

(2010) 01 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 10861 of 2000

The General Manager, Bharat Heavy Electricals Ltd.

APPELLANT

Vs

Canteen Wrokers of BHEL, The Secretary, Indco Service
Society Ltd. and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 39, 42, 43
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1), 12
Factories Act, 1947 — Section 46
Factories Act, 1948 — Section 2, 46
Tamil Nadu Factories Rules, 1950 — Rule 65, 66, 67, 68, 69

Citation : (2010) 2 LLJ 718

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

**Advocate : Sanjoy Mohan, for Ramasubramaniam Associates, for the Appellant;
K.M. Ramesh, for R1 and Gupta and Ravi for R2, for the Respondent**

Judgement

K.K. Sasidharan, J.—This writ petition is directed against the award of the Labour Court, Vellore dated 17-12-1999 in I.D. No. 93 of

1992 whereby and whereunder the Labour Court declared the canteen workers of Bharat Heavy Electricals Limited (hereinafter referred to as

BHEL""), Ranipet as their regular workers and directed the management to grant such status with effect from 23.11.1987 with all monetary

benefits.

BACKGROUND FACTS:

2. The petitioner is a Public Sector Undertaking Company wholly owned by the Government of India, engaged in the manufacture of Heavy

machinery. The petitioner Unit is located at Ranipet in the State of Tamil Nadu.

3. The petitioner has provided a canteen to its employees in accordance with Section 46 of the Factories Act, 1947. The canteen was originally managed by an independent contractor. Subsequently in the year 1986, the second respondent Society was formed by the workmen of the contractor. The second respondent (hereinafter referred to as ""Society"") is a labour Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1961.

4. The petitioner has entered into a written agreement with the Society and as per the said agreement, the Society has to provide food to BHEL employees by employing their own personnel to run the canteen and the petitioner would pay the agreed amount. The Society was a separate entity by virtue of its constitution and registration as a Co-operative Society. The Society is governed by its own by-laws.

5. The management of the Society vests with the Board of Directors and the profit and loss as the case may be shall be borne by the Society. The Society is answerable to the Registrar of Industrial Co-operative Societies. The admission and expulsion of the members of the Society are as per the terms of the by-laws and the status of the members of the Society is totally independent and unconnected with the employees of BHEL. The petitioner has no financial or supervisory control over the Society.

6. The Society had obtained a separate licence u/s 12 of the Contract Labour (Regulation and Abolition) Act, 1970 and as such it is a Contractor"" within the meaning of the said Act. The workmen employed by the Society are neither directly nor indirectly employed by BHEL.

They have no lien on BHEL in terms of their employment, wages or conditions of service. The workmen were under the direct control of the

Society and there never existed Master - Servant relationship between the members of the first respondent Union (hereinafter referred to as

Union"") and BHEL. BHEL was nothing more than a principal employer as defined under the Contract Labour Act, 1970. The Society has been

functioning as a separate entity catering to the needs of the workers of BHEL on the basis of the agreement executed from time to time.

7. While the matters stood thus, the Union made a demand that the workmen of the Society should be conferred with permanent status in BHEL.

The Union approached the Labour Officer for conciliation. BHEL appeared before

the Labour Officer and submitted their explanation on

13.1.1988. BHEL maintained that the workmen employed by the Society never functioned as their employees and as such there was no legal

relationship of employer-employee between the parties. However the Union persisted in their demand. Ultimately the Government of Tamil Nadu

referred the matter to the Labour Court for adjudication. The order of reference was challenged by the petitioner before this Court in W.P. No.

15145 of 1988. The writ petition was disposed of as per order dated 3.12.1997 directing the Labour Court to decide the issues taking note of the

objections submitted by BHEL.

8. The dispute was originally pending before the II Additional Labour Court, Madras. Subsequently it was transferred to the Labour Court,

Vellore and it was registered as I.D. No. 93 of 1992. The dispute was initially raised by the Anna Workers Union. Subsequently BHEL Canteen

Workers Union stepped into the shoes of Anna Workers Union and the dispute was prosecuted by them before the Labour Court.

9. Before the Labour Court, BHEL demonstrated that there was no employer-employee relationship between the parties. BHEL has also placed

reliance on various provisions of the by-laws of the Society to substantiate their contention that the Society is an independent entity and BHEL has

no control in respect of its affairs.

