

(2000) 05 AHC CK 0174

In the Allahabad High Court

Case No : C.M.W.P. No's. 5849 (S/S) etc. of 1999

Jay Krishna Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (2001) 89 FLR 200 : (2001) 2 LLJ 586

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : S.K. Kalia and S. Chandra, for the Appellant; Standing Counsel and Rana M.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—By virtue of filing Writ Petition No. 5849 (S/S) of 1999, the petitioners have prayed for a writ of certiorari quashing the order dated September 16, 1999 passed by the Secretary of the Labour Department, U.P., Civil Secretariat, Lucknow, whereby decision to carry on with the contract labour system was taken. Further a writ of mandamus commanding the respondents to regularise the services of the petitioners and pay their regular salary was also sought for. Yet one more relief for a writ in the nature of mandamus was also prayed for commanding the respondents to discontinue unfair labour practice and execute the order dated May 5, 1999 passed by the Secretary, Dugdh Vikas and order dated October 23, 1999 passed by the General Manager of the Milk Union. The petitioners have also requested for continuance of their service by means of a mandate to the respondents.

2. The matrix of the petitioners' case is that they have been working with the Milk Union for a long period ranging from three to eight years as contract labourers having put in more than 240 days in each year. The nature of the work which is being executed by them is perennial and not seasonal. The Co-operative

Milk Union with whom the petitioners are working, is a registered society under the U.P. Co-operative Societies Act and the said Union has a milk handling capacity of atleast three lac litres per day. The Union operates in three shifts everyday and thus minimum of two sets of employees or other staff are needed to operate the milk dairy business. However, the Milk Union instead of hiring the services of two sets of workers, employed on permanent basis only one set of employees and the other set of employees is on contract basis. Thus by amalgamating the services of two kinds of labourers, the Milk Union is running its dairy business round the clock in three shifts. The purpose behind engagement of contract labourers is to reduce the cost of operation but it is to the disadvantage of the labourers who would otherwise be entitled to draw their remuneration in regular pay scale. In this way, the contract labour system adopted by the Milk Union was camouflage to deprive the labourers of their legitimate right on regular basis and obviously it is unjust; unfair and unreasonable.

3. The petitioners pleaded further that the Milk Union has engaged the services of three kinds of labourers, namely, skilled, semi-skilled and unskilled. Labourers of each category are required to discharge their duty for eight hours at the rate of minimum wages fixed by the Labour Commissioner under the provisions of the Minimum Wages Act. As a matter of fact, all the petitioners' job conies within the ambit of Class III employees of Government service and as such they are entitled to the regular pay scale as admissible to the Government servants. They are experienced persons but the Milk Union engaged them as contract labourers and exploited their services. The petitioners raised their voice against the malpractice being adopted by the Union and submitted a representation to the State Government as well as to the Deputy Labour Commissioner requesting them to abolish the contract labour system on the ground that the Milk Union was compelling the labourers to perform the work of permanent and perennial nature without giving them regular pay scale. Similar reliefs have been sought for by the petitioners of Writ Petitions Nos. 6109 (S/S) of 1999 and 6030 (S/S) of 1999.

4. However, the Government and other authorities paid no attention to the representation of the petitioners. Feeling aggrieved of the Government's apathy towards the grievances of the petitioners, a writ petition bearing No. 240 (M/B) of 1997 was filed before this Court through registered Union of the Employees for abolition of contract labour system and regularisation of their services. Vide its order dated January 27, 1997 this Court directed the State Government to consider the petitioners' representation in accordance with the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter to be referred as the "Act") expeditiously. In spite of the Court's order the Government did not move in any direction as a result of which contempt proceedings were initiated by filing Contempt Petition No. 110 (C) of 1999 against the Government authorities. On receipt of the show cause notices, the Government constituted a State Advisory Board known as Rajya Sarkar Salahkar Samvida Board (hereinafter to be referred as "the Board"). As provided

