

(2001) 11 MAD CK 0090
In the Madras High Court
Case No : W.A. No. 544 of 1998

International Air Cargo Workers' Union	APPELLANT
Vs	
International Airport Authority of India and Others	RESPONDENT

Date of Decision : 12-11-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(2)
Industrial Disputes Act, 1947 — Section 31(2), 9A

Citation : (2002) 2 LLJ 79

Hon'ble Judges : P. Sathasivam, J; K. Gnanaprakasam, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for the Appellant; A.L. Somayaji and Vijay Narayan, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—International Air Cargo Workers' Union aggrieved by the order of the learned single Judge, dated December 15, 1997, in W.P. No. 6126 of 1995, setting aside the award, dated December 23, 1994, of the Industrial Tribunal in I.D. No. 65 of 1991 and issuing certain directions, has preferred the above writ appeal. The appellant is a registered trade union and according to its Secretary, it represents the workmen who were employed as loaders in the first respondent-International Airport Authority of India in the Cargo Division.

2. The case of the appellant-workers' union is briefly stated hereunder:

The International Airport Authority of India/first respondent herein (in short I.A.A.I.) was established in the year 1978. Loading and unloading of international cargo was an essential part of the first respondent and for executing the said work, they (first respondent) engaged Airfreight (Private) Ltd., a private limited company as a contractor. About 90 workers were employed in the said Airfreight (Private) Ltd. and the said workers were deputed to work in the Meenambakkam Airport for loading and unloading work ever since 1978. Though the monthly pay

was paid by the said private company, their work was directly supervised by I.A.A.I. The first respondent terminated contract with the said Airfreight (Private) Ltd. in 1985 and the members of the appellant-union were directly employed by the first respondent as casual workmen to do the same work of loading and unloading of cargo from November 1985 to July 1986. Thereafter, as per the direction of the first respondent and as per the orders of this Court, they formed an Industrial Co-operative Society and the first respondent awarded the contract of handling of cargo to the said society in the year 1986. Ever since then they have been continuously working under the first respondent herein. The said Industrial Co-operative Society was, a mere intermediary to disburse wages and it played no other role. The workmen are holding the post of Directors in the said society. The first respondent's officials as ever before continued to exercise the control and supervision over the members of their union for doing the work of loading and unloading of cargo. The society was only a name lender and the so-called contract entered into between the society and the first respondent was a sham and nominal (sic) to deny the workmen the status of direct employees of the first respondent. In all their earlier writ petitions, they have been consistently making a demand for direct absorption. In 1989, they raised an industrial dispute demanding regularisation and absorption by the first respondent. Before the Industrial Tribunal second respondent herein, they let in evidence to the effect that the contract was a sham and nominal and it is only a bogus and dubious way to avoid direct employment. Oral and documentary evidence were let in before the second respondent Industrial Tribunal in justification of their claim and the Tribunal after appreciating oral and documentary evidence, passed its award holding that they are entitled to absorption and regularisation prospectively from December 24, 1994. Questioning the said award, the I.A.A.I. first respondent herein preferred W.P. No. 6126 of 1995. The learned Judge without proper appreciation of facts and events, interfered with the impugned award holding that there is no evidence to show that the contract between I.A.A.I. and the society is not genuine. The learned Judge having found that all the factors, which are required to be taken note while prohibiting contract labour u/s 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970, are prevalent in this case, instead of sustaining the impugned award or giving directions to the I.A.A.I. to absorb them as direct employees, erroneously directed the Central Government and the Advisory Board constituted under the Contract Labour (Regulation and Abolition) Act, 1970, to consider abolition of contract labour within a period of 12 months. The Industrial Tribunal having appreciated the evidence on record, has found that their claim for regularisation and direct absorption was justified. In such a circumstance, the learned Judge, in exercise of powers under Article 226 of the Constitution of India, ought not to have interfered with the said award and once again directed the Central Government to consider abolition of contract labour. Against the order of the learned Judge, dated December 15, 1997, the workers union have preferred the present appeal.

