

(2018) 02 AHC CK 0029
In the Allahabad High Court
Case No : 7674 of 2011

M/S N.T.P.C. Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal U.P. & Others

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0029

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Vivek Ratan Agrawal, Vijay Ratan Agrawal, Anil Kumar Srivastava, Arun K. Singh Deshwal, D.K.Maurya, Mani Shanker Sahu, P.K.Asthana, S.B.Maurya, Sanjay Kumar Singh

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner - M/s National Thermal Power Corporation Ltd. (herein after referred to as the NTPC) which is a Central Government Public Sector undertaking and is engaged in the production / generation of electricity and other related activities. The Singrauli Super Thermal Power Station (herein after referred to as the SSTPS) at Shaktinagar, Sonebhadra is one power station set up by NTPC sometime in the year 1982.

2. The petitioner challenges the Award dated 28.8.2010 published on 18.11.2010 in Adjudication Case No. 20(1) / 2003 passed by the respondent no. 1 - the Presiding Officer of Industrial Tribunal-I U.P., Allahabad with a further prayer for consequential reliefs.

3. It is the case of the petitioner that SSTPS Karmchari Sahkari Canteen Samiti Ltd. is a registered Cooperative Society of the employees of the petitioner and is running the workers canteen on contract as per Rule 68 of the U.P. Factories Rules, under the U.P. Factories Act, 1948. The respondent nos. 4 to 47 were employed in the canteen of the factory by this Cooperative Society, which is the respondent no. 3.

4. By the impugned Award, the workmen of the canteen have been held to be employees of the NTPC and thus entitled to same designation, wages under the benefits / facilities as given by NTPC to its permanent employees.

5. It is the case of the petitioner that the Award impugned has been passed without application of mind and is perverse, as it records conclusions, which are contrary to the record. The NTPC has approximately 1600 employees at its power station at Shaktinagar, Sonebhadra and under Section 48 of the Factories Act, it is the statutory obligation of the occupier of a factory to provide for a canteen for the use of its employees. A canteen was set up in the premises of the factory by the NTPC, which was earlier being run by one contractor by the name of M/s K.M. Maheshwari w.e.f. 1983 till April 1985. Since the canteen services of the contractor were not satisfactory, the NTPC decided to have the canteen run / managed through a Cooperative Society of workers / employees of the NTPC, in accordance with U.P. Factories Rules, 1950.

6. The Adhoc Committee of the Cooperative Society was set up with employees of the SSTPS on 18.4.1985 and on 19.4.1985, the said Adhoc Committee informed the NTPC that it would be taking over the canteen and managing it w.e.f. 1.5.1985. The Cooperative Society - respondent no. 3 thereafter also applied for its registration in July 1985 before the District Assistant Registrar under the U.P. Cooperative Societies Act, 1965 and due to prolonged correspondence undertaken by the Additional District Cooperative Officer, Mirzapur, District Assistant Registrar, Cooperative Societies, Mirzapur and Deputy Registrar Cooperative Societies, Varanasi pertaining to the said application for registration, the registration certificate was actually issued only on 9.3.1987.

7. In the meanwhile w.e.f. April 1985, the respondent no. 3 started the process of appointment of a cooks, Masalchi, waiters and salesman etc. for running of the said canteen and issued advertisements in newspaper as well as pasted them on the notice board of the factory. Copies of such advertisements have been filed as Annexure to the writ petition, and applications made by several of the respondents for being appointed on different posts in the canteen have also been filed. The appointments were thereafter made by the respondent no. 3 and salaries were also being paid by the respondent no. 3.

8. In 1987, a Writ Petition No. 1255 of 1987 was filed by Canteen Karmchari Sangharsh Samiti against the NTPC praying for issuance of a mandamus to the NTPC to treat them as employees of the NTPC, and they be given the same benefits as were being given by NTPC to its own employees.

9. The writ petition was dismissed on 19.12.1994 and a Special Appeal No. 9 of 1995 was filed thereafter. During the pendency of the said Special Appeal, the concerned workmen also filed another Writ Petition No. 4016 of 1995 with almost the same prayers, which writ petition was dismissed as withdrawn later on in 2004.

10. The Special Appeal No. 9 of 1995 was dismissed by this Court on 12.3.1997

and the Review Application filed thereafter by the employees of the respondent no. 3 was also dismissed on 2.5.1997.

11. This Court observed that disputed question of facts requiring examination of evidence both oral and documentary was required to settle the issue and therefore observed that it would be appropriate that the petitioners / appellants may approach the Industrial Tribunal for adjudication of their case. The concerned workmen thereafter raised an industrial dispute, which was registered as Adjudication Case No. 20 of 2003, and the NTPC as well as respondent no. 3 entered appearance before the Tribunal and after pleadings were exchanged, the Tribunal delivered the Award on 1.12.2006.

12. When the Award was referred to the Government for publication, it was discovered that in the original Reference order, there was no mention of Industrial Tribunal-I, U.P., Allahabad, and therefore, the Government by an order dated 13.3.2007 amended the original Reference order and directed Industrial Tribunal-I, Allahabad to decide the dispute.

13. The NTPC challenged the said order dated 13.3.2007 in Writ Petition No. 52889 of 2007, which was disposed of by this Court on 30.10.2007 directing the Tribunal to hold adjudication proceedings "denovo" by providing fresh opportunity of hearing to either of the parties. The matter was taken up by the Industrial Tribunal-I and fresh written statement of claim / demand was filed by the respondent nos. 4 to 47 claiming regularisation of their services, treating them to the employees of the NTPC and not of the Cooperative Society.

14. The NTPC filed its reply and a separate reply was also filed by the respondent no. 3 - the Cooperative Society, alleging that there was no employer-employee relationship between the NTPC and respondent nos. 4 to 47. The Cooperative Society in its reply stated that the concerned workmen were its employees and the Industrial Tribunal should not proceed further, but the matter should be referred to the Registrar under the U.P. Cooperative Societies Act, 1965.

15. The concerned workmen filed their rejoinder statement. Documentary evidence was filed by the employers as Exhibit-E 1 to 81 and documentary evidence was filed by the workmen marked as Exhibit W-1-W-72 in support of their case. Sri Mahanand Tripathi appeared on behalf of all the workmen and his oral statement was taken. Sri R.K. Ojha appeared on behalf of the NTPC and Sri Umesh Chandra Mishra appeared on behalf of the Cooperative Society.

16. It has been stated on behalf of the petitioner that in the impugned Award dated 25.8.2010, the Tribunal misread the evidence produced by the petitioner as well as respondent no. 3, and recorded findings which were totally perverse, and contrary to the records produced and on the basis of the said findings drew illegal and arbitrarily conclusions.

17. In the Award it was held that the canteen was originally established by the petitioner for its employees in the year 1982 and the Cooperative Society came

into existence in 1987. The employees were forced to give back dated applications in the name of the Cooperative Society, which was not in existence in 1985 and recruitment was done of the respondent nos. 4 to 47 by the management of NTPC. The Cooperative Society, which was registered in 1987 was a camouflage and a sham and actual and effective control over the canteen was that of the management of NTPC.