u/s 4 of the Act, the State Government also communicated to the Board vide its order dated July 9, 1999 that the Board, after investigating the matter and after hearing both the parties might send its recommendation under the provisions of Section 10 of the Act. The Board on having carefully examined the representation of the Employees' Union as well as the Milk Union and after making detailed deliberations with the Government authorities submitted its report dated August 24, 1999, thereby recommending abolition of the contract labour system. The Board was also of the view that the work assigned by the opposite parties to labourers through contractors was of perennial nature. It was further revealed in the report that licences of the contractors were not renewed since 1997 and in the absence of renewal of the licences, the status of the contract labourers was that of daily wagers. Further the Board recommended that all the contract labourers should be considered eligible for regularisation. In the meantime, the opposite party No. 1, namely the Secretary of Dugdh Vikas Department issued an order of May 5, 1999 thereby directing the abolition of contract labour system in all the Milk Unions across the State with immediate effect from May 31, 1999. It was in this background that the Deputy Labour Commissioner, Lucknow Range, Lucknow, the competent authority for awarding licences to the labour contractors cancelled their licences and refused to renew the same mainly on the ground that the work being performed by the labourers was of perennial nature. However, the opposite party No. 2, namely, the Secretary of the Labour Department issued the impugned order of September 16, 1999 rejecting the representations, of the petitioners whereby the latter had requested for abolition of contract labour system. The opposite party No. 2 was of the view that according to the Board, the abolition of contract labour system in Milk Unions was neither relevant nor practicable but this was an erroneous observation of the said authority. As a matter of fact the Board had expressed strong opinion in favour of the contract labour system being abolished. The Secretary of the Labour Department had, by virtue of the impugned order unilaterally and in a most arbitrary manner decided to continue the contract labour system in the Milk Union. When the job being performed by the petitioners and other labourers engaged through the contractors or on daily wage basis was of perennial nature and the wages of the petitioners were being disbursed by the opposite parties and also when the petitioners were discharging the same duties as their regular counterparts were performing, there was no justification for the opposite party No. 2 to have decided to retain and continue the contract labour system. Such a decision was violative of the provisions of Articles 14 and 16 of the Constitution of India. Approximately 143 substantive and permanent posts were lying vacant in the Milk Union and all such vacancies occurred due to retirement of the regular incumbents from time to time. The opposite party No. 7, namely, the General Manager of Lucknow Producers Co-operative Milk Union vide his order of October 23, 1999 restrained engagement of contract labourers in view of the order dated May 5, 1999 issued by opposite party No. 1. However, following the issuance of the impugned order by the Secretary of the Labour Department, the petitioners' claim for their regularisation and absorption as regular employees of the opposite

parties was rendered nugatory but since the impugned order is patently illegal, arbitrary and unreasonable being non-speaking it is liable to be quashed and hence these petitions have been filed for a writ of certiorari praying for quashing of the said order.

5. A short counter affidavit was filed by Mr. R.K. Pandey, Manager Administration (Karmik) on behalf of opposite party No. 7 Lucknow Producers Co-operative Milk Union in all the above three writ petitions. The averments made by Mr. Pandey are exactly similar in all the three short counter affidavits. According to him, the contract labour system has not been abolished by the Government. The Milk Union has complied with all legal obligations under the Act and no case is pending anywhere. It was however, admitted that licences of some contractors were cancelled by the licensing authority but an appeal against such orders is pending. The petitioners were recruited by their respective contractors and the Milk Union had no business or authority to interfere where a particular contractor chooses to take the services of a labourer regularly for years or he brings a new labourer everyday. In the circumstances the Milk Union has no obligation to regularise the services of the petitioners. It was wrong on the part of the petitioners to allege that the Milk Union had ever acted in violation of the dictate of law. The claim of the petitioners to be regularised is misconceived as there was no relationship of employer and employee between the Milk Union and the petitioners. In fact there is no provision to the effect that the work of perennial nature cannot be taken through contract labour. It is, however, different if this aspect of the matter is considered by the State Government while considering a claim u/s 10 of the Act but unless notification u/s 10 of the Act is issued, the Milk Union is fully competent to carry on the contract labour system.

6. Rejoinder to the short counter affidavit was filed by Sri Padmakar Shukla. He asserted that it was not open to the answering opposite party No. 7 to question the validity of the order of the licensing authority whereby renewal of the licences of the contractors was declined. Now, there is no valid contractor and the payments being made to the petitioners and other labourers are nothing but misuse of power.

7. The employer and employees relationship between the opposite parties and the petitioners was clearly established from the fact that the opposite parties running the milk dairy business had 75% share in the Milk Co-operative Societies and the petitioners performed their duties at beck and call of the said opposite parties. The petitioners have been working continuously on their respective posts against the permanent vacancies and performing their duties of perennial nature. In this way, the impugned order passed by the Secretary of Labour Department is illegal, arbitrary and discriminatory and, therefore, it is liable to be quashed.