3. The case of the first respondent I.A.A.I. is as follows:

I.A.A.I. has been created by an Act of Parliament in the year 1972. In the year 1978 the International Air Cargo Complex was established and the I.A.A.I. was appointed as its custodian. The main facility provided by the I.A.A.I. in the said complex was in relation to the import and export of cargo and in movement of cargo in the said complex, in co-ordination with the customs authorities. A company by name Airfreight Ltd., which was registered under the Companies Act was awarded a contract through which its services were engaged by the authority for loading and unloading of cargo, and other connected work at the Madras Airport. Subsequently in the year 1985, the ground handling contract with Airfreight Ltd. was terminated and the I.A.A.I. took over the functions of the said company. Some of the workmen working under the company were engaged on day-to-day basis by the I.A.A.I. depending upon the actual requirements of the I.A.A.I., on the particular day on which the workers were engaged. Those persons filed W.P. No. 11683 of 1985 before this Court seeking direction to I.A.A.I. to employ all the workmen who were employed by Airfreight Ltd., as its employees for the cargo handling operations of the Madras Air Cargo Complex. In the course of the said proceedings on behalf of the authority, a memorandum was filed and this Court passed an order to the effect that the I.A.A.I. will consider in mitigating the hardship of the ex-loaders and workers of Airfreight (Private) Ltd., caused on account of its take over of cargo handling functions by accommodating them as far as possible except by way of regular absorption in the service of I.A.A.I. till such time the I.A.A.I. made its own regular arrangements, on contract basis through a co-operative society formed on specified terms and conditions and period as per the policy of the I.A.A.I. framed from time to time. The said memorandum was recorded, consequently the writ petition was dismissed. Subsequently, W.P. No. 5164 of 1986 was filed for directing the I.A.A.I. to hand over the functions of the ground handling work at the Madras Airport Cargo Complex on mutually agreeable terms to the Airport Industrial Co-operative Service Society Ltd., or to absorb the workmen on the permanent rolls of the I.A.A.I. The said writ petition was dismissed as settled out of Court. Thereafter the workers formed Airport Industrial Co-operative Service Society Ltd., in 1987 and after mutual discussion, a contract was awarded to the said society on December 11, 1987, and the same was in force for about 3 years. It expired on August 31, 1989. In the meanwhile, the workers also formed a union by the name of International Air Cargo Workers Union in the year 1987. They were also the members of Airport Industrial Co-operative Service Society (in short APINSCOS). After the formation of the society, the workers were engaged only by the society, and not by the I.A.A.I. They were never the direct workers of the I.A.A.I. and, therefore, there was no change in their status from direct workmen to contract labourers. The Air Cargo Workers Union consisting of some workmen filed another writ petition in W.P. No. 9110 of 1989 against the I.A.A.I. to grant service security to the workers of the union. The said writ petition was dismissed by this Court on December 18, 1989, with a liberty to the workers to raise an industrial dispute before the appropriate forum. Since the contract between the society and the I.A.A.I. expired on August 31, 1989, the

latter invited tenders from the other organisations for loading and unloading work in the Airport Cargo Complex. At this stage another writ petition in W.P. No. 18560 of 1990 was filed by the union to quash the tender notice, dated November 19, 1990. This Court dismissed the said writ petition on December 6, 1990 permitting the I.A.A.I. to open the tenders. Against the said order the union preferred Writ Appeal No. 1265 of 1990, but the said writ appeal was also dismissed by the Division Bench by order, dated January 3, 1991. In spite of all these orders, the union had raised an industrial dispute. The Conferment of Permanent Status to Workmen Act would not be applicable since the members of the union are not working in the first respondent. If at all they can claim permanent status as against the Airport Industrial Co-operative Service Society, there is no relationship of employer/employee between the workers and the first respondent.

4. The Ministry of Labour, Government of India, New Delhi, by its order No.L.11011/2/89/IR (Miscellaneous), dated October 14, 1991, have referred the following dispute for adjudication. The terms of reference are as follows:

"Whether the action of the management of International Airport Authority of India, Madras is justified in not absorbing the workers/members of the International Airport Co-operative Service Society, their contractor. If not, to what relief the concerned workmen are entitled."

With the said reference, the matter was adjudicated by the Industrial Tribunal, Madras. On the side of the workers' union, one G. Arumugham was examined as P.W. 1 and Exhibits W 1 to W 12 were marked. On the other hand, on the side of the management, two witnesses were examined as M.W. 1 and M.W. 2 and Exhibits M. 1 to M. 44 marked in support of their stand. The Industrial Tribunal, after framing necessary issue for decision and after considering the materials placed by both sides, after holding that the action of the management of I.A.A.I., Madras, is unjustified in not observing the workers/members of the Airport International Co-operative Service Society, passed an award, directing the first respondent therein to absorb the members of the petitioner-union/workers as stated in the annexure except the members who expired" and the members who left the service, according to seniority and the requirements of the first respondent with effect from December 23, 1994, namely, the date of the award. As stated earlier, against the said award, I.A.A.I. preferred WP. No. 6126 of 1995 before this Court.

5. We have heard Sri N.G.R. Prasad learned counsel for the appellant-workers union and Sri A.L. Somayaji learned senior counsel for the first respondent-I.A.A.I.

6. Sri N.G.R. Prasad, learned counsel for the appellant-workers union has raised the following contentions:

(i) The Industrial Tribunal having found that the agreement between the management and the society is a sham and nominal, based on acceptable

materials, the learned Judge committed an error in quashing the award while exercising the jurisdiction under Article 226 of the Constitution of India.

(ii) The learned Judge erred in holding that the memorandum, dated December 12, 1995, was valid and the Tribunal could not go into the question whether the appellant-workmen are the direct workmen of the first respondent or not?

(iii) The learned Judge ought to have held that the first respondent I.A.A.I. having admittedly employed the appellant workers herein directly for some time, could not reverse the process and engage them indirectly. This was illegal as it is contrary to Section 9-A of the Industrial Disputes Act and the judgment of the Supreme Court in Workmen of Food Corporation of India case reported in Workmen of The Food Corporation of India Vs. Food Corporation of India, :

(iv) The learned Judge should have exercised jurisdiction as per the decision of the Supreme Court reported in R.K. Panda and Others Vs. Steel Authority of India and Others, : by directing regularisation in view of the fact that the workers had been working for the I.A.A.I. for more than 16 years;

(v) Inasmuch as the Airports at Bombay and Calcutta are having their own employees for loading and unloading of cargo, the engagement of contractors for similar work by the I.A.A.I. cannot be sustained and it is in violation of Article 14 of the Constitution.

