
(1999) 09 PAT CK 0093
In the Patna High Court
Case No : C.W.J.C. No. 3133 of 1995 (R)

Singhbhum Thikedar Mazdoor Sangh	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(2)

Citation : (2001) 1 LLJ 221 : (2000) 1 PLJR 455

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ram Suresh Roy, T.K. Das, B.K. Singh and Rajesh Shanker, for the Appellant; M.S. Anwar and R. Praveen for Respondent No. 1 and Ganesh Prasad Singh, V.P. Singh and Amar Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner, claiming to be the union of about 200 workers, has prayed for issuance of an appropriate writ or direction directing the respondents to implement the provisions of Contract Labour (Regulation and Abolition) Act, 1970, and for enforcement of the notification, dated February 17, 1993, issued by the State Government as contained in Annexure-8 to the writ petition. In para 2 of the writ petition the petitioner, representing the workers employed in the scrap yard of Tata Engineering and Locomotive Company, Ltd., Jamshedpur (shortly referred to as TELCO), through Kay Pee and Sons, claimed the following reliefs:

"(i) The respondents be directed to abolish the contract labour system and to regularise the services of the members of the petitioner-union working in the Telco scrap yard, earlier under the Birsa Welfare Society, now K.P. & Sons Contractor under the TELCO, management from the date when earlier two thousand labourers have been regularised.

(ii) The retired and injured contract labourers should suitably be compensated as

the matter has been kept hanging since the last. 20 years for no fault on the part of labourers.

(iii) Any other reliefer reliefs deemed to be entitled in the eye of law".

2. Subsequently by filing an amendment petition the petitioner further prayed for a direction to the respondents to pay for the workmen the same wages as are paid to those similarly situated employees of TELCO working in the scrap yard.

3. The case of the petitioner is that it represents about 200 workers employed in the scrap yard of the TELCO, through its contractors mentioned hereinabove, who are engaged in the job of arranging the scrap by separating different items to facilitate their auction by the TELCO and also loading the scrap after auction for delivery to the purchasers which facilitates and helps in attracting the customers of the auction and the value of scraps auctioned every month is more than 80 lakhs and the activity is of perennial nature and the workers have been doing this work permanently and as a result of the services of the workers, the TELCO, is able to earn because if the services of the workers is not available, the auction of scrap will be difficult and further that the workers had been litigating for abolition of contract labour which resulted in depriving the workers of regular scale of pay, welfare facilities and direct relationship of employment with the principal employer and as a result of the efforts of the workers, notification u/s 10 of the Act was issued on December 17, 1977 prohibiting employment of contract labour in works relating to production and maintenance of machines carrying of materials from the stores to machines and back in different departments and sweeping and cleaning of workshops, roads and drains within the factory premises and in office, stock taking and watch and ward as well as sanitation in the TELCO.

4. The dispute arose as regards the categories of workers covered by the notification, dated December 16, 1977 (Annexure-1) which led to settlement, dated February 14, 1980, on which further discussions were held on April 24, 1980 (Annexure-2) as a result of which the litigation challenging the notification came to an end and although more than 2000 workers were regularised on negotiation pursuant to the settlement mentioned above, but the dispute as regards the absorption of contract labour employed in the scrap yard could not be finalised as the management seriously disputed the fact that the said workers were employed by the management. Accordingly an application, dated March 23, 1983 (Annexure-3), was made by Kunj Bihari Lal and five others to the Speaker of the State Legislative Assembly and the House Sub-Committee in its meeting, dated June 5, 1983, decided to make a spot inspection which submitted its report, para 8.3 of which has been reproduced in para 12 of the writ petition which was forwarded to the Labour Department. Eventually the Joint Labour Commissioner, Bihar, vide his letter, dated February 4, 1985 Annexure-5 and the Deputy Labour Commissioner, Jamshedpur, vide his letter, dated February 26, 1985 (Annexure-6) called upon the TELCO to implement the recommendations made in para 8.3 of the report of the petition Committee which were challenged

by the TELCO in C.W.J.C. Nos. 412 and 414 of 1985 (R). Those writ petitions were disposed of by a Division Bench of this Court by the judgment and order, dated June 14, 1990. The Division Bench although allowed the writ petitions and quashed Annexures 1 and 2 but issued certain directions and made some observations which shall be discussed hereinafter. The petitioner, aggrieved by the judgment, filed Civil Appeal No. 4049 of 1991 in the Supreme Court. The said appeal was disposed of in terms of judgment and order dated September 27, 1991, recording the assurance given by the State counsel that immediate step would be taken by the State Government for passing appropriate order u/s 10 of the Industrial Disputes Act.

