
(1990) 11 CAL CK 0015
In the Calcutta High Court
Case No : F.M.A. No. 629 of 1989

Divisional Railway Manager, Eastern Railway and Others	APPELLANT
Vs	
Satyajit Majumdar and Others	RESPONDENT

Date of Decision : 28-11-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28, 3
Constitution of India, 1950 — Article 14, 16, 19, 38
Railways (Amendment) Act, 1989 — Section 200
Railways Act, 1890 — Section 148(2)

Citation : (1991) 2 CALLT 214

Hon'ble Judges : Anandamoy Bhattacharjee, J;Ajoy Nath Ray, J

Bench : Division Bench

Advocate : R.N. Das and Uma Sanyal Misra, for the Appellant;Kashi Kanta Maitra and Bhaskar Prosad Vaisy, for the Respondent

Final Decision : Dismissed

Judgement

Anandamoy Bhattacharjee, J.—Even though Tennyson criticised British Laws as "the Lawless Science of our Laws", as "myriads of precedents" resulting in "wilderness of single instances", the Poet also eulogised the system as where "freedom broadens from precedent to precedent". Some amount of "wilderness"" also crept in our laws modelled on the British pattern and both certainty and also uniformity were very often the casualties.

2. But very soon our Courts could get over the outdated legal logomachy and hair-splitting niceties and becoming fully alive to the mandate of our National Charter to secure social and economic justice and to ensure that socio-economic justice "shall inform all the institutions of the national life", have made spirited endeavours to broaden the scope of socio-economic justice from "precedent to precedent". As a result, we have now evolved a new juristic principle, a new Jurisprudential approach, to the effect that whenever socio-economic justice appears to be in jeopardy, the Court must go into militant action by throwing asunder its age-worn robe of passive neutrality to rescue socio-economic justice.

In the Indian context of even today, with the overwhelming majority living below the poverty-line, socio-economic justice would obviously mean justice to" the weaker and the poorer. That is why this Court in two Division Bench decisions in *State Bank of India v. A. K. Roy* (1988 Labour & Industrial Cases, 585) and in *Sudhanshu v. Life Insurance Corporation* (92, Calcutta Weekly Notes 1092) has unhesitatingly declared that if any legislation or any administrative action can yield to two views or interpretations, the one in favour of the weaker or the poorer party ought to be accepted, so that social justice can be secured to those who are in dire and greater need therefore.

3. In the case at hand, the learned trial Judge Basak, J. has come out with a bold fiat that the servants of a catering contractor employed by the Railway Administration are also the servants of the Railway Administration. My learned brother Ray, J. in his well-written and thought-provoking judgement has also made spirited sorties to uphold the order of Basak, J. and has ruled that not only the catering contractor was a Railway servant, but even the servants employed by him would have that status. These judgements, if correct, would go a long way to advance, protect and secure social justice and implement the mandate in Article 38 of the Constitution. I would like to agree with them, if I can.

4. The cause of action arose when the preceding Indian Railway Act of 1890 was in operation, which has been repealed and replaced by the new Railways Act of 1989 with effect from 1st June, 1990. Section 200 of the Act of 1989, however, provides that anything done or purported to have been done or any action taken or purported to have been taken under the Act of 1890 shall, in so far as it is not inconsistent with the provisions of the Act of 1989, be deemed to have been done or taken under the later Act. Be it noted in particular that of the two provisions which are very material for our present purpose, Section 3(7) of 1890-Act defining "Railway Servant" corresponds to Section 2(34) of 1989-Act, while Section 148(2) of the 1890-Act, supplementing the definition of "Railway Servant" is also similar to Section 197(2) of the 1989-Act.

5. That a catering contractor employed by the Railway Administration and subject to considerable supervision and control by the Administration in the manner of the execution of the contract, is a "Railway Servant" within the meaning of the provisions of Section 3(7) read with Section 148(2) of the Railway Act, 1890, is no longer open to question. The provisions of Annexure "A" to the Affidavit-in-Opposition indisputably demonstrate that the catering contractor was subjected to a large number of "Do"s and "Do Not"s, affirmatory mandates and prohibitory injunctions, as to the manner in which the contract is to be executed. Construing the provisions of such a contract, it was held by the Lahore High Court in *S. L. Kapoor v. Emperor* (AIR 1937 Lah 547) that since the contractor could be "overlooked" and directed in the manner of performance of his work, he was a Servant and not an independent contractor. It was pointed out, relying on a decision of the Rangoon High Court in *A. V. Joseph v. J. L. Lammond* (AIR 1924 Rangoon 373), that provision for meals for travellers is part of the service of a