(vi) The learned Judge committed an error in quashing the award of the Industrial Tribunal, holding that the workmen concerned in the dispute are the direct workmen of the I.A.A.I.

7. On the other hand, Sri A.L. Somayaji, learned senior counsel for the management, has raised the following contentions:

(i) There is no reference for adjudication that the contract is sham and nominal.

(ii) The memorandum having been agreed to by the workmen and having received the legal sanction (sic) of this Court, cannot now be set aside on the ground that the workmen were coerced.

(iii) There is no direct relationship of an employer and employee between the workers, union and I.A.A.I.

(iv) Inasmuch as the finding of the Tribunal that the contract between I.A.A.I. and the society is collusive and not genuine is wholly unsupportable by the evidence on record, the learned Judge is perfectly right in holding that the said finding is perverse one.

(v) As the concluded agreement between the workers union, and the I.A.A.I. was; approved by this Court, the workers are not entitled to challenge the same and the conclusion arrived at by the Tribunal cannot be sustained; and accordingly, the same has rightly been set aside by the learned Judge.

8. We have carefully considered the rival submissions.

9. In the earlier part of our order, we have referred to the reference made by the Government of India for adjudication. Accordingly, we have to find out whether the action of the management of the I.A.A.I., Madras, in not absorbing the workers/members of the International Airport Co-operative Service Society is justified, and if not, what is the other relief to be granted to the workmen. The first respondent is an authority constituted by the International Airport Authority Act, 1971 (Central Act No. 43 of 1971). It was constituted for the purpose of regulating the trade at international airports. There is no dispute that it is an instrumentality of the Central Government and it is a "State" within the meaning of Article 12 of the Constitution. The workmen who are the members of the appellant-union are rendering services of unloading, loading, shifting, stocking, importing, exporting, marking, unpacking and other miscellaneous jobs at the Madras Airport. Their demand as seen from the various claims from time to time is for absorption as regular employees or workers of the first respondent. The first respondent-management rejected the claim of the workmen on the ground that there is no relationship of employer and employee between them (first respondent) and the workmen, that they are not working directly under the first respondent and that they are not permanent or regular employees of the first respondent. In other words, according to them, the workmen are deputed or supplied by the second respondent to the first respondent for the purpose of rendering the services mentioned above and they are the workmen under the direct control and supervision of the second respondent. There is no dispute that the Airfreight (Private), Ltd., was a contractor or licensee to supply the workmen to do the aforesaid services subject to certain terms and conditions to the satisfaction of the first respondent on payment of lump sum amount which was being disbursed to the workmen. Though the I.A.A.I. entered into a contract with the Airfreight (Private) Ltd. on January 2, 1978 (Exhibit M1) the said agency was terminated by the first respondent with effect from October 31, 1985 and the Air Freight (Private) Ltd. was asked to hand over the ground handling agency operations to the officers of the 1st respondent. This is clear from Exhibit M2, dated September 19, 1985. At that time the workmen numbering 94 were doing the aforesaid work through the said agency, viz., Airfreight (Private) Ltd., After terminating the agency, the first respondent called for tender on July 20, 1989, for the purpose of ground handling agency at their cargo complex at Airport, Madras. The workmen who were doing the work of loading and unloading in the cargo complex, demanded the first respondent for utilising their services for the purpose of ground handling. The first respondent rejected the demand of the workmen. Therefore, the workers' union filed a writ petition in WP. No. 11683 of 1985 before this Court to issue a writ of mandamus directing the first respondent to absorb all the workmen with continuity of service and all the benefits as permanent employees. At that stage, the first respondent entered into a memorandum/agreement with the workers' union. Based on the said agreement the writ petition was dismissed. Exhibit M4 is the order passed in W.P. No. 11683 of 1985. It is further seen that the first respondent entered into a settlement (Exhibit M5) with the second respondent by granting agency for six months. At

that stage, the workers" union and the second respondent filed W.P. No. 5164 of 1986 seeking appropriate direction to the first respondent for absorption of the loaders-cum-packers as permanent and regular employees. The said writ petition was dismissed on the ground that the workers" union and respondents 1 and 2 arrived at a settlement. Among the various agreements, we are concerned with the agreement, dated July 14, 1986 (Exhibit M7). Even subsequent to the said agreement, the workers" union filed writ petitions before this Court for absorption of the workers as regular and permanent employees of the first respondent. No doubt, all those writ petitions were dismissed by this Court with a liberty to agitate the same before the appropriate forum by raising an industrial dispute which resulted in I.D. No. 65 of 1991.

10. Before considering the contention that the agreement, dated July 14, 1986, Exhibit M7 entered into between the society and the I.A.A.I., is a sham and nominal, we may consider the order passed in WP. No. 11683 of 1985. During the pendency of the said writ petition, on behalf of the I.A.A.I. a memorandum was filed to the following effect:

"The authority will consider mitigating the hardship of the ex-loaders and packers of Air Freight claimed to be caused on account of its take over of cargo handling function by accommodating them as far as possible except by way of regular absorption in the services of I.A.A.I, till such time the authority has made its own regular arrangements, on contract basis through a co-operative society formed on specified terms and conditions and period as per the policy of I.A.A.I. framed from time to time."