5. Eventually the notification, dated February 17, 1993 (Annexure-8), was issued by the State Government u/s 10 of the Act in which the State Government prohibited the employment of contract labour in any process, operation or other work relating to the jobs in the TELCO with effect from the date of publication of the notification in the Bihar Gazette in respect of storage and handling work of scrap materials relating to boring and turning and metal scrap in the scrap yard of the TELCO.

6. The petitioner then filed an interlocutory petition before the Supreme Court and according to the petitioner, their lordships directed the petitioner to first approach this Court for the said relief by the order, dated January 31, 1995. The grievance of the petitioner is that even after issuance of the notification, dated February 17, 1993, (Annexure-8), the workmen who are represented by the petitioner had not yet been absorbed, by the TELCO although they had been working in the scrap yard and had been employed by the contractors and, therefore, they are entitled to the reliefs claimed.

7. In the counter-affidavit filed on behalf of respondents 1 to 3, State of Bihar, Joint Labour Commissioner, Bihar, and Deputy Labour Commissioner, Jamshedpur, it has been admitted that the notification prohibiting employment of contract labour in the scrap yard of the TELCO has been issued and that Kay Pee and Company through its proprietor Kameshwar Singh has filed a title Suit No. 10 of 1993 in the Court of Subordinate Judge 1, Jamshedpur, challenging the notification issued by the State Government and has also prayed for grant of temporary injunction which has been rejected and the matter is pending in the Court of Subordinate Judge 1, Jamshedpur, and the matter of regularisation of the services of the members of the petitioner is a matter to be decided by the TELCO.

8. In the counter-affidavit filed on behalf of TELCO, it has been stated that the interlocutory petition filed in the Civil Appeal No. 4049 of 1991, the same prayer was made as in the present writ petition and the interlocutory petition was withdrawn without any liberty granted to the petitioner to seek reliefs in this Court and, therefore, the writ petition is not maintainable. It has been submitted that the Gazette notification, dated February 17, 1993 (Annexure-8), has not been violated by the TELCO and it has been denied that any member of the

petitioner is working in the scrap yard of the TELCO and that either Birsa Welfare Society or Kay Pee and Sons Contractor was/is under the TELCO Management and it is further denied that neither 200 workmen alleged to be represented by the petitioner or any one of them are/is employed in the scrap yard of the TELCO and it has been asserted that no contract labour is employed in any process, operation or other works relating to storage and handling work of scrap materials relating to boring and turning in the scrap yard of the TELCO and it has been reiterated that no contract labour is employed in the work of establishment of the TELCO in its scrap yard. It has been claimed that professional auctioners are engaged by the TELCO who auction the scrap materials which are lifted by the auction purchasers and the TELCO has no concern either, with the lifting activities or loading activities of the auction purchasers as the auction purchasers either lift and load the purchased scraps in their own vehicles through their own labour or they engage some local agents for loading the scraps in their vehicles like Kay Pee and Company which is the employer of the members of the petitioner-union, the so-called union and the recommendations of the petition committee in Para 8.3 of its report reproduced in para 12 of the writ petition totally overlooked and ignored the case and stand of the TELCO inasmuch as neither any provident fund is deducted nor bonus is paid by the TELCO to the alleged members of the petitioner-union and no salary or wages are paid by the TELCO to the alleged workmen whom the petitioner-union claims to represent. It has been asserted that the auction purchasers have engaged the Contractor like Kay Pee and Sons Company to lift the scraps bought by him. It has been further stated that after the decisions of the Supreme Court the State Advisory Board called upon the TELCO to submit their comments which were filed vide Annexure C/4 to the counter- affidavit and the : Deputy Labour Commissioner, Jamshedpur, after making thorough spot enquiry submitted his detailed report to the Labour Commissioner vide letter No. 42, dated January 9, 1992, to the effect that:

"(1) The sale and purchase of the scrap material in the scrap yard was not an ancillary work of manufacture,

(2) The said Work was also not permanent in nature.

(3) The work of loading was act being performed by regular labourers."

