

(2001) 06 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3774 of 2000

Contract Laghu Udyog Kamgar Union

APPELLANT

Vs

V.G. Mohite, Assistant Labour Commissioner, Thane and
Others

RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contract Labour (Regulation and Abolition) Act, 1970 — Section 1(4), 1(5), 10, 12, 16

Maharashtra Contract Labours (Regulation and Abolition) Rules, 1971 — Rule 25, 25(2)

Citation : (2001) 3 ALLMR 597 : (2002) 1 BomCR 197 : (2001) 4 BOMLR 691 :
(2002) 93 FLR 58 : (2001) 2 LLJ 1398

Hon'ble Judges : A.P. Shah, J; A.M. Khanwilkar, J

Bench : Division Bench

Advocate : C.U. Singh and Jane Cox, for the Appellant; C.R. Sonawane, A.G.P.
and P.K. Rele, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order passed by respondent No. 1, dated May 12, 2000, rejecting the application preferred by the petitioner under Rule 25 of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971 (hereinafter referred to as the "Rules of 1971" for the sake of brevity). The petitioner prays for further direction against respondent Nos. 2 to 5 to pay to the workmen named at Serial Nos. 1 to 12 of Exh. A w.e.f. from their respective dates of joining the respondent No. 2 - Establishment, the same wages and benefits as those paid and extended to the helpers/ mazdoors who are directly and permanently employed by respondent No. 2 factory at Wagle Estate, Thane and also to pay to Mr. Kishore Pawar, Plant Operator, w.e.f. his date of joining the respondent No. 2 the same wages/benefits extended to the skilled operators who are directly and permanently employed in the respondent No. 2 factory at Wagle Estate, Thane.

2. The petitioner is a registered trade union bearing Registration No. BY 7780. The persons employed in the establishment of respondent No. 2 are stated to be the members of the petitioner - Union. Respondent No. 2 is a Public Limited Company engaged in the manufacture of pressure cookers in the engineering Industry. The grievance of the petitioner Union is that, respondent No. 2 engages workers, ostensibly through contractors, to do the work of gardening, sweeping and plant operation in its factory at Wagle Estate, Thane, though the said work is of perennial nature. It is stated that respondent No. 2 has employed about 300 workers directly on permanent basis. Besides them, some of the work in the establishment of respondent No. 2, though of perennial nature, is carried out by the so-called contractors, namely, respondent Nos. 3 to 5 herein - who employ the services of contract labour. It is stated that the persons named in the list of workmen at Exh. A to the petition have been employed in the establishment of respondent No. 2 on different dates, albeit through the contractors. Some of them employed as back as from April, 1990 and the last appointee being of September/December, 1995; each one of them has continuously worked in the establishment of respondent No. 2 since their joining and discharged their respective duties assigned to them. It is also stated that the petitioner Union some time in November, 1996 filed complaint before the Industrial Court at Thane being Complaint (U.L.P.) No. 544/1996, alleging the commission of unfair labour practice under item No. 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act of 1971). In addition, the petitioner has prayed for direction against the respondents to cease and desist from engaging in any such unfair labour practices and to declare that the said workers are the direct and permanent employees of respondent No. 2 Company. The petitioner has also prayed for a direction against respondent No. 2 Company to pay the same wages and benefits to the said workers at Exh. A on par with the wages and benefits paid to the other workers employed by respondent No. 2 in its factory directly, doing the same and similar type of work with effect from the respective dates of their joining. It is not in dispute that the said complaint is pending adjudication before the Industrial Court. However, during the pendency of the said complaint, the petitioner Union made an application to the respondent No. 1 on 18th September, 1998, purported to be under Rule 25(2)(iv)(b) and Rule 25(2)(v)(b) of the said Rules of 1971. By the said application, the petitioner, in substance, prayed that respondent No. 2 Company be directed to pay wages and extend the rate of wages and hours of work and service conditions to the members of the petitioner Union named in Exh. A on par with those paid to and extended to other workers of the establishment directly appointed on permanent basis, performing the same kind of work. Some time in January, 1999 the respondent No. 1 called the parties for a meeting with reference to the said application, preferred by the petitioner Union dated 18th September, 1998. Respondent No. 2 Company filed submissions, inter alia, contending that the only work being done in their premises by contractors is that of cleaning and sweeping, gardening and effluent plant activities, which is totally different from the work done by any of