8. Learned counsel appearing on behalf of the petitioners in all the three petitions assailed the impugned order on the ground of its being violative of Articles 14 and 16 and also the Directive Principles of State Policy as contained under Articles 38, 49, 41 and 43 of the Constitution of India as the contract

labour system being a camouflage to the relationship of employer and employees between the opposite parties and the petitioners was recommended to be abolished by the Board. Further, the Deputy Labour Commissioner declined to renew the licences of the contractors and the Secretary of Dugdh Vikas Department also restrained the Milk Unions from engaging labour contractors. Under these circumstances, the services of the petitioners deserved to be regularised by the opposite parties and as such they were entitled to claim regular salary at par with their regular counterparts.

9. I have heard the learned counsel representing the parties in all the three petitions.

10. It is significant to note that a writ petition being No. 1240 (M/B) of 1997 was filed raising an issue pertaining to recruitment of labourers through contractors. This Court vide its order dated January 27, 1997 instead of adjudicating upon the dispute between the labourers and the Milk Union directed the petitioners to approach the Government by way of a representation u/s 10 of the Act which deals with the abolition of contract labour system. It would be quite relevant to reproduce the observations of the Court while issuing a direction on the subject, it may be quoted as below:

"In the present case, however, it is indicated that the petitioner itself has approached the appropriate Government by making a representation, a copy of which has been filed as Annexure-3 to the writ petition, dated September 9, 1993. It is submitted on behalf of the opposite parties that it is addressed to the Deputy Labour Commissioner and not to the State Government. Learned counsel for the petitioner indicates that the Deputy Labour Commissioner is the appropriate authority through whom the application is to be given. Without unnecessarily probing into the matter any further, it is provided that it will be open for the petitioner to move afresh before the appropriate Government, to avoid any uncertainty in the matter, and if any such representation is moved, the appropriate Government shall consider the same in accordance with Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 expeditiously without keeping it pending for long.

Subject to the observations made above, we decline to entertain this petition and it stands finally disposed of."

11. The petitioners' contention is that they moved their representation to the Government for a decision on the issue but no action was taken. As a consequence, the petitioners were obliged to file a Contempt Petition No. 110 (C) of 1999 which finds reference in the impugned order Annexure-1. During the pendency of the Contempt Petition, the Government constituted a State Advisory Board under the Chairmanship of Sri Santosh Shukla. There were as many as ten members of the said Board. Their names find place in an enclosure to Annexure-10. Sri V.R. Singh, General Manager, Sri A.K. Misra, Sri Ganesh Chaturvedi and Sanjay Bhatia were of the opinion that it may not be practicable

to abolish the contract labour system. As against these four, Sri V.K. Gupta, Sri Uma Shankar Misra, Sri Raju Sharma, Sri Ram Daur Singh and the Chairman Sri Santosh Shukla expressed their opinion that in the absence of contract system being renewed by the competent authority, labour contract system should be abolished. The Chairman also observed that the work being performed by the petitioners was of perennial nature and, therefore, the contract labour system should be abolished and accordingly the recommendation was submitted. Obviously there was a difference of opinion amongst the members of the State Advisory Board but majority of them was in favour of abolition of contract labour system. Even if some of the members of the State Advisory Board had their reservation in winding up the contract labour system, the Government as a model employer was expected to have taken a decision which could provide security to the labourers with better working conditions. It was probably on the basis of the said underlying principle that the opposite party No. 1, Secretary of the Dugdh Vikas Department, issued an order dated May 5, 1999 a copy of which is Annexure-11 on record and thereby directed that it had been decided to abolish the contract labour system. He had also issued instructions by virtue of the said order directing all concerned authorities to take all relevant steps in the direction of abolishing the contract labour system so as to take a final decision by May 31, 1999. It was specifically mentioned that after the said date, no labour shall be engaged through a contractor as the contract labour system would stand rescinded. It is relevant to note that the Secretary of the Dugdh Vikas Department is the ex-officio Milk Commissioner, Dairy Development and in the same capacity he is also Managing Director of the Pradeshik Co-operative Dairy Federation Limited. It was with this position of the said Secretary that Sri J.P. Sharma issued the order dated May 5, 1999 under his authority as Managing Director of the Pradeshik Co-operative, Dairy Federation Limited. It will be better while dealing with the issue to quote the relevant part of the said letter (Annexure-11), which is as follows:

(Vernacular matter omitted)

12. A perusal of the instructions reproduced above which were issued by the Managing Director of the Pradeshik Co-operative Dairy Federation Limited would reveal that all the Co-operative Societies of the State were directed not to engage contract labourers unless there were compelling circumstances for some special work. Instruction was also issued to the effect that every work pertaining to the dairy business should be got executed by Class III and Class IV employees of course on daily wages basis. In this way, the authorities including the Government were complying with this Court's Order dated January 27, 1997 issued in Writ Petition No. 240 (M/B) of 1997 but a decision u/s 10 of the Act was required to be taken by the Government. Section 10 of the Act postulates as follows:

"10. Prohibition of employment of contract labour -

(1) Notwithstanding anything contained in this Act the appropriate Government

may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under Sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen."

13. Before a decision on the subject of abolition of contract labour system is taken by the Government, it has to be established that the work being performed by the labourers is perennial in nature (Clause-d); the work is of an industry, trade or business carried on by the establishments, ordinarily it is done through regular workmen and the work is sufficient so as to employ considerable number of whole time workers. It has not been disputed by the opposite party No. 7 that the dairy business being carried on by the concerned co-operative societies including opposite parties No. 6 and 7 is of permanent nature. As is mentioned in the detailed version of the activities of the milk union in representation Annexure-9, there were about 300 regular labourers and about 272 contract labourers working in Lucknow Milk Union. These workers handle about two lacs litres of milk daily besides involving themselves in the production of 2500 kgs. of butter, 3000 kgs. of ghee, 1000 litres of curd, 1000 litres of flavoured milk, 100 kgs. of Peda, 50 kgs. of milk-cake, 2000 kulhars (earthen pots) of curd, 50 litres of ice-cream, 300 kgs. of cheese and about 5000 kgs. of plain butter. It is needless to say that the milk and all other items are perishable, meaning thereby that all the workers working in Class III or IV category are required everyday to do their job. There is very little variation in regular and seasonal employment of the workers. The petitioners who are working at Lucknow are required to do their job in three shifts throughout the year in the work of processing milk and its products. There are different sections of the dairy, such as processing section, product section, country product section, filling section, Abhiyantran (mechanical) section, quality control section, time-keeping section, automobile section, administrative section, finance and accounts section and purchase section etc. The petitioners are discharging their duty in various sections on the

posts as may be indicated below:

Names of petitioners

Posts they hold

Writ Petition No.5849 (S/S) of 1999

1.

Jay Krishna Pandey

Stores Assistant

2.

Dev Sharan Singh

Junior Clerk

3.

Padmakar Slwkla

Sales Supervisor

4.

Ashok Kumar

Lab. Assistant

5.

Manoj Kumar Singh

Welder

6.

Anil Kumar Sakya

Lab. Assistant

7.

Shiv Prakash Yadav

Purchase Assistant

8.

Rajendra Mohan

Sales Supervisor

9.

Shambhu Nath Pandey

Lab. Assistant

10.

Santosh Kuraar Singh

Stores Assistant

11.

Alok Kumar Singh

Data Punching Operator

12.

Amit Kumar Srivastava

Data Punching Operator

13,

Jitendra Tripathi

Dairy Operator

14.

Vineet Kumar Singh

Dairy Plant Operator

Writ Petition No.6109 (S/S) of 1999

15,

. Mahendra

Clerk-cum-typist

16

, Vijay Kumar Singh

Junior Clerk

17.

. Naveen Prakash Srivastava

Junior Clerk

18.

, Ashok Kumar Mishra

Electrician

19.

, Amitabh Tiwar

Electrician

20.

. Niraj Kumar

Fitter

21.

. Sushil Kumar Srivastava

Assistant Accountant

22.

. Anand Kumar Singh

Refrigeration Mechanic

23.

Harish Kumar Dubey

Electrician

24.

. Santosh Kumar

Fitter

Writ Petition No.6030 (S/S) of 1999

25.

Chandra Bhushan Singh

Typist

26.

Pravesh Kumar Singh

Indenting Asstt. Junior Clerk

26.

Manoj Kumar Singh

Sales Supervisor

27.

