursuant to the business purchase agreement dated 27th of October 1997, whether any

industrial dispute exists or not, is a matter, which fell for consideration in this writ petition. In the absence of any material to show that the members of the 2nd respondent-Union are employed by the petitioner-Company after transfer of 3rd respondent-Unit in its favour, can such dispute be adjudicated as an industrial dispute, is required to be examined with reference to various Statutory provisions under the Industrial Disputes Act, 1947. As much as in this case it is not established that the workmen are employed by the petitioner-Company, entertaining such dispute is not only illegal and arbitrary, but it also runs contrary to the provisions under the Industrial Disputes Act, and as such, it is always open for this Court to entertain this petition under Article 226 of the Constitution of India, to examine such Statutory violations. Therefore, the judgments relied upon by the learned Counsel for the 2nd respondent-Union do not render any assistance in support of his argument, having regard to the facts and circumstances of the case.

36. As already held above, except the presumption drawn by the Tribunal below, there was no other evidence on record to show that the services of the members of the 2nd respondent-Union were engaged by the petitioner-Company at any point of time after it has purchased the 3rd respondent-Unit. In that view of the matter, this Court is of the view that in the absence of any recitals in the Business Purchase Agreement regarding transfer of services of casual labourers, the only option left to such employees was to seek compensation from the transferor Company, construing it as a retrenchment, but not to raise any industrial dispute, seeking declaration against the petitioner-Company. As much as there is no evidence at all with regard to their continuation after transfer of the Unit, there was no occasion for the petitioner-Company to convert them into contract labour, and as such, the Award of the Tribunal answering reference to the effect that the petitioner-Company was not justified in engaging the members of the 2nd respondent-Union as contract labour, and that such employees are entitled to be treated as casual labour under the petitioner-Company from the date of transfer of Unit from respondent No. 3, and that they are also entitled for consequential benefits including continuity of service, is without any basis and contrary to the material on record. For the aforesaid reasons, the impugned Award of the Tribunal is liable to be set aside.

37. Accordingly, the writ petition is allowed and the Award dated 20th July 2004, passed by the Industrial Tribunal-cum-Labour Court, Ananthapur, in I.D. No. 33 of 1999, is hereby set aside. No order as to costs.