

(2005) 01 MAD CK 0065
In the Madras High Court
Case No : W.A. No. 1684 of 1997

M. Elangovan and Others

APPELLANT

Vs

Madras Refineries Ltd., Industrial Catering Services (P) Ltd.
and Mr. A. Ravindran, Canteen Contractor

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1), 12(1), 2(1)
Factories Act, 1948 — Section 46

Citation : (2005) 2 LLJ 653 : (2005) 1 MLJ 686

Hon'ble Judges : R. Banumathi, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : V. Prakash for M. Ramamoorthy, for the Appellant; Sanjay Mohan,
for Ramasubramaniam Associates, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—The writ appeal is preferred against the judgment of learned Judge in W.P.No. 10628 of 1988 dated 30.9.1997.

The writ petitioners are the appellants herein and the point that arises in the appeal is whether the appellants who are employees in the statutory

canteen run by the first respondent in the appeal are employees of the first respondent for all purposes.

2. The appellants numbering 103 persons have filed the writ petition for writ of declaration declaring that the appellants are the workmen of the

respondents 1 and 2 and consequently, to direct the respondents 1 and 2 to regularise their services and absorb them and also for the issue of

further and other orders.

3. The case of the appellants, as seen from the affidavit filed in support of the writ petition, is that the first respondent, Madras Refineries Limited,

is factory within the meaning of the Factories Act, 1948, and in the said factory, more than 2000 workmen are employed on three shift basis and the factory runs round the clock. There is no dispute that the Factories Act applies to the first respondent company and the employer is statutorily bound to run canteen for its workmen on no-profit-no-loss basis. According to the appellants, the canteen is integral both functionally and statutorily to the industrial process carried on by the factory and in the canteen, the appellants have been employed through the third respondent, private limited company. It is also stated that the respondents 1 and 2 have no valid licence or registration to employ 103 persons as contract labourers, and the appellants are not contract labourers and they ought to have been absorbed by the respondents 1 and 2 as permanent labourers. It is their case that the appellants have put in continuous service for years together according to the service particulars found in the typed-set of papers filed long with the writ petition and the lowest category of unskilled labour in the factory of the respondents 1 and 2 is known as handyman who is paid sum of Rs. 2,000/- per month and the person doing semi-skilled and manual work gets monthly pay of Rs. 300/-. The appellants are entitled to the pay of lowest category of permanent employees. It is stated that the appellants are employed through an intermediary solely with motive of exploiting them and denying them just conditions of service including permanent status. Hence, the writ petition has been filed to protect the livelihood of the appellants with the prayer for declaration as stated earlier. The appellants, during the pendency of the writ petition, also sought for an interim injunction restraining the respondents 1 and 2 from terminating them from service.

4. A counter affidavit has been filed by the respondents 1 and 2 stating that the establishment of first respondent has been registered under the relevant provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the establishment of third respondent is also an establishment within the meaning of Section 12(1) of the said Act. It is the specific case of respondents 1 and 2 that the appellants are the employees of third respondent and they are not the employees of respondents 1 and 2. An additional counter has also been filed reiterating the statement that the appellants are contract labourers and they are employees of the third respondent.

5. During the pendency of the writ petition, the writ petitioners/ appellants did not have the benefit of interim order and the third appellant filed

petition to implead the fourth respondent, A. Ravindran as party/respondent in the writ petition stating that during the pendency of the writ petition,

the contract of the respondents 1 and 2 with the third respondent came to an end on 1.10.1989 and it was terminated and the respondents 1 and 2

entered into fresh contract with the fourth respondent. It is also stated that the third respondent has taken all but 27 petitioners/ appellants and

other petitioners/ appellants are continuing in service and hence, the petition has been filed to implead the fourth respondent as party/respondent. In

other miscellaneous petitions, the third appellant also prayed for direction to respondents 1 to 3 to pay the wages of 27 petitioners for September,

1989 and also for direction to the respondents 1 to 4 to continue to employ 27 petitioners pending disposal of the writ petition. The fourth

respondent has also filed an independent counter affidavit stating that the fourth respondent recruited 80 persons and 27 persons listed by the third

appellant were the employees under the third respondent. The respondents 1 and 2 as well as the third respondent have also filed independent

counter affidavits. This Court, by order dated 9.1.1990, dismissed the miscellaneous petition filed to direct the respondents to continue to employ

27 petitioners against which writ appeal was filed and the writ appeal was also dismissed by Bench of this Court. At the time of hearing of the writ

petition another affidavit has been filed by the respondents 1 and 2 stating that the contractors have been changing from time to time and most of

the appellants were not in continuous service under the successive contractors and most of the appellants are not working with the present

contractor in the canteen. On the above pleadings, the writ petition was heard by the learned Judge.