18. It has been argued by Sri Vivek Ratan Agarwal on behalf of the petitioner that despite filing of several documents, which were marked as Exhibits E-1 to E-81, the Tribunal incorrectly and perversely observed that no evidence was filed to show that the Cooperative Society had issued advertisement, and conducted the selection process, and issued appointment"s letters to the respondent nos. 4 to 47.

19. It has been argued that the Tribunal recorded a totally perverse finding that the canteen was being managed by the NTPC, ignoring the statutory obligation of the NTPC under Rule 68 of the U.P. Factories Rules, 1950 to provide infrastructure and other facilities for the management of statutory canteen under Section 48 of the Factories Act.

20. It has further been stated that NTPC has its own recruitment Rules and the respondent nos. 4 to 47 have not been recruited by the NTPC as per the recruitment Rules governing its other employees.

21. It has also been argued that the main function of NTPC is generation of electricity by establishing Thermal Power Plants and the statutory duty caused upon the NTPC to run a canteen for the benefit of its workmen cannot make the workmen of such canteen, the employees of the NTPC.

22. It was argued by the Sri Vivek Ratan Agarwal that there was no evidence that the concerned workmen / employees were appointed by the NTPC and the respondent no. 1. presumed facts which were not even pleaded on behalf of the respondent nos. 4 to 47. In the earlier round of litigation in writ petitions filed before this Court, the respondent workmen had stated that they were appointed by the Cooperative Society, which was running the canteen on contract, and it was not permissible for the concerned workmen to take an inconsistent plea that they were also workmen of the principal employer. Under the Contract Labour (Regulations and Abolition) Act, 1970 the employees of the contractor Ipso-facto cannot become employees of the principal employer and no notification has been issued under the Contract Labour (Regulations and Abolition) Act by the appropriate Government abolishing the engagement of contractors to carry out various works by the establishment.

23. It has been argued that on the second issue in the order of Reference i.e "whether the workmen on their working continuously were entitled to receive designation / wages along with other benefits as admissible to other permanent workmen;" the Tribunal did not gave any finding at all. It has been argued that the Award has been passed on presumptions which were not based on any

evidence at all and therefore it is liable to be set aside.

24. Several affidavits have been exchanged between the parties. during the pendency of the writ petition. The main contentions have been stated in the counter affidavit dated 24.3.2011 filed by Sri Anil Kumar Srivastava appearing for the respondent nos. 4, 6, 7, 8, 9, 11 to 16, 18 to 34, 36, 38 to 45, 46 & 47 and in the counter affidavit of the other respondents, it has been stated that all the employees were directly appointed by the NTPC w.e.f. April 1985 onwards and they were working directly under the control of the NTPC. The total strength of the employees of the SSTPS is more than 2000 and under Section 46 of the Factories Act and Rule 68 of the U.P. Factory Rules 1950, the NTPC was under a statutory obligation to maintain a canteen for its employees. For maintaining the statutory canteen, the NTPC had constructed a big building and provided all infrastructure facilities including free electricity, free fuel, free transportation, accommodation, medical and other facilities to the respondent nos. 4 to 47. Their appointments, disciplinary action and supervision upon them including the maintenance of attendance register, and fixing of duties, and leave admissible to such employees, and their removal and dismissal also were being done by the Management's Representative. All the top officers of the alleged Cooperative Society were Officers of NTPC / SSTPS and the Cooperative Society was only constituted for the purpose of avoiding the giving of regular pay scale and other facilities available to regular employees working in the NTPC.

25. The terms and conditions of the agreement between the Cooperative Society and the NTPC clearly established that the Officers of the NTPC determined the working hours, the menu of all eatable items and their rates and audited the accounts of the canteen. Additional man power if deployed by the Cooperative Society, was only with the prior approval of the NTPC, as the NTPC was to reimburse the salary / wages of such employees. All necessary infrastructure, including appliances, furniture, curtains, water coolers, oven, refrigerator and stationary etc would be provided by the management of the SSTPS and the NTPC also under took to reimburse the difference in cost and selling prices of Laddu, Samosa and other Breakfast items. Suitable bachelor accommodation for the employees, their liveries and medical treatment for the employees, and free supply of water, fuel and electricity to the canteen was to be provided under the said contract to the Cooperative Society.

26. It has also been stated that the Cooperative Society used the stationary of the NTPC and its staff / officers were also given extra time out of their normal duty hours to carry out the work of the Cooperative Society in managing the canteen.

27. In the counter affidavit, reference has also been made to documentary evidence filed with regard to contractual agreement between the said Society and the Management of SSTPS, and also documentary evidence with regard to registration of the Society much later in 1987 and the recruitment of the respondent nos. 4 to 47 being done initially by the management itself in 1985.

28. It has been contended that only because some of the respondent nos. 4 to 47 approached this Court by filing Writ Petition No. 1255 of 1987, the management of SSTPS thought of setting up the Cooperative Society as an unfair labour practice to deny the well deserved claim of the respondent workmen for regularisation and same pay and allowances as regular employees of the NTPC.

29. Several judgments of the Hon'ble Supreme Court have been relied upon by both the counsel for the petitioner and the learned counsel for the respondent nos. 4 to 47, during the course of arguments which shall be dealt with later on at appropriate place by this Court.

30. on behalf of some of the respondent nos. 4 to 47, Sri Sanjay Kumar Singh has emphasised that the respondent no. 3 i.e. the Cooperative Society has been fighting a proxy litigation and the affidavits filed by the respondent no. 3 are in exactly the same language and had identical contents to the reply of the NTPC before the respondent no. 1. In the written submissions filed by the respondent nos. 4 to 47, several paragraphs of the NTPC's reply before the Tribunal have been mentioned in a comparative table to show them to be exactly the same as the reply submitted by the respondent no. 3 Society before the Tribunal as well as before this Court.

31. It has also been emphasised that the supplementary affidavit dated 16.7.2015 filed on behalf of the petitioner shows the deponent as one Mohd Yasir Arafat being pairokar of M/s NTPC Limited whereas the aforesaid deponent Mohd. Yasir Arafat is the registered clerk of Sri Vivek Ratan Agarwal, Advocate, the counsel for the petitioner, as can be verified from the affidavit filed in support of the writ petition in 2011 by the petitioner.

32. It is the case of the respondent workmen that even the bye laws of the SSTPS Karmchari Sahkari Canteen Samiti Ltd. filed as Annexure 26 to the writ petition have been prepared on the letter pad of the NTPC. The General Manager of the SSTPS or his nominee was the ex-officio Chairman of the Cooperative Society.