10. The agreement entered into between BHEL and the Society was also placed before the Labour Court. However the Labour Court concluded

that the agreement was sham and nominal and it was only BHEL, who was running the canteen. Accordingly the dispute was answered by

directing the management of BHEL to grant permanent status to the workers of the canteen. Accordingly BHEL is before this Court.

SUBMISSIONS:

11. The learned Counsel for the petitioner would contend thus:

(a) BHEL is a factory employing more than 250 workers and as such there was a statutory requirement to provide canteen. Section 46 of the

Factories Act, 1948 provides for establishment and maintenance of such canteens. The Government of Tamil Nadu framed rules and those rules

also indicates the mandatory requirement of providing various facilities in the canteens. It was only in such circumstances BHEL has appointed the

Society to run the canteen.

(b) The second respondent Society is a separate legal entity. The Society has its own by-laws. The Society is manned by the Board of Directors

comprising the representatives of both BHEL and the workers of the Society. The Government is also entitled to nominate one Director. The Chief

Executive Officer of the Society is a Government servant. Therefore the Society has an independent existence and BHEL has no persuasive

control over the Society.

(c) The mere fact that the canteen is a statutory canteen established by BHEL as per Section 46 of the Factories Act, it cannot be said that the

factory is run by BHEL and the workers of the canteen are its workers.

(d) The Labour Court posed a wrong question and answered the same in a perverse manner.

(e) The finding recorded by the Labour Court that BHEL through its officers exercises control over the management of the Society and the

canteen, has no factual basis and as such it was a perverse finding.

(f) The Society has got an elected Board of Management and the daily administration of the Society is conducted by none other than the officer

appointed by the Government. Therefore the Society does not satisfy the management test so as to arrive at a finding that the management of the

Society is being carried on only by BHEL .

(g) BHEL is obliged to conduct the canteen in its factory premises. The rules also contain a mandate that the canteen should be inside or near the

factory. Therefore merely on the ground that the canteen is located inside the factory, it cannot be said that the Society is controlled by BHEL.

(h) The Labour Court observed that finance to run the Society was made available only by BHEL. However the accounts shows that the Society

has got its own finance and it also collects share capital from members. Therefore the said finding is also erroneous.

(i) The supply of basic materials were given to the Society only as per the agreement. BHEL was giving subsidised food to its workers and as such

responsibility to procure groceries and other materials vests with BHEL. Similarly the vessels, crockeries and other items necessary for running the

canteen are also to be provided by BHEL as per agreement. Therefore BHEL was providing these items only as per the agreement executed with

the Society. In such circumstances it cannot be said that the supply of these materials would prove that the canteen was run by none other than BHEL.

(j) The economic control test was taken as another ground to decide the matter against BHEL. It is true that BHEL has engaged its own workers to supervise the canteen. That was only for the purpose of satisfying itself that quality food was given to the workers of the factory. The said fact cannot be taken as a reason to come to the conclusion that the canteen was run only by BHEL through its workers.

(k) The Labour Court has placed reliance on Ex.W.10 dated 29.2.1998 and observed that the recruitment of the staff to the canteen were also done by BHEL. The document in Ex.W.10 was a stray document which has nothing to do with BHEL. Merely because BHEL recommended the case of a candidate for appointment it cannot be said that the recruitment was conducted only by BHEL.

(l) The Labour Court observed that the salary and other allowances of the workers were conditioned by BHEL. BHEL was only giving the agreed amount to the Society. It was the look out of the Society to disburse wages to its members as per the pay structure devised by the Society.

(m) The Labour Court by taking note of the fact that the supervisors of BHEL were employed in the canteen observed that the canteen was supervised and run by none other than BHEL. The supervisors were engaged by BHEL only to ensure that its workers were given superior quality food on time. The quality and quantity of food was of serious concern to BHEL and it was only to protect the interest of the workers, supervisors were posted in the canteen. The said supervisory control cannot be treated as an effective control of the Society.

(n) The medical and other facilities to the workers of the Canteen were provided by BHEL only to run the canteen in an efficient manner. The workers of the canteen are the workers of the factory within the meaning of the Factories Act. Therefore BHEL was bound to give medical facilities to the workers of the canteen. Those factors cannot be taken against BHEL as conclusive proof of management of the canteen by BHEL.

(o) The statutory obligation of BHEL u/s 46 of the Factories Act was also taken as a pointer by the Labour Court to decide the matter against

BHEL. The statutory requirement u/s 46 of the Factories Act was considered by the Supreme Court time and again and it was categorically held

that merely because the company was providing a statutory canteen, it cannot be said that the workers of the canteen are in effect the workers of the company.