9. A supplementary counter-affidavit has been filed on behalf of the TELCO disputing the status of the petitioner as a trade union. Reply to the amendment petition has also been filed on behalf of the TELCO in which it has, inter alia, been stated that the writ petition is not bona fide and the names of the workmen whose cases are sought to be espoused have not been disclosed in the writ petition nor have any details been mentioned as regards the wages which have allegedly been received by these workmen who are claimed to be represented by the petitioner and it has been asserted that the question whether any contract labour is employed in any process, operation or other works relating to the jobs in the TELCO's scrap yard has yet not been determined and without identifying the workmen who are allegedly the contract labour employed in the scrap yard of

the TELCO on the date of notification, no relief can be granted to the petitioner.

10. Sri Ram Suresh Roy, learned counsel appearing on behalf of the petitioner has firstly drawn my attention to the judgment passed by the Division Bench in C.W.J.C. Nos. 412 of 1985 and 414 of 1985 and also the order passed by the Supreme Court in Civil Appeal No. 4049 of 1991. Learned counsel submitted that on the respondent question (sic) the validity of the notification by filing writ application in this Court and in the Supreme Court while the matter was pending the management and union settled the dispute by tripartite agreement, dated February 14, 1980, whereby management agreed to absorb the workers on the basis of the list submitted by the union for the labourers who were working on January 1, 1980. The case of the labourers working in the scrap yard was placed but the company started delaying the matter. Consequently at the instance of the speaker of the Legislative Assembly matter was referred to the Committee and ultimately the State Government through Labour Department directed the Joint Labour Commissioner to implement the report. The respondent-company then filed two writ petitions being CWJC Nos. 412 and 414 of 1985 (R) in which the petitioner became intervenor. Learned counsel submitted that before the Division Bench respondent-company did not raise objection with regard to the jurisdiction of the committee nor questioned the act or the action of the committee. The Division Bench held that the contract labourers shall be entitled to claim continuance of employment under the principal employer in case of the prohibition to the contract system. Learned counsel further submitted that the respondent-company did not challenge the notification, dated February 17, 1993, for so many years nor the management challenged the finding in the judgment arrived at by the Division Bench. Sri Roy, learned counsel, relied upon the ratios decided by the Apex Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , and submitted that it is the responsibility of the State as well as the individuals for the development of the labourers after the abolition i of the contract labour system. Learned counsel further submitted that the petitioners who were intervenors in CWJC No. 414 of 1995 (R) filed SLP in the Supreme Court which was disposed of vide Annexure 7 and their I Lordships held that findings of the Supreme Court are final and binding on the management and since the State challenged the same, it is not by the State Government, to present the case of the present petitioner and pass appropriate order. It is contended that the State Government sat over the matter for a long time. Then contempt petition was filed by the petitioner being MJC No. 290 of 1992, and thereafter, the State Government issued notification (Annexure-8) in which contract labour working in boring, turning and metal scrap were prohibited. Learned counsel lastly submitted that in view of the law laid down by the Supreme Court recently in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , the respondent-company is bound to absorb and Regularise the workers of the petitioner-union without any delay.

11. On the other hand, Sri Ganesh Prasad Singh, learned counsel appearing on behalf of the management, has argued at length and in course of argument