Railway and the catering contractor was thus a Railway Servant within the meaning of Section 3(7) of the Railway Act, 1890 which defined the expression "Railway Servant" as "any person employed by a Railway Administration in connection with the service of a railway". A Division Bench of this Court in *Ratanlal Majumdar Vs. Alfred Ernest Young*, has also held a tea-stall contractor at a Railway station to be a Railway Servant. The position now appears to have been sealed by the Supreme Court in *Nanik Awatrai Chainani Vs. The Union of India (UOI)*, and also in the later decision in *Union of India (UOI) and Another Vs. B.N. Prasad*, which has followed *Nanik Awatrai Chainani (supra)* and both the Lahore decision in *5. L. Kapoor (supra)* and the Calcutta decision in *Ratanlal Majumdar (supra)* have been approved and relied on.

6. It is true that both in *Nanik Awatrai Chainani (supra)*, as well as in *B. N. Prasad (supra)*, the catering contractor, though held to be a "Rail way Servant", was held not to be entitled to any protection under Article 311 of the Constitution. But, as is well-settled, even a temporary civil servant, discharged in accordance with the contract of service or the service rules, is not entitled to invoke Article 311, unless the termination of his service amounts to dismissal or removal within the meaning of that Article. If a catering contractor employed for a fixed term is discharged on the expiration of the term without any accusation, imputation or stigma, he, even though employed by and under the Railway Administration, cannot come in within the protecting provisions of Article 311, because, to borrow from *B. N. Prasad (supra, at 413)*, "of the precarious contract under which he had entered in the Railway Service". But that would not deprive him of the status of a Railway Servant.

7. But accepting that the catering contractor, who was admittedly the immediate employer of the writ petitioners, was a Railway servant, as held by the Lahore High Court, our High Court and the highest Court of the land, the question that has faced us in this case is whether the servants employed by such Railway Servant are also Railway Servants. I am inclined to think that the provisions of Section 148(2) of the Railway Act, 1890, and of Section 197(2) of the present Act of 1989, provide some, though not the whole, answer to this question. Section 148(2) reads as hereunder :-

"For the purposes of Sections 5, 21, 83, 100, 101, 103, 104, 121 122, 125 and 137, Sub-section Sections (1) and (2) and Section 138, the expression "Railway Servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration".

As already noted, according to the ratio of the Lahore and the Calcutta decisions, approved by the Supreme Court as noted above, providing meals and refreshments" to the travellers is a part of the service of the Railway. The writ-petitioners were admittedly employed upon a Railway and in connection with such service and by a person, namely, the catering contractor fulfilling a contract with the railway administration, being Annexure "A"" to the Affidavit-in-Opposition Ex facie, therefore, the writ-petitioners are Railway Servants, though

according to the terms of Section 148(2), for the purposes of the Sections mentioned therein. The textual provisions of the corresponding provision Section 197(2) of the new Act are very much the same, with the difference that there are no corresponding provisions for Sections 103 and 125 of the old Act in the new Act and with some other difference also, not material for our present purpose. I am referring herein" below to the provisions of the 1890-Act and, as already stated, the corresponding provisions of the 1989-Act are, by and large, similar.

8. Section 100 makes a Railway Servant punishable for being in a state of intoxication while on duty and provides for aggravated punishment if his improper performance of duty as a result of intoxication is likely to endanger the safety of any person travelling or being upon a railway. Section 101 provides for punishment of a railway servant who, while on duty, endangers the safety of any person by any rash or negligent act or omission or by disobeying any rule or order. Section 121 provides for punishment for a person who lawfully obstructs or impedes any railway servant in the discharge of his duty. Section 137(1) and (2) categorically declare all railway servants to be public servants for the purposes of Chapter IX of Penal Code dealing with offences by or relating to public servants and of Section 409 dealing with criminal breach of trust by public servants. Section 138 provides for a summary procedure for recovery of possession of railway properties from the possession of a railway servant, any member of his family or representatives.

9. True, the terms of Section 148(2) are apt to give rise to the impression that the servants of a catering contractor are Railway servants only for the purposes of the Sections mentioned in Section 148(2)." But both Basak, J. and Ray, J. are inclined to hold that those servants, though directly employed by the catering contractor, are also themselves servants of the Railway. In effect, both the learned Judges have held that even though employed by or through a contractor, the Railway was the principal employer and the petitioners having been employed in connection with the service of a railway, were railway servants.

