

**(2025) 05 BOM CK 0239**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 3761 Of 2025**

Emerson Climat Technologies (India) Private Limited  
(Copeland India Private Limited)

APPELLANT

Vs

Bharatiya Kamgar Karmachari Mahasangh

RESPONDENT

**Date of Decision : 05-05-2025**

**Acts Referred:**

Industrial Dispute Act, 1947 — Section 2(s)

Contract Labour (Regulation & Abolition) Act, 1970 — Section 30, 30(2)

**Citation : (2025) 05 BOM CK 0239**

**Hon'ble Judges : Sandeep V. Marne, J**

**Bench : Single Bench**

**Advocate : J.P. Cama, Varun Joshi, Chetan Alai, Rama Somani, Dheeraj Patil**

**Final Decision : Partly Allowed**

## **Judgement**

Sandeep V. Marne, J.

1) Petitioner-employer has filed this Petition challenging the Award dated 30 March 2024 passed by the Presiding Officer, Industrial Tribunal, Satara answering Reference (I.T.) No.5 of 2013 in the affirmative and directing all the concerned workers to be made permanent by extending them benefits and status of permanent workers retrospectively from the date of raising of the Reference i.e. w.e.f. 20 September 2013.

2) Petitioner is engaged in the business of manufacturing of Hermetically sealed compressors having its registered office at Hinjewadi. It has one of its factories situated at Atit, District-Satara. Respondent is a registered trade union, which is not a recognised union in respect of Petitioner's factory at Atit under the provisions of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). Petitioner has a separate Union named Engineering Shramik Sanghatana, which is duly recognised under the provisions of MRTU & PULP Act with whom Petitioner has signed various settlements relating to permanent workmen employed in its factories.

Respondent-Union represented 131 contract workers and espoused their cause with the Petitioner-employer. Petitioner claims that it had engaged 131 contract workers through a contractor-Mangal Enterprises since 6 May 2009. Petitioner had displayed and advertised a notice for filling up certain vacancies on permanent basis. The Respondent-Union demanded grant of permanency to 131 contract workers. Respondent-Union raised dispute by letter dated 1 September 2012 before the Assistant Commissioner of Labour. The matter was taken in conciliation. After submission of failure report dated 21 August 2013, the Assistant Commissioner of Labour referred the dispute for adjudication to Industrial Tribunal at Satara by order dated 20 September 2013. The Reference was with regard to permanent absorption of members of Respondent-Union on account of completion of more than 240 days of service and to extend them all benefits payable to permanent workers with retrospective effect. Respondent-Union appeared before the Industrial Court and filed application for interim stay to the selection process initiated vide notice dated 17 October 2013. The Industrial Tribunal passed order staying the recruitment of new employees and restrained the Petitioner from recruiting any other person than members of the Respondent-Union.

3) Petitioner appeared before the Industrial Court and filed application seeking rejection of Reference on the ground that the Reference was not maintainable as it was being prosecuted by an unrecognised Union. The said application was resisted by the Respondent-Union by filing its reply. The Industrial Tribunal passed order dated 10 December 2013 conditionally permitting the Petitioner to make recruitment as per the recruitment process on the condition that till the reference was decided in favour of Respondent-Union, Petitioner would not act on the appointments made by them during pendency of the application. Respondent-Union thereafter filed its Statement of Claim dated 4 January 2014 seeking absorption of 131 members, who had completed 240 days of service alongwith all consequential benefits. The Claim was resisted by the Petitioner by filing its written statement. The Industrial Court rejected application filed by the Petitioner questioning maintainability of the Reference by order dated 9 November 2016. In the meantime, some orders were passed by the Industrial Tribunal directing the Petitioner to produce the documents. By order dated 18 June 2016, it restrained the Petitioner from granting status of permanency to workers other than members of Respondent-Union in pursuance of notice dated 17 October 2013 till final disposal of the Reference. Petitioner filed Civil Writ Petition No.1990 of 2017 challenging orders dated 1 April 2014, 3 December 2015, 9 November 2016 and 18 June 2016, which came to be disposed of by recording consent terms and by setting aside order dated 18 June 2016 on understanding that appointments made in pursuance of notice dated 17 October 2013 would be subject to final outcome of the Reference. In the meantime, Petitioner had filed Writ Petition Nos.444 of 2020 and 451 of 2020 challenging the order dated 9 November 2016 rejecting its application questioning maintainability of the Reference. The Petitions came to be dismissed by this Court by order dated 24 January 2020.

Petitioners filed SLP (C) Nos.5181-5182 of 2020 before the Hon'ble Supreme Court and it is averred in the Petition that the same is still pending.

4) In the meantime, the evidence in the Reference commenced. Respondent-Union examined Shankar Jagannath Pawar, Suresh Pandurang Mane and Dagdu Bhagave. Petitioner examined Pravin Bhalchandra More, Sachin Arvind Patil, Amol Vijay Bhoite, Shashikant Madhukar Shirke and Abasaheb Pandurang Patil as its witness. Both the sides relied upon various documentary evidence. After considering the pleadings, documentary and oral evidence, the Industrial Tribunal proceeded to answer the Reference in the affirmative and partly allowed the same by Award dated 30 March 2024. The Industrial Tribunal directed Petitioner to make all the concerned workers in the Reference permanent by extending them benefit and status of permanent workers retrospectively from date of Reference i.e. 20 September 2013 except those workers who were already made permanent, who had passed away, who availed benefit of VRS or who resigned from the membership of Union. According to Respondent-Union, 64 of its members would be benefited by the impugned Award dated 30 March 2024. Petitioner has filed the present Petition challenging the Award dated 30 March 2024.