6. Learned Judge posed question whether the appellants were the workmen of the first respondent and in consideration of the said question,

learned Judge held that the appellants were never on the rolls of the first respondent and they were neither recruited, nor employed by the first

respondent and they did not receive any salary from the first respondent. Learned Judge also held that their immediate employer was the third

respondent who was contractor. Learned Judge, after considering the provisions of the Contract Labour Act, recorded finding that there was no

quarrel or argument of any kind regarding the contract or the agreement entered into among the respondents inter se for each and every term by

floating tenders that they are shem and nominal and bogus one attributing with any allegation constituting comouflage. Learned Judge noticed the

Xerox copies of the original registration certificates obtained by the respondents 1 and 2 and held that the provisions of the Contract Labour Act

were complied with and the contractor was the employer of the appellants. He also noticed that the respondents 1 and 2 had floated fresh tenders

to the expiry of the terms and thereby selected the contractor periodically at every time who in turn employed the servants to work in the canteen

which is admittedly statutory canteen. Learned Judge also held that there was no quarrel or dispute in saying that there was no connection

whatsoever or administrative control or the payment of wages or appointment or dismissing power, existing between the appellants and the

respondents 1 and 2. Learned Judge further held that though all the appellants were working in the canteen situated in the precincts of the

respondents 1 and 2, there was no proof tall and no material was produced to show that the appellants were working in the canteen for very long

time and they were not able to establish as to how long and from what period they were in service and employed by whom in the statutory canteen

in question. Learned Judge in paragraph-64 of the judgment has categorically held that the appellants were not the regular employees of the

canteen in question and they had been engaged and recruited by the contractors who had come into the picture during the relevant period lone and

it is not known whether they have been working continuously in the canteen itself. He also held that there was no aiot of material to show that there

was statutory obligation cast upon the respondents 1 and 2 to the employees in the canteen who were recruited by the contractor for the

temporary period. It is on the above basis, learned Judge rejected the relief of declaration that the appellants are the workmen of the respondents

1 and 2 and held that all the appellants are not entitled to be classified as workmen under the respondents 1 and 2. In this view of the matter,

learned Judge dismissed the writ petition. It is g inst the judgment of learned Judge, the present appeal has been preferred.

7. We he rd Mr. V. Prakash, learned senior counsel appearing for the appellants and Mr. Sanjay Mohan, learned counsel appearing for the first

respondent. Learned senior counsel appearing for the appellants and learned counsel for the first respondent also filed written submissions on behalf of their respective parties.

8. Mr. V. Prakash, learned senior counsel submitted that the facts of the case show that the contractor was mere intermediary and the contractor did not have any independent existence and the appellants are the employees of the respondents 1 and 2. His second submission is that the canteen is statutory canteen run by the first respondent u/s 46 of the Factories Act and therefore the appellants are the workmen of the respondents 1 and 2 for all purposes.

9. Mr. V. Prakash, learned senior counsel for the appellants, relying on the following two decisions of the Supreme Court: (i) Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others, and (ii) Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and

Another, , referred to the relevant clauses in the agreement, namely, Clauses 1 to 6, 8 to 18 and 20 and Clause 20, according to him, is an important clause which reads as under:-

20. In addition to the payment to the caterers against redeemed coupons of various denominations/printed requisitions slips/coupons as detailed

above, the company shall pay to the caterers, in consideration of providing the comp any facilities the following mounts only, except otherwise

provided for in this agreement.

Towards caterers Establishment and profession l/service charges, sum of Rs. 40,000/- (Rupees Forty thousand only) per month which includes

transport costs connected with operating company facilities and the payment by the caterers to their canteen staff towards the following:

wages and salaries including cost of food/eatables that may be provided by the caterers to his staff;

Provident Fund;

ESIC contribution;

Bonus;

Retrenchment compensation;

Any accumulated leave wagesat the end of this agreement period;

Cost and maintenance of uniforms to be provided by the caterers to his staff;

Gratuity, if any, payable

Group Insurance coverage; and

Any other

payment/consideration payable to the caterer's employees.

b. The cost of paper bags, straw, tooth pick, etc. required to be provided by the caterers for operating the company facilities will be borne by the caterers.

c. Sales Tax of any other levies, if and when levied, shall be paid by the caterers, and the company shall reimburse or compensate such tax or any other levies paid by the caterers.

He also referred to the counter affidavit filed on behalf of third respondent. His submission is that similar clauses in the agreement were construed

by the Supreme Court in Parimal Chandr Rahacse wherein the Supreme Court held that the Corporation lone was party to the contract and neither

the Corporation employees, nor any Co-operative Society of the employees were parties and the Corporation lone had the right to continue or

terminate the contract. He relied upon the following passage in Parimal Chandr Rahacase:

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.