B.P. Verma

Legal Assistant

14. From the vivid description of the work mentioned above, it is obvious that the entire work executed by the petitioners and their fellowmen is of perennial nature and, therefore, with no stretch of reasoning, the opposite parties' contention that in the handling of milk or milk products only seasonal or daily wage workers are required, is acceptable. Obviously thus it is an exploitation of the manpower by the Government and its; functionaries and, therefore, opposite parties cannot be permitted to keep workers on a work which is of permanent and everlasting nature, either on contract basis or on daily wage basis.

15. The dairy business cannot be closed even for a day. The opposite party No. 6 is a Government officer and similarly the Managing Director of the Pradeshik Dairy Co-operative Federation is a senior officer of the Government. The powers of Managing Director, Milk Commissioner and that of the General Manager are, as per practice of the Government, vested in one officer and he holds all the three offices ex-officio by virtue of his being the Managing Director. He has to follow the Government instructions and policies formulated by the Government. As a matter of fact, the Government is in full supervisory and administrative control of the Co-operative Dairy Federation and its all regional units including Lucknow Producers Co-operative Milk Union where the petitioners are employed. In view of this factual position prevailing in the Milk Union, abolition of contract labour system appears to be the need of hour, This view finds support from the decision of the Hon"ble Supreme Court pronounced in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., . In that case similar dispute pertaining to the workers employed as Safai Karmacharis in various electricity plants and stations was raised. The Safai Karmacharis were engaged by the Haryana State Electricity Board through contractors. The plea of the Board that such Safai Karmacharis were seasonal workers was rejected by the Supreme Court having considered the perennial nature of the work such Karmacharis were required to do. The Hon"ble Supreme Court observed that regularisation of the working conditions of such labourers was inevitable and keeping in view the whole time job for all times round the year, the contract labour system deserved to be abolished. The relevant observations of the Hon"ble Supreme Court may be quoted as below Secretary, H.S.E.B Vs. Suresh and Others etc. etc., :

"There is, however, a total unanimity of judicial pronouncements to the effect that in the event, the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being perennial in nature that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since, involvement of contractor may have its. social evil of labour exploitation and thus the contractor ought to go out of scene bringing together the principal employer and the contract labourers, rendering the employment as direct, and resultantly a direct employee."

16. Elaborating the malpractices prevailing in the Contract Labour (Regulation

and Abolition) Act being a beneficial piece of legislation as engrafted in the statute book, the Apex Court held that the provisions of the Act ought to receive the widest possible interpretation in regard to the words used and unless words are taken to their maximum amplitude, it would be a violent injustice to the framers of the law. Denouncing the contract labour system in such a situation, the Hon''ble Supreme Court observed further as follows:

"As noticed above, Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation, specially on the wake of the new millennium. The democratic polity ought to survive with full vigour; social status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their working supervised and administered by an agency within the meaning of Article 12 of the Constitution the answer cannot possibly be in the affirmative-the law Courts exist for the society and in the event law Courts feel the requirement in accordance with principles of justice, equity and good conscience, the law Courts ought to rise up to the occasion to meet and redress the expectations of the people."

17. Keeping the observations of the Hon''ble Supreme Court and the principles of law laid down in view, it can well be visualised that the contract labour system prevalent in the U.P. Pradeshik Milk Co-operative Union including its Lucknow Unit was nothing but a camouflage being allowed to operate by the opposite parties with a view to earn more profits at the cost of work of labourers petitioners and to pay them meagre wages. It is the worst example of the exploitation of the miseries of the labourers as in the present era of unemployment and excelerating poverty, some of the petitioners and other labourers are forced to work for paltry sums-much below in quantum than that of their regular counterparts. Economy alone should not govern the fate of poor labourers in a democratic system like ours where the Government is not only under an obligation to ensure fundamental rights guaranteed to every citizen but it has also to perform its bounded duties as enshrined in the Directive Principles of State Policy in the Constitution of India more so when the Government is the controlling authority through its instrumentality, namely, the Milk Co-operative Societies. The nature of duty, volume of work, qualification and period of working of the petitioners are similar to that of the regular employees holding the same posts. The wages of such regular employees as also that of the petitioners are determined and disbursed by the opposite parties. The petitioners have been working under the direct supervision and control of the officers of the Milk Unions which are operational under the supervisory control of the Milk Commissioner-cum-Managing Director-cum General Manager who is none else than a Government paid officer. Obviously thus the labour contractors called as intermediaries are nothing but the persons who take the pound of flesh of labourers and exploit the situation. They draw more from the societies and pay