drawn my attention to the relevant annexures in order to justify the stand taken by the management. Learned counsel submitted that after the judgment of the Apex Court the State Advisory Board constituted u/s 4 of the Act in its meeting decided to call for a comment from the management and the Deputy Labour Commissioner, Jamshedpur. In response to the notice given by the Advisory Board, the management of the company filed a detailed comment and the Deputy Labour Commissioner, Jamshedpur, after making thorough spot inspection submitted his report to Labour Commissioner to the effect that the sale and purchase of the scrap materials in the scrap yard was not necessary work of manufacturer. It is further reported that the said work was not permanent in nature and the work laid down from factory to the scrap yard was the act being performed by regular labourers of the company. The advisory committee, thereafter, formed a sub-committee and the sub-committee also made spot inspection on July 29, 1992 but could not submit a joint report. Consequently the convenor of the sub-committee, namely, Shashi Kumar, sent his own report on September 5, 1992 stating that the petitioner/labourers; were engaged in the past auction activities and, therefore, the employer, Kay Pee and Company receives payment from the purchasers and pay wages to the labourers engaged by it. Learned counsel submitted that convenor, therefore, recommended that there should be a detailed investigation as to whether provision of Sub-section (2) of Section 10 is applicable with respect to the petitioner or not. Learned counsel submitted that despite the recommendation for detailed investigation of the fact the so-called report of the Advisory Board was forwarded to the State Government which is the basis of the notification, dated February 17, 1993 (Annexure-8). Learned counsel further submitted that the report is also antedated and is not the report of the committee which will be evident from the averments made in the rejoinder to the counter-affidavit. Learned counsel further submitted that even from the bare perusal of the report it will reveal that it is devoid of any factual consideration as to whether the ingredients of Sub-section (2) of Section 10 and the mandatory conditions thereunder were satisfied in the case of the petitioner. Learned counsel submitted that notification, dated February 17, 1993, was issued only because of the fact that the contempt petition at the behest of the petitioner was pending before the Supreme Court at the relevant time which is not binding on the respondent-company. Learned counsel further submitted that there was no contract labour engaged by the company in the process of the pre-auction of the scrap and ancillary to the manufacturer as the company was not obliged to engage the contract labourers of the post auction (sic) process. Learned counsel further submitted that the notification (Annexure-8) issued in gross contravention and derogation of the express mandate of the Division Bench judgment of this Court which was affirmed by the Supreme Court that the State Government was to be objectively satisfied before issuing notification under Sub-section (1) of Section 10 with respect to the fulfilment of the ingredients as contained in Sub-section (2) thereof. Learned counsel further advanced his argument on the question of maintainability of the writ petition on account of

non-joinder of Kay Pee and Company. Learned counsel further relied upon the ratios decided by the Supreme Court in the case Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, , and also the ratio by the Supreme Court in the case of Railway Parcel and Goods Handling Mazdoor Union and Others Vs. Union of India (UOI) and Others, .

12. Before appreciating the rival contentions of the parties it would be useful to first look into some relevant facts which have not been disputed by the parties.

13. Respondent 4, Tata Engineering Locomotive Company Ltd. (hereinafter referred to as the company) having its work and industry in Jamshedpur, a large number of workmen are employed by it. However, it has been engaging contractor for certain types of works who, in their turn, employed labourers for such works. In the year 1977 there was a notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting employment of contract labourers in works in the different departments of TELCO. It is only, thereafter dispute arose as regards the categories of workers covered by the aforesaid notification. The dispute then came to the High Court and the Supreme Court. In the meantime company and workers unions settled their dispute by tripartite agreement in 1980. In terms of the said agreement company agreed to absorb the employees who were on contract roll till January 31, 1980. However, decision regarding workers employed in the scrap yard of the company were not considered but it was stated that if there is any objection the same shall be scrutinised by union and the company. The petitioner-union raised objection and a committee was formed for submitting report latest by September 30, 1981. However, when the report was not submitted the President of the Union filed a petition before the Speaker of the House and thereafter, a Committee was formed by the House for enquiry and the Committee submitted its report-stating therein that 200 workers of Birsa Nagar Welfare Society are regular workers under the contractor and 30 workers in Gurudwara Relief Society, The said enquiry was made in presence of the said officer and management. The House, therefore, directed the State Government to take steps u/s 10 of the Industrial Disputes Act. The respondent-company then filed two writ petitions in this Court being CWJC Nos. 412 and 414 of 1985 (R) for quashing the reports of the Committee of Bihar Vidhan Sabha and also the orders issued by the Deputy Labour Commissioner and the Joint Labour Commissioner, Bihar, Patna, to implement the said reports. The aforementioned two writ petitions were allowed and the orders and communications issued by the officers of the Labour Department for implementation of the report of the Committee has been quashed. While allowing the writ petitions the Division Bench of this Court has arrived at certain findings and also made some observations which are necessary to be looked into for the proper adjudication of the dispute raised in this writ petition. So far as the jurisdiction of the House Committee is concerned the Court observed:

"(22) In the context that I have dealt with so long, there is no reason to think

that there is any encroachment upon the jurisdiction of any Court of law or a Court of enquiry or a statutory Tribunal or authority or a quasi judicial body or a commission, or so long the stage of invoking the remedy under the law had/has not arrived and so long the committee did not/does not influence the course of justice by its recommendations or acts otherwise it did not/does not transgress limitations aforementioned. They represent the public which word includes a group of individuals or even an individual, who has suffered or is likely to suffer precariously or his cause is a cause of the Public. In this context I repeat that it is not possible to hold that the House Committee exceeded its jurisdiction or statutory limitations. Moreover, it is not a case to consider whether the House Committee had any jurisdiction to call upon the petitioners to show cause or to disclose before it facts which they did not intend to disclose perhaps, that could be a contention and petitioner's right protected by various laws of the land could have been invoked to protect them had the notice to appear before the Committee been challenged. Then the question, whether the petition Committee had any jurisdiction to do so or not would have become relevant. The petitioners, however, did not question any act of the petition Committee at any stage earlier to their objecting to the impugned actions. Actions which appeared to affect the petitioners have been taken by the Joint Labour Commissioner and the Deputy Labour Commissioner and not by the House Committee."

In para 29 of the judgment the Division Bench observed that every worker who worked in connection with the work of the establishment is to be treated as the worker of the principal employer unless the establishment concerned had secured certificate of registration for the relevant period and it had employed contract labour through licenced contractor. In para. 32 of the judgment their Lordships observed as under:

"a law which has intended to protect the interest of the workers and has made prescriptions, as aforementioned, should not be given a meaning even in the matter of continuation of the employment of the workers appointed by the contractor to deny to the workers the right to continue in service. The abovesaid tripartite agreement of the establishment of the petitioners only agreed to honour the service conditions of such employees in their establishment, who had been for the reasons of a contract introduced by them employed by the contractor. I hold and conclude that contract labourers shall be entitled to claim continuance of employment under the principal employer in cases of the prohibition to the contract labour system. Other question's posted in the instant application and the contentions I shall deal with while considering the case of the petitioners in CWJC No. 414 of 1985 but on the principle aforementioned, the irresistible conclusion is that the petitioners have a responsibility to absorb all the contract labourers except those who are unfit to be absorbed or compensate them in accordance with law for the loss of service."

In concluding portion their Lordships, in paras. 47 and 48 observed as under:

"47. The findings recorded by me above lead to the irresistible conclusion that

the recommendations of the House Committee though deserve respect have no legal effect. Learned counsel for the petitioner is right in contending that they do not have any binding effect. The orders as contained in Annexures 1 and 2 in both the writ applications are without jurisdiction and they have no binding effect. The only way the respondent-State Government can act to abolish the contract labour in the scrap yard of the petitioners is to act in accordance with Section 10 of the Contract Labour (Regulation and Abolition) Act and in the matter of reinstatement of any employee of the petitioners only in accordance with the procedures laid down in the Industrial Disputes Act.

48. Before parting with, however, I must add at this stage that the petitioners shall avoid unnecessary litigations under the Industrial Disputes Act, etc., by honouring their commitment as recorded in the supplementary affidavit referred to above and do justice even to such employees who, according to their records, do not qualify for absorption or compensation by affording opportunity to them individually to furnish such materials as they may deem fit or proper and if they satisfy that their cases are similar to the cases of those who have been absorbed or even granted compensation accordingly. The petitioners, in view of the statements in the supplementary affidavit, are obliged to give notice to the 30 workmen whose cases are covered by the supplementary affidavit, hear them and decide their cases in accordance with law. Any of the said 30 workmen who is aggrieved by any action of the petitioners, shall be free to take recourse to the law on the subject concerned. The petitioners shall, however, be entitled to continue the contract labour system in the scrap yard until the same is prohibited in accordance with law."

14. Aggrieved by the judgment of the Division Bench the petitioner filed Civil Appeal No. 4049 of 1991 in the Supreme Court. The said appeal was disposed of by the Supreme Court in terms of judgment and order, dated September 27, 1991. The Supreme Court, after referring the observations made by this Court to the effect that the only way the respondent-State Government can act to abolish the contract labour in the scrap yard of the petitioner is to act in accordance with Section 10 of the Contract Labour (Regulation and Abolition) Act, has held as under:

"The writ petition in the High Court had been instituted by the management and that petition was allowed in so far as the High Court held that the only competent authority to enforce the provisions of the said Act was the Government itself and not any other officer. It was with that observation and subject to that the High Court stated in para 47, which have been (sic) set out above, that the writ petition is allowed. The findings of the High Court are, therefore, final and binding in so far as the management and the State Government are concerned, for neither of them has challenged them. In the circumstances, it is incumbent on the Government to consider the case of the present appellant with reference to the provision of Section 10 of the said Act and particularly those contained in Sub-section (2) thereof and pass appropriate

order under that section in regard to the appellant, bearing in mind all the facts and circumstances concerning it, as pleaded by it and also as considered by various bodies, including the findings of the petition committee of the Bihar Assembly. However, as rightly stated by the High Court, it is within the exclusive domain of the Government to pass appropriate order u/s 10.