33. It has been argued that the preliminary objection raised by the employers before the respondent no. 1 regarding maintainability of the Industrial Adjudication Case No. 20 of 2003 has been sufficiently dealt with. The written statement of demand in the adjudication case was first filed on 19.7.2002. At that time there was no trade union competent to raise the dispute of the concerned workmen. Rastriya Taap Vidyut Shram Jivi Kaamgaar Union was registered in the month of October 2002 and as per the provisions of Section 6(1) of the U.P. Industrial Disputes Act, 1947, no Union shall be entitled to represent any party unless a period of two years has elapsed since its registration under the Trade Union Act. Under the circumstances, the industrial dispute raised by the five representative workmen was validly entertained and Reference made by the Government to the respondent no. 1 for adjudication.

34. In reply to the submissions made by the learned counsel for the respondent

nos. 4 to 47, Sri Vivek Ratan Agarwal has in his rejoinder submitted that the respondent no. 3 is a registered Cooperative Society of employees of SSTPS and is a legal entity separate from the NTPC. The management of SSTPS has entered into a contract with the respondent no. 3 for running the statutory canteen and the contract has been signed containing therein clauses as are consistent with the statutory obligations imposed under Section 46 of the Factories Act read with Rule 68 of the U.P. Factories Rules 1950.

35. It has further been argued that the respondent no. 3- A, the District Assistant Registrar Cooperative Societies has been later on impleaded in the writ petition, although it was not a party in the industrial dispute before the respondent no. 1 because the control and management of respondent no. 3 - the Cooperative Society has been taken over w.e.f. 6.9.2007 by the District Assistant Registrar, Cooperative Societies in exercise of power under Section 29(5) of the U.P. Cooperative Societies Act, 1965. The Assistant Registrar, Cooperative Society, U.P., Allahabad has from time to time appointed Additional District Cooperative Officer as administrator of the respondent no. 3, and therefore, the counter affidavit filed on behalf of the respondent no. 3, Secretary of the Society Shyam Sundar Sharma should not be taken into account at all. Shyam Sundar Sharma retired from the services of the NTPC in 2010 itself, and could not remain the Secretary of the Cooperative Society thereafter, and the affidavit filed before this Court by said Shyam Sundar Sharma on behalf of the respondent no. 3 is misleading and should therefore be ignored. Reliance can be placed upon the affidavit filed on behalf of the respondent no. 3-A, the District Assistant Registrar, Cooperative Societies, Mirzapur only.

36. It has been argued that the representative of respondent workmen arrayed as respondent no. 39 in this writ petition in his oral evidence had admitted before the Tribunal that the respondent no. 3 Society was in existence since 1985 and also referred to advertisement put up on the notice board by the said society inviting applications for being appointed as cook, helper Masalchi, waiter etc. in the canteen.

37. It has been argued that the oral evidence of Sri Umesh Chand Mishra, who appeared on behalf of the respondent no. 3 - Cooperative Society has been misread by the Tribunal as also that of the petitioner's witness, Sri R.B. Jha. The counter affidavit of the respondent no. 3 filed in this writ petition cannot be relied upon as there was no Secretary of the Cooperative Society when the said counter affidavit was filed on 19.4.2012 as the District Assistant Registrar, Cooperative Society had already taken over the management of the Cooperative Society w.e.f. 6.9.2007.

38. With regard to argument raised regarding attendance register being maintained by the management of SSTPS and disciplinary proceedings being undertaken by such Officers of SSTPS, it has been argued that the Cooperative Society itself consisted of employees and other Officers of the SSTPS, and therefore Officers in responsible position in the SSTPS were also acting as

Chairman / Secretary of the Society, and in that capacity alone disciplinary proceedings as well as other supervisory control over the staff of the canteen was being conducted by them. Only because residential accommodation, fuel, electricity and medical facilities were being provided by the NTPC as a welfare measure, it could not be said that the respondent workmen were actually the employees of the SSTPS or the NTPC. The stationary and other material effects of the SSTPS / NTPC were being utilised by the Managing Committee of the Cooperative Society no doubt, but the utilisation of the same cannot be taken into account to confer upon the respondent workmen, the status of employees of the NTPC. Monetary assistance was initially given by the NTPC to the Society for running the canteen and therefore audit of accounts at the initial stage was necessary by the NTPC to ensure that money advanced was appropriately spent under the U.P. Cooperative Societies Act, 1965. The audit of accounts is now being done by independent Accountants. The drivers and vehicles of NTPC were sometime allowed for use of the Society only to help in the running of the statutory canteen without undue financial burden being cast upon the Cooperative Society and only as a welfare measure.

39. It has been argued by learned counsel for the petitioner that the respondent no. 1 while deciding the adjudication case should not have taken into account the financial and other help extended by the management of SSTPS to the Cooperative Society, but it should have confined itself only to decide whether complete and effective control over the workmen was being exercised by the management of SSTPS, so as to make them employees of the management.

40. Having considered the rival submissions, this Court on perusal of the Award passed by the respondent no. 1 finds that two questions were referred for adjudication before the Tribunal i.e. "Whether the 44 canteen employees as mentioned in the list filed as Annexure 1 to the Reference order are in the employment of opposite party no. 1 NTPC or opposite party no. 2 SSTPS Canteen Karmchari Sahkari Samiti?" and "Whether on the basis of continuous and uninterpreted employment of these workmen, they were entitled to the same designations / pay scales, like other permanent regular employees of the NTPC and not giving them the same benefits was proper and legal?"

41. The respondent no. 1 examined documentary evidence filed by the workmen that is marked as Exhibit W-1 to Exhibit W-72 and the documentary evidence filed by the employers marked as Exhibit E-1 to Exhibit E-81 and also considered the oral statement of Sri Mahanand Tripathi who appeared as authorised representative of all workmen, and Sri Umesh Chand Mishra appearing for the Society, and Sri R.B. Jha appearing for the NTPC. The respondent no. 1 has thereafter found on the basis of documentary evidence that the NTPC exercised complete direct control and supervision over the respondent workmen. All policies with regard to running of the canteen, the engagement of staff, the buying of provisions, the number of eatable items and their rates, at the canteen were being decided by Officers of the NTPC, the registration of the Cooperative

Society had been done only with the oblique motive of depriving the respondent workmen, the benefits as available to regular employees of the NTPC.

42. At the time when the industrial dispute was raised by Sri Mahanand Tripathi in 2002, the Rastriya Taap Vidyut Shram Jivi Kaamgaar Union was not in existence and it was registered later on. By that time, the Conciliation Officer had taken cognizance of the industrial dispute raised on 19.7.2002 by the workmen through five representatives so authorised by them. As such the industrial dispute raised by duly authorised representatives of the workmen viz Sri Mahanand Tripathi and Sri Kaushal Kishore was in accordance with law and could be validly entertained by the respondent no. 1.