10. He further submitted that the canteen run by the first respondent was exclusively used by the staff of the first respondent during working hours

and the first respondent provided the infrastructure to run the canteen and the cost of materials and wages of workmen were met from the funds

provided by the first respondent and neither the workers, nor the managing committee contributed either to the capital or the expenses for running

the canteen and the first respondent gave subsidy for supplying food articles to its employees at concessionary rate and the first respondent also

provided cycles and tricycles for the supply of food stuffs. He therefore submitted that the decision of the Supreme Court in Parimal Chandr Rah

case as well as Indian Overseas Bank case would squarely apply to the facts of

the case and the agreement between the respondents 1 and 2 with the third respondent or fourth respondent is sham and camouflage one.

11. Mr. Sanj y Mohan, learned counsel appearing for the first respondent submitted that it is not open to the appellants to argue in the appeal stage that the contract was sham and camouflageas the appellants have conceded before the learned Judge that the contract was not challenged on the ground that it is sham document and the learned Judge recorded the as me in his judgment in more than one place. He also submitted that in the grounds of the writ appeal filed before this Court, no such ground has been raised and there is no ground that the concession m de before the learned Judge was wrong one and hence, it is not open to the appellants now to urge that the contract between the first respondent with the contractor is sham document.

12. We are of the view, the submission of Mr. Sanjay Mohan, learned counsel for the first respondent is well-founded. We have noticed the findings of learned Judge and in paragraph-41 of the judgment, learned Judge recorded clear finding that there was no quarrel or argument of any kind with regard to the contract or agreement entered into among the respondents inter sea for each and every term by floating tenders, that the contract or agreement is sham and nominal and also bogus one attributing with any allegation constituting camouflage. Learned Judge gain in paragraph-62 of the judgment recorded finding that the facts of the case are totally different and distinct from the factual aspects of the cases cited by counsel for both the parties and there was no quarrel or dispute in saying that there was no connection whatsoever or administrative control or the payment of wages, or appointment or dismissing power existing between the employees, namely, the petitioners (appellants in the appeal) and the respondents 1 and 2, who are the principal employer. He also recorded finding that the appellants are not able to say or claim for how long and from what period they have been in the service and employed by whom in the statutory canteen in question. In paragraph-64 of the judgment also learned Judge recorded finding that the appellants are not regular employees of the canteen in question and they have been engaged and recruited by the contractors who had come into the picture during the relevant periods and there is also no proof that they have been working in the canteen

continuously. The finding of learned Judge was not challenged in the grounds of appeal before us. It is evident that learned senior counsel for the appellants has raised plea for the first time during the pendency of the appeal that the contract entered into between the respondents inter se is sham and nominal document and pointed out that clauses similar to one contained in the terms of contract were considered by the Supreme Court in Parimal Chandra Rahacase and Indian Overseas Bank case and since the Supreme Court has held that the contract was sham one, here also, it must be held that the contract is sham and nominal one. We are of the view, the question whether the contract between the principal employer and the contractor is genuine one or it is sham or camouflage has to be considered on the facts of each case. It may be that though contract containing similar clauses of the agreement entered into among the respondents was held by the Supreme Court in Parimal Chandr Rahacase to be sham one, it is not ground to hold that ipso facto the contract on the facts of the case is also sham one. We are of the view that the finding whether the contract is genuine one or not is pure finding of fact and we find that the learned Judge has considered the issue not only on the basis of concession made by the appellants, but also on the basis of materials before him and held that the contract entered into between the respondents inter se was neither sham, nor nominal one and hence, it is not permissible for the appellants to challenge the said finding. Further, no new material has also been placed before us except the ones that were placed before the learned Judge on the basis of which the learned Judge came to the conclusion that the contract entered into between the respondents was genuine one and in the absence of any fresh material, we hold that it is not open to the appellants to rise the plea that the contract is not genuine one. Further, though the clauses similar to ones found in the agreement in question, as pointed out by learned senior counsel for the appellants, were considered by the Supreme Court in Parimal Chandra Rahacase, the Supreme Court rendered its finding on the facts of that case. Moreover, the decision in Parimal Chandra Rahacase which has been heavily relied on by learned senior counsel for the appellant was noticed by the learned Judge and he distinguished the same in paragraph-52 of his judgment on the ground that it dealt with non-statutory canteen. Learned Judge also noticed Parimal Chandr Rahacase in paragraph-55 of his judgment and held

that the findings in Parimal Chandra Rahacase were made on the basis of the peculiar facts of the case. As far as the decision of the Supreme

Court in Indian Overseas Bank case is concerned, the decision came into force during the pendency of the appeal, the decision is also not

applicable as the question whether the contract is genuine or not has to be considered with reference to the facts of each case.