(p) The accounts of the Society clearly shows that it was having a budget and provisions were made for payment of salary and dividend to its members. Therefore the Society was managing its affairs independently without the control of BHEL.

(q) The learned Counsel for the petitioner placed reliance on the following judgments to substantiate his contentions .

(1) M. Elangovan and Others Vs. Madras Refineries Ltd., Industrial Catering Services (P) Ltd. and Mr. A. Ravindran, Canteen Contractor,

(2) Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others, .

(3) International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, .

12. The learned Counsel for the Union supported the award passed by the Labour Court. The learned Counsel made the following submissions:

(a) The workmen of the Society were originally employed by the contractor. During the year 1986, BHEL represented that it was difficult to

absorb the canteen workers in BHEL. Accordingly it was agreed to organise an Industrial Co-operative Society with a clear understanding that the

workers then working with the contractor would be given preference for regular employment in BHEL subject to vacancy. Their seniority in the

canteen also would be taken into consideration for such appointments. Therefore BHEL has specifically agreed to treat the workers of the canteen

as its workers and the Society was formed only as an interim measure till the actual absorption of the workers of the Society hitherto employed

under the contractor.

(b) Though the Society was having a Board of Management, the actual control of the Society was always in BHEL. BHEL has employed its own

supervisors and they are looking after the affairs of the canteen. The provisions and other groceries used to be purchased only by BHEL and it

would be kept only in their godown. It would be given to the canteen daily wise.

The godown is also under the lock and key of BHEL. Therefore the day-to-day management of the Society was conducted only by BHEL.

(c) The wages of the workers used to be revised now and then by BHEL. Whenever there was revision of wages in BHEL, the same would be

extended to the workers of the canteen. The said practice is evident from the exhibits marked before the Labour Court.

(d) The food coupons were issued to the workers only by BHEL employees and the cash box of the canteen was also handled only by BHEL

employees. Therefore the effective management was only with BHEL.

(e) The learned Counsel placed reliance on the following judgments.

(1) Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others, .

(2) Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, .

ANALYSIS:

13. The petitioner is a factory within the meaning of Section 2(m) of the Factories Act, 1948. The Factories Act contains provisions for the welfare

of the workers. Section 46 of the Act provides that in any specified factory wherein more than two hundred and fifty workers are ordinarily

employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Since the petitioner has employed

more than two hundred and fifty workers, they are bound to provide and maintain a canteen for the use of its workers.

14. There is no dispute that originally the canteen was entrusted to a private contractor by BHEL. The contractor was running the canteen on the

basis of an agreement executed with BHEL. The members of the Union were the workers of the contractor. It was only in the year 1986, the idea

of incorporating a Co-operative Society was emerged in the meeting between the management of BHEL and the Union. The letter dated

12.6.1986 sent by the Union to BHEL contains a reference about the discussion. In fact the Labour Commissioner as per letter dated 30.11.1985

called upon the management of BHEL to inspect MRL Industrial Co-operative Service Society Limited and to form a Society of such kind in

BHEL. It appears that the said suggestion also made an impact in coming to an agreement with the workers to organise an Industrial Co-operative

Society.

15. The Society was constituted as an Industrial Service Co-operative Society. The membership of the Society was restricted to the workers of

the contractor engaged for running canteen and to look after sanitation at BHEL, Ranipet. Those persons who are above eighteen years of age and

whose lands were acquired under the Land Acquisition Act for the establishment of BHEL, Ranipet and eligible for employment in BHEL but not

employed in BHEL on the date of registration of the Society were also given the right to be enrolled as members of the Society.

16. The Board of management of the Society consists of three nominees of BHEL, one from the State Government and another three to be elected

from the worker members. As per the by-laws, the Society has to be managed by the Board of Management and the day-to-day affairs would be

conducted by the President through the Chief Executive Officer. The President shall have a general control over the affairs of the Society and he

was expected to monitor the day-to-day administration of the Society.

17. There is no dispute about the constitution of the Society and the fact that its original members were none other than the workers employed in

the statutory canteen till the formation of the Society. There are agreements entered into between BHEL and the Society which contains provisions

regarding the nature of functioning of the Society.