10. The fact that in Section 148(2) of the Railways Act, 1890, corresponding to Section 197(2) of the new Act, servants employed by the contractors under the Railway have been expressly declared to be Railway servants for the purposes of the Sections specified therein, cannot mean that they were not or could not be Railway Servants *de hors* or outside the provisions of those sections. To my mind, these provisions were enacted *ex abundanti cautela* to ensure irresistibly that servants employed by a Railway contractor, like the writ-petitioners, do not go out of the ambit of the Sections specified in Section 148(2) dealing with Railway Servants in any view of the matter on the plea that they were not employed directly by the Railway, but by or through a contractor. The section cannot be pressed into service to deprive the writ-petitioners of the status, of Railway Servant, if they are so under the provisions of law *de hors* this section.

11. And there our laws, both legislative and judicial, have made admirable advancement inspired by the spirit of our National Charter to secure socio-

economic justice to the weaker and the poorer. u/s 2 of the Contract Labour (Regulation and Abolition) Act, 1970, a contractor in relation to an establishment means a person who undertakes to produce a given result for the establishment (other than a mere supply of goods or articles of manufacturer) through contract labour. The expression "establishment" has been defined to mean any office or department of the Government or any place where any trade, business or occupation is carried on. The catering of food and refreshment at the Railway Station by the catering contractor was therefore an establishment and the catering contractor was also a contractor within the meaning of this Act. The Act also provides in Section 2(b) that a workman shall be deemed to be employed as a "contract labour" in or in connection with the 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. And "workman" has been defined in Section 2(i) to mean a person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, but is not employed in a supervisory capacity drawing wages exceeding Rs. 500/-per month or in a managerial or administrative capacity.

12. I do not, as I need not, decide that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 would in terms apply to the case at hand. My only purpose for referring to this Act is to remind ourselves of the present legislative trend in our Service Jurisprudence, where under an employee employed for the purpose of the works of a Principal Employer, would be deemed to be employed by or under that Principal Employer, even though he has in fact been employed by an intermediate employer employed by the Principal Employer.

13. But that apart, the decision of a three-Judge Bench of the Supreme Court, speaking through Krishna Iyer, J., in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, , referred to by Basak, J. in the impugned order and strongly relied on by Ray, J. in his proposed judgement, would go a long way to lend strong countenance to the view that the writ-petitioners were in effect employed by the Railway Administration, though through the hands of its contractor. The decision, if I may say so with respect, deserves our serious advertence. In that case, a number of workers were employed to make ropes in a factory, but they were employed, not directly by the owner of the factory, but by and through a contractor. The Supreme Court, in agreement with the High Court, gave short shrift to the contention that the factory-owner had entered into agreement with intermediate contractors who had hired the workmen and there was thus no direct employer-employee Vinculum Juris between the establishment and the workmen. The Supreme Court, among others, took note of the facts that-(a) the works done by the workmen were an integral part of the works of the establishment, (b) the place of work belonged to the establishment, (c) the finished products were used for the purpose of the establishment and (d) the workmen were broadly under the control of the establishment and ruled that if the livelihood of the workmen

substantially depended on the services rendered by them for the benefit and satisfaction of the establishment, "the absence of direct relationship or the presence of dubious intermediaries or make-believe trappings of detachment from the Management, cannot snap the real-life bond" and "the liability cannot be shaken off"". The old concept of law of contract, rooted in laissez faire economics, must now yield to the new socialistic concept fully alive and sensitive to the exploitative situations and the true test, as pointed by the Supreme Court, is that where a worker or group of workers labour to render services which form integral part of the services of another and utilised as such, then that other is, in fact, the employer, even though the employment is brought about by or through some other person acting under the supervision and control of the former.

14. All the tests, as noted hereinbefore, appear to be satisfied in respect of the writ-petitioners. They all were engaged in rendering service of providing food and refreshment to the travellers in Railway which, as already noted, is an integral part of the services to be rendered by the Railway. The place or places where they render such services belong to the Railway. The products produced by them are used for the services to be rendered by the Railway. And, as would appear from Annexure "A" to the Affidavit-in-Opposition by the Respondents, they were also broadly under the control of the Railway. They were accordingly Railway Servants, as held by the learned trial Judge Basak, J. and also my learned brother Ray, J.