5) Mr. Cama, the learned senior advocate appearing for the Petitioner would submit that the Industrial Tribunal has grossly erred in allowing the reference directing grant of permanency to the members of the Respondent-Union, with whom Petitioner has no employer-employee relationship. He would submit that the impugned award goes beyond the terms of reference. That the members of Respondent-Union are employed through the Contractor-M/s. Mangal Enterprises and unless reference was made for establishment of employer-employee relationship, direct relief of granting permanency in favour of such members could not have been granted by the Industrial Tribunal. That the Industrial Tribunal has erred in framing the issue about existence of employer-employee relationship and about the contract being sham and bogus. That those issues did not arise out of reference made to it by the Appropriate Government. He would submit that Industrial Tribunal has travelled outside the terms of Reference. In support, he has relied upon judgments in *Tata Iron and Steel Company Ltd Versus. State of Jharkhand and others* (2014) 1 SCC 536, *Pottery Mazdoor Panchayat Versus. Perfect Pottery Co. Ltd. And Anr* (1979) 3 SCC 762 and *Mahendra L. Jain And Ors. Versus. Indore Development Authoity And Ors* (2005) 1 SCC 639.

6) Mr. Cama would further submit that the reference made to the Industrial Tribunal by the Appropriate Government was not sustainable as members of the Respondent-Union are mere contract workers, who cannot be treated as workmen of the Petitioner under Section 2(s) of the Industrial Dispute Act, 1947 (ID Act). Therefore, no reference could have been made on their behalf. In support of his contention, he would rely upon judgment of the Apex Court in *Workmen of the Food Corporation of India Versus. Food Corporation of India*

(1985) 2 SCC 136. Mr. Cama would further submit that onus of establishing employer-employee relationship and that the workers are entitled to permanency or regularisation was squarely on the Respondent-Union. That no other material is produced to establish employer-employee relationship between Petitioner and members of Respondent-Union. In support of his contention of onus, he would rely upon judgment of the Apex Court in Ganga Kisan Sahkari Chini Mills Ltd. Versus. Jai Veer Singh (2007) 7 SCC 748. That in absence of production of appointment letter, Provident Fund number, wage slip, etc., the workers cannot be treated as workers of the principal employer. In support, he would rely upon Apex Court judgment in Bharat Heavy Electricals Ltd. Versus. Mahendra Prasad Jakhmola And Ors (2019) 13 SCC 82.

7) Mr. Cama would further submit that findings recorded by the Industrial Tribunal suffer from the vice of perversity. That the Industrial Tribunal has erroneously held that the appointment letters issued by M/s. Mangal Enterprises to the concerned workers do not bear signatures ignoring the position that the witness of the Respondents clearly admitted in the evidence that he was appointed by M/s. Mangal Enterprises but was not willing to file appointment letter. The Contractor led specific evidence of having issued the appointment letter. That the appointment letters filed by the Petitioner do bear signatures of the workmen. He would submit that the Industrial Tribunal erred in holding that Petitioners failed to show existence of valid contract by ignoring copies of various contracts produced before it. The Industrial Tribunal has erred in holding that no such registration or license existed as on the date of first appointment in the year 2009 ignoring the position that no evidence was produced by the workers of initial appointment in the year 2009. That in any case Petitioner produced various registration certificates issued under the provisions of Contract Labour (Regulation And Abolition) Act, 1970. That the Industrial Tribunal has erred in holding that appointment letters were prepared by the Petitioner to show appointments through contractor ignoring the evidence of contractor. That otherwise, employees of M/s. Mangal Enterprises have admitted that appointment letters were issued by the said contractors. That the Industrial Tribunal erred in holding that no signatures appeared on pay slip issued by M/s. Mangal Enterprises ignoring the position that witness of Respondent clearly admitted that M/s. Mangal Enterprises issued salary slip. That the findings recorded by the Industrial Tribunal that dismissal orders relied upon by Respondent pertained to 2018-2021 after making of reference, ignoring the position that Petitioner also relied upon chargesheet and dismissal pertaining to 2013. The Industrial Tribunal has erred in assuming that Petitioner paid Rs. 15,00,000/- to contract workers under VRS in absence of any evidence to that effect. That the finding of Industrial Tribunal about absence of evidence of supervision being done by M/s. Mangal Enterprises is recorded by ignoring evidence of the Contractors, who gave names of supervisor who exercised supervision over the contract workers. Similarly, the findings of absence of written order of allotment of work by M/s. Mangal Enterprises is contrary to the

evidence of Contractor, who gave the entire scope of work during the course of his evidence. That the Industrial Tribunal has erred in holding that the work is of perennial nature.