13. The Supreme Court in Hari Shankar Sharma and Others Vs. Artificial Limbs Manufacturing Corporation and Others, held that the issue

whether contract is genuine or not is one of fact to be determined by the fact finding Tribunal. It is also relevant to notice here that in Artificial

Limbs Manufacturing Corporation case the Supreme Court held that merely because the employer has complied with the provisions of the

Factories Act by providing the equipment, foodstuffs, etc. to the contractor would not necessarily mean that the employer is running the canteen

through the agency of the contractor and there must be something more. We therefore confirm the finding of Learned Judge that on the facts of the

case there is nothing to show that the contract between the respondents inter se is sham and bogus one and we also confirm the finding of the

learned Judge that the contract is genuine one.

14. We further hold that since concession has been made on the question of fact and the said finding has not been challenged in the appeal

preferred before us, it is not open to the appellants to canvass the question during the hearing of the appeal. There is also another difficulty for the

appellants as the respondents 1 and 2 have been entering into several agreements with different contractors for different periods during the

pendency of the writ petition as well as during the pendency of the writ appeal; some of them for long duration and some of them for short duration

and only two contractors are party/respondents in the appeal and subsequent contractors are not parties in the appeal. We are of the view, on the

basis of mere averments in the affidavit, it is not possible to declare that the contracts entered into by the respondents 1 and 2 with various

contractors are sham and nominal and not genuine ones. Hence, we proceed on the basis of finding of fact rendered by learned Judge, particularly

when the finding was based on concession made before him and there are no materials also to indicate that the contract entered into is sham and

nominal.

15. The submission of Mr. V.Prakash, learned senior counsel for the appellants is that the canteen run by the respondents 1 and 2 is statutory

canteen, required to be run by the first respondent u/s 46 of the Factories Act and the appellants who are all employees in the canteen are

workmen of the respondents 1 and 2 for all purposes. Learned senior counsel strongly relied upon the decisions of the Supreme Court in Mishra

Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., and National Thermal Power Corporation Ltd. Vs. Karri Pothuraju and Others, . He

also relied upon the decision of a Constitution Bench of the Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union

Water Front Workers and Others etc. etc., . He referred to the decision of a Full Bench of this Court in TAMIL MANILA THOZHILALAR

SANGAM v. T.N.E.B. 1998 (3) LLN 421 and submitted that on the basis of the decision, the canteen has been maintained by the respondents 1

and 2 in discharge of statutory obligation and for that, the respondents 1 and 2 availed the services of contractors and hence, the labourers

employed by the contractors are the employees of the principal employer. He therefore submitted that on the basis of the decisions of the Supreme

Court, cited supra, the appellants are the employees of the respondents 1 and 2 and suitable directions may be issued for the regularisation of the

services of the appellants as given by the Full Bench of this Court in Thozhilalar Sangam case. He also relied upon the decisions of the Supreme

Court in Parimal Chandra Raha case and Indian Overseas Bank case in support of his submission that the appellants are employees of the

statutory canteen run by the respondents 1 and 2 and the respondents 1 and 2 are the principal employers and hence, the appellants are direct

employees of the respondents 1 and 2.

16. Mr. Sanjay Mohan, learned counsel appearing for the first respondent, on the other hand, submitted that Section 46 of the Factories Act

requires that a canteen should be provided and maintained by the occupier for the use of the workers. He referred to Section 46 of the Factories

Act and the Rules framed there under. He referred to the decision of the Supreme Court in Indian Petrochemicals Corpn. Ltd. and Another Vs.

Shramik Sena and Others, and submitted that the Supreme Court has held that

the employees of statutory canteen are workmen of the establishment for the purpose of Factories Act only and not for all purposes. Learned counsel submitted that in Indian Petrochemicals Corpn. Ltd. Case, the Supreme Court referred to its decision in Parimal Chandra Raha case as well as M.M.R. Khan and others etc. Vs. Union of India and others, etc., and Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen, and held that the workman of a statutory canteen would be a workman of the establishment for the purpose of Factories Act and not for all purposes. He submitted that the Full Bench of this Court in Tamil Manila Thozhilalar Sangam case 1998(3) LLN 421 was rendered on 5.5.1998 before the decision of the Supreme Court in Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, which was rendered on 4.8.1999 and hence, the Full Bench decision of this Court may not be relevant for the purpose of this case. He submitted that the judgment in Indian Petrochemicals Corpn. Ltd. Case, rendered by a three Judge Bench of the Supreme Court, is a binding decision on this Court. He also referred to the decision of the Supreme Court in WORKMEN OF THE CANTEEN OF COATES OF INDIA LTD. v. COATES OF INDIA LTD. in which the judgment was delivered on 28.8.1996 wherein the Supreme Court held that the provision in Factories Act requiring a canteen to be provided in the industrial establishment premises is not decisive to hold that the workmen employed in such a canteen are workmen of the establishment. He also referred to the decisions of the Supreme Court in UNION OF INDIA v. M. ASLAM (2001) 1 SCC 720 and G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, . Learned counsel strongly relied upon the decision of the Supreme Court in Hari Shankar Sharma and Others Vs. Artificial Limbs Manufacturing Corporation and Others, and submitted that the Supreme Court has held that the employees in a canteen set up in discharge of statutory mandate, namely, Section 46 of Factories Act, 1948 do not necessarily become employees of establishment and it would depend on how the obligation to set up the canteen was discharged by establishment, whether by direct recruitment or by employment of contractor. Learned counsel pointed out that Ms. Justice Ruma Pal was a party to the Constitution Bench which rendered the