18. The core question to be decided in this writ petition is as to whether the employees of the Society are in effect the employees of BHEL by

virtue of the persuasive control of BHEL over the Society.

19. Disputes regarding nature of employment of workmen in statutory and non-statutory canteens were the subject matter before the Supreme

Court time and again. There were two kinds of canteens. Those canteens which were established as per the provisions of the Factories Act were

termed as statutory canteens. Other canteens which were established by the management without such compulsion were termed as non-statutory

canteens.

20. Before considering the facts of this case, for the purpose of coming to a conclusion as to whether the canteen was run only by BHEL and the

Society was only sham and nominal, it is necessary to consider the decisions of the Supreme Court on point.

PRECEDENT:

21. In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, the Supreme Court indicated the principles according to which the

relationship of an employer and employee or Master and Servant has to be determined.

13. 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 p. 23 in Mersey Docks

and Harbour Board v. Coggins & Griffith (Liverpool) Ltd. "The proper test is whether or not the hirer had authority to control the manner of

execution of the act in question".

14. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to

business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in

England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have

exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the

master could not control the manner in which the work was done.

15. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and

supervision by the employer.

22. In Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, the workmen were engaged by

the management on piece-rate basis. The workers were also paid on piece-rate basis. The Workers generally attend the shops every day if there

was work. The rate of wages paid to the workers were not uniform. The rate depended on the skill of the worker and the nature of work. When

cloth was given for stitching to a worker after it has been cut, the worker was told how he should stitch it. If he does not stitch it according to the

instruction, the employer rejects the work and he generally asks the worker to re-

stitch the same. When the work was not done by a worker according to the instructions, generally no further work would be given to him. If a worker does not want to go for work to the shop on a day, he does not make any application for leave, nor was there any obligation on his part to inform the employer that he will not attend for work on that day. If there was no work, the employee was free to leave the shop before the shop closes. Almost all the workers did their work in the shop. Some workers were allowed to take cloth for stitching to their homes on certain days. But it was done always with the permission of the proprietor of the shop. The machines installed in the shop absolutely belonged to the proprietor of the shop and the premises and the shop in which the work was carried on also belongs to him.

The question posed before the Supreme Court was whether from the above circumstances, the conclusion drawn by the Chief Inspector of Shops and Establishments and the High Court that there existed employer-employee relationship was correct. The Supreme Court considered series of cases including *D.C. Dewan Mohideen Sahib and Sons v. The Industrial Tribunal, Madras 1964(II) LLJ 633* relating to contractors supplying leaves and tobacco from the owner and employing workmen for manufacturing beedies. The Supreme Court observed thus:

28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction.

29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now

no more than a factor, although an important one.

35. ...The degree of control and supervision would be different in different types of business. If an ultimate authority over the worker in the

performance of his work resided in the employer so that he was subject to the latter's direction, that would be sufficient.

23. In *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, , the issue before the Supreme Court was as to

whether the workmen employed by an independent contractor to work in the factory for manufacturing ropes were workers and as to whether

there was a relationship of employer-employee between them. In *Hussainbhai's* case, the industry was engaged in the manufacture of ropes. Large

number of workmen were engaged to make ropes within the factory. When their engagement was put an end, it was challenged before the

Tribunal. The Tribunal allowed the claim of the workers and it was confirmed by a learned Single Judge as well as the Division Bench of the High

Court. The Supreme Court indicated the factual position thus:

2. ...It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by

the Management; that the factory premises belonged to the Management; that the equipment used also belonged to the Management and that the

finished product was taken by the Management for its own trade. The workmen were broadly under the control of the Management and defective

articles were directed to be rectified by the Management. This concatenation of circumstances is conclusive of the question.

After considering the nature of engagement, the Supreme Court indicated the test to be adopted to find out the employer - employee relationship

thus:

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these

goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers? subsistence, skill,

and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom

alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of

factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the

Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment

needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real

employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose

of the law and not be misled by the maya of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an

enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the

Management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.

24. In *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, , the issue was regarding the claim made by forty two

workmen working in canteens at four different offices of the Life Insurance Corporation in Calcutta. The learned Single Judge allowed the writ

petition filed by the workmen and directed the Corporation to implement the policy of equal pay for equal work and pay them minimum salary as

was enjoyed by the regular staff of the Corporation. There was a further direction that the workmen shall be treated as direct workers under the

Corporation with all service benefits. The Supreme Court considered the earlier cases on point and on an evaluation of the law on the subject

observed thus:

25. What emerges from the statute law and the judicial decisions is as follows:

(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his

employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the

management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the

canteen becomes a part of the establishment and the workers working in the

canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer

either by an agreement or an award, etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become

a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is

a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment

and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among

others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment,

whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees

employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously

available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing,

maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the

service available etc.