8) Mr. Cama would further submit that Respondent led evidence of only two workers, who did not have any power or authority to lead evidence on behalf of the balance 129 workers. He would submit that evidence led by said workers cannot be relied upon to assume employment of the other workers. In support, he would rely upon judgment of this Court in *Glasstech Industries (India) Pvt. Ltd, Raigad Versus. Workmen Represented by Maharashtra General Kamgar Union* (2013) 1 CLR 512 and *Force Motors Limited. Versus Poona Employees Union and others* 2009 1 CLR 855.

9) Mr. Cama would further submit that the findings recorded by the Industrial Tribunal about contract being sham and bogus is not only outside the scope of reference but is otherwise perverse. He would submit that Respondent-Union failed to establish the six tests prescribed in the judgment of the Apex Court in *Balwant Rai Saluja Versus. Air India* (2014) 9 SCC 407. That the evidence of contractor proved beyond doubt that matters relating to leave, salary, chargesheets, dismissal, allocation of work, etc. were all done by M/s. Mangal Enterprises. That wage-cum-muster was also maintained by M/s. Mangal Enterprises. That ESI and PF contributions were made by M/s. Mangal Enterprises. VRS was introduced by M/s. Mangal Enterprises for its own workers. He would therefore submit that none of six tests get satisfied in the present case for holding that members of Respondent-Union are direct workmen of the principal employer. Mr. Cama would therefore pray for setting aside the impugned order.

10) Petition is opposed by Mr. Patil, the learned counsel appearing for Respondent-Union. He would submit that the Industrial Tribunal has rightly appreciated the entire evidence on record for holding that there exists employer-employee relationship between Petitioner and members of the Respondent-Union. That the whole theory of existence of contract presented by the Petitioner is bogus. That the Industrial Tribunal has rightly appreciated the position that the agreement allegedly executed between Petitioner and M/s. Mangal Enterprises is mere paper arrangement and the same is sham and bogus. He would submit that the Petitioner did not produce the so-called contracts executed with M/s. Mangal Enterprises under which members of the Respondents were allegedly hired. That the first contract relied upon by Petitioner is shown to have been executed on 15 October 2009 whereas the witness of the Petitioner admitted that the members of Respondent-Union were first recruited on 6 May 2009. Thus, no contract existed as on the date of first recruitment of the members of Respondent-Union and the contract was later created with a view to deny employer-employee relationship. That the contracts otherwise are not continuous as no contract was produced covering the period from 1 January 2011 to 31 December 2012. Though contracts are produced covering the period from 3 March 2014 onwards,

the same are in respect of Petitioner's factory at Chakan, which has no relevance to the present case. Except two stray contracts, no evidence was led to show continuous hiring of members of Respondent-Union through M/s. Mangal Enterprises. He would submit that most of the documents relating to M/s. Mangal Enterprises were bogus and forged by the Petitioner. That mere computer-generated statement relating to PF/ESI contributions were produced not bearing any authentic signatures. The appointment orders do not bear signature of M/s. Mangal Enterprises. That witness of Petitioner-Mr. Shashikant Madhukar Shirke specifically admitted during the course of his cross-examination that no contract was executed with M/s. Mangal Enterprises in respect of the concerned workers. That thus, the whole story of execution of contract with M/s. Mangal Enterprises was clearly sham and bogus. Mr. Patil would further submit that it was Petitioner alone, who always exercised complete supervision and control over the work of members of Respondent-Union. He would invite my attention to Skill Matrix Chart demonstrating exercise of supervision over the work performed by Respondent-Union. He would submit that registered licenses relied upon by Petitioners were secured in the year 2015 in respect of past periods. That the insurance policy relied upon by Petitioner is in respect of housekeeping services provided by M/s. Mangal Enterprises and has no co-relation with services of members of Respondent-Union. That the PF slips relied upon by Petitioner are also not authentic document as the contributions made by the employer and employee do not match.

11) Mr. Patil would then rely upon tripartite Agreement executed between some of the members of Respondent-Union, M/s. Mangal Enterprises and Petitioner, under which Petitioner paid amount of Rs.15,00,000/- to the concerned workers. He would submit that the Industrial Tribunal has rightly inferred existence of employer-employee relationship based on payment made by Petitioner for granting voluntary retirement to the members of the Respondent-Union. He would submit that the members of Respondent-Union otherwise satisfy the 6 tests laid down by the Apex Court in its judgment in Balwant Rai Saluja (supra) as discussed by this Court in judgment in Kalyan Dombivli Municipal Corporation Versus. Municipal Labour Union And Anr 2023 SCC Online Bom 2266. He would also rely upon judgment of the Apex Court in Steel Authority of India And ors. Vs. National Union Waterfront Workers and ors 2001 (7) SCC 1 in support of his contention that members of the Respondent-Union have rightly been treated as direct workers of the Petitioner. He would accordingly pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) The Reference was initially espoused by Respondent-Union on behalf of its 131 members, many of whom are no longer interested in outcome of the same. As of now only 64 members of Respondent-Union continue to work with the Petitioner. Rest have either been absorbed, have passed away, have resigned or have opted for voluntary retirement.

14) There is debate amongst rival parties as to who is the real employer of these 64 workers. It is the contention of Respondent-Union that the workers have been engaged by the Petitioner by showing their employment through a Contractor. On the other hand, Petitioner contends that the concerned workers have been hired, trained and deployed to work in Petitioner's Ancillary Unit at Atit by the Contractor-Mangal Enterprises.