After stating that Sri R Janakiraman, learned counsel for the petitioner, in that writ petition agreed to this memorandum, the learned Judge, recording the memorandum, dismissed the writ petition. It is clear that after noting the fact that the learned counsel appearing for the workers" union agreed to the said memorandum, the learned Judge dismissed the writ petition without considering the various clauses of the agreement. In other words, the Court had no occasion to go into the reasonableness of the various clauses contained therein. In such a circumstance, the contention of the management that as the agreement upon which the writ petition was dismissed gets judicial approval, the workers are estopped from questioning the same before the Industrial Tribunal cannot be accepted. Whether they succeeded in their attempt in establishing their case is a different aspect that we will consider in the following paragraphs. However, irrespective of the dismissal or disposal of their writ petition if it was found subsequently that the agreement is one sided and did not reflect the real intent of the parties, we have to necessarily come to a conclusion that their interest has not been duly considered. In such a situation, it would be open to any one of the parties to challenge the same before the appropriate forum.

11. Sri N.G.R. Prasad learned counsel for the appellant-union brought to our notice certain clauses in the agreement for our consideration. As per the agreement, dated July 1, 1986, the Airport Industrial Co-operative Service

Society agreed to provide 70 loaders-cum- packers on regular basis and also to provide, if required, additional loaders-cum-packers, at the rate of Rs. 15 per manshift. The society, however, requested the I.A.A.I., management to consider their request for increasing the amount from Rs. 45,870 per month to Rs 50,000 towards salaries and other benefits. In the event of the society unable to deploy the required number of loaders-cum-packers, out of the ex-loaders-cum-packers of Airfreight, it, shall be prerogative of the General Manager to make alternate arrangements from other sources. The society shall make good any damages caused to the cargo consignments to any property of the authority by the loaders-cum-packers engaged to render services under the contract, due to negligence or wilful act on the part of the loader-cum-packer. If any of the loader-cum-packer deployed by the society is not found up to the standard required and the performance is not satisfactory or he is found to be medically unfit for such employment, on the specific direction of the General Manager, the society shall remove such loader-cum-packer from the services under the contract and suitable alternate loader-cum-packer should be provided by the society from the composite list of ex-Airfreight employees. The society shall disburse the wages and other payments to the loaders-cum-packers engaged by them in the presence of an authorised representative of the authority. If no loader-cum-packer is found to be engaged in any work other than works specified they shall be struck off from work and the society shall not engage them for work under the contract, thereafter. Sri N.G.R. Prasad has also brought to our notice similar clauses in the agreement dated July 14, 1986. A careful perusal of the above agreement, more particularly certain clauses, would show that the said contract is one sided and the first respondent has overall control in execution of the work.

12. It is also the definite case of the union that once they became the direct workmen of the first respondent I.A.A.I., from November, 1985 to July, 1986, it is not open to the first respondent to revert back to the contract system and such reversion trend it illegal and void ab initio. In support of the above contention, learned counsel for the appellant very much relied on a judgment of the Supreme Court in. *Workmen of Food Corporation of India (supra)*. Before considering the said decision, let us find out whether the appellant-workmen became the direct workmen, of the first respondent for the period from November 1985 to July 1986. In the claim petition filed before the Industrial Tribunal, particularly in Para. 4, the workers' union asserted that in November 1985, I.A.A.I. took over the functions of the cargo International Air Cargo Complex from Airfreight, Ltd., and at that time the workers shown in the annexure to the claim petition were taken by the I.A.A.I. as casuals. It is further stated that they became the direct workers of I.A.A.I. They being the direct employees of the first respondent I.A.A.I. for the period from November 1985 to July 1986 no steps were taken by the I.A.A.I. to get them enrolled on regular employment and their salary was also very meagre. No doubt their claim for regularisation before this Court in W.P. No. 16683 of 1985 was dismissed in view of the memorandum of compromise filed, according to which, every effort will

have to be taken to engage them as workers, except by way of direct employment till such time the authority has made its own regular arrangements on contract basis through a co-operative society. The said aspect was not specifically denied in the counter statement. W. W. 1 in his evidence has also deposed to the same effect namely, from November 1985 to July 1986 all of them worked directly for the first respondent and it was the first respondent who gave wages to all the workers. It is also clear from his evidence that the work done by them was supervised by the first respondent. MWIBK. Mehrotra, Cargo Manager, I.A.A.I. in cross-examination has admitted that:

"the petitioners work under the first respondent directly. The petitioner directly worked under the first respondent's control and supervision...."