25. In *Parimal Chandra Raha* the Supreme Court considered the nature of arrangement between the Corporation and the Co-operative Society.

The observation reads thus:

29. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the

Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen

committees, the Cooperative Society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary

breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative Society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation.

26. In *Secretary, H.S.E.B Vs. Suresh and Others etc. etc.*, the Supreme Court indicated as to how the legislation like the Contract Labour

(Regulation & Abolition) Act, 1970 has to be interpreted. It reads:

3. Ours is a Socialist State as the Preamble depicts and the aim of socialism, therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to sub serve the need and the requirement of the common man. Article 39 is a pointer in that direction.

Each clause under the article specifically fixes a certain social and economic goal so as to expand the horizon of benefits to be accrued to the

general public at large. In particular reference to Article 39(a) it is seen that the State ought to direct its policies in such a manner so that the citizens

- men and women equally, have the right of an adequate means of livelihood and it is in this perspective again that the enactment in the statute-

book as noticed above [the Contract Labour (Regulation & Abolition) Act, 1970] ought to be read and interpreted so that social and economic

justice may be achieved and the constitutional directive be given a full play.

27. The Supreme Court in *Secy., Haryana* indicated the approach to be taken in respect of employment which was perennial in nature. The

observation reads thus:

13. 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 abolition 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.

28. In *Secretary, H.S.E.B Vs. Suresh and Others etc. etc.*, , the Supreme court indicated as to how a social and beneficial piece of legislation has

to be interpreted. It reads thus:

18. As noticed above the draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation

specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution

ought to be given its full play and it is in this perspective the question arises - is it permissible in the new millennium to decry the cry of the labour

force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by

an agency within the meaning of Article 12 of the Constitution - the answer cannot possibly be in the affirmative - the law courts exist for the

society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought

to rise up to the occasion to meet and redress the expectation of the people. The expression "regulation" cannot possibly be read as contra public

interest but in the interest of the public.

29. In *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, , the issue before the Supreme Court was as to whether the

relationship of workmen of a statutory canteen managed by a contractor with the establishment maintaining such canteen are master-servant and by

virtue of their status as the workmen of the establishment for the purpose of Factories Act, whether ipso facto would enable the workmen to claim

that they are the workers of the factory. The other contention was regarding the nature of management of the canteen, in the light of the provisions

made by the management to run the canteen and the supervision and control exercised by them in running the Canteen and as to whether it would

constitute the relationship of an employer and employee. The claim made by the workmen that the canteen was a statutory canteen u/s 46 of the

Factories Act, and as such the workmen are deemed to be the employees of the Factory, was rejected. The Supreme Court observed thus:

17. The question however is: does this status of a workman under the Factories Act confine the relationship of the employer and the employees to

the requirements of the Factories Act alone or does this definition extend for all other purposes which include continuity of service, seniority,

pension and other benefits which a regular employee enjoys. The Factories Act does not govern the rights of employees with reference to

recruitment, seniority, promotion, retirement benefits etc. These are governed by other statutes, rules, contracts or policies. Therefore, the

workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purposes cannot be

accepted.

30. The Supreme Court in Indian Petrochemicals Corporation Ltd., case examined the salient features of the contract in the said case for the

purpose of arriving at a decision as to whether the employees of the canteen were in fact employees of the establishment. The Supreme Court

considered the following features as evidence of relationship of employer & employee between the management and the workmen. It reads:

25. ...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 appellate Management.

31. In *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, the Supreme Court by placing reliance on *Indian*

Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, , indicated that the formula evolved cannot be concretised into fixed

formula for universal application and the mere availability of any one or more or their absence in a given case cannot by itself be held to be decisive

of the whole issue. The observation reads thus:

18. The standards and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or

concretised into fixed formula(e) for universal application, invariably in all class or category of cases. Though some common standards can be

devised, the mere availability of any one or more or their absence in a given case cannot by itself be held to be decisive of the whole issue, since it

may depend upon each case to case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That

being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be

not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby

attempt to compartmentalise and peg them into any pigeonhole formulae, to be insisted upon as proof of such relationship.