43. With regard to the issue as referred to it by the Government in the Reference order dated 13.3.2007, the respondent no. 1 has taken into account not only the documentary evidence which was filed, but the oral evidence of Sri Mahanand Tripathi, the representative of the workmen that the canteen was being run by the management of the NTPC since April 1985. The recruitment of all workmen of the canteen was done by Officers of the NTPS. The infrastructure viz the building, furniture, appliances etc were supplied by the NTPC as also the fuel, electricity and water supply for the canteen. The provisions required for making the eatable items i.e. the working capital was also provided by the management of the NTPC. The menu and the rates of such eatable items was determined by the Officers of the NTPC. The workmen, not only the respondent workmen, but also the Accountant and Manager of the canteen were selected and appointed of the Officers of the NTPC. The Officers of the NTPC determined the duty hours and also the leave applications and other disciplinary action against the respondent workmen. The daily provisions were procured through the vehicle and driver provided by the NTPC and the log book maintained for such vehicle was also verified by the Officers of the NTPC. Besides, the accounts maintained of the canteen were also verified by the Officers of the NTPC. Residential quarters, medical facilities, electricity, water supply and fuel expenses were all borne by the management of the NTPC.

44. Sri Umesh Chand Mishra, who appeared for the Cooperative Society, in his oral statement had deposed before the respondent no. 1 that the canteen was in existence in 1981 and the Cooperative Society was registered in 1987 and members of the said Cooperative Society were officers and employees of the NTPC, and the management committee of the Cooperative Society mostly had Officers of the NTPC. The bye laws of the Cooperative Society were on the letter head of the NTPC and although the wages of the respondent workmen were disbursed by the Cooperative Society initially, their reimbursement was done by the NTPC. All infrastructure including building, electricity, water supply and furniture etc were provided by the NTPC, which controlled the quantity, quality and rates of the eatable items supplied in the canteen. No separate service Rules for the employees of the canteen had been framed, who were otherwise governed by the Cooperative Societies Act.

45. Similarly, Sri R.B. Jha, who appeared for the NTPC in his oral statement had said that initially in between 1981 to 1985, one Maheshwari was the contractor. Later on the Cooperative Society came into existence in 1985 although it was registered in 1987.

46. After looking into all documentary evidence and considering the oral statements of Sri Mahanand Tripathi, Sri Umesh Chand Mishra and Sri R.B. Jha, the respondent no. 1 has recorded a finding that there was no evidence of the respondent workmen being engaged by the Cooperative Society directly.

47. Moreover taking into account the facilities provided by the NTPC to the Cooperative Society for managing the canteen, it was evident that the canteen was actually being run by the management of the NTPC and the Cooperative Society was only set up as a front. The actual and complete control and supervision of the working of the canteen was in the hands of the management of the NTPC.

48. With regard to the second question referred to the Tribunal by the Government; a finding has been recorded that all the respondents workmen had been working continuously since 1985 without any break in the canteen run by the management of the NTPC, and thus were entitled for regularisation. During the pendency of the adjudication case, three of the workmen had died and therefore it was observed that benefit of the Award shall not be available to them. For others, a direction was issued that the NTPC may regularise them and give them designation, pay scale and other benefits as available to its regular employees w.e.f. the dates of their respective engagement.

49. This Court has gone through copious amounts of documentary evidence filed by the respondent workmen and by the employers before the respondent no. 1 and it finds that even in the writ petition filed by the workmen earlier before this Court i.e. the Writ Petition No. 1255 of 1987 SSTPS Canteen Karmchari Sahkari Samiti Vs. NTPC, the respondent workmen had alleged that the Cooperative Society may have come into existence on 1.5.1985, but it had not been registered and the respondent workmen had been engaged in April - May 1985 by Selection Committee constituted by the Management. The alleged Cooperative Society had been constituted only as a front and had not been registered under the U.P. Cooperative Societies Act, 1965; and that a mandamus be issued for the respondent nos. 1 & 2 - the NTPC Limited and Singaurali Thermal Power Project to treat the employees of the canteen in their project at Singaurali as their own employees entitled to the same wages, benefits and facilities as were being given to their own Class IV employees, for example, sweepers and attendants, and such facilities like over time allowance dearness allowance, weekly off etc. as available to regular employees under various labour laws may also be extended to the writ petitioners.

50. This writ petition was dismissed and Special Appeal was disposed of thereafter by this Court with the observation that disputed questions of facts

needed adjudication by the industrial Tribunal. It was thereafter that industrial dispute was raised in July 2002 before the Conciliation Officer. At the time when the industrial dispute was raised the Rastriya Taap Vidyut Shram Jivi Kaamgaar Union was not in existence and was registered later on. The respondent workmen authorised some of their representatives to pursue their case before the respondent no. 1.

51. The initial Reference order was modified by the Government on 13.3.2007 and two issues were referred to the respondent no. 1; firstly to decide "whether the workmen were employees of the opposite party no. 1 i.e. (NTPC) or they were employees of the opposite party no. 2 (STTPS) i.e. The Cooperative Society?" and also to determine "whether continuing the workmen for long without extending them benefits as admissible to regular permanent employees of the NTPC could be said to be valid and legal, if not then to what relief?"

52. From an examination of documentary evidence produced by either side before the respondent no. 1, the respondent no. 1 found that all the top Officers of the Society were Officers of the NTPC. The General Manager of the SSTPS was the ex-officio Chairman of the Society. The initial recruitment of the employees of the canteen was done by the Selection Committee consisting of Officers of the NTPC. The attendance of the canteen employees, the assignment of duties to them, the schedule of weekly off and issuance of gate passes to them were by the Officers of the SSTPS. The Uniforms, medical facilities, residential quarters and wages were all provided by the NTPC. The transport facilities, electricity, fuel and other running expenses were borne by the NTPC. The NTPC had nominated a Finance Officer for audit of accounts of the Society and for the other canteen affairs, the letter pad of the NTPC was being used. Disciplinary action was taken by the Officers of the NTPC against the employees of the canteen, and at each stage of the management of the canteen, the Officers of the NTPC had full control and supervision over the canteen employees.

53. With respect to the judgments relied upon by the respondent workmen i.e. National Thermal Power Corporation Ltd. Vs. Karri Pothuraju 2003 (99) FLR 8; Hindalco Industries Ltd. Vs. Association of Engineering Workers 2008 (117) FLR 891; Indian Petro Chemicals Corporation Ltd Vs. Shramik Sena & others 1999 (83) FLR 75; VST Industrial Ltd. Vs. VST Industries Workers" Union & others 2001 (88) FLR 548 and Secretary, Hariyana State Electricity Board Vs. Suresh others 1999 (81) FLR 1016, there is no detailed discussion in the Award impugned, but a finding has been recorded that the said judgments applied to the facts of the case set up by the workmen that indeed the workmen were employees of the NTPC / SSTPS and not of the Cooperative Society.