15. The petitioners are also in continuous employment for about 10 years and therefore, their claim for being absorbed may require consideration, as pointed by Ajit Kumar Sengupta, J., in *Bimal Kumar Pal v. State of West Bengal* 1 CWN 35).

16. But once it is held that the writ-petitioners are "Railway Servants", then their dispute relating to continuance of their services or their claim for being absorbed in services become "service matters", as defined in Section 3(q) of the Administrative Tribunal Act, 1985. And in that case, in view of Section 28 of the Act, any question relating to the tenure, confirmation or any other matter whatsoever in respect of the services of the petitioners cannot be agitated in this Court.

17. The learned trial Judge has directed the matter to be transferred to the Administrative Tribunal. This Court has no jurisdiction whatsoever over the Administrative Tribunal under Article 226, Article 227 or otherwise under any other provision of any law and ordinarily we can not have any such power to transfer any case to any Court or Tribunal which is not amenable to our jurisdiction in any way. But once we hold the writ-petitioners to be Railway Servants, any dispute relating to "service-matter" in respect of those petitioners can be taken cognizance of only by the Administrative Tribunal once such a one is constituted and if any such proceeding was pending before this Court on the date when such a Tribunal is established, the same shall, under the provisions of Section 29 of the Administrative Tribunal Act, 1985, stand transferred to such

Tribunal. The proceeding giving rise to this appeal was pending when the concerned Administrative Tribunal was established and, therefore, must be deemed to have stood transferred to that Tribunal.

18. All that I hold is that the writ-petitioners were Railway Servants. They have undisputedly put in service for more than 10 years. They have continued in service even after the contract in favour of their immediate employer, the catering contractor, has come to an end. Whether they have acquired such status as to entitle them to continuation of or absorption in service is a "service matter" to be decided by the Administrative Tribunal. All that we can and need do is, not to transfer the case which has already stood transferred by the operation of law, but to forward and transmit the records of the case to the Administrative Tribunal. Let that be done forth with.

19. The appeal is accordingly dismissed with costs assessed at 100 Gms. to be paid to the respondents.

Ajoy Nath Ray, J.

This is an appeal from a judgment and order of the Hon"ble Mr. Justice Bimal Chandra Basak dated the 29th of January, 1988 and I have no doubt in my mind that the appeal must be dismissed.

20. The short question in this appeal is whether the learned Judge in the Court below correctly declared the 22 writ petitioners as railway employees. The other directions given by the learned Judge, is that the determination of other reliefs, and disposal of the writ petition, would be by the Central Administrative Tribunal, are not disputed by any party herein. Those directions thus remain untouched and the Administrative Tribunal would deal with the case as it thinks fit on the basis of the declaration that the 22 persons concerned are Railway Employees. It would also be for the Tribunal to see if any substantial part of the writ survives, and further if the justice of the case requires any amendments or fresh pleadings for complete adjudication of the conditions of service.

21. Two points have been urged in this appeal by Mr. Rothin Das appearing with Mrs. Uma Sanyal (Misra) for the appellants. The first is whether this Court can go into the question of the declaration of status of these 22 persons as Employees under the Railways, in view of the provisions of the Administrative Tribunals Act, 1985. The relevant sections are Sections 14 (and 15) and the exclusion sections are Sections 28 and 29. The concerned phrase is "Recruitment" or "Any matter concerning recruitment". The phrase "Service matters" being defined in Section 2 (q) does not help either side. If any question of recruitment of these 22 persons is concerned here, or any question relating to such recruitment, there can be no doubt that this Court would have no jurisdiction to entertain the matter.

22. However, it is submitted by Mr. Maitra on behalf of the writ petitioners that the question of declaration of status already existing, is not a question of recruitment, nor is it any other question relating to recruitment. If a person on

the basis of facts prevailing, and by operation of the true law of the land, is in reality already a Railway servant, but such status of the employee is not clearly and certainly realised either by the employee or by the Railway Authorities, then it is not a question of recruitment in any way. Recruitment involves a volitional act on the part of the recruiting Authority, and an application or offer for recruitment on the part of the prospective employee. Both these elements are absent here. It is in the peculiar facts and circumstances of this case that such a question of declaration of status arises, and a declaration of this nature is outside the phrase "recruitment" or "any matter Concerning recruitment" and thus the appeal must fail as regards this first point.