This would only help to perpetuate practising unfair labour practices than rendering substantial justice to the class of persons who are invariably

exploited on account of their inability to dictate terms relating to conditions of their service. Neither all the tests nor guidelines indicated as having

been followed in the decisions noticed above should be invariably insisted upon in

every case, nor the mere absence of any one of such criteria could be held to be decisive of the matter. A cumulative consideration of a few or more of them, by themselves or in combination with any other relevant aspects, may also serve to be a safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such variety or class of cases involving different type of establishments and in dealing with different employers would mean seeking for things, which are only impossible to find.

32. In Indian Overseas Bank case, the canteen was not a statutory one. The Supreme Court found that there were materials to come to a conclusion that there was a master-servant relationship between Indian Overseas Bank and canteen workers, notwithstanding the presence of a

Co-operative Society earlier and a contractor later. The observation reads thus:

20. ...The canteen in question was being run from 1-1-1973 and even before that, indisputably, the Bank itself had arranged for running of the

same through a contractor and similar arrangement to run through a contractor was once again made by the Bank on its closure on 26-4-1990,

though after a period of some break from 21-10-1992. Besides this, the nature and extent of assistance, financial and otherwise in kind provided

which have been enumerated in detail, would go to establish inevitably that the Bank has unmistakably and for reasons obvious always undertaken

the obligation to provide the canteen services, though there may not be any statutory obligation and it will be too late to contend that the provision

of canteen had not become a part of the service conditions of the employees. The materials placed on record also highlight the position that the

Bank was always conscious of the fact that the provision and availing of canteen services by the staff are not only essential but would help to

contribute for the efficiency of service by the employees of the Bank. That it was restricted to the employees only, that the subsidy rate per

employee was being also provided, and the working hours and days of the canteen located in the very bank buildings were strictly those of the

Bank and the further fact that no part of the capital required to run the same was contributed by anybody else, either the promoters or the staff

using the canteen are factors which strengthen the claim of the workers. It was also on evidence that the canteen workers were enlisted under a

Welfare Fund Scheme of the Bank besides making them eligible for periodical medical check-up by the doctors of the Bank and admitting them to the benefits of the Provident Fund Scheme. The cumulative effect of all such and other facts noticed and considered in detail provided sufficient basis for recording its findings by the Tribunal as well as the Division Bench of the High Court ultimately to sustain the claim of the workers in this case.

33. In *Vst Industries Ltd. v. Vst Industries Workers' Union* (2001) 1 SCC 298, the High Court issued a writ of Mandamus to treat the employees of the Factory canteen as employees of VST Industries Limited. Though the Supreme Court accepted the contention of the Management that writ petition was not maintainable as VST was not an authority or a person amenable to writ jurisdiction, the findings of fact recorded by the learned Single Judge was confirmed as evidence of a jural relationship of employer-employee in spite of the presence of an independent contractor. The relevant para reads thus:

10. In the present case, the findings recorded by the learned Single Judge on examination of the facts available is that there had been a canteen within the premises of the appellant up to the year 1982 and it is only from 1982 onwards the management of the canteen has been entrusted to a private contractor; that even after change of the contractor, the canteen workers have continued to be the same irrespective of the change in the contractors from time to time; that wages were paid to the workmen in the canteen by the management through the contractor; that the appellant has provided the accommodation, furniture, fuel, electricity, utensils, etc.; that the management exercises control over the standard in quality, quantity and the rate of the food items supplied to the workmen for whose benefit the canteen is established. Thus, these circumstances clearly indicate that the appellant has complete control over the activities in respect of the canteen and the contractor has absolutely no discretion either in regard to the menu, quality and quantity of the food items much less the rate at which the same are supplied to the workmen. When the management of the appellant exercises such a complete control, the canteen shall be deemed to be run by the management itself. The appellant in any manner cannot controvert these facts.

