

(2012) 02 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No's. 8368-8393 of 2011 (L-RES)

Bharath Electronics Contract Labour Union and Others

APPELLANT

Vs

M/S. Bharat Electronics Ltd.

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10 (1)
Industrial Disputes Act, 1947 — Section 10 (1) (d), 2 K

Citation : (2012) ILR (Kar) 1653 : (2012) 6 KarLJ 61

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; P.D. Vishwanath, for M/S. A.G.H. Associates. Advs., for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar

1. Petitioners are calling in question the award dated 4.11.2010 passed by the Industrial Tribunal, Bangalore in I.D. No. 184/2005 whereunder the dispute referred to the Tribunal by the appropriate Government u/s 10(1)(d) of the Industrial Disputes Act came to be rejected. The appropriate Government by order dated 27.10.2005 referred the dispute to the Industrial Tribunal at Bangalore to adjudicate as to whether respondent-management was justified in not absorbing the services of the petitioners and rejecting their prayer for being paid the wages and other facilities as provided to employees similarly placed. On such reference being made to the Industrial Tribunal, the workmen along with Bharath Electronics Contract Labour Union (hereinafter referred to as "Union" for brevity) filed a claim statement praying for an award being passed in their favour for being to absorbed on permanent basis and granting them salary and other benefits payable which are paid to permanent employees of the respectively company. It was contended in the claim statement that petitioners have been working at BEL by discharging the work of perennial nature on full time basis for

last 10 to 18 years and their nature of work being permanent, they cannot be denied the benefit of absorption and it was alleged that respondent/management was indulging in unfair labour practice by denying them right of absorption and grant consequential benefits.

2. On service of notice, respondent-management appeared and had filed its counter statement contending that dispute raised by the workmen is not an industrial dispute and it is in the nature of a individual dispute; dispute raised by the first party workmen relates to their employment or non employment and as such they had to raise an industrial dispute properly espoused by a Union or substantial number of workmen of the company should have raised the dispute; management is not in a position to have any additional manpower when it is reducing the existing manpower for economical reasons; any award directing absorption of these workmen would amount to granting a permission to enter from back door into the service of the company; these workmen are labourers engaged by the contractors over whom the management has no supervision; no master and servant relationship exists between the management and the workmen who have been employed by the contractors. All contentions raised in the claim petition came to be denied.

3. In support of their respective contentions, parties to the dispute tendered both oral and documentary evidence and addressed arguments. After considering the same, Industrial Tribunal by order dated 04.11.2010 rejected the reference. It is this order which is impugned in the present writ petition.

4. Heard Sri. V. Lakshminarayan, learned Counsel appearing for petitioner and Sri. P.D. Vishwanath learned Counsel for M/s. AGH Associates for respondent. Perused the impugned order as also the records secured from the Industrial Tribunal.

5. Industrial Tribunal has come to a conclusion that dispute raised by Sri Hemanth and 29 others is more an individual dispute and Union has not espoused the cause of workmen and even otherwise substantial number of workmen of the company have not espoused their cause and as such it cannot be termed as an Industrial Dispute. It has also held that, scope of reference is attempted to be enlarged by adding BEL Contract Labour Union as first party and Bharath Electronics Ambedkar SC & ST Sahakara Sangh as also Bharath Electronics Karmikara Hitharakshana Samithi as second and third party respectively and as such it is a clear case of mis-joinder of parties without any authority of law and adjudication is without jurisdiction.

6. Sri. V. Lakshminarayan, learned counsel appearing for petitioners would contend that petitioners are working on full time basis for more than 18 years and the nature of work which they carry on is perennial in nature. He contends that it is the Union which had moved an application before Labour Commissioner raising an Industrial Dispute on behalf of 30 workmen and based on Doctrine of Community of Interest, dispute came to be referred to the jurisdictional

Industrial Tribunal and Union has espoused the cause of workmen and as such dispute is maintainable. He would further contend that a writ petition had been filed before this Court challenging the action of the respondent in relieving the workmen of their services in W.P. No. 2062-89/2000 and W.P. No. 3207/2000 which came to be disposed of with a direction that petitioners should initiate conciliation proceedings and raise a dispute and on the basis of the same, reference has been made by the appropriate Government which was not objected to by the Management and as such the order of the Industrial Tribunal holding that dispute raised by Sri Hemanth and 29 others is more individual dispute rather than Industrial dispute is erroneous and such a contention cannot be raised by respondent. He would submit that resolution dated 3.6.2010 produced and marked as Ex.W-103 would go to show that more than 100 persons have signed ratifying the action taken by the workmen earlier and this Exhibit itself has not been considered by the Tribunal and this document would go to show that group of workmen are espousing the cause which represents community of interest. He would contend that even an outside union or a union not registered can also espouse the cause of the members by raising a dispute and such dispute cannot be termed as not being a industrial dispute raised properly. He would contend that when members espouse the cause as an Industrial dispute, they need not be the members of a Union. The acid test would be community of interest of workmen being represented and if this test is applied it becomes a industrial dispute. He would draw the attention of the court to Ex. W. 16AA which is a resolution of the meeting held on 1.5.2005 and names of ten workmen has been recorded who are parties to the dispute, whereunder, Sri Hemanth has been authorised to appear before the Conciliation Officer and the resolution passed on 3.6.2010 at Ex.W-103 would also go to show that more than 100 workmen have signed the resolution and in turn they have ratified the acts of Sri. Hemanth. He would contend that though order sheet dated 4.9.2010 of the Industrial Tribunal would go to show there is reference to Ex.W-103 and the Industrial Tribunal having observed that it requires consideration in future, ought to have considered this aspect as the basis for raising a dispute being Ex.W-103, and same has not been considered. Hence, he contends the order of the Labour Court is erroneous.

7. He would further contend that findings of the Labour Court at paragraph 15 onwards is erroneous. Inasmuch as the management has not disputed the nature of the work carried on by these workmen and evidence on record would go to show that the work discharged by these workmen and perennial in nature and the contract put forward is a camouflage.