the category of the workers employed directly by them. The petitioner filed its reply before the respondent No. 1 on 21st of July, 1999 in which the petitioner placed reliance on the notification dated 22nd July, 1998 issued by the Government of Maharashtra under the Minimum Wages Act, 1948 to contend that the wages for same kind of work covered under the Rules of 1971 and the one mentioned in the said notification for the employees employed in the engineering industry, defining the categories of unskilled, semi-skilled and highly skilled, will have to be kept in mind while deciding the application and reliefs to be granted thereunder. On the other hand respondent No. 2 filed further submission on 29th July, 1999 contending that the issue that would arise for consideration while considering the present application of contract labour is an issue which is subjudice before the Industrial Court in the complaint being (U.L.P.) No. 544/1996 filed by the petitioner Union and therefore. respondent No. 2 requested respondent No. 1 to keep the present application in abeyance till the said matter is finally decided by the Industrial Court. The petitioner, thereafter, filed further clarification/submission contending that the relief prayed in the present application was entirely different and Independent of the reliefs claimed under the complaint which was pending before the Industrial Court. Respondent No. 1 eventually passed the impugned order on May 12, 2000.

3. The impugned order passed by respondent No. 1 is essentially based on the report of the Government Labour Officer dated May 4, 2000. The report of the said officer indicates that, during his visit he found that total 27 contract employees were working in the establishment of respondent No. 2 Company, through 4 different contractors. The Government Labour Officer further found that none of the workers so employed were connected with manufacturing activities. It is further observed that the workers employed as contract labour were not doing the same kind of work that was undertaken by the regular workers employed by respondent No. 2, Company. It is further stated that some contract employees are working in workshop and buffing department but they are working only for cleaning, sweeping and to collect scrap material, which work is not done by the regular workers. The report further indicates that at the relevant time 15 contract workers were working in the canteen, 10 are for cleaning, 1 for gardening and 1 for A/C Plant maintenance. The report also indicates that the contract employees were getting wages according to Minimum Wages, H. R. A. and legal benefits like P.F., E.S.I.C.. leave wages, bonus. On the basis of this report, the respondent No. 1 proceeded to hold that the contract workers were not asked to do the same kind of work which the direct/permanent workers of respondent No. 2 were undertaking. To that extent the plea taken by the petitioner Union has been negatived. The respondent No. 1 has. therefore, observed that there is no question of taking any action by his office in that matter. The respondent No. 1 has further observed that the issues that have been raised in the application are the subject matter of the complaint filed by the petitioner, which was pending before the Industrial Court. In the circumstances, the petitioner Union was called upon to contact the office of the respondent No. 1

only after the Courts decision in the said matter. The respondent No. 1 in addition has held that since no licence has been issued to any of the contractors employed in the establishment of respondent No. 2 by his office, there was no question of canceling/suspending the licence for failing to comply with the conditions stipulated under Rule 25 of the said Rules of 1971. Taking this view of the matter, the application in question has been disposed of by the respondent No. 1 by the impugned order dated 12.5.2000. It is in these circumstances that the petitioner has approached this Court by way of writ petition for the reliefs mentioned hereinbefore.

4. The respondents have been duly served with the Rule granted by this Court on 7th of August, 2000. The respondent Nos. 1, 3 to 5 though served have not appeared. Respondent No. 2 has appeared and resisted the petition. Respondent No. 2 is represented by Shri P. K. Rele, Senior Advocate instructed by Shri Piyush Shah. Whereas, Shri C. U. Singh is instructed by Tanu Mehta Tiwari, Advocates for the petitioner Union.