less to the labourers. As a matter of fact they are nominal commission agents of the opposite parties. Under these circumstances, it may well be derived that the petitioners are the servants of the Milk Unions and not of the contractors and when it is established that the workmen working in an establishment are in fact the employees of the Management for all purposes, they should be treated like other regular employees of such establishment. The Hon''ble Supreme Court while dealing with a similar question as before this Court on the issue of contract labour system, held in *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, ; that if the premises, furniture, fixture, fuel, utensils etc. of an industrial establishment were provided by the said establishment and the workmen did their job under the supervision and control of an authorised officer of the Management and further if the workers were to be reimbursed by the Management, it would be deemed that the contractor who had engaged them was nothing but an agent or a Manager of the same establishment. In that case, the factory had a statutory canteen in which labourers engaged through contractors were doing their job under the supervisory control of the factory Management. Having regard to all the facts and circumstances, it was held by the Hon''ble Supreme Court that the workmen were in fact employees of the Management and, therefore, they needed protection of the continuous employment in the said establishment. Further, the Hon''ble Supreme Court rejected the contention of the Management that it was open to it to employ labourers through contractors on the ground that the contractor who had engaged the workmen was not wholly independent of the Management. Similar are the facts and circumstances of the case in hand. As discussed earlier, the petitioners are the labourers working under the supervisory control of the Milk Co-operative Societies called Unions which in their turn conduct their business in accordance with the instructions of the Milk Commissioner who is a senior officer of the U.P. Government. Their services, therefore, deserve to be protected and regularised. The opposite parties have regularised services of several contract labourers in the establishment; some of them are Javed Ahmad, Mahendra Pal Singh and Manish Shukia and even the order (Annexure-14) of the General Manager further corroborates that fact. There are hundreds of regular posts lying vacant in the establishment as has been mentioned in para 34 of Writ Petition No. 5949 (S/S) of 1999-an averment which goes un rebutted.

18. The impugned order dated September 16, 1999 is a non-speaking order and it appears to have been passed without weighing the pros and cons of the issue involved. It simply refers to the Advisory Board's minority opinion regarding abolition of the contract labour system being impracticable. The order does not attach any significance to the majority view including that of the Chairman of the Board. As observed categorically the Board vide its majority view was not in favour of carrying on with the contract labour system and even the Government auditors had objected to this practice calling it as nothing but exploitation of the labourers. The audit report as contained in Annexure 13 appears to indicate that the Government had been advised to shun the contract labour system. From a

perusal of this report, it is abundantly clear that an audit para was prepared by the auditors highlighting the irregularities in the matter of the work being taken by the Milk Societies through contract labourers. An objection was also raised regarding the regular appointment being not made for a considerable time and the payment to the labourers through contractors was termed to be as regular. From the auditors' point of view, as stated in the report, the method of labour contract was the exploitation of labour and in addition to that, the payment of service charges to the contractors was a futile expenditure. The auditors report had thus censured the authorities concerned about the Sangh's functioning through contract labourers. However, the Government functionaries turned their blind eyes and deaf ears to the financial irregularities as pointed out in the auditors' report and it may not be out of place to mention that such apathetic view of the Government is responsible for the current financial crisis the Government is said to have come across. The opposite parties have not offered any plausible explanation as to why financial irregularities were being committed by indulging in unfair labour practice and for perpetrating social injustice. The labourers who have been working for the last about ten years are still victims of the labour evils and the Government and its functionaries are instrumental in frustrating the very object and purpose of a welfare legislation, namely, the Contract Labour (Regulation and Abolition) Act, 1970. Hundreds and hundreds of posts are lying vacant but the Government has not moved at all to fill them up by appointing labourers on the vacant posts. However examples of nepotism in making discrimination in the matter of appointment cannot go unnoticed. A perusal of order Annexure-14 would reveal that one Sri Javed who was working on contract basis for a few months only was appointed as Assistant Accountant on daily wages basis and few more, as shown at page 78, were regularised and placed in regular pay scales. Such appointments can only be termed to be discriminatory as there was no basis or methodology used for such appointments and regularisation. It is a settled view that appointment and regularisation otherwise than in accordance with rules are irregular as possibility of there being arbitrary appointment cannot be ruled out. In making appointment of the persons listed in Annexure-14, the rules were not followed nor any examination or interview was held. Other similarly placed officials either in Class III or Class IV cadres were not given a chance to compete with those who were appointed. This is the worst illustration of the arbitrariness on the part of the functionaries at the helm of affairs of the Milk Societies.