8. He would contend that a cursory look at the contract in question as spoken to by the witnesses would go to show the nature of work carried on by these workmen and licence granted is entirely different. He would contend if Ex.M-1 to M-6 are compared with each other along with evidence of workmen it would go to show that nature of work carried on by these workmen are entirely different from the nature of work specified in the licence which is issued to the contractors

and as such the nature of work discharged by these workmen being regular work and perennial in nature finding by tribunal contrary to this fact is liable to be held as erroneous. He would contend that, existence of a contract is a must for provisions of the Contract Employment (Regulation and Abolition) Act, 1970 being attracted to the facts of the case. He would draw the attention of the court to Exhibits W-5, W-8, W-14, W-54, W-74. W-85 and the evidence of the witness WW-23 and cross examination of MW-1 to contend that nature of work being carried on and discharged by petitioners are different from the works specified in this licence obtained by contractors under the Contract Labour Act. In support of his submissions he has relied upon the following judgments:

(1) (2001) 7 SCC 1 -para 68, 87, 107, 125

(2) 2001 (1) LLJ Delhi 1127 - para 37

(3) (1971) 1 SCC 225 - para 5

(4) 1970 (1) LLJ AP 538 - para 2

(5) AIR 1961 SC 304 - para 6

(6) AIR 1960 SC 948 - para 6

(7) AIR 1967 Mysore 172 - para 9

(8) AIR 1957 SC 264 - para 25

(9) Unreported judgment in WP 2062-89/2000 and 3205-3207/2000 dated 29.3.2005

9. Per contra, Sri Vishwanath, learned counsel appearing for respondent would contend that the resolution passed at the meeting 1.5.2005 does not reflect that any decision was arrived at to take up the cause of the workmen before the Labour Court but it only authorizes Sri. Hemanth to espouse the cause of workmen. In this regard, he would draw the attention of the court to the cross examination of the witnesses examined on behalf of the workmen namely WW5, WW6, WW7 and WW11 to contend that these witnesses unequivocally admit that there is no resolution to raise a dispute. He would further draw the attention of the court to the evidence of WW23, wherein he has admitted that no meeting was called at the time of passing the resolution Ex.W-103 and he would also draw the attention of the Court to the evidence of WW-13 to contend that the said resolution is a created document and as to how the said document came into existence is admitted by this witness. He would contend that Ex.W-16AA is a resolution dated 1.5.2005 and as on the date of the order of the Industrial Tribunal dated 11.4.2008 at Annexure-E, the said resolution was already available on record and Ex.W-16AA came to be marked on 21.6.2010 whereunder, the witness has admitted prior to such resolution itself they had raised a dispute and as such, he seeks for dismissal of the Writ Petition. He would further contend that the witnesses WW-1, WW-2, WW-4, WW-9, WW-11, WW-20, WW-21, WW-22 and petitioner No. 14 have stated that they are helpers

and as such, they are not discharging any perennial work. He would draw the attention of the court to the evidence of WW-3, WW-5, WW-13 and WW-23 to contend that they have admitted that they are Electricians. Likewise, he would contend that petitioners 3, 6, 9, 12, 15, 16, 19 and 25 have also admitted that they are doing their work as Sanitary Assistants and as such, it cannot be said that they are carrying on the work which is perennial in nature. He would draw the attention of the court to exhibit W18, whereunder it is reflected that Sri S. Krishnamurthy (petitioner No. 3) has been discharging his duties in Electrical Maintenance Department and as such, a plea has been put forward as though he is working in said department which factually is incorrect because the witness WW-6 namely the very same Sri S. Krishnamurthy has admitted in his examination-in-chief that he has been working as "Sanitary Assistant" vide paragraph No. 2. Likewise, he draws the attention of the court to exhibit W-52, a certificate said to have been issued to Sri H. Murthy (Petitioner No. 13) which goes to show that he is an Electrician and same being relied upon by the petitioners to contend that the workmen have been discharging their duties continuously and the nature of work is perennial which is contrary to the evidence according to the learned counsel for the respondent since WW-13 namely the very same Sri H. Murthy, who has tendered evidence has admitted in the cross examination that he does not have any certificate or qualification as Electrician and as such, these documents cannot be relied upon and Tribunal has rightly not accepted this evidence. He would also contend that even otherwise, the authors of these documents have not been examined and as such, it has no evidentiary value. He would further contend that contention of the learned counsel for petitioner regarding non obtaining of certificate of registration as required under the Contract Labour Act has to be rejected in limine since certificate of registration has been obtained as per Ex.M-1 by the respondent and even the contractors have also obtained the licences as per Ex.M-2 to M-4. In support of his submissions he has relied upon the following judgments:

- (1) AIR 1963 SC 318 - PARA 15, 16
- (2) ILR 2001 KAR 94 - PARA 2
- (3) AIR 2009 SC 3063 - PARA 20
- (4) (2011) 1 SCC 635 - PARA 11
- (5) AIR 2000 (6) SC 1806 - PARA 34 AND 41

10. Having heard the learned Counsel appearing for parties I am of the considered view that following points arise for my consideration:

- (1) Whether the dispute raised by the petitioners would be an industrial dispute espoused by Union representing community of interest?
- (2) Whether the work carried on by the petitioners are permanent and perennial in nature so as to hold that the contract labour is a camouflage?

(3) Whether the award passed by the Labour Court rejecting the reference ID No. 184/2005 is to be set aside, affirmed or modified?

(4) What order?

BRIEF BACKGROUND OF THE CASE:

11. The "appropriate Government" in exercise of its power u/s 10(1)(d) of Industrial Disputes Act, 1947, by order dated 27.10.2005 has referred the following points of dispute for being adjudicated by the Industrial Tribunal, Bangalore:

(1) Whether the management of M/s.Bharat Electronics Limited, Jalahalli Post, Bangalore -560 013, is justified in not paying Sri. Hemanth and 29 others whose names are found in the annexure the wages and facilities extended to permanent employees and not regularising their services?

(2) If so, to what reliefs the applicants are entitled to?

12. On the basis of an order dated 16.04.2002 passed by Division Bench of this court in W.A.Nos. 2661-2681/2000 c/w W.A.Nos. 4357 and 4479-98/2000 (S-Res) holding that on completion of 10 years of service of employees, the university (writ petitioner therein) may consider their absorption subject to condition as specified in paragraph -(a) therein namely (i) at the time of initial appointment, the employee should not have been over aged with reference to the maximum age limit prescribed by the University; (ii) they should now be medically fit according to the standards if any prescribed by the University and; (iii) they should have completed 10 years of service as contract workers as on the date of the Judgment, petitioners herein preferred Writ Petition Nos. 2062-89/2000 and W.P. Nos. 3205-3207/2000 which came to be disposed off with a direction that petitioners should initiate conciliation proceedings. Accordingly, dispute came to be raised before the labour and Conciliation officer and on account of failure of conciliation, the "appropriate Government" referred the dispute to Industrial Tribunal for being adjudicated. On such reference being made claim petition came to be filed u/s 2A read with section 2K of the Industrial Disputes Act seeking following reliefs:

(a) Register this dispute of the petitioners herein against the respondents;

(b) Declare that the petitioners are working as against the work which is perennial in character and further declare that the Petitioners are entitled for absorption and also entitled for full pay scale and further declare that the Petitioners are the employees of the BEL Organisation;

(c) Direct the respondents to absorb the petitioners into the services of BEL Organisation and pay equal pay for equal work.