5. Shri Singh for the petitioner-Union contends that the approach adopted by the respondent No. 1 is totally erroneous and in fact he has abdicated his authority in rejecting the application on the ground of pendency of the proceedings before the Industrial Court. He contends that the proceedings before the Industrial Court are entirely different and unrelated to the subject matter and the reliefs that could be granted by respondent No. 1 in the present application. He submits that even if the relief that falls for consideration in the present application would overlap with the reliefs that could be granted in the complaint pending before the Industrial Court, even then there was no inhibition for the authority to proceed to decide the matter on merits, having regard to the power conferred by the Contract Labour (Regulation and Abolition) Act. 1970 (hereinafter referred to as said Act of 1970), read with the Rules, 1971. He submits that, in any case, the finding recorded by the respondent No. 1 that, the contract labour employed by respondent No. 2 through the contractors were not discharging the same work, is erroneous. According to him, the expression "same work" will have to be understood to mean that the duties of the workers are to be broadly classified in the category of skilled, semi-skilled, unskilled and clerk; and not the actual duties undertaken or discharged by them. He submits that only this interpretation would subserve the legislative intent. He submits that non-suiting the workers on the ground that they were not actually involved in the manufacturing activities of respondent No. 2 Company is fallacious. He further submits that the approach of respondent No. 1, that since no licence has been Issued to any of the contractors engaged in the establishment of respondent No. 2 and, therefore, there was no question of canceling/suspending the licence for failing to comply with the condition under Rule 25, is also contrary to law. According to him, if it is demonstrated to the authority that, the provisions of the Act of 1970 would apply to any establishment or for that matter to any contractor, in that case, it is the duty of the officer to insist upon such establishment to register and also insist upon the contractor to obtain licence

and failing to do so by either will have the inevitable effect of drawing presumption that the contract labour so employed by the establishment are the direct workers of the establishment since they are engaged in a work of perennial nature. He submits that in view of the mandate of the Act of 1970, it would necessarily follow that the employment of employees as contract labour, without complying the requirements of law, constitutes an offence. According to him, the Act of 1970 would apply to all such establishments who have engaged 20 or more workmen on any day of the preceding 12 months as contract labour irrespective of the fact that they have been employed through one or more contractors. He submits that the provisions of the said Act would also apply to every contractor who employs on any day of the preceding twelve months twenty or more workmen irrespective of whether the same have been employed in one or more establishments where the contractor is rendering services. He submits that, only this interpretation would subserve the legislative purpose of enacting the Act of 1970. He submits that, in the present case since the provisions of the Act of 1970 squarely apply, it was the duty of respondent No. 1 to direct the respondent No. 2 Company as well as the contractors, the respondent Nos. 3 to 5, to register themselves and obtain licence as required by the said Act and to extend all the privileges to the contract labour employed by them as are being extended to the permanent workers employed by respondent No. 2.

6. On the other hand Mr. Rele for respondent No. 2 Company contends that the Act of 1970 has no application to the present case. He submits that the said Act would apply as against an establishment which has employed contract labour through contractors in excess of the prescribed number. He submits that. In view of the scheme of the Act of 1970, licensing of the contractors is establishment wise; and, therefore, the argument advanced by the petitioner that the Act would apply to every contractor who has employed 20 or more workmen on any day of the preceding 12 months irrespective of the number of establishments in which he has rendered services, is totally fallacious. He submits that the responsibility of registration of the establishment is entirely different from that of licensing the contractor. He submits that when the Act has no application to the establishment, then it is wholly unnecessary to apply for registration of the establishment, or for the licence, by the contractor engaged in such establishment, as the case may be. He further submits that the issues that are involved in the present proceedings are clearly overlapping with the issues that would arise for consideration in the complaint filed before the Industrial Court at the instance of the petitioner Union, therefore, it would be wholly inappropriate to decide any of the issues raised in the present proceedings as it would directly or indirectly affect the result of the proceedings pending before the Industrial Court. He further submits that in any case no fault can be found with the approach adopted by respondent No. 1 in disposing of the application which was based on the finding of fact noted by the Government Labour Officer as indicated in the report. He submits that in view of the finding that the workers employed through the contractors were not engaged in the manufacturing activities of respondent No.

2, but only in the incidental work which was not undertaken by the regular worker of the respondent No. 2, no interference was warranted in writ jurisdiction. As a necessary corollary, he submits that, the reliefs claimed by the petitioner on the premise that the members of the petitioner Union are doing the same work as that of regular workers, is not tenable. According to him the view taken by the respondent No. 1 cannot be faulted with.