decision in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., - hereinafter referred

to as " SAIL case") and if the Three Judge Bench decision of the Supreme Court in Indian Petrochemicals Corpn. Ltd. Case had been overruled

by the judgment in SAIL case, the Supreme Court would not have followed the said decision in Artificial Limbs Manufacturing Corporation case

2002 1 LLJ 237 . Learned counsel referred to the decision of the Supreme Court in Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of

Tamil Nadu and Others, , particularly paragraph-74 of the judgment wherein the Supreme Court held that though the Supreme Court had

reservation about the correctness or otherwise of the decision in Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., , but it did

not go into the said question inasmuch even therein it noticed that the decision in SAIL case stood on a different footing. Learned counsel therefore

submitted that the appellants are the employees of the establishment run by the respondents 1 and 2 for the purpose of Factories Act only and not

for any other purpose.

17. We have carefully considered the submissions of learned senior counsel for the appellants and learned counsel for the first respondent. In

National Thermal Power Corporation Ltd. Vs. Karri Pothuraju and Others, the Supreme Court after referring to the decision in Indian Overseas

Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, , Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front

Workers and Others etc. etc., , VST Industries Ltd. v. Workers" Union 2001) 1 SCC 298 , Indian Petrochemicals Corpn. Ltd. and Another Vs.

Shramik Sena and Others, and The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, held as under:-

We have carefully considered the submissions of the learned counsel appearing on either side. In The Saraspur Mills Co. Ltd. Vs. Ramanlal

Chimanlal and Others, this Court held that where there is a statutory liability on the company concerned to run a canteen in the factory, then even

though the canteen was run by a cooperative society, the employees working in the canteen would be covered by the definition of the word

"employed" envisaged in Section 3(13) of the Bombay Industrial Relations Act. In VST Industries (2001) 1 SCC 298 dealing with the claim of

workers of a canteen run through a private contractor in pursuance of the obligation of the industrial establishment u/s 46 of the Factories Act,

1948, this Court upheld the claim of workers for being treated as the workers of the company itself. In *Steel Authority of India Ltd. and Others*

etc. etc. Vs. *National Union Water Front Workers and Others* etc. etc., a Constitution Bench of this Court considered the claims of contract

labourers engaged by a contractor for absorption in the establishment of the principal employer on issuance of the abolition notification under the

provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the rules made thereunder. This Court, while adverting to the position

of law in force, has observed as follows: (SCC pp.55-56, paras 106-07) "106. We have gone through the decisions of this Court in *VST*

Industries case (2001) 1 SCC 298 , *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital* Vs. *State of Uttar Pradesh* and

Others, and *M. Aslam* case (2001) 1 SCC 720 . All of them relate to statutory liability to maintain the canteen by the principal employer in the

factory/establishment. That is why in those cases, as in *The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others*, the contract labour

working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce

from them the broad principle of law that on the contract labour system being abolished under Sub-section (1) of Section 10 of the CLRA Act the

contract labour working in the establishment of the principal employer have to be absorbed as regular employees of the establishment.107. An

analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work

of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract

labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour

working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the

contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer

himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the

correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of

maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour

would indeed be the employees of the principal employer. Consequently, we consider it to be too late in the day for the appellant, which had an

obligation under the Factories Act, 1948 to run the canteen to contend to the contrary. So far as the case on hand is concerned, the Division

Bench has chosen to leave liberty to the appellant to consider the claims of the workers as to whether they satisfy the requirements and whether

they are otherwise unfit for confirmation. In the light of all these, we are unable to countenance the challenge to the decision of the High Court, as

either legitimate or valid one.

18. In *Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc.*, the Supreme Court again considered the question and held as under:-

The submissions on behalf of the appellants relying upon certain observations in *Steel Authority of India Ltd. and Others etc. etc. Vs. National*

Union Water Front Workers and Others etc. etc., proceed upon an erroneous assumption that the regularisation of canteen workers was being

allowed and ordered on the basis of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the CLRA

Act"). The series of decisions commencing from *K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of Kerala and others*, do not

lend any sustenance or credit to such a claim and, therefore, we are not persuaded to countenance the same. The relevant observations made in

paras 106 and 107 by the Constitution Bench in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and*

Others etc. etc., after specifically noticing the decision reported in *VST Industries case (2001) 1 SCC 298* also go against any such claims.