13. On service of notice from Industrial Tribunal, respondent-management appeared and filed its counter statement denying the averments made in the claim petition and sought for rejection of the reference.

14. The petitioner-workman examined 23 witnesses in support of their case as WW-1 to WW-23 and got produced 102 documents and got it marked as Ex-W-1 to W-102, The management examined one witness as MW-1 and got marked nine documents produced by it as Ex-M-1 to M-9. The Labour Court on evaluation of evidence found that the first petitioner union was not a party to the dispute raised by Hemanth and 29 others against the respondent-management; no permission of the Tribunal was taken to implead the union in the claim statement; no resolution has been passed to establish that substantial number of workman of first party union had resolved to espouse the cause and so called resolution produced at Ex-W-16AA is not a resolution passed to espouse the cause of Sri Hemanth and 29 others and as such it is an individual dispute than an industrial dispute not espoused by first union. Industrial Tribunal also held that Sri Hemanth and 29 others are not essentially the employees of respondent-management and there exists no relationship of employer" and employee" between them and they have been working under the contractors all along and as such they have no right to claim their absorption. Accordingly Industrial Tribunal rejected the reference.

RE: POINT No. 1:-

15. In order to adjudicate this point it would be necessary to have a look at the definition of industrial dispute as defined u/s 2(k) of The Industrial dispute of Act, 1947 and same reads as under:

2(k)"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or on-employment or the terms of employment or with the conditions of labour, of any person

16. A dispute in order to constitute industrial dispute as defined u/s 2(k) of the Act has to be espoused by a Union or a number of workmen under same employer as on the date of reference. A dispute between an employer and a single employee cannot per se be an industrial dispute. Such of those persons who seek to support the cause of workmen may themselves be directly and substabtially interested the dispute. Thus, the test to be adopted would be whether on the date of reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute is raised is by a substantial number of workmen. A dispute to be construed as an industrial dispute it is not a pre-condition that such dispute should be sponsored by a recognised union or all the workmen of a establishment should be parties to it. The representation of the union throughout the proceedings is a condition precedent to constitute a dispute as an industrial dispute. The following Judgments would reflect as to what constitutes an industrial dispute:

1. AIR 1963 SC 318

The Bombay Union of Journalists and others Vs The "Hindu", Bombay and anr.

(15) The Tribunal observed xxx espoused by them. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. If Venkateswaran or Tiwari had prior to the date of the reference supported the cause of Salivateeswaran, by their subsequent affidavit the reference could not have been invalidated. But as we have already observed there was in fact, no support of the cause of Salivateeswaran by Venkateswaran or by Tiwari and therefore the dispute continued to remain an individual dispute.

(16) The effect of the support xxx adjudication proceedings. If the dispute was in its inception, an individual dispute and continued to be such till the date of the reference by the Government of Bombay, it could not be converted into an industrial dispute by support subsequent to the reference even of workmen interested in the dispute. We have already held that subsequent withdrawal of support will not take away the jurisdiction of an industrial tribunal. On the same reasoning subsequent support will not convert what was an individual dispute at the time of reference into an industrial dispute. The resolution of the Indian Federation of Working Journalists, assuming that it has any value, would not be sufficient to convert what was an individual dispute into an industrial dispute,

1970 (1) SCC 225

M/s. Western India Match Co., Ltd., Vs The Western India Match Co. Workers Union and others

5. After the decision by this court xxx affects the other workmen. The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of Dimakuchi Tea Estate, is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. The parties to the reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. It must follow that the existence of such an interest, evidenced by the espousal by them of the cause, must be at the date when the reference is made and not necessarily at the date when the cause occurs, otherwise, as aforesaid, in some cases a dispute which was originally an individual one cannot become an industrial dispute. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it"

3 AIR 1961 SC 304

State of Bihar Vs Kripa Shankar Jaiswal

6. It would be an erroneous view if it were said that for a dispute to constitute an industrial dispute it is a requisite condition that it should be sponsored by a recognised union or that all the workmen of an industrial establishment should be parties to it. A dispute becomes an industrial dispute even where it is sponsored by a union which is not registered as in the instant case or where the dispute raised is by some only of the workmen because in either case the matter falls within S.18(3)(a) and (d) of the Act. See also *Newspapers Ltd., Allahabad Vs State Industrial Tribunal, Uttar Pradesh*, (1960) 2 Lab LJ 37 at p.38: (AIR 1960 SC 1328 at p. 1329). The settlement of March 18, 1954, arrived at during the conciliation proceedings was signed by the General Secretary and members of the executive committee of the Union though it was unregistered at the time. We cannot therefore give our accord to the decision that the settlement of March 18, 1954, was not a settlement binding between the parties

4 AIR 1967 Mysore 172 -

The Management of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd., vs. The Workmen of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd. and another

8. It is well settled that before any dispute between an employer and his employees can be said to be an industrial dispute under the Act, it must be sponsored by a substantial number of workmen or by the Union representing the workmen. It is also settled that an individual dispute does not become an industrial dispute at the instance of the aggrieved individual workman and that an individual dispute, which is not an industrial dispute at its inception, may become one, if it is sponsored by the Union of the Workmen or supported by substantial number of workmen. An element of collective bargaining which is the essential features of modern Trade Union Movement, is necessarily involved in industrial adjudication.

ILR 2001 Karnataka 94

Prakash and others Vs Superintending Engineer (Elcl) and Others

2 In these writ petitions xxx absorption. The matter is well settled that if an individual raise a dispute it can only be for removal, termination or dismissal. If the workmen wants to raise a dispute with regard to absorption and regularisation, that can only be done by Union which can raise the dispute on behalf of the workman of workmen. *THE BOMBAY UNION OF JOURNALISTS AND OTHERS vs. THE "HINDU" BOMBAY AND ANOTHERS*" states that dispute cannot be made by an individual person if it relates to regularisation and absorption unless the dispute is taken up by the union.