15) Though the Petitioner has sought to connect the demand of Respondent-Union for permanent absorption to notice dated 17 October 2013 issued by it for filling up certain vacancies of permanent nature, it appears that demand dated 23 August 2012 was already served by Respondent-Union and justification statement was filed before the Assistant Commissioner of Labour, Satara on 1 September 2012. Thus, the demand for absorption was made much prior to initiation of recruitment process by the Petitioner. After issuance of the recruitment notice, the Union started demanding absorption of contract workers instead of going for open market recruitment.

16) After submission of failure report by the Conciliation Officer, the Additional Commissioner of Labour, Pune, made following reference to the Industrial Tribunal, Satara :

The reference is translated as under :

'Schedule'

The Applicant workers be absorbed in permanent service with retrospective effect by principal employer M/s. Emerson Climate Technologies (India) Ltd. on account of rendering of continuous service of more than 240 days and they shall be paid all benefits (wages) payable to permanent workers with retrospective effect.

17) It appears that maintainability of reference was questioned by the Petitioner before Industrial Tribunal by filing application at Exhibit- C3 on the ground of the same being espoused by unrecognized Union. The application came to be rejected by the Industrial Tribunal vide order dated 9 November 2016, which order was upheld by this Court. Now, Petitioner has sought to question the correctness of reference by contending that the same was made in respect of persons who are not workmen of Petitioners within the meaning of Section 2(s) of the ID Act and that therefore, the same is not sustainable. Petitioner contends that reference at the instance of workers of Contractor cannot be made against the principal employer. Reliance is placed on judgment of the Apex Court in Workmen of the Food Corporation of India (supra) in which it is held that there has to be express or implied contract of service between employer and employee and that unless a person is employed, there can be no question of he being a workman. It is held that where contractor employs a workman to do the work, the workman of the Contractor would not become a workman of the principal employer. The Apex Court held in paragraph 11 as under :

11. Briefly stated, when Corporation engaged a contractor for handling

foodgrains at Siliguri Depot, the Corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him. payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the Corporation and the workmen. 'Workman' has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean "any person (including an apprentice) employed in any industry to do...". The expression 'employed' has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be. in other words. an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a 'workman' within the definition of the term as contained in the Act. (Dhrangadhara Chemical Works Ltd. v. State of Saurashtra.) Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union.

18) In my view, there are atleast two reasons why the objection raised by Mr. Cama about the sustainability of reference deserves outright rejection. Firstly, if Respondent had any objection to the validity of Reference order, it ought to have challenged the same, which it has failed to do. It has participated in the reference proceedings without challenging the Reference order. It is therefore now precluded from questioning the sustainability of the Reference order. Secondly, the Industrial Tribunal has framed the issue relating to existence of employer-employee relationship and has held that members of Respondent-Union are workers of the Petitioner. Thus, the members of Respondent-Union are held as workers of the Petitioner and therefore, the judgment in Workmen of the Food Corporation of India (supra) would have no application to the facts of the present case. Therefore, objection about error in the order of reference sought to be raised by the Petitioner deserves outright rejection.

19) Petitioner contends that Industrial Tribunal has travelled outside the scope of Reference while delivering the impugned Award. It is contended that existence of employer-employee relationship and contract being sham and bogus were never made terms of Reference by the Appropriate Government. It is contended that the Reference was for direct absorption in services of Petitioner as if the workers

were temporary workers of the Petitioner. That there is no reference to the Industrial Tribunal to decide whether the contract is sham or bogus or that the workers employed by the Contractor are indeed the direct workers of Petitioner.

20) Reliance is placed on judgment of the Apex Court in Tata Iron and Steel Company Ltd. (supra) in which it is held in paragraph 16 and 18 as under :

16. The Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject-matter of reference and cannot travel beyond the same. This is the view taken by this Court in a number of cases including in National Engg. Industries Ltd. v. State of Rajasthan. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/exact nature of "dispute" between the parties.

18. It follows from the above that the reference in the present form is clearly defective as it does not take care of the correct and precise nature of the dispute between the parties. On the contrary, the manner in which the reference is worded shows that it has already been decided that the respondent workmen continue to be the employees of the appellant and further that their services were simply transferred to M/s Lafarge. This shall preclude the appellant to put forth and prove its case as it would deter the Labour Court to go into those issues. It also implies that by presuming so, the appropriate Government has itself decided those contentious issues and assumed the role of an adjudicator which is, otherwise, reserved for the Labour Court/Industrial Tribunal.

(emphasis added)

21) Reliance is also placed on judgment of the Apex Court in Pottery Mazdoor Panchayat (supra) in which it is held in paragraph 11 as under :

11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management.

(emphasis added)

22) In Mahendra Jain (supra) it is held in paragraph 34 as under :

34. We have noticed the provisions of the Act and the Rules. No case was made out by the appellants herein in their statements of claims that they became permanent employees in terms thereof. There is also nothing on record to show that such a claim was put forward even in the demand raising the industrial dispute. Presumably, the appellants were aware of the statutory limitations in this behalf. Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.