7. After having given our anxious consideration to the aforesaid contentions of both the sides, we would first proceed to examine as to whether any of the issues raised, that arise for consideration in the present proceedings, will have any bearing on the outcome of the complaint pending before the Industrial Court. In this context, it would be apposite to advert to the relief prayed for in the complaint filed before the Industrial Court. The relief claimed in the said complaint is essentially based on the allegations contained in the complaint that the workmen employed by respondent No. 2 through contractors, is sham so as to denude the contract labour of the basic wages and facilities and benefits that are provided to the workers appointed on regular basis. It is seen that the main thrust of the said complaint is that the work undertaken by the workers employed on contract basis is of a perennial nature and, therefore, it was not permissible for the respondent No. 2 to continue the services of such workers for years together without giving them all benefits of permanent employee. It is in these circumstances that the petitioner Union has approached the Industrial Court for a declaration that the approach of respondent No. 2 Company amounts to commission of unfair labour practice within the meaning of item No .9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. Accordingly, the relief which has been prayed in the said complaint is essentially based on the rights and privileges guaranteed to the workmen under the M.R.T.U. & P.U.L.P. Act, 1971. Merely because the relief pressed into service by the petitioner Union in the subject application would overlap with the relief claimed in the complaint filed before the Industrial Court, that by itself cannot be a ground to refuse to entertain the application filed by the petitioner. We have no hesitation in observing that when the provisions of the Contract Labour Act are applicable to any establishment or contractor, then merely because the provisions of M.R.T.U. & P.U.L.P. Act, 1971 are also applicable and can be availed of, cannot be a ground to non-suit the workmen of the relief available under the Contract Labour Act. This view is fortified from the language of section 30 of the Contract Labour Act which is a non-obstante provision. It provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of the agreement of contract of service, or in standing order applicable to the establishment whether made before or after commencement of that Act. In other words, the provisions of the Contract Labour Act would prevail over the provisions of the M.R.T.U. & P.U.L.P. Act, 1971, unless the benefits in respect of any matter which are more favourable to the workmen so employed than those to which they would be entitled under the Contract Labour Act, As such it would

be the duty of the officer/authority empowered under the Contract Labour Act to give effect to the provisions of this Act, notwithstanding the possibility that the workman could avail of a similar relief under some other enactment including M.R.T.U. & P.U.L.P. Act. It needs no mention that the Act, 1971 is a State legislation, whereas the Act of 1970 is a Central legislation. Even on this count, the Act of 1970 would prevail over the Act of 1971. Understood thus, we have no hesitation in taking a view that it was the duty of the authority under the Contract Labour Act to determine the merits of the controversy between the parties raised before it and not be deterred by the fact that some other proceedings were pending between the parties before another Court, and more particularly when those proceedings are undoubtedly not under the provisions of the Act of 1970. In that sense the approach adopted by respondent No. 1, that the petitioner Union could approach his office after the final decision given by the Industrial Court, cannot be sustained in law. On the other hand the respondent No. 1 was under an obligation to decide the application preferred by the petitioner Union on merits in the light of the provisions of the Act of 1970 and the Rules made thereunder.

8. The next point which arise for our consideration is whether the provisions of the Rules framed thereunder being Rules of 1971 would apply to the present case. Before we proceed to express our opinion on this aspect it would be essential to first examine the scope and purport of the Act of 1970. This Act was enacted by the Parliament with an avowed object of progressively abolishing the contract labour system and to make improvement of service conditions of contract labour where abolition of the contract labour was not possible. The dominant object underlying this Act, is to abolish employment of contract labour and also to make it an offence if any person engaged or employed contract labour without following the provisions of the Act. It would be appropriate to advert to the statement of objects and reasons for which this Act came into force, which reads thus :-

"The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the systems and improvement of service conditions of contract labour where abolition was not possible. The matter was discussed at various meetings of Tripartite Committee at which the State Governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where this system could not be abolished altogether, the working conditions of the contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

The proposed Bill aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of

certain criteria that have been laid down and at regulating the service conditions of contract labour where abolition is not possible. The Bill provides for the setting of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registrations of establishments and contractors. Under the scheme of the Bill the provisions and maintenance of certain basic welfare amenities for contract labour, like drinking water and first aid facilities and in certain cases rest rooms and canteens, have been made obligatory. Provisions have also been made to guard against default in the matter of wage payment."