From the dicta laid down by the Apex Court and this Court as extracted hereinabove, it would emerge as under:

(i) That an individual dispute would be invalid and it would not become a industrial dispute unless it is espoused by a union or a appreciable number of

workmen under same employer as on the date of reference;

(ii) Individual can raise a dispute for removal, termination or dismissal alone and not for seeking regularisation.

(iii) Dispute with regard to absorption and regularisation can only be done by a union either registered or unregistered.

(iv) If at the inception it was an individual dispute subsequently it cannot be converted into an industrial dispute by support received from the union subsequent to such reference.

(v) As on the date of reference, if the dispute was espoused by union of the workmen of an employer even by an appreciable number of workmen representing the community of interest it would be an industrial dispute;

17. Keeping the principles enunciated from the law laid down by Hon"ble Apex Court and this court principles deductible thereunder as extracted hereinabove when facts on hand are examined, it would emerge that in the respondent establishment that there are about 4,000 workers on the rolls apart from contract labourers. It is also on record that there are about 2,000 contract labourers. Sri. Lakshminarayan learned Counsel for petitioner has contended that even an unregistered trade union or group of workmen representing the community of interest can espouse the cause of the workmen and it would become an industrial dispute. To substantiate his claim that substantial number of workmen had espoused the cause by their act of ratification he has relied upon three documents produced and marked before the Labour Court namely Ex-W-16A, W-16AA and W-103. Ex-W-16 is the register of proceedings said to have been recorded in respect of the meetings conducted by first petitioner - trade union. The said document was marked on 26.08.2006 in the cross examination of WW-5. The entry in the said register found at page 111 came to be marked as Ex-W-16AA in the cross examination dated 24.06.2010 of witness WW-23. Ex-W-103 is said to be a resolution dated 03.06.2010 which came to be marked in the further examination-in-chief of the witness WW-23 recorded on 05.06.2010. It is contended that on account of there being a resolution Ex-W-16AA authorising a workman i.e., Sri. Hemanth WW-23 to conciliate and same having been ratified in the meeting held on 03.06.2010 which resolution is marked as Ex-W-103 it would clearly go show that dispute is by a trade union and the workmen who have signed the resolution Ex-W-103 reflects that it represents the community of interest of workman and as such, dispute is maintainable as a industrial dispute. A reading of the said resolution Ex-W-16AA would not establish the fact that the cause of Sri Hemanth and 29 others was supported by substantial or a good number of workmen working in the respondent establishment so as to bring the "individual dispute" within the ambit and scope of "industrial dispute". To constitute a "industrial dispute", support or approval of requisite number of workmen for valid espousal of the cause is a must. It is no doubt true that straight jacket formula cannot be proposed since the number of

workmen varies from one establishment to another. In the instant case 30 persons who had passed a resolution on 01.01.2005 as per W-16AA, even assuming had authorised Sri Hemanth to conciliate, it cannot be inferred from the said resolution or from any other material available on record that those workmen represented the community of interest of workmen since the number of workers on the rolls of the respondent was around 4,000 apart from 2,000 contract labourers. These 30 workmen who have passed the resolution on 01.01.2005 as per Ex.W-16AA would hardly constitute 2% of the total work force and as such it cannot be held or construed that it was espoused by substantial number of workmen. In fact, it must be established and proved at the time of raising the dispute that these substantial number of workmen had participated in the deliberations to arrive at a conclusion and had resolved to support the cause of those workmen. In other words there should be ad idem of mind amongst those appreciable number of workmen to arrive at a conclusion and to resolve accordingly. In the absence thereof, such resolution cannot be construed as a resolution passed by substantial number of workmen.

18. As to whether a dispute raised by an individual has acquired the character of an Industrial dispute, has to be examined with reference to date of reference of dispute, and whether it was taken up and supported by the Union of the workmen of its employer against whom the dispute has been raised by a considerable or appreciable number of workmen. It is to be tested as on the date reference was made since the reference would become valid only if an Industrial dispute exists as on said date, since it has to be preceded by support of considerable number of workmen and community of interest has to exist as on the date of reference and the defect even if any cannot be cured by converting it into a Industrial dispute by merely passing a resolution subsequently. Let me now examine evidence on record. When so examined it would go to show that witness Sri H. Murthy, WW-13 has admitted to the following effect in the cross examination dated 7.8.2010:

I do not know xxxxx handwriting. Hemanth was not present when the meeting was conducted on 3.6.2010. He did not address the meeting on that day. Witness states that Hemanth had instructed him to conduct the meeting. Hemanth had returned from outstation on the evening of 3.6.2010. He had signed the circular only after returning to Bangalore in the evening. The circular was addressed to this Tribunal as "

(I)" Since this Tribunal had directed us to produce the resolution, a circular was drawn on 3.6.2010 and the same was addressed to the Tribunal. Hemanth xxxxx xxx Ex.W-103.

15 days prior to notice xxxxx xxxxxx membership. Ex.W-16(AA) is in my handwriting. The resolution was passed as per Ex.W-16(AA) on 1.5.2005 in a meeting attended by 10 or 12 members. There was no necessity to issue any prior notice for this meeting. This meeting was held to celebrate Labour Day. Ex.W-16(AA) has nothing to do with this case. It is not true xxxxxx xxxx this

Tribunal.

(Emphasis supplied by me)

19. As against this admission when the evidence of WW-23 and his further evidence tendered on 5.6.2010 as also cross examination dated 21.6.2010 which is extracted herein below is examined it would go to show that even prior to passing of the resolution as Ex.W. 16AA, the dispute had already been raised. The admission reads as under:

As per bye law xxx xxxxx Ex. W-60. At page 111 of Ex.W-16 is now marked as Ex.W-16(AA). It pertains to celebration of Labour Day" for the 5th of May every year On the same day, we had passed a resolution to make us permanent. The authorisation letter was given to me as Ex.W-16(AA) at page 111. Prior to this only, we have already raised a dispute.

(Emphasis supplied by me)

20. This evidence would clearly go to show nothing has been mentioned in the resolution about Industrial dispute being raised and in fact some of the witnesses have admitted that no resolution was passed to raise a Industrial dispute or to espouse the cause of any aggrieved workmen. In fact, some of the workmen have also unequivocally admitted and they have approached the labour Commissioner on their own in a group of 30 workmen without any Union representing them before the Labour Court.