10. Further, the decision of the Division Bench of the Andhra Pradesh High Court dated 27.11.1996 in *WA.No. 430 of 1996* was the subject-

matter of appeal in the decision reported in *VST Industries Ltd. Case (2001) 1 SCC 298* which, as pointed out supra, was noticed by the

Constitution Bench which rendered the decision in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and*

Others etc. etc., and considered such line of cases not only to stand on a different footing than the one which was the subject matter before the

Constitution Bench, but also observed that where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal

employer availed the services of a contractor, the courts have held that the contract labour would indeed be the employees of the principal

employer and that such cases do not relate to or depend upon abolition of contract labour. So far as the decision dated 27.11.1996 of the same

Division Bench rendered in Writ Appeal No. 385 of 1996 is concerned, the appeal filed against the same in CA.No. 5990 of 1997 (National

Thermal Power Corpn. Ltd. v. Karri Pothuraju) was considered separately and by our judgment separately delivered today has been affirmed and

the appeal by the management has been dismissed. This decision also would squarely govern all these cases in favour of the workers.

Consequently, we see no merit whatsoever in the submissions made to the contract by way of challenge in all these appeals, wherein the appellants

concerned, indisputably are obliged to run the respective canteens in their establishments on account of the obligation cast upon them under the

mandatory provisions of the Factories Act, 1948, and the Rules made thereunder.

19. In SAIL case, the Constitution Bench of the Supreme Court considered three points that arose for consideration which are as under (para-6):

(i) what is the true and correct import of the expression "appropriate Government" as defined in Clause (a) of Sub-section (1) of Section 2 of the

CLRA Act;

(ii) whether the notification dated 9.12.1976 issued by the Central Government u/s 10(1) of the CLRA Act is valid and applies to all Central

Government companies; and

(iii) whether automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on

issuance of a valid notification u/s 10(1) of the CLRA Act, prohibiting the contract labour in the establishment concerned.

The Supreme Court after noticing the decisions in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and Indian

Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, held as under (para-71):

By definition the term "contract labour" is a species of workman. A workman shall be so deemed when he is hired in or in connection with the

work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an

establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work

of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer.

Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as

an agent so there will be master-and-servant relationship between the principal employer and the workman. But where a workman is hired in or in

connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or

because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in

Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and in Indian Petrochemicals Corpn. Ltd. and Another Vs.

Shramik Sena and Others, etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the

answer is in the negative, the workman will be a contract labour.

The Supreme Court in paragraph-107 of the judgment, after referring to the decisions in VST Industries case (2001) 1 SCC 298 , G.B. Pant

University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, and M. Aslam case (2001) 1 SCC 720 laid

down the law as under:-

An analysis of the cases, discussed above, shows that they fall in three classes; (i) where contract labour is engaged in or in connection with the

work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of

contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract

labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case

the contract labour working in the establishment of the principal employer were

held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

20. In *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, in the judgment delivered by a Three Judge Bench noticed *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, and *K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs.*

The State of Kerala and others, and held that workmen of a statutory canteen would be the workmen of the establishment for the purpose of the

Factories Act only and not for all other purposes. The Supreme Court has also held that in *Parimal Chandra Raha* case the Supreme Court did not

specifically hold that the deemed employment of the workers is for all purposes nor did it specifically hold that it is only for the purpose of the

Factories Act, but however, a reading of the judgment in its entirety makes it clear that the deemed employment is only for the purpose of the

Factories Act. The Supreme Court also held that if the argument that once an employee is found to be an employee under the *Factories Act*, he

would become the employee of the management for all purposes is to be accepted, then the same would run counter to the law laid down by a

larger Bench of the Supreme Court in *M.M.R. Khan and others etc. Vs. Union of India and others, etc.*, and on this point, similar is the view of

another three Judge Bench of the Supreme Court in *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, and

therefore, the workman of a statutory canteen would be the workmen of the establishment for the purpose of the *Factories Act* only and not for all

other purposes. The Supreme Court then examined the question whether from the material on record it could be held that the workmen are, in fact,

the employees of the management for all purposes, and on the basis of detailed affidavits and documents filed, it held that the canteen in the