9. The preamble of this Act reiterates the object of the enactment which mentions that : an Act to regulate the employment of the contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The legislative purpose of this enactment has been authoritatively answered by the Apex Court in *Air India Statutory Corporation etc. v. United Labour Union and Ors..*". The Apex Court has observed that the Act is a social welfare measure to further the general Interest of the community of workmen as opposed to the particular interest of the Individual entrepreneur. It seeks to achieve a public purpose, i.e. regulate conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual Interest can, therefore, no longer stem the forward flowing tide. The Apex Court has further observed that the aim of this legislation is to attain substantial degree of social, economic and political equality which is the legitimate expectation and constitutional goal. The object of the Act is to regulate the contract labour so long as the contract labour is not perennial. The labour is required to be paid prescribed wages and are provided with other welfare benefits envisaged under the Act, under direct supervision of principal employer and that the violation visits with penal consequences. In the said decision, the Apex Court has further observed that the concepts engrafted in the statute require interpretation from that perspective without doing violence to the language and such an interpretation would elongate the spirit and purpose of the Constitution and make the rights of the workmen a reality lest establishment of an egalitarian social order would be frustrated and constitutional goal defeated. The Apex Court has also observed that, to make the rights guaranteed in Chapters III and IV of the Constitution meaningful to workmen and meaningful right to life a reality to workmen, shift of Judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount Interest of the community, should be the essence in interpreting the provisions of this Act.

10. Keeping these principles in mind, we would proceed to examine the ambit of the Act of 1970. Sub-section 4 of section 1 of the Contract Labour Act. 1970 provides for provision regarding applicability of the said Act to specified establishment or contractor. It would be appropriate to reproduce Sub-sections 4 and 5 of the Section 1 of the said Act of 1970, which reads thus :-

"(4) it applies -

(a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen :

Provided that, the appropriate Government may, after giving not less than two months notice of Its intention so to do by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5)(a) it shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) if a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or as the case may be, a State Board, and its decision shall be final.

Explanation.- For the purpose of this Sub-section, work performed in an establishment shall not be deemed to be of an Intermittent nature -

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year."

11. On a plain reading of Clause (a) of Sub-section 4 of Section 1 of the said Act, it would appear that the Act would apply to every establishment in which twenty or more workmen are employed on any day of the preceding twelve months as contract labour. There is nothing in the Act to suggest that the prescribed number of workmen must be employed as contract labour by the said establishment through one agency (Contractor) or otherwise, we are of the view that the Act would apply to every establish- ment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour, irrespective of the fact that they were employed by the establishment directly or through one or more contractors. On a plain reading of Clause (b) of subsection 4 of section 1 of the said Act, it would appear that, similarly, the provisions of the Act would apply to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. There is nothing in the Act to suggest that the contractor should have had employed the prescribed workmen in one establishment or otherwise. Further, there is nothing in this provision to suggest that the Act would apply only to such contractor who employs or who employed on any day of the preceding twelve months prescribed number of workmen in an establishment to which this Act applies. In our view, Clause (a) and Clause (b) of Sub-section 4 of

section 1 of the Act are mutually exclusive. Once the Act becomes applicable, the establishment or the contractor concerned, are under obligation to comply with the mandatory requirement of registration or licensing in terms of sections 7 and 12 of the Act, as the case may be. It is, therefore, not possible to countenance the argument advanced on behalf of the respondents, that licensing of the contractor be necessarily on Establishment wise basis and that the Act would apply only against such contractor who has engaged workmen as contract labour in an establishment which is registered under the Act and to which provisions of the Act of 1970 are attracted. Much was sought to be argued on the basis of the definition of contractor appearing in Clause (c) of Sub-section 1 of section 2 read with sections 10, 12 and 16 of the Act of 1970. According to the respondents these provisions would suggest that the "contractor" is always in relation to an establishment to which the Act applies. In our view, such pedantic approach cannot be sustained having regard to the avowed object of this enactment to abolish contract labour system, unless it was absolutely Impracticable to do so in certain cases, in which case the Act attempts to regulate the service conditions of contract labour. Moreover, this argument clearly overlooks that the Act defines the word "establishment". Section 2(l)(e) does not confine only to establishments to which the Act applies, but it defines establishment generally, whereas definition of contractor postulates contractor in relation to an establishment and not in relation to an establishment to which this Act applies. The Legislature was obviously aware of this distinction, for at other places the later expression has been used. A fortiori, the Act becomes applicable not only qua the establishment if it has employed twenty or more workmen as contract labour directly or through contractors on any day of the preceding 12 months, but also against any contractor who has employed 20 or more workmen on any given day of the preceding 12 months. This is spelt out on conjoint reading of Section 1(4)(b) and section 12 of the Act. The only exception provided by the Act of 1970, by virtue of Sub-section 5 of section 1 of the Act is, to the establishment in which work of an Intermittent or casual nature is performed. In other words, the Act of 1970 is intended to take within its sweep all establishments or contractors engaging more than the prescribed workmen on any day of the preceding twelve months as contract labour. Only such construction would subserve the legislative intent and the object of this enactment. If we were to accept the submission of the respondents then, it would frustrate the legislative Intent and the purpose of the Act. As mentioned earlier, the legislative intent was to abolish the contract labour system as a whole but only permit on certain conditions stipulated by the Act where it was not possible to abolish the same.