21. Now, coming back to the issue of the resolution dated 3.6.2010 which was marked as Ex.W-103, and examined with reference to the contention of the 1st petitioner-Union that on the said date or there about when they approached the labour Commissioner, about 500 to 600 workmen had appeared before the labour Commissioner has to be eschewed with circumspection, in view of clear admission given by the witnesses on this document namely Ex.W-103, whereunder it is admitted no meeting was held on 3.6.2010 and as such question of Union having support of substantial number of workmen and same having been reduced into writing and their acts having been ratified does not stand to logic. The admission reads as under:

As per Ex.W-16-AA xxxx xxxx in writing. I have signed circular letter at Ex. 103 dated 3.6.2010. On 3.6.2010, we have not held any meeting. 1 alone have signed the this circular letter. At page No. 30, 31 an 32 of the documents produced by me on 5.6.2010 115 persons signatures are found. ON 3.6.2010, the signatures of all the workmen were not obtained at once in a meeting. They were taken outside after telling the workmen. I had instructed office bearers who had come to meeting to take their signatures. The meeting was not held on that day. The signatories have not signed on a single day. 1 do not know on what dates the signatures were obtained.

This would clearly go to show that no resolution was passed on 3.6.2010 much less the workmen whose names are mentioned by witness WW-23 in his

examination-in-chief were not present.

The evidence of few witnesses would throw light on the resolution Ex.W-16 as also Ex.W-103. They read as under;

WW5 Cross Examination page 8 (184)

I now see the said minutes book. It is marked as Ex.W. 16. It is true in page-2, the name of the contractor, a column is indicated and it is left blank (this entry is marked as Ex.W. 16(a). The names of the workmen alone is recorded, the period is not mentioned. I now see my name as per Ex.W. 16(b). (entry at item No. 112 on page 8). In this entry, I have been shown as helper. It is true in the resolution, it is not mentioned to file a case or seeking for a reference. I have not produced the notice in regard to general body meeting.

WW6 Cross Examination (191 & 192)

The resolutions are recorded in the meeting book, I have not produced general body meeting resolution in regard to raising of this reference. Witness again states I have reproduced resolution before the Tribunal. The resolution book relied by the witness is handed over, asked to identify the resolution. After perusal of the Ex.W. 16, witness states, there is no resolution passed to initiate the present dispute.

WW7& Cross Examination (197)

Union meeting is not called in regard to espousing of the proposed cause in this case. We 30 people only have joined and passed the resolution to raise the dispute. There is a resolution passed by we 30 persons. Witness is given the resolution book relied by him and asked to identify the resolution. Witness identified page No. 117. It is true in this resolution celebrating the Independence Day is recorded. Can you show any other resolution? Witness identifies page No. 123. It is true this is also in regard to celebrating the Republic Day and not in regard to the espousal. Witness again shows page-131. It shows a resolution of celebrating May Day. It is true to say that 2000 members of our union have also not passed a resolution espousing the present case.

WW8 Cross Examination (165)

As per the resolution Hemanth is authorised to represent before the labour committee. No resolution is passed by the general body to institute this proceeding or espouse the present case. Our union did not espouse.

WW 13 Cross Examination (239 and 240)

Hemanth was not present when the meeting was conducted on 3.6.2010. He did not address the meeting on that day. Witness states that Hemanth had instructed him to conduct the meeting. Hemanth had returned from outstation on the evening of 3.6.2010. He had signed the circular only after returning to Bangalore in the evening. The circular was addressed to this Tribunal as "

(I)". Since this Tribunal had directed us to produce the Resolution a circular was drawn on 3.6.2010 and the same was addressed to the Tribunal.

Ex.W. 16 (AA) is in my handwriting. The resolution was passed as per Ex.W. 16 (AA) on 1.5.2005 in a meeting attended by 10 or 12 members. There was no necessity to issue any prior notice for this meeting. This meeting was held to celebrate Labour Day. Ex.W. 16 (AA) has nothing to do with this case.

WW 23 Cross Examination (297, 374 and 375)

I have not produced any resolution seeking to espouse our cause passed by any of the 4 unions. I have not produced any resolution to show that our union having passed a resolution to espouse our cause in this Tribunal or before the Labour Officer. Myself and 29 others individually went to the Labour Commissioner and raised this dispute.

The Government has referred the reference in the names of I Hemanth & 29 others and BEL on the other side. Similarly Court has ordered notice describing Hemanth and 29 others as I party workmen and BEL as II party. As per the reference, our union name has not disclosed.

I have signed Circular letter at Ex.W. 103 dtd. 3.6.2010. On 3.6.2010 we have not held any meeting. I alone have signed the this circular letter. At page 30, 31 & 32 of the documents produced by me on 5.6.2010 115 persons signatures are found. On 3.6.2010 the signatures of the all the workmen were not obtained at once in a meeting, they were taken outside after telling the workmen. I had instructed office bearer whoever comes to meeting to take their signatures. The meeting was not held on that day. The signatories have not signed on a single day. I do not know on what date the signatures are obtained.

22. A cursory look of the above admissions would go to show that there is no reference with regard to filing of case or seeking reference and witness WW-6 has clearly admitted that there is no resolution passed to raise the dispute. The said witness further also admits that no meeting was called to pass the resolution. Witness WW-8 admits that their Union did not espouse the cause of the workmen. That apart, the admissions of the witnesses WW-1 to WW-23 and the evidence available on record has been considered, analysed, scrutinised by the Industrial Tribunal and it is amply clear that first petitioner - Union has appeared subsequent to the date of reference as discussed by Industrial Tribunal vide paragraph 10 of the impugned award. It is also to be noticed that Industrial Tribunal has extensively discussed after analysing the evidence namely Ex.W-16(AA) at paragraph 15 and has arrived at a conclusion to hold that there is no support or espousal of cause by substantial number of workmen to convert the individual dispute into Industrial dispute and to vest the Industrial Tribunal jurisdiction to adjudicate the reference. In view of these discussions, point No. 1 is answered by holding that the dispute raised is a individual dispute and not an Industrial dispute.