54. This Court now proceeds to deal with judgments as cited by the respondent workmen before the respondent no. 1. The Supreme Court in National Thermal Power Corporation Ltd. Vs. Karri Pothuraju 2003 (99) FLR 8 was dealing with a similar case wherein the NTPC had set up Super Thermal Power Station in Andhra Pradesh and for its nearly 2300 employees and had set up in canteen

facilities under Section 46 of the Factories Act. Such canteen facilities were provided through 54 persons said to have been working in canteen in various capacities - cooks, cleaners, helpers, waiters etc. The NTPC had granted substantial subsidy at one point of time to the tune of Rs. 1,95,000/- for buying provisions etc. and as working capital for setting up these canteen facilities and the employees of the canteen had been working since long, some of them from 1983 onwards, though engaged by contractors. The Deputy Manager (Administration) and his subordinates supervised working of the canteen in respect of preparation of eatable items, service and maintenance, and to ensure quality of service. The employees of the canteen had filed a writ petition for issuance of a direction to the appellants to regularise their services with attendant benefits. The Writ-Court did not accept the claim of the workers and was of the view that the workers in the canteen run by Railways and LIC stand on a different footing and the writ petition therefore came to be dismissed. The workers filed an Appeal, the Division Bench of Andhra Pradesh High Court allowed the Appeal.

55. The NTPC thereafter approached the Supreme Court placing reliance upon judgment rendered by it in *Indian Petro Chemicals Corporation Ltd and another Vs. Shramik Sena* 1999 (83) FLR 75 (SC) and it was argued that the workers were indisputably engaged by the contractor and cannot claim for regularisation of their services in the public sector undertaking, as it was against the recruitment Rules and Policy of the Government.

56. The Supreme Court held that where there is a statutory liability on the Company to run a canteen in a factory, even though the said canteen was being run by Cooperative Society, the employees working in the canteen would be covered by the definition of workers as held in *Saraspur Mills Company Ltd. Vs. Ramanlal Chimanlal* 1973 (26) FLR 294 (SC). The Supreme Court also relied upon *Steel Authority of Indian Ltd. Vs. National Union Waterfronts workers & others* 2001 (91) FLR 182 and *VST Industry Ltd. Vs. VST Industries Workers' Union & others* 2001 (88) FLR 548 to hold that contract labour engaged by a contractor can validly claim absorption / regularisation, if it was found that the principal employer exercised actual and effective control over such workmen, the Appeal was dismissed.

57. In *VS Industries Ltd. Vs. VST Industries Workers Union & another* 2001 (88) FLR 548 cited on behalf of the respondent workmen, the Supreme Court was considering the case of the appellant company, which was engaged in the manufacture and sale of cigarettes and which maintained a canteen in pursuance of statutory obligation under Section 46 of the Factories Act. The appellant company had managed the canteen on its own for sometime and thereafter introduced contract system and the contractors paid salary to the workmen employed in the canteen whereas the appellant company provided the building, furniture, fuel, electricity, water supply and other facilities. The contractor was engaged only for over seeing the preparation and service of food items, whereas

the quality and quantity of food items and their rates were controlled by the Management of the Company.

58. The employees of the canteen filed a writ petition for their regularisation, which was allowed by the Writ-Court and the judgment was affirmed later on by the Division Bench of the High Court, which held that the employees of the canteen were actually the employees of the company and entitled to the same benefits as other regular employees.

59. The Supreme Court considered its judgment rendered in Indian Petro Chemicals Corporation Ltd. (supra) and In Parimal Chandra Raha Vs. LIC and M.M.R. Khan Vs. Union of India AIR 1990 SC 271 to hold that workmen of the statutory canteen would be workmen of an establishment for the purpose of the Factories Act only, and not for other purposes; but at the same time, it considered the merits of the case as discussed in the judgment of the writ-court that the canteen was being run within the premises of the appellant company by its management upto 1982 and thereafter the management of the canteen was entrusted to private contractor. Even after change of contractors, the canteen workers continued to work and wages were paid to the workmen in the canteen by the management through the contractor. The management provided accommodation, furniture, fuel, electricity etc and exercised complete control over the standard, the quality, quantity and rates of food items supplied to the workmen for whose benefit the canteen was established. The appellant Company had complete control over the activities of the canteen and the contractor had absolutely no discretion either in regard to the menu or the quality or the quantity of the food items or their rates. The canteen was held to be run by the management itself and the Appeal dismissed.

60. In Hindalco Industries Ltd. Vs. Association of Engineering Workers 2008 (117) FLR 891, the Supreme Court was considering the case of a company, which was engaged in manufacture of Aluminum products and under statutory obligation under Section 46 of the Factories Act it maintained the canteen for the benefit of its workmen. In order to avoid giving workmen working in the canteen, permanency and benefits which are applicable to regular workmen, the Company had engaged a contractor. The Union of such canteen employees raised an industrial dispute that the contract is a sham and is a mere arrangement made for the purpose of avoiding permanency and giving wages and all benefits as applicable to regular and permanent workmen of the Company.

61. The Supreme Court relying upon its earlier decisions held that workmen who are working in the statutory canteen must be treated as workmen of the principal employer, and affirmed the decision of the Industrial Court treating practice of engaging employees in the canteen through a contractor as an unfair labour practice.

62. The Supreme Court relied upon its judgment rendered in Indian Petro Chemchals Ltd. (supra) and considered issue as framed by the Supreme Court in

the said judgment namely "whether from the material on record it could be held that the workmen are, in fact, the employees of the management for all purposes". In the factual discussion that followed thereafter, the ultimate conclusion drawn by the Court was that on facts there was complete supervision and control on the canteen by the appellant company, its Officers supervised the functioning of the canteen and only to prevent the workmen from having the protection of continuous employment in such establishment, it was said that there was a contractor engaged for running on the canteen.

63. The Supreme Court in paragraph 23 observed thus:- "Since the factual details that arose in the Indian Petrochemicals case (supra) are identical to the case on hand, we reproduce the following discussion and the ultimate conclusion:

"25. Though the canteen in the appellant's establishment is being managed by engaging a contractor, it is also an admitted fact that the canteen has been in existence from the inception of the establishment. It is also an admitted fact that all the employees who were initially employed and those inducted from time to time in the canteen have continued to work in the said canteen uninterruptedly. The employer contends that this continuity of employment of the employees, in spite of there being a change of contractors, was due to an order made by the Industrial Court, Thane, on 10-11-1994 wherein the Industrial Court held that these workmen are entitled to continuity of service in the same canteen irrespective of the change in the contractor. Consequently, a direction was issued to the Management herein to incorporate appropriate clauses in the contract that may be entered into with any outside contractor to ensure the continuity of employment of these workmen. The Management, therefore, contends that the continuous employment of these workmen is not voluntary. A perusal of the said order of the Industrial Court shows that these workmen had contended before the said Court that the Management was indulging in an unfair labour practice and in fact they were employed by the Company. They specifically contended therein that they are entitled to continue in the employment of the Company irrespective of the change in the contractor. The Industrial Court accepted their contention as against the plea put forth by the Management herein. The employer did not think it appropriate to challenge this decision of the Industrial Court which has become final. This clearly suggests that the Management accepted as a matter of fact that the respondent workmen are permanent employees of the Management's canteen. This is a very significant fact to show the true nature of the respondents' employment. That apart, a perusal of the affidavits filed in this Court and the contract entered into between the Management and the contractor clearly establishes:

- (a) The canteen has been there since the inception of the appellant's factory.
- (b) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.
- (c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been

provided for by the appellant.