establishment of the management was not only a statutory canteen, but the

workmen were the workmen of the management. We have also noticed the decisions of the Supreme Court in UNION OF INDIA v. M.ASLAM (2001) 1 SCC 720 and G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, and those cases are cases where the contract was held to be a sham. It is also relevant to refer to another decision of the Supreme Court which was decided on 28.8.1996 in WORKMEN OF THE CANTEEN OF COATES OF INDIA LTD. v. COATES OF INDIA LTD. wherein the Supreme Court held that though the Factories Act requires a canteen to be provided in the industrial establishment premises, it is not decisive or sufficient to determine the status of the persons employed in the canteen and the effect of compliance with the provisions of the Factories Act is a different matter which does not arise for consideration to hold that the workmen employed in such a canteen are workmen of the establishment. The Supreme Court in VST INDUSTRIES LTD. v. VST INDUSTRIES WORKERS' UNION (2001) 1 SCC 298 , after referring to the judgment in Indian Petrochemicals Corpn. Ltd. Case, held that the workmen of a statutory canteen are workmen for the purpose of Factories Act and not for any other purpose and the Supreme Court then examined the question whether the workmen are employees of the management for all purposes and found that the management has complete control over the activities in respect of the canteen and the contractor has absolutely no discretion either in regard to the menu, quality and quantity of the food items much less the rate at which the same are supplied to the workmen. The Supreme Court held that when the management exercises such a complete control, the canteen should be deemed to be run by the management itself. In Hari Shankar Sharma and Others Vs. Artificial Limbs Manufacturing Corporation and Others, the Supreme Court held that it could not be said as an absolute proposition of law that whenever in discharge of a statutory mandate, such as Section 46 of the Factories Act, 1948, a canteen was set up by an establishment, the employees of the canteen became the employees of the establishment. The Supreme Court also held on the facts of the case that the employees of the canteen are not the employees of the Corporation, but they are the employees of the contractor. It is also relevant to note that the Supreme Court has taken the view after

referring to the judgments in Parimal Chandra Raha case, Indian Petrochemicals Corpn. Ltd. Case and R.K. Panda and Others Vs. Steel

Authority of India and Others, . In Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, the Supreme Court held as

under:-

In our opinion, the statutory canteen or other canteen run by the employer in his premises stands absolutely on a different footing. In determining

the relationship of employer and employee, as has been noticed by this Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National

Union Water Front Workers and Others etc. etc., the said question has no relevance.

74. In Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., , as the appellants were required by the Factories Act to provide

canteen facilities and since the workers engaged through the contractors had been held to be the employees of the principal employers, this Court

held that the workers engaged through contractors were entitled for regularisation of their services. Although we have reservation about the

correctness or otherwise of the said question but we need not go into the said question inasmuch even therein, the Court noticed that the decision

in Steel authority of India Ltd."s Case (supra) stands on a different footing.

21. It is profitable to refer to the Full Bench decision of this Court in TAMIL MANILA THOZHILALAR SANGAM v. T.N.E.B. 1998 (3) LLN

421 where this Court held that the employees of a statutory canteen are employees of the management.

22. We are of the view that the question whether the appellants are the employees of respondents 1 and 2 for all purposes has to be decided with

reference to facts of the case. The appellants have not produced any material to show as to how long they were in service in the canteen run by the

contractor on contract with the respondents 1 and 2 and hence, learned Judge, in our view, has correctly observed that the facts of the case are

peculiar and there was no connection whatsoever or administrative control or the payment of wages or appointment or dismissing power existing

between the employees/appellants herein and the first respondent who is the principal employer. Learned Judge also found that a bald and vague

plea has been set up in the affidavit of the petitioners/appellants that all the

appellants were working in the canteen for a very long time, but, they were not able to say or claim for how long and from what period they have been in the service and employed by whom in the statutory canteen in question. Another important aspect is that even during the pendency of the writ petition, when the new contractor has not taken 27 appellants, a miscellaneous petition in W.M.P.No. 19669 of 1989 was filed with the prayer to direct the respondents to continue to employ the said 27 persons and the said petition was dismissed by a learned Judge of this Court. The matter was taken in appeal which was also dismissed. The appellants did not have the benefit of any interim order of this Court during the pendency of the writ petition or even thereafter. The first respondent has also filed an affidavit in the appeal stating that they entered into contracts with several contractors by floating fresh tenders, and a list of contractors is also furnished in the affidavit. It is also stated in the affidavit that only one of the appellants, by name, T.Gurusamy (serial Number 51 in the writ appeal) is working with the present contractor and other appellants are not serving in the canteen. The first respondent has also produced the present contractor's Register of Wages for the month of August, 2004 along with the affidavit. It is in the factual background, the question whether the appellants are entitled to the relief of declaration that they are workmen of the respondents 1 and 2 and consequently to direct the respondents 1 and 2 to regularise the services of the appellants and to absorb them.