RE POINT No. 2:

23. Mr. Lakshminarayan, learned Counsel appearing for petitioner would at the out set contend that the condition precedent for section 2(b) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "Contract Labour Act" for brevity) being attracted is the existence of a contract and registration of the Principal employer as also licence obtained by a contractor. He would submit that u/s 10 of the Contract Labour Act, the appropriate Government is empowered to prohibit employment of contract labour after consultation of the Central Board or the State Board. He would contend that documents produced by the management before the Industrial Tribunal would not demonstrate that the employer having registered its establishment and the contractor having obtained the licence. In order to examine this contention, it would be necessary to note the relevant provisions governing these issues and they are extracted herein below:

"2. Definitions. (1) In this Act, unless the context otherwise requires-

(a) "appropriate Government" means:

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate.

2(1)(c). "Contractor" is one who supplies contract labour to an establishment undertaking to produce a given result for it. He hires labour in connection with the work of an establishment. *State of Gujarat v. Vogue Garments*, (1983) 1 LLJ 255 : 1983 Lab IC 129 (Guj HC).

2(1)(g). "principal employer" means

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

2(1)(i). "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

(A) who is employed mainly in a managerial or administrative capacity; or

(B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

(C) who is an out-worker, that is to say, a person to whom any articles and

materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

Rules 17, 18, 21 and 23 of The Contract Labour [Regulation and Abolition) Central Rules, 1971

17. Manner of making application for registration of establishments. (1) The application referred to in sub-section (1) of Section 7 shall be made in triplicate, in Form I to the registering officer of the area in which the establishment sought to be registered is located.

(2) The application referred to in sub-rule (1) shall be accompanied by a demand draft showing payment of the fees for the registration of the establishment. -

(3) Every application referred to in sub-rule (1) shall be either personally delivered to the registering officer or sent to him by registered post.

(4) On receipt of the application referred to in sub-rule (1), the registering officer shall, after noting thereon the date of receipt by him of the application, grant an acknowledgment to the applicant.

18. Grant of certificate of registration (1) The certificate of registration granted under sub-section (2) of Section 7 shall be in Form II.

(2) Every certificate of registration granted under sub-section (2) of Section 7 shall contain the following particulars, namely-

(a) the name and address of the establishment;

(b) the maximum number of workmen to be employed as contract labour in the establishment;

(c) the type of business, trade, industry, manufacture or occupation which is carried on in the establishment;

(d) such other particulars as may be relevant to the employment of contract labour in the establishment.

(3) The registering officer shall maintain a register in Form III showing the particulars of establishments in relation to which certificates of registration have been issued by him.

(4) If, in relation to an establishment, there is any change, in the particulars specified in the certificate of registration, the principal employer of the establishment shall intimate to the registering officer, within thirty days from the date when such change takes place, the particulars of, and the reasons for, such change.

21. Application for a license (1) Every application by a contractor for the grant of a licence shall be made in triplicate, in Form IV, to the licensing officer of the area in which the establishment, in relation to which he is the contractor, is located.

(2) Every application for the grant of a licence shall be accompanied by a certificate by the principal employer in Form V to the effect that the applicant has been employed by him as a contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act and the rules made thereunder insofar as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant. (3) Every such application shall be either personally delivered to the licensing officer or sent to him by registered post.

(4) On receipt of the application referred to in sub-rule (1), the licensing officer shall, after noting thereon the date of receipt of the application, grant an acknowledgment to the applicant.

(5) Every application referred to in sub-rule (1) shall also be accompanied by demand draft showing

(i) the deposit of the security at the rates specified in Rule 24, and

(ii) the payment of the fees at the rates specified in Rule 26.

23. Refusal to grant licence-(1) On receipt of the application from the contractor, and as soon as possible thereafter, the licensing officer shall investigate or cause investigation to be made to satisfy himself about the correctness of the facts and particulars furnished in such application and the eligibility of the applicant for a licence.

(2) (i) Where the licensing officer is of opinion that the licence should not be granted, he shall, after affording reasonable opportunity to the applicant to be heard, make an order rejecting the application.

(ii) The order shall record the reasons for the refusal and shall be communicated to the applicant.

A conjoint reading of the above provisions of the Act and the Rules made thereunder would go to show that a workmen is deemed to be employed as "contract labour" in connection with a work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the Principal employer as per Section 2(1)(b) and as per the definition clause of "Contractor" as defined u/s 2(1)(c) of the Act it would mean a person who undertakes to produce a given result for the establishment through Contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor and it would be other than mere supply of goods or articles of manufacture to such a establishment; u/s 2(1)(g) of the Act, the "principal employer" would mean and include the head of that

office or department or such other officer as the Government or local authority as may be specified in this behalf by any office or department of the Government or a local authority; as per the definition clause of "workmen" as defined u/s 2(1) (i), it would mean any person employed in or in connection with the work of any establishment to do any skilled, semi skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment may be expressed or implied and excludes such persons as specified in sub-clause (A) to (C) specified therein. Section 7 mandates that every principal employer has to make an application to the registering officer for registration of the establishment. And u/s 9 of the Act, non registration of an establishment prohibits such establishment to employ contract labour. The contractor as defined u/s 2(c) of the Act, cannot undertake or execute any work unless licence is issued in that behalf by the licencing officer and the licencing officer is empowered to grant licence u/s 13 and such officer is also empowered to revoke, suspend and amend the licence. Aggrieved by any order made u/s 7, 8, 12 or 14, an appeal can be preferred to an appellate officer. Section 21 mandates a contractor to be responsible for payment of wages and in the event of contractor fails to make payment of the wages within the prescribed period or makes short payment, the principal employer would become liable to make such payment to the contract labour employed by the contractor and recover the amount so paid from the contractor as specified under sub-Section (4) of Section 21. The procedural aspect namely the manner of making application for registration by the establishment, grant of certificate of registration, application by a contractor for grant of licence and refusal to grant the licence are governed by Rule 17, 18, 21 and 23 of the Rules.