(emphasis added)

23) Thus, the law appears to be well settled that Industrial Adjudicator derives its jurisdiction from Reference made by the appropriate Government and that it is bound to act within its four corners. The Industrial Tribunal cannot enlarge the scope of Reference nor can it deviate therefrom. Industrial Tribunal, being a creature under the ID Act, acquires jurisdiction on the basis of a Reference made to it. The appropriate Government needs to make a Reference in such a manner that it reflects the real nature of 'dispute' between the parties. If the Reference is found to be defective, which does not take care of correct and precise nature of a dispute, Industrial Adjudicator cannot expand the scope and proceed to decide issues that fall outside the scope of Reference. Having stated the position of law about contours of jurisdiction of Industrial Adjudicator to decide the dispute within its four corners, I now proceed to examine whether Industrial Tribunal has exceeded the terms of Reference.

24) The exact Reference made to the Industrial Tribunal has already been reproduced above. It is sought to be contended by the Petitioner that the Reference is for direct absorption of workers in services of Petitioner as if the workers are its direct temporary workers. However, the Reference uses the word 'मुख्य मालकाने'(by principal employer). Thus, Petitioner is referred to as 'principal employer' in the Reference made to the Industrial Tribunal. The fact that Petitioner is branded as principal employer of the workers presupposes that the workers were being treated as contract workers and there existed a Contractor between the principal employer and the concerned workers. It therefore cannot be contended that the Reference was for decision of dispute of regularisation/absorption of temporary workers directly employed by the Petitioner. It also cannot be contended that the appropriate Government proceeded on an assumption that Petitioner is the direct employer of the workers. If the appropriate Government was to proceed on an assumption that members of the Respondent-Union were directly employed temporary workers seeking absorption, Reference order would

not have used the word 'principal employer'. It therefore cannot be contended that the Reference made to the Industrial Tribunal did not include within its ambit the issue of existence of employer-employee relationship between the workers and the principal employer, as was done in case before the Apex Court in Tata Iron and Steel Company Ltd (supra). The appropriate Government did not presume nor decided the contentious issue of existence of direct relationship of employer and employee between the members of the Respondent-Union and the Petitioner. On the contrary, the Reference specifically proceeded on an assumption that Petitioner is the principal employer and called upon Industrial Tribunal to adjudicate whether members of Respondent-Union could be absorbed in services of the principal employer.

25) It is also seen that right since the inception of initiation of proceedings, the Respondent-Union always demanded that the contract between the Petitioner and Mangal Enterprises was sham and bogus. It would be appropriate to refer to the relevant contentions raised in Justification Statement dated 1 September 2012 :

The aforesaid company has made paper arrangement with M/s. Mangal Enterprises and the names of the concerned workers have been shown in the muster roll of the said labour contractor. The union submits that the said labour contractor is sham and bogus. In fact, all the tools, such as, hammer, noseplayer, fibre, vej, die, forming gauge, plug gauge, slot machine, coll machine, etc. required for manufacturing of motors of compressors, supplied by the company/ principal employer i.e. M/s. Emerson Climate Technologies (India) Ltd. It is submitted that all the concerned workers are working since last several years continuously, and regularly, however they have been deprived from the benefits, facilities and wages on par to the other permanent workers of the company.

(emphasis added)

26) Even before the Conciliation officer, the issue of Mangal Enterprises being set up as a bogus Contractor was specifically raised and the said contention has been recorded by the Conciliation Officer in his failure report dated 21 August 2013. Thus, before and after making of Reference order dated 20 September 2013, the Petitioner very well knew that the Respondent-Union had raised the issue of the contract with Mangal Enterprises being sham and bogus.

27) After noting the exact Reference, the rival parties also filed pleadings on existence of employer-employee relationship and contract being sham and bogus. Based on the pleadings filed by the parties, the Industrial Tribunal framed the following issues :

#### ISSUES

1. Does the Second Party prove that there is employer-employee relationship between the parties as alleged?

2. Is reference maintainable?
3. Does the Second Party Union entitled reliefs sought for?
4. Does reference is bad for non joinder of necessary party?
5. Does the Second Party prove that, an agreement took place between First Party with Mangal Enterprises is sham and bogus?

28) Thus, specific issues relating to existence of employer-employee relationship as well as the contract being sham and bogus were raised. Petitioner never objected to framing of these two issues at any point of time, possibly because it felt that both these issues were clearly within the ambit of Reference made to Industrial Tribunal. Petitioner never contended before the Industrial Tribunal that the said two issues were outside the term of Reference. Petitioner in fact led evidence on both the issues without complaining about framing thereof. Therefore, the Petitioner is now precluded from contending that the Industrial Tribunal could not have decided the issue of contract being sham and bogus.

29) Thus, both on account of use of the word 'principal employer' in the Reference order, as well as understanding on the part of the Petitioner before and after making order of reference, Petitioner cannot now contend that the Reference did not cover the aspect of contract being sham and bogus. The objection sought to be raised by the Petitioner in this regard is accordingly rejected.