M.W.2, special officer of the second respondent co-operative society, even in chief examination has stated that the workers work under the control of the first respondent and that every day, the first respondent informs the second respondent regarding the requirement of workers. He also deposed that the second respondent society cannot take disciplinary action against them. All the above materials both oral and documentary clearly show that the workmen were under the direct employment of the first respondent for the period from July, 1985 to November 1986. This aspect was correctly considered and accepted by the Tribunal. In this regard, Sri. N.G.R. Prasad, learned counsel for the workers' union very much relied on a decision of the Supreme Court in *Parimal Chandra Raha v. Life Insurance Corporation of India*. It is seen from that case that canteen services have been provided to the employees of the Life Insurance Corporation for a long time and it is the Corporation, which has been from time to time taking steps to provide the said services. The canteen committees, the co-operative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is the Corporation which has been appointing the contractors to run the canteens and entering into agreement with them for the said purpose. The terms of the contract further show that they are in the nature of directions to the contractors about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellant have been working in the canteen continuously for a long time whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the

infrastructure for running the canteen viz, the premises, furniture, electricity, water, etc., is supplied by the Corporation to the managing agency for running the canteen. Whenever there was a temporary breakdown in the can been service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, their Lordships have held that:

"... we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the co-operative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers.

We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

The principle enunciated in the above decision *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, , has been considered and followed in the latest decision of the Supreme Court in *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others*, :

13. In the light of the above decisions of the Supreme Court as well as the acceptable materials placed before the Tribunal, Sri A.L. Somayaji, learned senior counsel for the first respondent, has very much relied on a decision of the Kerala High Court in *Kerala Civil Aviation General Workers" Co-op. Society Vs. Union of India (UOI)*, . The question before the learned single Judge of Kerala High Court was whether porters doing portage work in an airport, forming themselves into a co-operative society will come under the definition of contract labour and whether, with reference to them, the civil aviation department would be the principal employer. The learned Judge in Para 3 has held that at pp. 317 & 318 of LLJ:

"..... The civil aviation department which sells the privilege to do portage in its premises cannot be considered to be the principal employer within the meaning of the Act, for the work done by the contract labour is not part of the work of the establishment. The members of the union were the employees of the society and the society was the contractor on whom the licence or the privilege to enter the premises of the airport and do portage service for the air travel passengers was conferred for a period of two years commencing on December 6, 1980. The rights if any of the contract labour are only against their employer viz. the society. If on the other hand the society is to be understood as consisting of its members as contended by the counsel for the petitioner, the members of the society do not even fall within the definition of "contract labour". They were only persons doing service on behalf of the society of which they are members."

The said decision is distinguishable since it relates to portage work in an airport and the labourers do portage services for the air travel passengers and they have nothing to do with the airport or airport authority; accordingly the same has no relevance for our case.

14. The other decision referred to by Sri L. Somayaji is in B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, : In that decision, after referring to Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, their Lordships have held:

".. .It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered u/s 10 of the Act. Similarly, the question whether the work done by the workmen directory employed by the principal employer of any establishment is matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25(ii)(v)(a)...."

The said decision is also not helpful to the stand taken by the management for this reason. We have already referred to the reference made by the Government of India for adjudication. Learned counsel for the I.A.A.I. argued before the learned Judge that the reference contains two parts, namely:

- (1) to abolish the contract labour in the Air Cargo Complex in the task of loading, packing and incidental work; and
- (2) to absorb all the workmen in the services of I.A.A.I.

The learned single Judge has also accepted the said contention. In the light of the reference, which we have extracted in the earlier part of our judgment, we are of the view that there is no reference for abolition of contract labour. On the other hand, the Government of India, has referred to the only question, namely, whether the management I.A.A.I., Madras, is justified in not absorbing the workers/members of the Co-operative Society; accordingly we hold that the counsel for the management as well as the learned single Judge proceeded on the wrong footing and interfered with the decision arrived by the Tribunal. In such circumstances, the above decision is also not helpful to the plea of the management.

15. Now we shall consider another important question, namely, that the first respondent I.A.A.I. have not employed these workers directly as casual labourers from November 1985 to July 1986, which is admitted by them in their counter-affidavit. The evidence of M.W. 1 as well as the documents Exhibits W3 and W4 show that wages were paid directly by the first respondent to these workers, that I.A.A.I. reverted them (workers) back and that they (I.A.A.I.) indulged in indirect employment of these workers through the society. In this regard, Sri N.G.R. Prasad, learned counsel for the appellant-union has very much relied on a decision of the Apex Court in Workmen of Food Corporation of India v. Food

Corporation of India (supra). In that case the Food Corporation of India abolished the contract system and introduced direct payment system to handling labourers in 1973. After employing these persons directly, the Food Corporation of India tried to reinduct the contractors as an intermediary. The Supreme Court considered the status of such workmen, and observed as follows:

"The submission that it was open to the Corporation to engage a contractor for handling of foodgrains may be true or legally acceptable; the question, however, is whether once some workmen became the workmen of the Corporation as hereinbefore discussed, was it open to the Corporation to induct a contractor and treat its workmen as workmen of the contractor. The answer is in the negative, for the reasons hereinbefore discussed."

After referring to the Statement of Objects and Reasons in enacting the Contract Labour (Regulation and Abolition) Act, 1970, their Lordships have further held:

"The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The proposed Bill aimed at abolition of contract labour in respect of such categories as may be notified. The Corporation attempted by its action to reverse that trend which does no credit to it. We say no more save and except saying that where the law helps, such anti-labour practices must be thwarted or nipped in the bud."