12. To illustrate our point it would be apposite to take a hypothetical case. Take a case where the establishment gets the works done, which are essentially of perennial nature, though not Its main activity/work, Just as in the present case, of sweeping, cleaning etc., through more than one contractor by employing more than the prescribed workmen as contract labour; and also ensures that none of the contractor would engage 20 or more workmen in a given day so as to

extricate from the clutches of the provisions of this Act. But the interpretation which we propose to give would frustrate such an attempt and thus further the legislative intent of progressively abolition of the contract labour system. Inasmuch as. such a case would be covered by Clause (a) of Sub-section 4 of Section 1 of the Act. Similarly, in another situation, where the contractor has a work force of more than 20 workmen and continuously supplies contract labour to more than one establishment, but ensures that none of the establishment has more than 20 workmen employed as contract labour on a given day during the preceding 12 months with a view to frustrate the provisions of the Act. But the view taken by us alone would curb even such a mischief. It is relevant to note that the proviso to Sub-section 4 enables the appropriate Government to make the provisions of this Act applicable to any establishment of contractor employing such number of workmen less than twenty as specified in the notification, by notification in the Official Gazette. In our view, therefore, the provisions of the Act would become applicable not only were the establishment, but also when the contractor, as the case may be, or both or either, fulfil the requirement of engaging 20 or more Workmen as contract labour on any day of the preceding 12 months.

13. In the present case there is no dispute that the respondent No. 2 had engaged 27 contract labours through four different contractors in its establishment. Moreover, the nature of work undertaken by such contract labour in the establishment like gardening, sweeping, plant operation etc., are unquestionably perennial ones. There can be no serious dispute on this aspect. Consequently the provisions of the Act become, applicable by virtue of Clause (a) of Sub-section (4) of the Act. It is pre posteriors to contend that, since number of workmen employed by each of the contractor was not 20 or more on any day of the preceding twelve months, the Act had no application. Accepting such a submission will have the inevitable effect of rewriting the said provisions, which is impermissible .

14. The premise on which the respondent No. 1 proceeded that, the Act has no application to the present case is, therefore, not sustainable. On the other hand respondent No. 1 ought to have proceeded on the basis that the provisions of the Act applies to the present case and thus ought to have called upon respondent Nos. 2 to 5 to comply with the requirements of the said Act, by registering and obtaining licence and to provide all the privileges under the said Act conferred upon the workmen employed by them as contract labour.

15. Respondent No. 1 has proceeded on the basis of the report of Government Labour Officer which indicates that the work done by the contract labour was not the same as done by the regular workers of respondent No. 2 and unconnected with the manufacturing activities. This approach is wholly inappropriate and would defeat the legislative intent. We are of the opinion that the expression "perform the same kind of work" occurring in Rule 25 will have to be understood in the context of the definition of "workman" in Section 2(I)(i) of the Act of 1970.