(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(g) The workmen have the protection of continuous employment in the establishment.

26. Considering these factors cumulatively, in addition to the fact that the canteen in the establishment of the Management is a statutory canteen, we are of the opinion that in the instant case, the respondent workmen are in fact the workmen of the appellant Management.

27. At this stage, it is necessary to note another argument of Mr Andhyarujina that in view of the fact that there is no abolition of contract labour in the canteen of the appellant's establishment, it is open to the Management to manage its canteen through a contractor. Hence, he contends that by virtue of the contract entered into by the Management with the contractor, the respondent workmen cannot be treated as the employees of the Management. This argument would have had some substance if in reality the Management had engaged a contractor who was wholly independent of the Management, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the Management. In the background of this finding, the last argument of Mr Andhyarujina should also fail."

64. Following the law as laid down by the three Judges Bench of Indian Petro Chemicals Corporation Ltd., the Supreme Court dismissed the Appeal.

65. Counsel for the respondent workmen have further relied upon judgment rendered by the Supreme Court in Mohan Singh Vs. Chairman Railway Board 2015 (147) FLR 14, wherein the Supreme Court was dealing with the issue of statutory and non statutory canteens In paragraphs 17 & 18 it observed thus:- "17. Once that conclusion is reached, the result with respect to status of workers employed therein becomes obvious. In M.M.R. Khan, this Court has held - "Since in terms of the Rules made by the State Governments under Section 46 of the Act, it is obligatory on the Railway Administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the Railway Administration created by the Act and as

pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the Railway Administration may employ anyone such as a Staff Committee or a Co-operative Society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the Railway Administration?..We are, therefore, of the view that the employees in the statutory canteens of the Railways will have to be treated as Railway servants. Thus the relationship of employer and employee stands created between the Railway Administration and the canteen employees from the very inception."

18 Therefore, in the light of the settled principle enunciated herein above, we hold that the subject Canteen is a "Statutory Canteen" under the Factories Act, 1948 and that the learned Single Judge had arrived at the correct conclusion. In our opinion, the Division Bench of the High Court was not correct in taking a contrary view. We, therefore, allow these Appeals. We set aside the impugned Judgment passed by the High Court, and direct the Respondents to treat the subject Canteen at Moradabad as a Statutory Canteen either under Section 46 of the Act or the relevant clauses of the Indian Railway Establishment Management. However, so far as the Appellants are concerned, we find it difficult to condone or ignore the fact that they were not appointed as per the regular recruitment procedure. To pass an order regularizing the services of all workers employed therein would necessarily imply ratification of appointments given outside the Constitutional scheme. We, therefore, direct the Respondents to consider regularizing the services of the Appellants presently serving as canteen workers in consonance with the principles laid down in Secretary, State of Karnataka Vs. Uma Devi AIR 2006 SC 1806 and take requisite action within six months of the receipt of this Judgment. Further, as and when the subject posts fall vacant the Respondents shall be bound to fill the posts by a regular process of selection. The Appellants in the present case shall be allowed to compete in the regular recruitment and the Respondents shall grant to them appropriate age relaxation as well as grant proper weight age for their having worked in the subject Canteen."

66. Counsel for the petitioners, Sri Vivek Ratan Agarwal has referred to Section 46 of the Factories Act and Rule 68 of the U.P. Factories Rules 1950. Section 46 places a statutory obligation on the occupier of a factory to provide and maintain a canteen in the factory, where more 250 workers are employed. There is nothing in the said provision which provides the mode in which the factory must set up a canteen. It inheres to the discretion of the concerned factory to either discharge the said obligation of providing a canteen by way of direct involvement, or through a contractor or any other third party. The State Government however has been given discretion to make Rules with regard to date by which such canteen shall be provided; the standard in respect of construction accommodation, furniture and other facilities of the canteen; the food stuff to be served therein and the charges which may be claimed therefor; the Constitution of the managing committee of the canteen; and the

representation of workers in the management of the canteen; the items of expenditure in running of the canteen, which are not to be taken into account in fixing the cost of food stuffs and which shall be borne by the employer; etc.

67. Rules 68 of the U.P. Factories Rules 1950 provides as under:- "68. (1) The occupier of every factory wherein more than two hundred and fifty workers are ordinarily employed on any one day and which is specified by the State Government in this behalf shall provide, within six months from the date of specification, in or near the factory, an adequate canteen according to the standards prescribed in this rule. This rule shall come into force at once.

(2) The manager of every factory shall submit in triplicate, through the Inspector of Factories of the region concerned, the plans and site plan of the building to be constructed or adopted, for use as a canteen to the Chief Inspector of Factories for his approval.

(3) The canteen building or buildings shall be situated not less than fifty feet from any latrine/urinal, boiler house, coal stacks, ash dumps and any other source of dust, smoke or obnoxious fumes :

Provided that the Chief Inspector may in any particular factory relax the provisions of this rule to such extent as may be reasonable in the circumstances and may require measures to be adopted to secure the essential purpose of this sub-rule.

(4) The canteen building or buildings shall accommodate a dining hall, kitchen, store room, pantry and washing places, separately for workers and for utensils.

(5) In a canteen the floor shall be made of smooth and impervious material, the remaining portion of the inside walls shall be made smooth by cement plaster or in any other manner approved by the Chief Inspector.

(6) The doors and windows of a canteen building shall be of fly proof construction and shall allow adequate ventilation.

(7) The canteen shall be sufficiently lighted at all times when any person has access to it.

(8) In every canteen-

(a) all inside walls of rooms and all ceilings and passages and stair cases shall be lime-washed or colour-washed at least once in each year or painted once in three years dating from the period when last lime-washed or painted, as the case may be;

(b) all wood work shall be varnished or painted once in three years dating from the period when last varnished or painted;

(c) all internal structural iron or steel work shall be varnished or painted once in three years dating from the period when last varnished or painted:

Provided that inside walls of the kitchen shall be lime-washed once every four months.

(9) Records of dates on which lime-washing, colour washing, varnishing or painting is carried out shall be maintained in Form No. 8.

(10) The precincts of the canteen shall be maintained in a clean sanitary condition. Waste water shall be carried away in suitably covered drains and shall not be allowed to accumulate so as to cause nuisance. Arrangements shall be made for the collection and disposal of garbage.

(11)(a) The dining hall shall accommodate at least 20 per cent of the workers working at a time :

Provided that in any particular factory or in any particular class of factories, the Chief Inspector may with the approval of the State Government alter the percentage of workers to be accommodated in a canteen keeping in view the practice prevailing in the factory or in the industry where many workers may not be available to take advantage of the canteen facilities.