24. Now, let me examine as to whether the respondent-management has complied with the provisions of the Contract Regulation Act, as referred to and discussed herein above. The respondent-management has taken up a specific contention that it is engaged in the manufacture of defence equipment required by the armed forces of the country and on account of policy decision and to reduce the man power vacancies were not filled up and apart from having 4,000 employees on its own, it has entrusted work of non-perennial nature like maintenance of buildings and road, and colonies, civil, electrical and sanitary work, gardening, sweeping, cleaning which work cannot be entrusted to a regular workmen since such work cannot continue for all the eight hours of the shift and has to be finished before other workmen commence their work or they have to commence their work after other work men finish their work. It has been contended by respondent that for this purpose, it has to entrust the work to various contractors and as a principal employer it is a duly registered establishment under the Contract Labour Regulation and it entrusts the work only to those contractors who hold valid licence and if it is renewed from time to time and only to such licenced contractors, the work is being entrusted. In this regard, the certificate of registration obtained by the respondent under the Act as a Principal employer has been produced and marked as Ex.M-1, The perusal of

the same would go to show that the said registration has been issued by the appropriate Government under sub section (2) of Section 7 of the Contract Labour Regulation Act. The particulars of contractors is also appended to the said list whereunder M/s.BE SC ST Welfare Assn and M/s. BE Karnataka Karmikara Hitharakshaka Samithi are shown as contractors amongst others. The licences obtained by the contractors as required u/s 12(1) of the Contract Regulation Act is available as per Ex.M-2, M-3 and M-4. These documents would clearly go to show that both "principal employer" as well as the "contractors" have obtained the registration as well as licence as required under the Contractor Labour Act and Rules made thereunder and no infirmity can be found on this issue. The registration by the Principal employer and obtaining of licence by contractor being in accordance with law, contention of learned Counsel appearing for petitioner cannot be acceded to and it is liable to be rejected and as such, it is hereby rejected.

25. It is further contended by Sri Lakshminarayan, learned Counsel for petitioner the work discharged by these petitioner workmen are perennial in nature and the contract in question which has been produced or relied upon by the respondent-management is a camouflage and to defeat the rights of the petitioner such document has been brought into existence. In this regard, learned counsel for petitioner has relied upon the judgment of the Hon''ble apex court in SAIL and Others Vs. National Union Waterfront Workers & Others reported in (2001) 7 SCC 1 and contends that CLRA Act was enacted by parliament not only to regulate employment of contract labour suitably but also to abolish it in certain circumstances and contends that the work entrusted to the contractor if found to be perennial in nature and could be sufficient to employ a considerable number of whole time workmen and that type of work is being done in most establishments through regular workmen that itself would go to show that it is perennial in nature and as such, contract even if any entered into with the licenced contractors, it would be a sham or nominal contract and the employer would not be entitled to take umbrage under the said contract. It has been held by the Hon''ble apex court in SAIL'S case as under:

68. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub-section (1) of Section 10. It is a common ground that the consequence of prohibition notification u/s 10(1) of the CLRA Act, prohibiting employment of contract labour, is neither spelt out in Section 10 nor indicated anywhere in the Act. In our view, the following consequences follow on issuing a notification u/s 10 (1) of the CLRA Act:

(1) contract labour working in the concerned establishment at the time of issue of notification will cease to function; (2) the contract of principal employer with the contractor in regard to the contract labour comes to an end; (3) no contract

labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter; (4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour; (5) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification u/s 10 (1) has been issued; where all the benefits under the CLRA Act which were being enjoyed by it, will be available; (6) if a contractor intends to retrench his contract labour he can do so only in conformity with the provisions of the I.D. Act. The point, now under consideration, is : whether automatic absorption of contract labour working in an establishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert to this aspect shortly.

87. Now turning to the provisions of the Act, the scheme of the Act is to regulate conditions of workers in contract labour system and to provide for its abolition by the appropriate Government as provided in Section 10 of the CLRA Act. In regard to the regulatory measures, Section 7 requires the principal employer of an establishment to get itself registered under the Act. Section 12 of the Act obliges every contractor to obtain licence under the provisions of the Act. Section 9 of the Act places an embargo on the principal employer of an establishment, which is either not registered or registration of which has been revoked u/s 8, from employing contract labour in the establishment. Similarly, Section 12(1) bars a contractor from undertaking or executing any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 of the Act make contravention of the provisions of the Act and other offences punishable thereunder. With regard to the welfare measures intended for the contract labour, Section 16 imposes an obligation on the appropriate Government to make rules to require the contractor to provide canteen for the use of the contract labour. The contractor is also under an obligation to provide rest room as postulated u/s 17 of the Act. Section 18 imposes a duty on every contractor employing contract labour in connection with the work of an establishment to make arrangement for a sufficient supply of wholesome drinking water for the contract labour at convenient places, a sufficient number of latrines and urinals of the prescribed type at convenient and accessible places for the contract labour in the establishment, washing facilities etc. Section 19 requires the contractor to provide and maintain a first aid box equipped with prescribed contents at every place where contract labour is employed by him. Section 21 specifically says that a contractor shall be responsible for payment of wages to workers employed by him as contract labour and such wages have to be paid before the expiry of such period as may be prescribed. The principal employer is enjoined to have his representative present at the time of payment of wages. In the event of the contractor failing to provide amenities mentioned above. Section 20 imposes an obligation on the principal employer to provide such amenities and to recover the

cost and expenses incurred therefor from the contractor either by deducting from any amount payable to the contractor or as a debt by the contractor. So also, Sub-Section (4) of Section 21 says that in the case of the contractor failing to make payment of wages as prescribed u/s 21, the principal employer shall be liable to make payment of wages to the contract labour employed by the contractor and will be entitled to recover the amount so paid from the contractor by deducting from any amount payable to the contractor or as a debt by the contractor. These provisions clearly bespeak treatment of contract labour as employees of the contractor and not of the principal employer.

107. An analysis of the cases, discussed above, shows that they fall in three classes; (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract labour would indeed be the employees of the principal employer.

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 Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a

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 u/s 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 Advisory Board or the State Advisory Board, as the case may be, and;

(2) having regard to (i) conditions of work and benefits provided for the 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 passed 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 Section 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 establishment concerned;

(4) We over-rule the judgment of this court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India case, 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 u/s 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 with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not 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 regularise the services of the contract labour in the establishment concerned subject to the 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 u/s 10(1) of the CLRA Act in respect of the establishment concerned 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.

It has also been noted by their lordships in paragraph 89,
which reads as under:

89. In the light of the above discussion we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government u/s 10(1) prohibiting employment of contract labour in a given establishment.

26. As held by their lordships, there cannot be any automatic absorption of contract labourers by the principal employer in an establishment, even when a notification has been issued by the "appropriate Government" prohibiting such establishment from employing contract labourers. However, such situation has not arisen in the instant case at all since there is no such notification issued nor it is the contention of petitioners. Thus, when even in a situation of prohibition being imposed by the appropriate Government, the Hon'ble apex court has held there cannot be automatic absorption of contract labour and in the instant case, there being no such prohibition imposed by the appropriate Government and there being a valid registration in favour of the principal employer and the contractor also having obtained valid licence to employ contract labourers, the question of considering the petitioners prayer for regularisation does not arise automatically.