It is well settled that a statutory Rule must be interpreted in such a way that it does not whittle down the Act of Parliament in any respect, for the Rule would become ultra vires. The Rules are framed in aid of the Act. Understood thus, the nature of work done by the contract labour will have to be classified as skilled, semi-skilled, or unskilled manual, supervisory, technical or clerical work in the establishment and not by physically comparing with the actual work done by the regular workers of the establishment relating to manufacturing activities alone or otherwise. The definition of "workman", in Clause (i) of Sub-section (1) of Section 2 of the Act, 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 to him, functions mainly of a managerial nature; or (C) who is an out-worker that is to say, a person to whom any articles or 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. Admittedly, the work undertaken by the contract labour employed by respondent No. 2 does not fall in either of the exempted category of this definition but is covered by virtue of persons employed in connection with the work of establishment of respondent No. 2 to do skilled and unskilled manual work for hire or reward. As mentioned hereinabove, respondent No. 1 has relied upon the finding of the Government Labour Officer that none of the contract labour was connected with the manufacturing activity and was not doing the same kind of work done by the regular workers. The view taken by the respondent No. 1, clearly misconstrues the expression "perform the same kind of work" occurring in Rule 25(2)(iv)(b) of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971. The expression "perform the same kind of work" need not mean that the contract labour should actually do the same work as the workmen directly employed by the establishment. But the work performed by such contract labour will have to be broadly classified on the basis of skilled, semi-skilled, unskilled manual, supervisory, technical or clerical work for hire or reward. In our view, this meaning can be ascribed on the basis of Section 2(l)(i) of the Act of 1970, which defines "workman", read with Rule 25(2)(iv)(b); as well as the notification issued by the Government of Maharashtra under the provisions of Minimum Wages Act, which classifies the workers broadly in 4 categories, skilled, semi-skilled, unskilled and clerk. Moreover, Sub-clause (c) of Rule 25(2)(iv) stipulates that the rates of wages shall be such as may be specified by the Commissioner of Labour. In other words, the rates of wages specified under the Minimum Wages Act, are

to be kept in mind while considering the claim of the workman under the Act of 1970. A fortiori, the classification of workmen done under the Minimum Wages Act would apply or at any rate the principle underlying such classification would be relevant while examining the purport of "perform the same kind of work" provided for in Rule 25.

16. Mr. Rele, however, relies on the decision of the Apex Court in the case between Union of India and another v. Amardeep Trading Company & Ors.," and of Allahabad High Court in Mehrotra Enterprises u. State of U.P. and others. He contends that expression same or similar work in these Rules of 1971 are *pari materia* to the Central Rules of 1971 which came up for consideration before the Apex Court and the Apex Court has left this question open. In that case the High Court had recorded a clear finding that even though the Railways was the principal employer and the respondents had taken the contract from the Railways for carrying on handling work which was done by the Railways directly, but the nature of duties of the workers engaged by the respondents could not be treated as same and similar by categorising the Railway workers into skilled and unskilled and then treating the workers engaged by the respondents in the category of unskilled workers. Undoubtedly, the Apex Court has expressly left the question regarding the words "same and similar" occurring in Rule 25 open without expressing any opinion. In our view, it is not possible to entertain the submission advanced on behalf of the respondents that the said provision would apply only when the contract labour demonstrates that he was doing exactly the same kind/amount of work as that of regular workmen of the establishment. On the other hand, we are of the view that, it would be enough for the contract labours to demonstrate that the work discharged by them was 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. On conjoint reading of the definition of workman with Clauses (b) and (o) of Rule 25(2)(iv) of the Maharashtra Contract Labour (Regulation & Abolition) Rules, 1971, the submission made on behalf of the petitioner union that duty is cast upon the authorities under this Act (Contract Labour Act) to ensure that wages specified in this behalf by the Commissioner of Labour are observed. Necessarily, we will have to make reference to the schedule specified by the Government in the notification Issued in exercise of powers under the provisions of the Minimum Wages Act, 1948. Even under the said notification, the classification is broadly on the basis of skilled, semi-skilled, un-skilled and clerk. Therefore, it is open to the contract labour to demonstrate that he is discharging the same kind of work on the basis of the broad categories referred to above. In the circumstances, the basis on which respondent No. 1 proceeded to decide the application is wholly unsustainable both on facts and in law.

17. The other circumstances, which has weighed with the respondent No. 1 was that the establishment was not registered nor any licence was issued under the provisions of the Act, for which reason the Respondent No. 1 had no authority to entertain the application. Even this premise is totally unsustainable. As observed

earlier, it was the duty of respondent No. 1 to first find out whether the provisions" of the Act were applicable to the workmen in the present case; and, if it did, as in the present case, then it was the duty of respondent No. 1 to direct the establishment to register itself as required under Chapter III of the Act as also direct the contractor to apply for licence as required under Chapter IV of the Act and to treat the contract labour as direct workers of the establishment, unless the establishment is able to demonstrate that the work undertaken by the contract labour was only of an intermittent or casual nature, failing which the concerned persons in the establishment and the contractor would face prosecution within the purport of Chapter VI of the Act. Respondent No. 1 has obviously failed and abdicated his authority which is cast upon him under the said Act of 1970. In the circumstances, the order passed by respondent No. 1 cannot be sustained in law and the same deserves to be set aside.