23. The second point is whether in substance these 22 employees had actually become Railway Employees without the Railways or the concerned persons themselves realizing the same in a definite way. That there was uncertainty is indisputable. The writ petitioners claimed themselves to be railway servants in the thirteenth paragraph of the writ petition. Yet there are inconsistent averments in the sixth and tenth paragraphs, and the prayers even are not formulated on the solid basis of paragraph 13. But this is not a matter where pleadings take the front row in the theatre of justice. So I propose to deal with the real case, which is a case of direct employment.

24. The facts are short and simple. For 10 years or so prior to 1983 the employees had worked in a Canteen of Durgapur Railway Station for catering to Railway passengers. They were working under a Caterer, a certain Messrs. N. Bose & Sons. Identity cards by the concerned Railway Authorities were issued to these employees. The catering centre was physically within the Railway Station. In 1983, the catering contract of Messrs N. Bose & Sons., was terminated and these employees were rendered unemployed in so far as the catering contractor was concerned.

25. The question is, that, under these circumstances, did the employees become or were they entitled to become, in law, the Railway Employees in some sense of the term or other.

26. It has been decided in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, (equal to 1978 Supreme Court Cases, page 506) that the real employer must be found out by a consideration of all circumstances, and the ostensible employer is not necessarily the real employer for all purposes. Various tests have been laid down in that case. Following the principle of lifting the Veil for the purpose of seeking who the real employer is, I here find several elements to show that these employees were really Railway Employees rather than not. The jobs that the employees did were of direct benefit to railway passengers. The employees worked at premises devoted entirely to a core activity of the Railway Organisation. The Railways issued the necessary identity cards to these employees. The wayfarer on an ordinary train passing through Durgapur would be very surprised indeed if one of these catering employees serving food or tea to him was said to be in no way connected with the Railways.

It is also true that, if, to borrow the language of the Supreme Court, the Railway Authorities choked, (which God forbid), so would all these employees. Under these circumstances, I have no doubt in agreeing with the learned Judge in the Court below that these employees were in reality Railway Employees even when the catering contract of the intermediary employer ceased.

27. It is not the case of the Railways that the catering centre was altogether closed down. The Railways wanted to run the centre and engage surplus staff from other places, as would be evident from the letter of 9th March, 1984 which is the letter under challenge in the writ petition. In my opinion the Railway Authorities were not free to do so. They would have to treat these existing employees of the catering centre as their own employees, but in case some transfer of employment is needed amongst different catering centres, the same could naturally be done in accordance with the existing rules and practice of the Railways. But treating these employees as mere nobodies was unfair, and impermissible in law, on the part of the appellant.

28. Mr. Maitra, apart from relying on the above case also wanted to submit that an appointment is different from a recruitment and he referred to the cases reported in 1968 SLR page 538 and 1969 Labour & Industrial Case, page 696. I do not think this case can be decided on any such fine distinction, and I am not sure that there is any distinction there at all.

29. The case reported in 63 CWN page 78 was also referred to after my learned brother had pointed it out, and the same is a case on the question whether a catering service contractor is himself to be treated as a Rail way servant. The instant case is no more than a logical extension of the same principle.

30. Mr. Maitra correctly submitted that these 22 writ petitioners had become earlier Railway servants within the meaning of Section 3(7) of the Indian Railways Act. Mr. Maitra also appropriately placed reliance on the two cases reported in AIR 1937 Lahore page 547 and in 1984 Labour & Industrial Case page 1235 respectively. Although both these are judgements of learned single Judges yet I most respectfully agree with the approach in both these cases. On applying the test as to whether the Railway Organisation had these 22 employees as part of it, albeit in a small way, considering the vastness of the entire Railway Organisation, there can be no doubt that they did form a true part of the entire organisation of the Railways. It is in the same way that a little blood capillary vessel is also a part of the whole big human body.

31. A question which might spring to the mind is why the Railways-should be burdened with the additional responsibility of paying the salaries of these 22 employees. But this question is answered as soon as it is asked It is only this that after charging the public for meals even at prices as agreed upon by the Railway Administration and after making a presumable profit, the contractor was paying the salaries to these employees. The public wayfarers' funds were thus continuously being drawn upon partly for the benefit of these catering employees

at all material times, even though it was through the conduit pipe of the intermediary employer. The Railways themselves will now do no more and no less.