In our case, we have already referred to the cancellation of the contract with Airfreight (Private), Ltd., when the I.A.A.I., itself engaged workers directly for loading and unloading the cargo from November 1985 to July 1986. In such a circumstance, as observed by their Lordships in the above decision, after introducing the direct payment system, agreed to between the parties, if I.A.A.I., wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item (1); in the fourth Schedule provides "wages, including the period and mode of payment." By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a "must" before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty u/s 31(2) of the Industrial Disputes Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective. The facts in the F.C.I.'s case and the facts in our case are identical. In that case, after referring to the provisions of Section 9-A of the Industrial Disputes Act, the Supreme Court has declared that those workmen were employees of the Food Corporation of India. In view of our discussion and the factual materials placed, we are of the firm view that the conclusion of the Supreme Court will also apply to our case, due to the reason that the workmen in our case had been directly employed by the I.A.A.I., from November 1985 to July 1986. Further, irrespective of the circumstances that prevailed from November 1985 to July 1986 they have thus become the employees of the

I.A.A.I. They cannot reverse the trend by stating that they were not the workers of the I.A.A.I. but the workers of the second respondent society, such contention cannot be accepted in view of the decision of the Supreme Court in F.C.I. case (supra).

16. Now we shall find out the status of the workmen, nature and control being followed by I.A.A.I. We have already referred to the various clauses in the agreement. As a matter of fact, both the counsel took us through all the clauses in the agreement which made this Court to dismiss WP. No. 11683 of 1985. Before the Tribunal as well as before the learned single Judge, IAAI was trying to rely upon the agreement Exhibit M5, dated July 1, 1986 signed between I.A.A.I and the second respondent-society, which was a society consisting of ex-Airfreight employees who are workmen concerned in this dispute. We have already referred to and held that after becoming direct workmen of the I.A.A.I. from November, 1985 to July 1986 the management ought not to have reverted them back to the contract system and that such action is illegal as per the decision of Food Corporation of India case (supra). We have also held that if the management wanted to reintroduce the contract labour system they ought to have given notice u/s 9-A of the Act. In the absence of any such notice, the change is illegal as per the very same judgment of the Food Corporation of India case. Regarding the control of the workers, the documents produced by the workmen as well as the management amply support that though the workmen were supplied by the second respondent-society, the entire control was with the first respondent-management. As per Clause 11 of the appointment order Exhibit W1 issued to one of the workmen, he was directed to report directly to the Assistant Manager, Ground Handling Agency, Madras, Airport Cargo Complex through his supervisor and the Assistant Manager will assign his duties. Exhibit W4 which is a circular issued by the Assistant Director (Cargo) I.A.A.I. Madras-27, wherein the workmen were requested to receive their wages. The said document (Exhibit M4) clearly shows that the Assistant Director (Cargo), I.A.A.I. requested all the workmen concerned to receive their wages immediately. Exhibit W12 letter of the Cargo Manager, dated April 9, 1988 to the President, Airport Industrial Co-operative Service Society Ltd., showed that I.A.A.I. had taken disciplinary action against one L. Prabhudoss, Loader-cum-packer at the air cargo complex by debarring him for a period of 45 days with effect from April 6, 1988 to May 20, 1988 for unauthorisedly removing some imported items. Exhibit W3 series are cash receipts for payment of ex gratia for cargo labourers for the period March 22, 1986 to May 9, 1986 and May 17, 1986 to May 23, 1986. A perusal of these receipts shows that all the amounts were paid by the Assistant Manager, I.A.A.I. directly to the workmen concerned after getting their signatures. Regarding supply of uniforms to loader-cum-packers it is stated in the letter of the Cargo Manager, dated June 16, 1988 (Exhibit M11) addressed to the President APINCOSS (Airport Industrial Co-operative Service Society), Madras 56, that the matter has already been referred to I.A.A.I. Headquarters for decision and that they will intimate the decision as soon as the

same was received. Exhibit M38 letter disclosed that the Cargo Manager of the I.A.A.I. debarred one N. Ramachandran, loader-cum-packer for his involvement in the pilferage of some baggage from one of the boxes. Similar order has been passed by the Cargo Manager, in his letter dated June 22, 1989 against one M.K. Gopi, loader-cum-packer for a period of one month. In another letter, dated March 25, 1994 the senior Cargo Manager (Exp.) advised the Special Officer, APINCOSS, Air Cargo Complex, Madras Airport, not to deploy one Ellappan, loader at Air Cargo Complex till further orders. In another letter dated December 28, 1987, the Deputy Manager, Cargo has conveyed their inability to allow one T.S. Manohar to be engaged as loader-cum-packer through their society in view of his misconduct and misbehaviour. The letter dated March 7, 1990 of the Cargo Manager addressed to the Special Officer of the Airport Industrial Co-operative Service Society Ltd. shows that on the basis of the assurance given by one Ramachandran loader-cum-packer in his letter, dated February 21, 1990, assuring that he would work in a disciplined manner, it has been decided to allow him to be taken on duty with immediate effect. By a letter, dated May 8, 1990, the Senior Cargo Manager cancelled the suspension of one A. Ekambaram, T. Kesavan and R. Subramani. In addition to these documentary evidence, WW. 1, General Secretary of the petitioner-union has also deposed that the officer of the first respondent issued instructions to the workers regarding the manner in which the work should be done, and that the workers were under the control of the first respondent. He also deposed that though the second respondent co-operative society was formed, their work was supervised by the first respondent and they worked as per the directions of the first respondent. Even M.W. 1 in his cross-examination has admitted that the employees of the first respondent instructed a particular loader to take a particular cargo. The first respondent officer gives a slip to the loader indicating as to in which shed the cargo should be kept. He also admitted that on the basis of the information given by the first respondent, the union sends the loaders to the first respondent. M.W. 2 has also admitted that the second respondent-society cannot take disciplinary action against the workers. According to him, all the workers work under the control of the first respondent. He further deposed that every day the first respondent informs the second respondent regarding the requirement of the workers. In cross-examination, M.W. 2 has admitted in categorical terms, that:

"Only the first respondent's officials are supervising the work of the employees. Only the first respondent's officers instruct the workers as to what work they should do. First respondent alone determines as to what wages will have to be paid to the workers. Second respondent only acts as an intermediary between the petitioners and the first respondent."

All these oral and documentary evidence clearly show that the workmen worked only under the supervision and control of officers of the first respondent and the second respondent society acted only as an intermediary between the workmen and the first respondent. Sri A.L. Somayaji, learned senior counsel for the first; respondent, contended that merely because the I.A.A.I., is said to have

controlled the workmen and their activities, it cannot be construed that these workmen were the employees of the first respondent. In this regard he very much relied on a Division Bench decision of the Karnataka High Court, in National Airport Authority, Delhi Vs. Bangalore Airport Service Coop. Society and others, wherein the Division Bench has held as follows at pp. 542 & 543 of LLJ:

"5. In order to determine whether the applicants were the workmen of the appellants and thus there was the relationship of employer and employee between the appellants and the applicants, both the learned single Judge and the Labour Court should have considered firstly whether there was a contract of employment between the appellants and applicants through the first respondent at least indirectly. Secondly whether the portorage service was incidental or integral part of the functions of the airport authorities. The Labour Court and the learned single Judge committed an error to arrive at a conclusion that there was relationship of employer and employee between the appellants and the applicants, merely because the appellants had a little control over the activity and attitude of the applicants while discharging their duties of portorage service, without noticing that mere exercise of control is not sufficient to hold that the authority so exercising the control is a principal employer, without noticing from where that power of control emerges. So also, the power to suspend or to recommend to remove from service is also not an important factor. Because the test of control in order to establish relationship of master and servant may be a relevant factor, but it is wrong to say that it is the decisive factor in all cases."

In the light of the various clauses in the agreement, namely, the instructions of the I.A.A.I. for entrustment of work, taking disciplinary action against the workers, direction for payment of wages, etc., as already discussed by us, it is clear that irrespective of the contents or clauses of the agreement, all these workmen were kept under the control and supervision of the first respondent in such a circumstance, we are of the view that the decision referred to above is distinguishable and not applicable to the facts of our case. There can be no doubt that the workers employed by the second respondent-society are really the workmen of the first respondent. We have also referred to the fact that though the society supplies workmen, the working hours, nature of work, disciplinary action against the erring workers, payment of wages, etc., were being made and maintained only by the first respondent. As observed by their Lordships in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, : no magic formula can be propounded which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction. Their Lordships have further held that control is obviously an important factor and in many cases it may still be the decisive factor. In our case, the Tribunal has discussed in detail the evidence of witnesses and concluded that the agreement is a devise to conceal the real state of affairs. We are satisfied that there is ample evidence on record in support of

the Tribunal's decision and there is nothing that would justify this Court in interfering with it.

17. We have already perused the agreement Exhibit M 5 between the society and the management and expressed that in the circumstances that prevail at the relevant time, the workers have no other option except to accept otherwise they will lose the employment which they had all along. This has specifically been stated in the claim statement as well as in the evidence of W.W. 1. We have also observed that MOHAN, J. (as he then was) has no occasion to go into the various clauses in the agreement while dismissing Writ Petition No. 11683 of 1985, Merely because the counsel who represented the workmen had consented to the terms of the agreement that does not prevent the affected workmen from questioning the same before the appropriate forum. As a matter of fact in all the earlier writ/writ appeal, proceedings filed at the instance of the workers union, this Court has directed them to approach the appropriate forum under the industrial law, namely the Industrial Tribunal if they have any grievance and they rightly raised a dispute and the question was adjudicated by the Tribunal. No doubt, we agree that the Tribunal could have used plain language instead of making certain comments regarding the conduct of the management. However, eschewing those comments, we are in agreement with the conclusion arrived at by the Tribunal which is based on acceptable materials.

18. The annexure to the claim statement filed before the Tribunal clearly shows that these workers worked number of years (from one year to maximum 16 years) and their claim for regularisation has to be considered. As rightly argued, the claim of the management as well as the conclusion of the learned Judge that the demand of the workmen for regularisation is beyond the scope of reference has to be rejected. As stated earlier, as and when I.A.A.I, calls for a tender for engaging loaders and packers, etc., for the cargo complex the workers' union approached this Court with a request not to give work on tender and to regularise their services under the first respondent.