In the circumstances the apprehensions of the appellant are unfounded. The Government counsel, Sri B.B. Singh assures us that immediate steps will be taken by the State Government to consider the questions and pass appropriate orders u/s 10.

We notice the long delay that has already occurred since the dispute started as regards the claim of the appellant. We are told that nearly 20 years have now gone by. It is very unfortunate that even at this distance of time, matters are not settled as regard the status of the member of the appellant-union.

In the circumstances, while noticing the submission of the Government counsel and also other counsel appearing at the Bar, we direct the State Government to pass an appropriate order within three months from today."

15. As noticed above, the civil appeal was disposed of recording the assurance given by the State counsel in the Supreme Court that immediate step would be taken by the State Government for passing appropriate order u/s 10 of the Act. It appears that when the State Government delayed in the compliance of the assurance then a contempt petition was filed and it was thereafter the State Government came with a notification, dated February 17, 1993 (Annexure-8), u/s 10 of the Act prohibiting the employment of contract labour in any process, operation or other work relating to job and in respect of handling work of scrap materials relating to boring and turning and metal scraps in the scrap yard of TELCO.

16. The contention of Sri Ganesh Prasad Singh, learned senior counsel of the respondent-TELCO is that before issuing notification u/s 10(1) of the Act the State Government has not complied with the mandatory of Section 10(2) of the Act. Learned counsel submitted that before issuing notification under Sub-section (1) the conditions prescribed under Sub-section (2) of Section 10 must have been tested and satisfied by the State Government. According to the learned counsel since the notification was issued mechanically, the same is bad in law. In this respect learned counsel referred various documents annexed with the counter-affidavit.

17. I shall now analyse the documents produced by the parties in order to find out whether the notification was issued mechanically by the State Government without complying with the requirements as envisaged in Sub-section (2) of Section 10 of the Act.

18. It transpires from the record that after the appeal was disposed of by the Supreme Court the State Advisory Board constituted u/s 4 of the Act in its

meeting decided to call for the comments from the management and the Deputy Labour Commissioner, Jamshedpur. In response to the notice given by the Advisory Board the management of respondent-company filed comments. A copy of the comments filed by the management is Annexure C/4 to the counter-affidavit. The Deputy Labour Commissioner, Jamshedpur, also after enquiry submitted his report to the Labour Commissioner vide letter, dated January 9, 1992. A copy of the report of the Deputy Labour Commissioner has been annexed as Annexure D/4 to the counter-affidavit. It is not disputed by the parties that the Advisory Committee formed a sub-committee for making spot enquiry and submission of report. The subcommittee made thorough spot inspection on July 29, 1992. The sub-committee consisted of Sri Shasi Kant Sharma, the then Labour Commissioner as its convenor with three members namely, Sri N.K. Sharma, Sri Ramashray Prasad and Sri Jogendra Thakur. The convenor namely, the then Labour Commissioner submitted his independent report on September 5, 1992. A copy of the report has been filed by both the parties which has been annexed as Annexure 12 to the supplementary affidavit and Annexure E/4 to the counter-affidavit.

19. Since both the parties are relying on this report it would be a relevant piece of evidence for coming to a right decision. From perusal of the report it reveals that the Labour Commissioner as come to a finding that the petitioner's labourers were engaged in post-auction activities, their employer Kay Pee and Company receives payment from the purchasers and it paid wages to the labourers engaged by it. The report further shows that the Labour Commissioner also came to the findings that:

- (i) The scrap yard Area is in direct control of TELCO and within the TELCO premises and the entry in the scrap yard is under the control of security guard.
- (ii) In the scrap yard work is managed by supervisor appointed by TELCO. The supervisor and the contractor jointly supervised the work.
- (iii) The contract labourers have been working in a scrap yard for the last 10-15 years, the contractors are changed but the labourers remain the same.