32. There is another point of general importance involved. On the principle that I have ventured to follow, it is not unlikely that many a Government Organisation or the Union and the States themselves would be faced with a claim of an employee, saying that he is in law already the direct employee of the Organisation or the Union or the States. However, in case such a claim is made, it is not any and every employee who would succeed in being declared a direct employee. It is only that employee, who has been employed with a sufficient degree of permanent organisational connection who could be considered for such a status of direct employment. The Canteen workers here worked for 10 years on the Railway Station doing railway work and the degree of permanence required is easily found in their case.

33. If, however, the Railways require to engage some contractor, who employs a number of employees for a fortnight or a month or even two or three months, there would be no degree of permanent or organisational connection of these employees so as to permit them to claim a direct status of employment. In fact, a claim of that nature made by such employees would immediately appear to the reason to be unsubstantial; whereas in a case like the present, the mind rather tries to seek out a way of justification for continuance of the employment of these 22 employees, at a place where they have long worked, rather than be repelled by a claim for such direct status being made on their behalf.

34. I am fully aware that there can be border line cases. But that is what Judges and Courts of law are therefor. It would be wrong in principle not to allow a clear case only for fear that border line cases might crop up and cause future litigation. It would in one sense be putting the cart before the horse.

35. This novel question also involves a decision as to when, in point of time, these employees under the intermediary employer could claim to have become the direct employees of the Railways. The Railways or indeed any public body is not certainly to be burden with a spate of applications from several employees on the basis of the principle followed by me. On the other hand, I do not feel free completely to cast away the case of employees who fairly deserve to become direct employees under a Union undertaking. I, therefore wish to lay down some principles which appear to me to be good guidelines in cases of this nature.

(a) An intermediary employer will continue to employ his own employees and the employees will not be permitted to look beyond the intermediary employer to any State Undertaking so long as the contractual or other relationship between the State Undertaking and the intermediary employer is subsisting;

(b) It is only when fee intermediary employer is being sent out of contractual relationship that the case of his employees would fall to be considered by the State Undertaking, in case the employees wish for direct employment;

(c) The State Undertaking would be under no obligation to take up these employees as direct employees if the Undertaking has decided to discontinue altogether the work which was being done by the intermediary employer. That is, if the whole activity ceases, then the Undertaking is not bound at the instance of the employees to continue with the activity against its wishes and policy decision;

(d) The activity of the intermediary employer and the employees must be of a type directly associated with the basic function of the State Undertaking. In case of a Railway, it must relate to running of trains and welfare of passengers; in case of Telephone Authorities, it must relate to the telephone networks themselves or some such other essential item; in case of a State run Industry, the activity must relate to the actual production of the industrial product it self, or to something equally fundamental to the basic organization of the Industry;

(e) Apart from all these, the employees must have worked on a continuous basis under the intermediary employer for a sufficient length of time so as to make their sudden unemployment unjust and unconscionable. This part of the matter is of paramount importance;

(f) No employee would be entitled to claim for direct employment, in case the work of the intermediary employer is of an intermittent type, i.e., seasonal, or undertaken at gaps of time. Such intervals in the period of time necessarily mean that the State Undertaking is going to have its organization run without any permanent workforce for these seasonal or intermittent jobs. The continuity of time of employment is thus a must for direct employment of this nature.

36. The above principles are naturally not intended to be either final or exhaustive as it is not possible for me to foresee fully what occasions may arise in future. These I have laid down on broad considerations which have guided me in this case, and which would, unless I am shown cause to the contrary, guide me in future cases too.

37. After the hearing was concluded, Mr. Maitra personally handed over to me a xerox copy of a judgement of a Calcutta Division Bench, composed of the Hon'ble Mr. Justice Salil Kumar Datta and the Hon'ble Mr. Justice B. C. Ray, as his Lordship then was at Calcutta. Mr. Maitra also assured me that he would hand over a copy to the other side. The case is of N. Jagga Rao v. Union of India, the judgement of 16th July, 1974, reported apparently in (1975) FLR 38. In view of the pronouncement of the Supreme Court, no additional authoritative support is needed for piercing the veil and taking the liberty of peeping through to discover the real employer.

38. Under the circumstances, I think that the appeal must be dismissed, and the above two points raised by Mr. Rathin Das and Mrs. Uma Sanyal (Misra) appearing on behalf of the appellant, must both be overruled.

39. The appeal is thus dismissed with costs assessed at 100 Gms.