23. In our view, the decision in Indian Petrochemicals Corpn. Ltd. Case would apply to the facts of the case. Though in that case the contract was found to be sham and nominal, the ratio of the judgment of the Supreme Court is that the employees of the canteen u/s 46 of the Factories Act would be employees only for the purpose of Factories Act and not for any other purpose. The same view has been reiterated in some of the decisions of the Supreme Court which we have referred to earlier where the Supreme Court held that employees of a statutory canteen would be employees only for the purpose of the Factories Act and not for all purposes. We find that the submission of Mr. Sanjay Mohan, learned counsel for the first respondent has force. His submission was that the decision in SAIL case has to be read in the context of the points that arose for consideration in that case and paragraphs-71 and 107 of the judgment in SAIL

case should be read together and unless the contract in respect of a statutory canteen is a sham and nominal contract, the employees of such canteen would continue to be the workmen of the contractor. Learned counsel referred to paragraph-107 of the judgment and submitted that the Supreme Court referred to the judgments in VST Industries case (2001)1 SCC 298 , G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, , M. Aslam case (2001) 1 SCC 720 and The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, and in all those cases the principal establishment was actually in full control of the canteen workmen. In so far as VST Industries case is concerned, the decision arose from the judgment of Andhra Pradesh High Court and in that case it was held that the contract was a sham document. Learned counsel submitted that paragraph-107 of the judgment in SAIL case should be confined only to a case where there is a finding of sham or camouflage or where as in the Saraspur Mills case the definition of "worker" in the State Act was wide enough to treat a contract labour as an employee of the principal employer. His submission is that the Supreme Court in SAIL case has not overruled the decision in Indian Petrochemicals Corpn. Ltd. Case and there was no implied overruling also as one of the Judges who decided SAIL case was also the member of the Bench which decided the case subsequently in Artificial Limbs Manufacturing Corporation case 2002 1 LLJ 237 which was decided two months after the judgment in SAIL case was delivered. In so far as Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., is concerned, he submitted that the decision in Mishra Dhatu Nigam case would be applicable to a case where the contract is sham.

24. It is no doubt true that the Full Bench decision of this Court in Tamil Manila Thozhilalar Sangam case 1998(3) LLN 421 is not a case where the contract was found to be a sham and nominal, but, as already held by us, the Full Bench decision of this Court was rendered on 5.5.1998 which was much prior to the decision of the Supreme Court in Indian Petrochemicals Corpn. Ltd. Case. The Full Bench of this Court did not have the benefit of the Three Judge Bench decision of the Supreme Court in Indian Petrochemicals Corpn. Ltd. Case and the Full Bench decision of this Court, in our view, has to be read in the light of the law laid down by the

Supreme Court in Indian Petrochemicals Corpn. Ltd. Case.

25. We find that the submission of Mr. Sanjay Mohan, learned counsel for the first respondent is well-founded when he submitted that Mishra

Dhatu Nigam case would be applicable only to a case of sham contract. We hold that where the contract, as in the instant case, is a genuine one,

the ratio of the decision in Indian Petrochemicals Corpn. Ltd. Case would apply as there is no evidence for the adoption of any unfair labour

practice by the first respondent, nor there is any evidence to show that there is social injustice done by the first respondent and to eradicate the

social injustice, this Court should issue necessary directions. We also hold that the decisions relied on by Mr.V. Prakash, learned senior counsel,

(i) Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., , (ii) National Thermal Power Corporation Ltd. Vs. Karri Pothuraju and

Others, and (iii) Tamil Manila Thozhilalar Sangam v. T.N.E.B. 1998 (3) LLN 421 do not apply.

26. Learned counsel for both the parties referred to several decisions of the Supreme Court as well as various High Courts as to what is meant by

per incuriam and on the question when there is a conflict among the Supreme Court judgments, what is the course to be adopted by this Court,

whether latter judgment of the Supreme Court interpreting an earlier judgment should be followed, and the decisions relied upon by learned senior

counsel for the appellants and learned counsel for the first respondent are as under:-

1. Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others,

2. Gopal Krishna Indley Vs. 5th Addl. District Judge, Kanpur and Others,

3. Deena alias Deen Dayal and Others Vs. Union of India (UOI) and Others,

4. Gujarat Housing Board, Ahmedabad Vs. Nagajibhai Laxmanbhai and Others,

5. M.M. Yaragatti Vs. Vasant and Others,

6. ASHOK LEYLAND, LTD. v. LABOUR COURT 1988 1 LLN 302

7. N. Meera Rani Vs. Government of Tamil Nadu and Another,

8. Municipal Corporation of Delhi Vs. Gurnam Kaur,

9. Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.,

10. Krishena Kumar and Others Vs. Union of India and others,

11. M/s. Subbhash Chander Kamlesh Kumar Vs. State of Punjab and others,

12. UNION OF INDIA v. DHANWANTI DEVI AIR 1996 SCW 4020

13. Jawahar Lal Sazawal and Others Vs. State of Jammu and Kashmir and Others,

14. Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another,

In the view we are taking, it is not necessary to discuss in detail the decisions relied upon by learned senior counsel for the appellants and learned

counsel for the first respondent. We are of the view, on the facts of the case, learned Judge was justified in rejecting the relief of declaration that

the appellants are to be classified as the workmen of the respondents 1 and 2 and learned Judge was also right in holding that the appellants have

no right to be classified as workmen of the respondents 1 and 2.

27. Consequently, the writ appeal fails and the same is dismissed. However, in the circumstances, there will be no order as to costs.