20. The respondents mainly relied upon the comments of the meeting alleged to have been held on October 19, 1992, a copy of which has been annexed as Annexure-F/4 to the counter-affidavit. From perusal of this document it appears to be antedated resolution the authenticity of which cannot be relied upon. Learned counsel for the respondent also gave much stress to the findings arrived at by the then Labour Commissioner in his report, Annexure-E/4 on the point that the petitioners labourers engage in post auction activities and their employer Kay Pee and Company receives payment from the purchasers and it pays wages to its labourers engaged by it. But the said report, as noticed above, further says that the same labourers are working in the scrap yard for the last 10-15 years and only the contractors, time to time are changed but the works are done by the same labourers in the scrap yard within the premises of the

TELCO fully guarded by the security men of TELCO.

21. Having regard to the facts of the case and the documents discussed hereinabove, it cannot be said that the notification, dated February 17, 1993 (Annexure-8), was issued without any enquiry and inspection rather the State Government after considering the reports of the Labour Commissioner and the Advisory Board on consideration of the materials found that the conditions required under Sub-section (2) of Section 10 are fully satisfied and accordingly notification was issued in 1993.

22. It is worth to mention here that the respondent-TELCO neither raised any objection nor challenged the notification (Annexure-8) at any point of time and it was only after the petitioner moved this Court for implementation of the notification, the respondent came out with a case that the notification was issued by the Government without complying the requirements of Sub-section (2) of Section 10.

23. At this stage it would be useful to refer the observations made by the Supreme Court as quoted above while disposing the civil appeal filed by the petitioner. It has been specifically observed that the findings of the High Court are final and binding on the management and the State in so far as they have not challenged those findings. It has further been observed that in such circumstance it is incumbent on the Government to consider the case of the present petitioner with reference to the provisions of Section 10 and to pass appropriate order bearing in mind all the facts and circumstances and also after considering the reports of various bodies including the findings of the petition committee of the Bihar Assembly.

24. For better appreciation I have quoted above the relevant paragraphs of the judgment of the Division Bench of this Court. The Division Bench categorically held that the labourers shall be entitled to claim continuation of employment under the principal employer in cases of prohibition to the contract system and the respondents have the responsibility to absorb or to compensate them in accordance with law for the loss of services. The Division Bench further held that the management should avoid unnecessary litigation and to do justice even to such employees who, according to their records, do not qualify for absorption or compensation, if they satisfy that their cases are similar to those who have been absorbed or granted compensation.

25. The Contract Labour (Regulation and Abolition) Act, 1970, regulates registration of establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour. The object and purpose of the Act as held by the Apex Court are two fold. As long as the work in an industry is not perennial, the Act regulates the conditions of the workmen-employees through the contractor registered under the Act. The services of the workmen are channellised through the contractor.

The principal-employer is required to submit the number of workmen needed for employment in its establishment who are supplied by the contractor. The principal employer is required to compel the contractor to pay over the wages and on his failure, the principal employer should pay and recover it from the contractor. However, on the advice by the Board that the work is of perennial nature, etc., and on being satisfied of the conditions u/s 10(2), the appropriate Government takes a decision to abolish the contract labour and such decision is published by a notification. It results in abolition of the contract labour. On publication of such notification a direct relationship between the principal employer and the workmen comes into existence and the workmen become the employee of the principal employer. The object and scope of the Act has been thoroughly discussed by the Apex Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], :

"10. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature, etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio-economic justice assured in the Preamble, Articles 14, 15 and 21 and the Directive Principles of the Constitution."

Their Lordships further observed, in para 11 at Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled],

"11. The founding fathers of the Constitution cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic, the State under Article 38 is enjoined to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 (a) provides that the State shall direct its policies towards securing the citizens, men and women equally, the right to an adequate means of livelihood; Clause (d) provides for equal pay for equal work for both men and women; Clause (e) provides to secure the health and strength of workers; Article 41 provides that within the limits of its economic capacity and development, the State shall make effective provision to secure the right to work as fundamental with just and humane conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the

workmen and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work to a living wage, a decent standard of life, education and leisure....."