27. The Hon'ble Supreme Court has in the case of International Airport Authority of India Vs. International Air Cargo Workers' Union and another reported in AIR 2009 SC 3063 has held as under:

20. But where there is no abolition of contract labour u/s 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The

principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principal employer and the agreement is sham, nominal and merely a camouflage, even when there is no order u/s 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employees and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification u/s 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but what would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used to otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with contractor."

28. Thus, keeping in mind the contours defined by the Hon"ble apex court in the above judgment when the facts on hand are examined, it would emerge that relationship of employer and employee between the petitioners and the respondent is conspicuously absent. One of the important tests being the existence of the relationship of employer and employee as held by the Hon"ble apex court in 2004 LLR 47, it has to be seen as to who has the power to select, pay remuneration, dismiss the employee, deduct the contributions, organise the work etc. so as to link such relationship. In the instant case evidence on record would clearly go to show that petitioners have been engaged by the contractors to work in the respondent-establishment; remuneration is paid by their respective contractors; contractors have been deducting wages for making

statutory contributions and as such, there is no relationship of employer and employee between petitioners 2 to 26 and respondent. The admission witnesses who have admitted to this fact in their cross examination are extracted herein below which fortifies the view taken by the learned judge of the Industrial Tribunal and which is also being affirmed by me by assigning the reasons aforesaid. The admissions of the witnesses read as under:

Witness No.

Particulars of admission

(1) WW-20

I did not give any application to BEL seeking employment. I am employed at BEL through Karnataka HitharakshanaSamithi. XXXXXXXXSamithi pays wage to me. Samithi deducts my PF Account.

(2) WW-19

I did not give any application to BEL seeking employment. BEL did not give any appointment order to me. I was given work at BEL through Karnataka HitharakshanaSamithi.

(3)WW-21

I have entered the BEL through Ambedkar Society. There are 1,000 workmen at BEL through our society. XXXX the respective Samithi pays the wage to us. Ex.W-79 is the wage slip as given by AmbedkarSahakaraSangha.

(4) WW-23

I did not apply for BEL seeking employment. BEL did not sent me any interview card. I was not selected or interviewed. XXXXAmbedkar Society has taken me to BEL to do the contract work which it has undertaken to do. XXXXX as per the contents in Ex.W-92 I am working at BEL as casual labourer through Ambekar Society and thereafter, through HitharakshanaSamithiis reflected. XXXXX It is true that those permanent workmen are the workmen who have completed Diploma, BE, ITI etc., and they are qualified. I do not have any such qualifications. It is true remaining 29 of us also do not have any such qualifications but have gathered only SSLC, PUC or Degree.

29. A perusal of the above evidence would clearly go to show that none of the ingredients above referred to treat the petitioners works as perennial in nature are present namely petitioners possessing requisite qualification; being employed by the respondent; salaries/wages being paid by the respondent; respondent being in control of these employees. In such circumstances, it cannot be held that there exists employer and employee relationship.

30. Merely because a register is maintained by the respondent for the purposes of noting the attendance of these workmen by the respondent, that by itself would not be a deciding factor to hold that petitioners are in effective control of

the respondent. The attendant circumstances as discussed herein above would also be a relevant factor to arrive at a conclusion that petitioners are not in complete control by the respondent-management. When the petitioners have admitted in the cross examination about they having been employed by the Contractors, it is rather intriguing that the petitioners want to venture by contending that they are employees of respondent and such a plea cannot be permitted to be raised. Thus, material on record would not only disclose that petitioners are not the employees of the respondent but it would disclose that the petitioners are the direct employees of the licenced contractors. The Industrial Tribunal has pierced the veil to discern the truth and has found that the registration certificate obtained by the respondent-management and marked as Ex.M1 and the licences obtained by the Contractors as per Ex.M-2 to M-4 and the works specified therein has been carried out by the petitioner-workmen and it is not a perennial job as contended by them.

31. It would be relevant to note at this juncture itself the arguments of Sri Lakshminarayan that certificate/letters as per Ex.W-5, W-8, W-85, W-14. W-54, W-74 certifying the nature of work carried out by the holders of those certificate/ letters which according to the learned counsel is the actual work discharged by them. This evidence when examined on touch-stone basis, it can be safely concluded that same is contrary to evidence on record. This I say so, because in Ex.W-5, which is a certificate dated 7.3.1995, mentions that Sri Muniyappa, S/o. Anjanappa, is carrying on the works of Bulb coating, Lacquering, alluminising and renecking, etc., However, in his cross examination dated 8.8.2006, he admits that he has not done any training in Diploma or ITI and he is washing bottles amounting to 100-150 per day in addition to helping the preparation of Conical flasks. TDS i.e. water value and termidity. It is to be further noticed that witnesses WW-1. WW-2, WW-4, WW-9, WW-11, WW-20, WW-21 and WW-22, have admitted that they are discharging the duties of a helpers likewise witnesses WW-5, WW-13 and WW-23 have admitted that they are doing the duties of Electricians. Further, the witnesses WW-3, WW-6, WW-12, WW-15, WW-16, WW-19, WW-25 have admitted that they are discharging the duties of Sanitary Assistants. It is also to be noticed that certificates/letters relied upon by the petitioner-workmen has not been proved inasmuch as the authors of these documents have not been examined. All these materials produced before the Industrial Tribunal would go to show that petitioner - workmen are the employees of their respective contractors and they are discharging their duties accordingly and they were not selected or appointed by the respondent-management in any manner whatsoever and as such, the prayer sought for by the petitioners for regularisation of their services has been rightly rejected by the Industrial Tribunal by holding that if such prayer is granted it would amount to "Back door entry" and rightly so. Hence, point No. 2 is answered by holding that the contract entered into between the respondent and the licenced contractors is not a camouflage and there is no relationship of employer and employee between the petitioner-workmen and the respondent.

RE POINT No. 3:

In view of the discussions made herein above, the award of the Industrial Tribunal, Bangalore, passed in ID No. 184/2005 dated 4.11.2010 deserves to be affirmed and accordingly it is hereby affirmed.

Hence, Writ Petition is dismissed as devoid of merits.

No costs.