18. The next question is, what is the nature of relief that could be granted in favour of the petitioner. The petitioner has prayed for directions against respondent Nos. 2 to 5. No doubt Respondent Nos. 2 to 5 are private parties. The Apex Court in *Air India Statutory Corporation (supra)* has observed that it is the responsibility of the State as well as the Individuals, singly and collectively, for the development taking into account the need for fuller responsibility of the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. The Apex Court has further observed that it is axiomatic, whether or not industry is controlled by Government or public Corporations by statutory form or administrative clutch or private agents. Juristic persons. Corporation whole or Corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz. Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the fundamental rights enshrined in the Constitution. The word control, therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

19. The Apex Court has further observed that there are no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to meet out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour u/s 10(1), the High Court has by judicial review as the

basic structure, constitutional duty to enforce the law by appropriate directions.

20. Having regard to the above said observations of the Apex Court, it would be the duty of this Court to modulate or mould the relief's prayed in the present petition. As observed earlier, we have held that the provisions of the Act of 1970 are applicable to the establishment of respondent No. 2, for it has engaged 27 contract employees through four contractors, being covered by Clause (a) of Sub-section 4 of Section 1 of the Act. Once the provisions of the Act become applicable then, the mandate of Chapter III is that every principal employer of an establishment shall apply for registration. The consequence of non-registration are provided for in Section 9 of the Act. Section 9 stipulates that no principal employer of an establishment to which this Act applies shall (a) in the case of an establishment required to be registered u/s 7, but which has not been registered within the time fixed for the purpose under that Section, (b) in the case of an establishment the registration in respect of which has been revoked u/s 8, employ contract labour in the establishment after the expiry of the period referred to in Clause (a) or after revocation of registration referred to in Clause (b) as the case may be. In other words, there is express bar of engaging the services of contract labour after the specified period. And, in case, the principal employer engages contract labour in its establishment, without complying the requirement of registration etc., then it would be presumed in law that the persons employed in such an establishment by the principal employer are its direct workers, unless it is shown that the work undertaken by them is not of perennial nature. If the principal employer defies this position, then he would necessarily face prosecution under Chapter VI of the Act for the contravention of any of the provisions of the Contract Labour Act. Similarly, when the provisions of the Act are applicable against a contractor; and. If he falls to obtain licence as required under Chapter IV of the Act, then he would also face similar prosecution under Chapter VI of the Act.

21. Accordingly, the appropriate relief that could be passed in the facts of the present case is to direct the respondent No. 1 to take necessary action against respondent Nos. 2 to 5 as per the provisions of the said Act. If the respondent Nos. 2 to 5 dispute the status of the workers employed by them and assert that they are not contract labours, then necessary legal action will have to be instituted against the concerned persons. In case, respondent Nos. 2 to 5 are able to satisfy the respondent No. 1 that they would fall in any one of the exempted category pursuant to appropriate Government Resolution or entitled to be exempted from the application of any of the provisions of the Act, then appropriate directions will have to be passed by respondent No. 1 in that behalf. Since we have already taken the view that the provisions of the Act are applicable, it is the duty of the principal employer to provide all the benefits and facilities that are guaranteed to the persons employed in the establishment in question as contract labour including the ones provided for in Chapter V of the Act. Falling which the authorities do take appropriate penal action against the concerned respondents in accordance with the prescribed procedure under

Chapter VI of the Act. Respondent No. 1 shall take necessary steps and issue appropriate directions against respondent Nos. 2 to 5 as expeditiously as possible, preferably within three months from the date of the receipt of the writ of this Court.

22. For the aforesaid reasons, this writ petition succeeds in the above terms and the impugned order is quashed and set aside and respondent No. 1 is directed to take appropriate steps and Issue necessary orders in accordance with law. Rule is made absolute in the above terms with costs.