30) Coming to the merits of the case, the Industrial Tribunal has answered Issue No.1 about existence of employer-employee relationship in the affirmative. It has also answered the issue of agreement between the Petitioner and Mangal Enterprises to be sham and bogus, in the affirmative. The Industrial Tribunal has done an in-depth analysis of the entire evidence on record while answering Issue Nos.1 and 5 together. The Industrial Tribunal has taken note of six tests enumerated by the Apex Court in its judgment in Balwant Rai Saluja (supra). The six tests enumerated by the Apex Court in the judgment are as under :

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case , International Airport Authority of India case and Nalco case .

31) The Industrial Tribunal thereafter proceeded to determine whether the tests prescribed by the Apex Court in Balwant Rai Saluja are satisfied in the present case. I proceed to examine the findings recorded by the Industrial Tribunal vis-à-vis the evidence relating to satisfaction of the six tests.

32) On the first test of 'who appoints workers', the Industrial Tribunal has taken note of bank account statements of the workers showing that salary of some of them were deposited in their Accounts prior to 5 May 2009 by other contractors such as Vedanta and Sahani Enterprises. Petitioner produced appointment letter issued by Mangal Enterprises on 5 May 2009 to show as if appointments of all 131 workers were made on single day i.e. 5 May 2009 by Mangal Enterprises. The Industrial Tribunal has noted discrepancies in the said appointment orders, which did not bear signatures of the alleged employer and vital clauses like salary etc., were found to be blank. The Industrial Tribunal further took note of the fact that Petitioner did not produce any contract executed with Mangal Enterprises before 5 May 2009. The Agreement relied upon by the Petitioner, which is shown to have been executed with Mangal Enterprises is dated 15 October 2009 and the said Agreement commenced from 15 October 2009. The Industrial Court has therefore questioned as to how Mangal Enterprises can appoint workers on 6 May 2009 even before execution of contract with it by the Petitioner. The proprietor of M/s. Mangal Enterprises, despite being called to produce original appointment orders, failed to produce the same. He admitted that the appointment orders were only for the period from 6 May 2009 to 5 December 2009 (3 months) and that no further appointment orders were issued to any worker. The Industrial Tribunal has also questioned as how 131 workers could be appointed on a single day. To make the case of the Petitioners worse, its witness Shri. Shashikant Madhukar Shirke admitted in the cross-examination that 'It is true to say that First Party has not entered into legal agreement with Mangal Enterprises in respect of the concerned worker'. The owner of Mangal Enterprises was cross-examined on the issue of conduct of any selection process for appointing 131 workers on a single day and he could neither give any satisfactory answer nor could produce any document evidencing conduct of such selection process. Considering the above evidence on record, the Industrial Tribunal has arrived at a finding that the concerned workers started working with the Petitioner well before the execution of the alleged contract with Mangal Enterprises. In my view, therefore it is not satisfactorily proved that Mangal Enterprises had initially appointed the concerned workers.

33) The above findings also prove the fifth test of 'whether there is continuity of service' as it is established that many of the workers drew salaries from other contractors as well. Thus, same workers are retained notwithstanding change of Contractor.

34) So far as Test Nos. 2, 3, and 4 relating to payment of salary, authority to dismiss and taking disciplinary action is concerned, the Industrial Court has considered the salary slips and wage registers produced by Mangal Enterprises. However, its proprietor admitted in the cross-examination that pay slips did not bear signatures of any authorised persons of Mangal Enterprises. He has also admitted non-reflection of signatures of the concerned workers. The Industrial Court found that the wage registers are in the form of Excel Sheets printed from the computer and refused to believe that wage registered could have been maintained on a day-to-day basis by the Contractor. The Industrial Tribunal also held that the said documents might have been created subsequent to filing of the dispute.

35) So far as the test of payment of salary is concerned, the most vital aspect taken into consideration by the Industrial Court is the agreements executed between the concerned workers, Mangal Enterprises and the Petitioner for grant of voluntary retirement. Several such agreements are on record. The agreements record that the concerned workers were employed by Mangal Enterprises and are granted voluntary retirement. Petitioner is party to each of those agreements. The financial liability under the agreement granting voluntary retirement is borne by Petitioner and not by Mangal Enterprises. To illustrate, agreement dated 8 December 2022 records that Petitioner has paid Rs. 15,00,000/- to the Contractor for being paid to the concerned worker. If the said worker was not the employee of the Petitioner, why it paid amount of Rs.15,00,000/- meant for the said worker towards voluntary retirement scheme is difficult to digest. Any Voluntary Retirement Scheme postulates award of ex-gratia payment/compensation for loss of future wages. The compensation/ex-gratia amount paid to a worker under the Voluntary Retirement Scheme contains major component towards loss of future wages. In that sense, the amounts paid to the concerned workers opting for voluntary retirement contain a component towards future wages. Voluntary Retirement Scheme is offered by an employer with a view to save expenses on payment of future salary to its employees and for downsizing the workforce. If work was not available for a particular contract worker, Petitioner could have simply called upon the Contractor not to deploy the concerned worker to work in its factory. If the worker was rendered jobless on account of the Contractor's inability to deploy him elsewhere, it is the Contractor who would either retrench him or offer voluntary retirement. It was not Petitioner's business to pay compensation/ex-gratia to the workers of Mangal Enterprises.