(b) The floor area of the dining hall, excluding the area occupied by service counter and any furniture, except tables and chairs shall be not less than 10 square feet per dinner to be accommodated as prescribed in clause (a).

(c) A portion of the dining hall and service counter shall be partitioned off and reserved for women workers in proportion to their number. Washing places for women shall be separate and screened to secure privacy.

(12) Sufficient tables, chairs or benches shall be available for the number of dinners to be accommodated as prescribed in clause (a) of sub-rule (11).

(13) There shall be provided and maintained sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of the canteen. Suitable clean clothes for the employees serving in the canteen shall also be provided and maintained.

(14) The furniture, utensils and other equipments shall be maintained in a clean and hygienic condition. A service counter, if provided, shall have a top of smooth and impervious material. Suitable facilities including an adequate supply of hot water shall be provided for the cleaning of the utensils and equipments.

(15) The food, drink and other items served in the canteen shall be sold on non-profit basis, and the prices charged shall be subject to the approval of the Managing Committee: Provided that where the canteen is managed by a Co-operative Society, exclusively of workers and registered under the Uttar Pradesh Co-operative Societies Act, 1965 such society may be allowed to include in the charges for the foodstuffs served, a profit up to 5 per cent on its working capital invested in running of the canteen.

(16) In computing the prices referred to in sub-rule (15), the following items of

expenditure shall not be taken into consideration but will be borne by the occupier :-

- (a) the rent for the land and building;
- (b) the depreciation and maintenance charges of the building and equipment provided for the canteen;
- (c) the cost of purchase repairs and replacement of equipment including furniture, crockery, cutlery and utensils ;
- (d) the water charges and expenses for providing lighting and ventilation;
- (e) the interest on the amount spent on the provision and maintenance of the building furniture and equipment provided for the canteen;
- (f) the cost of fuel required for cooking or heating foodstuffs or water; and
- (g) the wages of the employees serving in the canteen and the cost of uniforms, if any, provided to them.

(17) The charge per portion of foodstuff, beverages and any other items served on the canteen shall be conspicuously displayed in the canteen in Hindi.

(18) All books of accounts, registers and any other documents used in connection with the running of the canteen shall be produced on demand to an Inspector of Factories.

(19) The accounts pertaining to the canteen, shall be audited, once every twelve months by registered accountants or auditors the balance-sheet prepared by the said auditors shall be submitted to Canteen Managing Committee not later than two months after the losing of the audited accounts :

Provided that where the canteen is managed by a Co-operative Society, exclusively of workers, and registered under the Uttar Pradesh Co-operative Societies Act, 1965 the accounts pertaining to such canteen may be audited in accordance with the provisions of the Uttar Pradesh Co-operative Societies Act, 1965:

Provided further that the accounts pertaining to the canteens in a Government factory may be audited by its departmental Accounts Officers.

(20) The Manager shall appoint a Canteen Managing Committee which shall be consulted from time to time as to-

- (a) The quality and quantity of foodstuff to be served in the canteen ;
- (b) the arrangements of the menus ;
- (c) times of meals in the canteen;
- and (d) any other matter as may be directed by the Committee :

Provided that where the canteen is managed by a Co-operative Society, exclusively of workers and registered under the Uttar Pradesh Co-operative Societies Act, 1965 it shall not be necessary to appoint a Canteen Managing Committee.

(21) The Canteen Managing Committee shall constitute of an equal number of persons nominated by the occupier and elected by workers the number of elected workers shall be in the proportion of 1 for every 1,000 workers employed in the factory provided that in no case shall there be more than 5 or less than 2 workers on the committee.

(22) The Manager shall determine and supervise the procedure for elections to the Canteen Managing Committee.

(23) Canteen Managing Committee shall be dissolved two years after the last election, no account being taken of a bye-election.

(24) When a rest room made in accordance with rule made under Section 47 of the Act fulfils the requirements necessary for making of a canteen under this rule, no separate canteen need be provided."

68. It has been argued that from a perusal of the Rule 68, it is evident that not only the standard of construction of the canteen building, its maintenance, lighting, white washing had been provided in detail, but also the items of furniture and others equipments, like crockery, cutlery and suitable uniforms for employees serving in canteen has to be provided and maintained by the management of the factory. The food items have to be specified and have to be sold on a non profit basis and if a canteen is being run by a cooperative society, the society may be allowed to include a profit upto five percent on its working capital invested in the running of the canteen in settling the rates of food stuffs served.

69. Under Rules 15 & 16 while deciding the rates of food stuffs, certain expenditure on rent, maintenance charges, equipment provided, purchases, repairs, replacement of equipment including furniture, crockery and water charges, fuel charges and wages of employees, of cost of uniforms would have to be borne by the occupier and cannot be taken into account while determining the cost of food items. All books of accounts and other registers and documents have to be maintained and the Canteen Managing Committee has to be appointed by the occupier, which has to be consulted as to the quality and quantity of food stuff, arrangement of menus and other matters relevant for the efficient running of such canteen.

70. It has therefore been argued by the learned counsel for the petitioner that the petitioner was providing all facilities as required under Rules 68 of the U.P. Factories Rules of 1950 and the learned Tribunal misconstrued the facilities provided by the management, coming to the conclusion that the canteen was actually being run by the management and not by an independent cooperative

society.

71. Counsel for the petitioner has also relied upon several decisions, namely (a) Indian Petro Chemicals Corporation Ltd. Vs. Shramik Sena & others 1999 (83) FLR 75 particularly paragraphs 15 to 19;

(b) National Aluminium Company Ltd. Vs. Anant Kishor, paragraphs 12, 19 to 24 & 30;

(c) Balwant Rai Saluja & another Vs. Air India Ltd. & others JT 2014 (9) SC 562 paragraphs 1 to 6 27 to 38 49, 58, 81 to 86.

72. In Indian Petro Chemicals Corporation Ltd. Vs. Shramik Sena & others 1999 (83) FLR 75, the Supreme Court was considering the case of the workmen of a canteen set up by the appellant for its factory in District Raigarh. The management was treating them as persons employed on contract basis through contractor, the High Court had found that the management had direct control over the said workmen and the canteen was a part of the establishment of the management and the work carried on by the employees of the canteen was preliminary in nature and was incidental to and connected with the establishment of the management. The High Court allowed the writ petition primarily on the ratio of decision of the Supreme Court in Parimal Chandra Raha Vs. LIC 1995 255 611.

73. Counsel for the appellant Indian Petro Chemicals Corporation Ltd. Vs. Shramik Sena & others 1999 (83) FLR 75 had argued that the Supreme Court had not held that every workmen of the statutory canteen automatically becomes a regular workmen of the management and he had relied upon another larger Bench decision of the Court in the case of MMR Khan Vs. Union of India 1990 SC 191.