26. Recently in the case of Secretary, Haryana State Electricity Board v. Suresh and Ors., (supra) their Lordships have gone further and held that the Act being a beneficial legislation, the words used in the Act should be given the widest possible interpretation. Their Lordships observed, in Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,

"16. Needless to note at this juncture that the Contract Labour (Regulation and Abolition) Act being a beneficial piece of legislation as engrafted in the statute book, ought to receive the widest possible interpretation in regard to the words used and unless words are taken to their maximum amplitude, it would be violent injustice to the framers of the law. As a matter of fact the law is well-settled by this Court and we need not dilate much by reason, therefore to the effect that the law Courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would lose its efficacy and contract labourer would be left at the mercy of the intermediary."

Their Lordships further observed, in para 12, Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,

"12. There is, however, a total unanimity of judicial pronouncements to the effect that in the event the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being perennial in nature, that is to say, in the event of the engagement of labour force through an intermediary which is otherwise in the ordinary course of events and, involves continuity in the work, the Legislature is candid enough to record its action since involvement of the contractor may have its social evil of labour exploitation and thus the contractor ought to go out of the scene bringing together the principal-employer and the contract labourers, rendering the employment as direct, and resultantly, a direct employee. This aspect of the matter has been dealt with great lucidity, by one of us (MAJMUDAR, J.), in Air India Statutory Corporation v. United Labour Union (supra)."

27. In the instant case, as noticed above, there is a separate scrap yard existing in the factory premises of the respondent-TELCO wherein scrap materials are being stored and sold. This is a continuous process and there are sufficient evidence on record that the labourers are working in the scrap yard for the last 10-15 years notwithstanding the change of contractors under whom they work. It can, therefore, safely be concluded that the work is perennial in nature. This Court, while admitting the writ petition for hearing, by its order, dated May 23,

1997, directed the petitioner to file supplementary affidavit annexing a list of the workmen with their full and complete description who are engaged as contract labourers on the date of issuance of the impugned notification (Annexure-8). In compliance of that order the petitioner filed a supplementary affidavit on July 21, 1997. The petitioner furnished the list of the contract labourers who were engaged during the relevant period.

28. As noticed above, in the counter-affidavit filed by respondents 1 to 3, the State and the Labour Commissioner, it is inter alia, stated that the Government of Bihar, has already banned the employment of contract labour in any process, operation or other works of scrap materials relating to boring and turning metal scraps in the scrap yard of TELCO, Ltd., Jamshedpur, vide notification, dated February 12, 1993. It is further stated that Kay Pee and Company through its proprietor, Kameshwar Singh had filed a title suit being T.S. No. 10/1993 in the Court of the Sub-Judge No. 1, Jamshedpur, challenging the notification, dated February 12, 1993, issued by the Government prohibiting the employment of contract labour and had prayed for injunction. The prayer for injunction had been rejected by the Sub-Judge vide order, dated July 23, 1993, Subsequently the petitioner filed an amendment petition in the aforesaid suit which was allowed vide order, dated February 21, 1994. The plaintiff, Kay Pee and Company challenged the order, dated February 21, 1994, by filing Civil Revision No. 211/1994(R) which was dismissed by this Court on November 18, 1995. It is further stated in the counter-affidavit that after the contract labour system in the scrap yard of TELCO has been abolished by the State Government, the matter for regularisation of services of the members of the petitioner-union is to be considered by respondent 4, TELCO Ltd.

29. It has not been denied or disputed by the respondents that the workers of the petitioner-union had been working in the scrap yard under the contractor, Kay Pee and Company in relation to the sale and purchase of the scrap materials. Although pursuant to order passed by this Court the petitioner furnished a list of the workers employed during the relevant period with their full description but this needs proper verification and identification and the list furnished by the petitioner regarding the workmen, cannot be accepted in toto. Only those workers from the list shall be entitled to the reliefs whose identification is properly and satisfactorily verified by the respondents with the help of their contractor Kay Pee and Company.

30. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, this writ application is allowed and respondent 4 is directed to implement the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and to enforce and implement the notification, dated February 17, 1993 (Annexure-8), issued by the State Government. The respondents, particularly respondent 4 is further directed to abolish contract labour system and regularise the services of the members of the petitioner-union working in the TELCO scrap yard under Kay Pee and Company, the contractor

under TELCO management with effect from the date of notification. It is further directed that the workmen of the petitioner-union, after their regularisation on proper identification and verification, as stated above, shall be entitled to the same wages as are paid to those similarly situated workmen working in the TELCO scrap yard. It is further declared that after the notification, dated February 17, 1993, the injured workmen not able to work, shall be entitled to suitable compensation in accordance with law.