36) It appears that several of the members of the Respondent-Union have opted for the VRS floated by the Petitioner. This means that the Petitioner took into consideration even the number of contract workers while opting for downsizing of its staff. It is common ground that the VRS was simultaneously introduced for permanent and contract workers. If there was no employer-employee relationship, there was no necessity for Petitioner to launch Voluntary Retirement Scheme for contract workers. This would mean that the contract workers were

also considered, albeit indirectly, by the Petitioner as part of its workforce, it decided to downsize the same and hence offered them package under Voluntary Retirement Scheme. If indeed they were workers of the Contractor with no semblance of relationship with the Petitioner, it would not have offered them voluntary retirement and could have simply asked Mangal Enterprises to stop sending them to its factory. Far from doing so, Petitioner participated in the Voluntary Retirement Scheme and became part of the Tripartite Agreement executed between the concerned workers and Mangal Enterprises. The entire financial burden towards ex-gratia was borne by the Petitioner. However, instead of paying the same directly to the worker, Petitioner handed over the said amount to the Contractor, and the Contractor apparently paid the same to the concerned worker. This could mean that the Petitioner paid part of future wages to the concerned workers by becoming a party to the VRS Agreement. If those workers had absolutely no relationship with the Petitioner, why would the Petitioner bear the burden of paying their future wages becomes questionable. Acceptance of liability to pay future wages in lieu of retirement would constitute a significant facet of employer-employee relationship.

37) Mr. Cama has attempted to salvage the situation by relying on the provisions of Section 30(2) of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA) in support of his contention that it is always open to the principal employer to enter into direct agreement with the contract worker and mere entering into such agreement does not mean that employer-employee relationship gets established. Section 30 of the CLRA provides thus :

30. Effect of laws and agreements inconsistent with this Act:

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of the Act:

PROVIDED that where under any such agreement, contract of service or standing orders the contract labour employed, in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

38) In my view, provisions of sub-section (2) of Section 30 of CLRA are aimed at protecting a beneficial agreement entered into by a contract worker with

principal employer from being declared void under the provisions of the Act. Thus, if the contract worker and the principal employer agree to provide better terms of employment, provisions of CLRA Act do not come in the way. However, permissibility for principal employer to enter into direct contract with contract labourer is a different aspect from the effect that arises out of the act on the part of the duo in entering into such direct agreement. To illustrate, it is permissible for principal employer to enter into a contract with the contract labourer to pay higher amount of salary or even to pay salary directly to the contract worker. Such a contract would not be void under the provisions of CLRA. However, if the principal employer chooses to enter into a contract directly with a contract labourer for providing more beneficial terms of employment, the effect of such agreement on satisfaction of six tests prescribed by the Apex Court in *Balwant Rai Saluja* does not get obliterated. Therefore, seeing in the light of the provisions of Section 30 of the CLRA, the tripartite agreement for VRS executed between the contract worker, Mangal Enterprises and Petitioner would be valid in the eyes of law. However, the effect of execution of such agreement for satisfaction of six tests prescribed in *Balwant Rai Saluja* would continue to operate.

39) In my view, therefore the act on the part of the Petitioner in entering into an agreement for VRS with the contract workers together with bearing of financial burden towards offering ex-gratia payment containing component of future wages, would conclusively prove existence of direct employer-employee relationship between the Petitioner and the concerned workers.

40) So far as the test of disciplinary action and dismissal is concerned, Petitioner could not produce any document to show that any contract worker was subjected to any disciplinary proceedings or dismissed from service by Mangal Enterprises prior to raising of the dispute in the year 2012. The Industrial Court has rightly held that the Petitioner has resorted to creation of record of dismissal by a Contractor during pendency of the Reference. Also, Petitioner has participated in the process of cessation of services of some of the contract workers by becoming party to the VRS Agreements. It has borne the financial burden towards VRS. It has decided when they would retire and how they would retire. It applied contemporaneously introduced VRS scheme meant for its own permanent employees to the contract workers as well. It thus participated in the decision of cessation of services of contract workers.

41) So far as the aspect of supervision and control is concerned, Mr. Patil has strenuously relied on Skill Matrix Record which shows that performance of the contract workers was routinely supervised by the permanent employees of the Petitioner. Additionally, there are several inspection reports produced before the Industrial Tribunal showing continuous supervision and control over contract workers by the Petitioner. This is not a case where a contract was issued for performance of a specific job work. The case involves continuous employment of members of the Respondent-Union for the past 16 long years where they enter

the factory of the Petitioner daily and perform same work along with the permanent workers. Some stray admission extracted during cross-examination about names of supervisors of the contractors would not mean that there was absolutely no supervision and control by the supervisors of the Petitioner. Also, the fact that the Petitioner agreed to bear the financial burden of paying ex-gratia amounts to the contract workers by becoming party to the tripartite agreements would again suggest complete control of the Petitioner on contract workers. It is the Petitioner who decided how much amount was to be paid towards VRS.

42) In my view, therefore majority of the tests, if not all, prescribed by the Apex Court in its judgment in Balwant Rai Saluja are satisfied in the present case.