74. It was held by the Supreme Court after considering the two decisions that the workmen of a statutory canteen would be workmen of the establishment for the purposes of Factories Act only and not for all other purposes. It next considered the question as to whether from the material on record, it could be held that the workmen were infact employees of the management for all purposes and it had found on detailed examination of evidence considered by the High Court, on the basis of the affidavits filed by either parties, that the respondent workmen were in fact workmen of the appellant management, but it held that such workmen having not been appointed initially in accordance with the recruitment Rules governing the appointment of other regular employees under the management, could not be regularised in contravention of various statutory orders including reservation policy. It therefore upheld the guidelines or conditions of regularisation as laid down by the High Court.

75. In National Aluminium Company Ltd. (supra) employees of a School established by NALCO had asked for parity of pay scales and other facilities available to employees of NALCO. It was held that the main activity of NALCO is

the manufacture or production of Aluminum, for which it has manufacturing units. The proceeding and method of recruitment of regular employees and their eligibility conditions differed as the nature of job of such employees is entirely different from the employees of the school. The day to day control over the staff of the school was that of the Managing Committee of the School run by Saraswati Vidya Mandir Samiti, on the basis of agreement with NALCO. Only because the schools were set up by NALCO or NALCO had agreed to take care of financial deficit for running of the school, it could not be held to be a conclusive factor for holding the employees of such School to be actually the employees of NALCO.

76. The Supreme Court relied upon in its earlier decisions for determining the relationship of Master and Servant and observed thus:- "The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in *Mersey Docks and Harbour Board Vs. Coggins & Griffith (Liverpool) Ltd.*, and another , "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

77. The Supreme Court referred to its judgment rendered in *RBI Vs. Its workman* 1996 (3) SCC 267 where the Supreme Court had observed in paragraph 10 thus:- "The Bank does not supervise or control the working of the canteens or the supply of eatables to employees. The employees are not under an obligation to purchase eatables from the canteen. There is no relationship of master and servant between the Bank and the various persons employed in the canteens aforesaid. The Bank does not carry any trade or business in the canteens. The staff canteens are established only as a welfare measure. Similar demands made by the staff canteen employees and the request made to the Central Government to refer the dispute for adjudication was rejected by the Central Government and the challenge against the same before the Calcutta High Court was unsuccessful. According to the Bank, it has no statutory or other obligation to run the canteens and it has no direct control or supervision over the employees engaged in the canteens. It has not right to take any disciplinary action or to direct any canteen employee to do a particular work. The disciplinary control over the persons employed in the canteens does not vest in the Bank nor has the Bank any say or control regarding the allocation or work or the way in which the work is carried out by the said employees. Sanctioning of leave, distribution of work, maintenance of the Attendance Register are all done either by the Implementation Committee (Canteen Committee) or by the Cooperative Society or by the Contractor."

78. The Supreme Court thereafter held that the Managing Committee of Saraswati Vidya Mandir Samiti was an independent body and although NALCO

was providing financial help and infrastructure facilities etc., it could not be said that it had complete supervision and control over the working of the schools or its employee.

79. In *Balwant Rai Saluja & another Vs. Air India Ltd. & others* JT 2014 (9) SC 562, the Supreme Court considered its earlier decision rendered by it as also English case law to determine as to when it could be said with certainty that there was an effective and absolute control of the principal employers or the holding company over the employees engaged by the subsidiary company. It was observed in paragraph 61 thus:- "Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer - employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary / remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills* case (supra), the *International Airport Authority of India* case (supra) and the *Nalco* case (supra)."

80. Thereafter the Supreme Court discussed the doctrine of lifting the corporate veil and observed in paragraphs 71 & 73 thus:- "Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principles has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.

73. In the present reference, this Court is required to ascertain whether workmen, engaged on a casual or temporary basis by a contractor to operate and run a statutory canteen on the premises of a factory or corporation, can be said to be the workmen of the said factory or corporation."

81. It held on facts that the Hotel Corporation of India was a wholly owned and controlled subsidiary of Air India, and Air India had an effective and absolute control over the Hotel Corporation of India, but at the same time, this would not entitle the Court to lift the Corporate veil, as mere ownership and control is not sufficient ground to establish that Air India was committing an impropriety resulting in depriving of the appellant workmen of their legal rights. The mere fact that Air India had a certain effective and absolute control over the Hotel Corporation of India, did not mean that the employees working in the canteen run by the Hotel Corporation of India were Air India's employees or that the Air India had effective and absolute control over the employees of Hotel Corporation

of India employed in canteen runs by it.

82. On a consideration of facts as discussed by the learned Tribunal in its Award, it is evident that the findings of fact have been recorded by the Tribunal on the basis of documentary evidence and oral statements of the representatives of the parties to the dispute. Such evidence on facts have although been disputed by the counsel for the petitioner, from a perusal of the copious amount of documentary evidence filed along with the Special Appeal, and in the several affidavits filed by the parties, during the pendency of this writ petition; it is evident that the respondent no. 1 has considered the documentary as well as oral evidence in its correct perspective.

83. It has been observed by the Supreme Court in the case of Indian Overseas Bank Vs. Steel Canteen workers union 2000 (4) SCC 245, in exercising writ jurisdiction, this Court cannot re-appreciate the evidence and draw conclusions of its own on pure questions of fact. The Supreme Court in the aforecited judgment of the Indian Overseas Bank in paragraphs 8, 19 & 23 observed thus:- "8. The question is whether in view of such categorical findings of fact arrived at by the Tribunal, the learned Single Judge exercising jurisdiction under Article 226 of the Constitution of India could re-appreciate the evidence and come to a different conclusion. We have already pointed out that the learned single Judge had erred in appreciating certain documents and the evidence in the case. We are clearly of the opinion that the learned Single Judge had no material to characterize the judgment of the Tribunal as perverse.

19. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or

otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below."

23. The learned Single Judge seems to have not only overlooked certain relevant material but by adopting a negative approach had belittled the relevance and importance of several vital and important factual aspects brought on record. If on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon "no evidence, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. The promoters of the canteen being permanent employees in the service of the Bank, permitted to run the canteen, by merely being in control of the day-to-day affairs of the canteen, the Bank cannot absolve of its liabilities when it was really using the canteen management as its instrumentality and agent. The cloak apart, the "voice definitely is that of Jacobs.

84. In view of what has been found by the learned Tribunal the details of which have been mentioned herein above by me, it is evident that despite statutory liability of running a canteen for the benefit of its employees being cast under Section 46 upon the petitioner, and despite various detailed provisions made under Rule 68 of the Rules of 1950, there were other liabilities incurred by the NTPC besides these statutory duties, which would not have been otherwise incurred, had the management of NTPC not been in actual and complete effective control over the running of the canteen. Such facilities like provision of housing accommodation, medical facilities providing transport facilities, buying provisions and giving initial working capital of Rs. 1,40,000/- and exercising control over duty allocation, leave permission and disciplinary action over the canteen employees rendered the NTPC liable. It does make out a case for respondent nos. 4 to 47 to be treated as in actual employment of the petitioner, the Award impugned therefore needs no interference and the writ petition is hence dismissed. No order as to costs.