19. It can be noticed with dismay that the Government authorities in a dictatorial manner can pass a sweeping order as the one contained in Annexure-1 by simply saying that abolition of the contract labour system was not proper and practicable. As to why it was not practicable, was not at all disclosed nor the reasons about the abolition being improper were detailed or elaborated. As stated above, the majority view of the Advisory Board was rejected while that of the minority accepted. It is abundantly clear from such a sweeping order that the Government has no regard for the sanctity of the human labour, particularly

when it is a welfare State. The Secretary having issued the order Annexure-1 acted in clear contravention of the provisions of Section 10 of the Act, 1970 by passing a non-reasoned and altogether a discriminatory order. He could not give out an iota of reason as to why the contract labour system should not be abolished in Milk Union. He referred to the Deputy Labour Commissioner's report but was short of merit to have disagreed with his recommendation. It is relevant to mention here that the Deputy Labour Commissioner had given a concrete finding in his order dated June 28, 1999 that the nature of work which the contract labourers including the petitioners were doing was of permanent and perennial nature and, therefore, it was required that the said system should be done away with. It is a very sorry state of affairs to note that the Government functionary who has to supervise and keep a watch over the welfare of the labourers, has been totally ignored by the Secretary of the Government who could under the circumstances be said to be either ignorant of the labourers' plight or of the ills and evils of the contract labour system. This Court has to take notice of the paradoxical situation with anguish and deprecate the Government authority as envisaged in Annexure-1 issued for either economical benefits or for some other ulterior motive but by cutting the throat of poor labourers. It seems to be very easy to ignore the advice of another authority but it is difficult to appreciate the spirit behind the recommendation as contained in the order dated October 23, 1999 (Annexure-15) passed by the General Manager of the Milk Union. As mentioned earlier, the General Manager is a Senior officer of the Government and Incharge of the Milk Union and although he holds the triple charge yet his recommendations are thrown to the paper basket. It is not a democratic way of the Government machinery to deal with the reports and recommendations of its subordinate functionaries particularly when they are in the direct supervisory control of their departments. It may be needless to emphasise upon the fact that the General Manager-cum-Managing Director-cum Milk Commissioner is the right officer to take stock of the functioning of the Milk Union and its various agencies and none better than him is expected to take accurate decisions to monitor and regulate the better working of the Milk Societies and all but the Government can appreciate his performance and attach values to his recommendations.

20. It is significant to mention that for the last many years, the licenses of the contractors were not renewed and in the absence of such renewals, hundreds of labourers including the petitioners were working as before and still the Government dare say that it has taken a decision to carry on with the contract labour system. Learned Standing counsel appearing on behalf of the opposite parties endeavoured to draw this Court's attention towards recent renewals of some contractors as is evident from letter dated December 11, 1999 on record but the learned counsel could not answer as to what was the relationship between the Lucknow Producers' Co-operative Milk Union and the Labourers who were discharging their duties for a couple of years without there being a licensed contractor in between.

21. The Hon"ble Supreme Court in Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, recommended that all undertakings which are employing the contract labour system in any process, operation or work which satisfies the factors mentioned in Clauses (a) to (d) of Section 10(2) of the Act should on their own discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees,

22. Having regard to, all what has been discussed above, I am of the decisive view that the work being executed by the Milk union or its associate functionaries is of perennial nature and all labourers including the petitioners working therein are the workmen in the employment of the opposite parties and they are, therefore, entitled to be absorbed as regular employees in a phased manner under a scheme to be evolved by the General Manager-cum-Managing Director of the Lucknow Producers Co- operative Milk Union. It is further provided that all the labourers including the petitioners working for more than three years on any basis shall be immediately regularised. Those who are in the employment of the opposite parties for less than three years but over a period of 240 days in a year to be calculated as on date shall not be removed and their regularisation shall be considered in due course of time. Until the labourers including the petitioners are absorbed on regular basis, they shall be paid their salary/wages in the pay scales which are admissible to their regular counterparts.

23. Accordingly all the writ petitions are allowed with costs and a writ in the nature of certiorari quashing the impugned order dated September 16, 1999 passed by opposite party No. 2 is issued.

24. Further a writ in the nature of mandamus commanding the opposite parties to eradicate unfair labour practice and to undo social injustice and also as a measure (sic) of labour welfare is issued to the effect as provided above.