43) So far as the contracts executed with Mangal Enterprises are concerned, Petitioner could produce only two contracts in respect of its establishment at Karad. The first contract is dated 15 October 2009 for the period from 15 October 2009 till 31 December 2010. The second contract is for the period from 1 January 2012 to 31 December 2013. Thus, there is no contract during gap period from 1 January 2011 to 31 December 2011. After 31 December 2013, no contract is produced concerning establishment at Atit. The contract for the period from 3 March 2014 to 31 March 2015 is in respect of Chakan plant and not in respect of the factory at Atit. Petitioner has thus thoroughly failed to prove continuous existence of contracts with Mangal Enterprises, under which the Contractor could have provided labourers to the Petitioner's establishment.

44) Mr. Cama has relied upon certain documents in support of his contention that Mangal Enterprises was the real employer of the contract workers. There is only one leave application dated 17 September 2013 relied upon by the Petitioner, authenticity of which is questioned by Mr. Patil. It is unbelievable that Mangal Enterprises had received only one leave application in respect of 131 workers who worked for about four long years prior to registration of the dispute. So far as the documents relating to disciplinary action and dismissal are concerned, the same are post raising of demand by the Respondent-Union. The wage register produced before the Industrial Tribunal is a mere printout of Excel Sheets, and it is difficult to believe that the same were contemporaneously maintained. Reliance is placed on insurance policies in the name of Mangal Enterprises, but the same are for the purpose of providing housekeeping services by Mangal Enterprises. None of the members of the Respondent-Union are engaged to perform housekeeping services. Reliance on PF and ESIC challans does not cut any ice as the PF and ESIC contributions are routed through Mangal Enterprises as the Petitioner followed the system of rerouting salaries through Mangal Enterprises.

45) Mr. Cama has sought to contend that two workers could not have deposed on behalf of all the 131 contract workers. He has relied on judgments in Glasstech Industries (India) Pvt. Ltd. Raigad (supra) and Force Motors (supra). The Reference was made at the instance of Respondent-Union espousing the cause of

131 workers. The Reference was thus being persecuted by the Union in a representative capacity and it was not necessary for all 131 workers to step into the witness box and depose in support of their claims. Evidence by some of the workers was sufficient in the facts and circumstances of the present case.

46) The conspectus of the above discussion is that no element of perversity can be traced in the findings recorded by the Industrial Tribunal holding that there is direct employer-employee relationship between the Petitioner and the concerned contract workers and that the contract shown to have been executed with Mangal Enterprises is sham and bogus.

47) The next issue for consideration is the nature of relief that could have been granted in favour of the Respondent-Union. Though initially Respondent-Union was espousing the cause of 131 contract workers, it appears that several of them have opted for voluntary retirement or are no longer in service for various reasons. As of now, only 64 members of the Respondent-Union continue to work with the Petitioner. No doubt, their continuation is owing to interim orders passed in their favour from time to time. They have been working with the Petitioner for the last 16 long years. In my view, therefore they deserve to be absorbed as permanent employees of the Petitioner establishment. The Industrial Tribunal has granted permanency from the date of order of Reference i.e. 20 September 2013. This would mean that dismissed workers would be entitled to monetary benefits from 20 September 2013 till the dates of their dismissal. Though the Industrial Tribunal has attempted to strike a balance by seeking to reduce the financial burden of the Petitioner, in my view, it has not walked full path and has directed permanency from 20 September 2013. If indeed the Industrial Tribunal wanted to reduce the financial burden on the Petitioner, by striking a balance, it ought to have directed permanency from the date of the Award and not from the date of Reference. The Industrial Tribunal ought to have taken note of the position that obtained as on the date of making of the Award. Almost 50% of the workers are no longer working. It would be unjust to make the Petitioner bear the burden of paying them difference of wages to those workers, who have retired or have been dismissed from service. The benefit of permanency ensures that the nature of employment gets converted from temporary to permanent. The present case involves a twin process of first establishing a direct employer-employee relationship and thereafter awarding the benefit of permanency. Mere establishment of direct employer-employee relationship does not directly result in grant of benefit of permanency. Upon establishment of such direct employer-employee relationship, the erstwhile contract workers would only become temporary workers of the employer. The next stage is to decide their entitlement for permanency. In my view, considering the unique facts and circumstances of the present case, it would be too iniquitous to put the financial burden on the Petitioner to pay difference of wages to even 64 continuing workers during the past 12 long years. It has come on record that the Petitioner has made conscious efforts for downsizing the staff, both permanent as well as contractual. Considering this position, in my view, it would be appropriate to grant the benefit

of permanency to the 64 workers currently working from the date of the Award. In fact, during the course of hearing of the petition, a fair suggestion was given on behalf of the Respondent-Union that it was willing to give up some part of claim of difference of wages from the date of Reference till today. Noting this fair conduct on the part of the Respondent-Union, I am of the view that ends of justice would meet in the present case, if the currently working members of the Respondent-Union are granted permanency from the date of the Award.

48) I accordingly proceed to pass the following order:

(i) The impugned Award dated 30 March 2024 passed by the Industrial Tribunal in Reference (I.T.) No.5/2013 is modified.

(ii) It is directed that only currently functioning members of the Respondent-Union shall be made permanent employees of the Petitioner from the date of the Award i.e. w.e.f. 30 March 2024.

(iii) They shall be extended all the benefits of permanent employees and be paid the difference in wages from 30 March 2024 onwards within 8 weeks.

49) Writ Petition is partly allowed to the above extent. There shall be no order as to costs.