19. The claim of the management as well as the conclusion of the learned Judge is that before MOHAN, J. (as he then was) the workmen agreed to be employed through the co-operative society and the same has become final. As observed earlier, the learned Judge merely dismissed the writ petition after recording the memorandum. In other words, we are satisfied that the Court had not gone into the question whether the management could change the status from direct employment to indirect employment without a notice u/s 9-A of the Industrial Disputes Act. Equally the Court had also not gone into the aspect of change in status, namely, from direct employment to indirect employment. All these aspects were considered by the Industrial Tribunal with reference to the oral and documentary evidence let in by both parties. It is settled law that if any such agreement or award is arbitrary and opposed to fundamental rights, the same have to be ignored and there cannot be any estoppel against violation of fundamental rights. The materials placed before the Tribunal clearly show that

right from 1985, the workmen have been contending that they are the employees of the first respondent and praying regularisation under them. In *R.K. Panda v. Steel Authority of India Ltd.* (supra), the Supreme Court has held that whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contract is a mere camouflage and a smoke screen is a question of fact and has to be established by the contract labourers on the basis of the requisite material. Their Lordships have also held that it is not possible for the High Court or even the Supreme Court while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. The following observation of their Lordships is also relevant:

"... As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

We have already referred to the fact that except certain observations, the Tribunal after analysing the oral and documentary evidence, has rightly granted the relief in favour of the workmen. In such a circumstance, more particularly when the conclusion of the Industrial Tribunal/Labour Court is based on acceptable legal evidence, interference by this Court exercising jurisdiction under Article 226 of the Constitution is very limited. In this regard, it is relevant to refer a recent judgment of the Supreme Court in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, : In that case, the factual findings recorded by the Tribunal in favour of the workmen based on acceptable evidence, the learned single Judge undertook for himself by reappreciating the facts as though exercising an appellate jurisdiction including certain vital aspects of the facts and belittling the factual and important portions of the evidence. After noting that the learned single Judge committed an error in considering the order of the Tribunal as an appellate Court, the Division Bench reversed the conclusion of the learned single Judge and confirmed the finding recorded by the Tribunal. Against the said order, the management-Indian Overseas Bank has preferred an appeal before the Supreme Court. In such a circumstance, their Lordships have observed, in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*,

"17. The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of facts, unmindful, though fully aware that he is not exercising any appellate jurisdiction over the awards passed by the Tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot

be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some materials which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken..."

We have already observed that the Industrial Tribunal have overwhelming materials which constituted ample and sufficient basis for recording its findings, except some observations and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore open to the writ judge was to find out the satisfaction or otherwise of the relevant criteria laid down by the supreme Court on the facts found and recorded by the Tribunal which is the fact-finding authority and to embark upon an exercise reassessing of evidence. The learned Judge seems to have not only overlooked certain relevant materials, but by adopting a negative approach had belittled the relevance and importance of several vital and important factual aspects brought on record.

20. In Secretary, H.S.E.B Vs. Suresh and Others etc. etc., : Their Lordships have observed that the finding of fact arrived at by the Labour Court cannot otherwise be interfered with while exercising powers under Article 226 of the Constitution, unless the same is otherwise perverse or there is existing, an error apparent on the face of the record. Though the learned Judge has concluded that the findings and the ultimate conclusions of the Tribunal are perverse, for the above discussion of the entire materials, we are unable to accept the said conclusion and, at any rate, the finding of fact arrived at by the Tribunal cannot be construed as perverse finding or an error apparent on the face of the record. We are also satisfied that without the assistance of the workers, the I.A.A.I. cannot run the Air Cargo Complex for performing the functions of packing, moving the goods, loading, unloading and works incidental thereto. The work is also of perennial nature. The learned Judge himself observed that if these functions are stopped, the cargo complex cannot function and the cargo complex at the airport is meant for the purpose of processing the cargo for export and import and such work is essential for import and export through incoming and outgoing aircraft which is continuous day-to-day operation. Likewise the learned Judge himself has also admitted that the work is performed by regular workmen in the cargo complex at Calcutta. As a matter of fact, the learned counsel for the workers' Union placed before us documents (Exhibits W5 and W6) to show that similar work is being performed by regular workmen directly engaged by I.A.A.I. in the cargo complex at Bombay/Mumbai. In such a circumstance, as observed by the Supreme Court in Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, : R.K. Panda case (supra), and in the light of the categorical findings by the Tribunal based on acceptable legal materials, we are of the view that the learned Judge committed an error in quashing the award of the Tribunal and issuing certain directions. Inasmuch as there was no notification abolishing the contract labour in respect of the appellant workers and the same

was not an issue raised by Government of India for adjudication. As observed by the Supreme Court in R.K Panda case (supra), we are of the view that the Tribunal is fully justified in directing the absorption of the members of the workers union as stated in the annexure to the claim petition, except the members who expired, and who have left the service, according to seniority and as per the requirements of the I.A.A.I. with effect from December 23, 1994, namely, the date of award.

21. For the reasons stated above we set aside the order of the learned Judge and confirm the award of the Tribunal dated December 23, 1994, in I.D. No.65 of 1991. Net result, the writ appeal is allowed. No costs. The first respondent-I.A.A.I. is directed to implement the award of the Industrial Tribunal within a period of two months from the date of receipt of a copy of this order.