11. We do agree that the respondents have a strong case on merits.

34. In *Union of India v. M. Aslam* (2001) 1 SCC 720, the issue before the Supreme Court was regarding the claim made by the employees of the

Unit-run Canteens. The Central Administrative Tribunal accepted the contentions of employees and held that they were serving under the Ministry

of defence. Before the Supreme Court, the Union of India contended that the Unit-run canteens are operated by non-public funds and the

expenditure required to run the Unit Canteens were made out of the profits earned by the canteen itself and therefore there was no relationship of

Master and Servant between Union of India and the employees of the Unit-run Canteens. The Supreme Court found that originally the canteens

were run by the contractors. Subsequently the concept of Unit-run Canteens were born. Accordingly, contract system was abolished. The

Supreme Court applied the test formulated in *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, , and decided the

issue thus:

3. ...Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-run

Canteens can be held to be not government servants, when it has emerged that providing canteen facilities to the defence service personnel is

obligatory on the part of the Government and, in fact, these Unit-run Canteens discharge the duty of retail outlets after getting their provision from

the wholesale outlet or depot of the Canteen Stores Department....

35. In *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, , the Supreme Court

considered the earlier cases relating to contract labour and observed thus:

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

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

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

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

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

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

36. The question as to whether the condition in the agreement between the contractor and the establishment that the new contractor should retain the employees who had served under the earlier contractors, would necessarily mean that such employees were employees of the establishment was the issue in *Hari Shankar Sharma and Others Vs. Artificial Limbs Manufacturing Corporation and Others*, . The Supreme Court observed that the issue is primarily and ultimately one of fact to be determined by a fact-finding Tribunal.

37. In *Bharat Heavy Electrical Limited Vs. State of U.P. and Others*, , the issue before the Supreme Court was the arrangement made by BHEL to employ workmen through intermediary. The management engaged workers as gardeners to sweep, clean and maintain and look after the lawns and parks inside factory premises and campus of the residential colony through the agency. Their services were terminated. The workers raised an industrial dispute. Before the Labour Court, BHEL raised a plea that the workers were never employed by them and as such they were not liable to pay any amount of compensation or to re-instate the workers in service. The Labour Court directed BHEL to re-employ the workers. The award was confirmed by the High Court. The Supreme Court considered the nature of work performed by the workmen and their employment through the contractor. The Supreme Court found that the Head Mali, was admittedly employed by BHEL and he used to supervise the work of the workmen. Similarly another employee of BHEL used to maintain the records of attendance of the workmen. The Supreme Court concurred with the views expressed by the High Court that the workmen were under the direct employment, supervision and control of BHEL and that the employer with a view to get over stringent provisions of the labour law, resorted

to engage the workmen through some intermediary and such an arrangement shall be termed as artificial. The Supreme Court also considered the earlier judgment in *Hussainbhai, Calicut Vs. The Alath Factory*

Thezhilali Union, Kozhikode and Others, and observed thus:

10. Looking to what is stated in paras extracted above, it is clear that where workman-labour is engaged to produce goods or services and these

goods or services are for the business of another, the other is the employer. The work of the respondent workmen is not totally disassociated in

fact between them and the appellant to say that they were not employees of the appellant judged by what is stated in para 7 of the same judgment

in the following words:

7. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance

and in real-life terms, by another. The management's adventitious connections cannot ripen into real employment.

38. In *Bharat Heavy Electricals Ltd. Case cited supra*, the Supreme Court by lifting the veil and looking at the conspectus of factors governing the

employment concluded that the involvement of the direct contractor was merely figurative and sham. The Supreme Court confirmed the award of

the Labour Court and directed re-instatement of the workers.

39. In *Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others*, , the Supreme Court observed that the question as to

whether there was a relationship of Master-Servant has to be answered having regard to the facts involved and no single test has been held to be

the determinative factor. The observation reads thus:

Determination of relationship

32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees

concerned are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard-and-fast rule nor is it

possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it

organisation or any other test - has been held to be the determinative factor for determining the jural relationship of employer and employee.

33. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly an independent entrepreneurial dealing.

40. The Supreme Court in *Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others*, , indicated the relevant factors for determining the jural relationship thus:

Relevant factors

37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer,

the court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the

paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g.

whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

41. The role of industrial adjudicator to decide the question as to whether the contract was sham or camouflage was indicated by the Supreme

Court in *Workmen of Nilgiri Coop. Mkt. Society Ltd.* thus:

Camouflage

68. Whether a contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of the Contract

Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought

on record.

...

94. There cannot be any doubt whatsoever that where a person is engaged through an intermediary or otherwise for getting a job done, a question

may arise as the appointment of an intermediary was merely sham and nominal and rather than camouflage where a definite plea is raised in the

Industrial Tribunal or the Labour Court, as the case may be, and in that event, it would be entitled to pierce the veil and arrive at a finding that the

justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and

employee between the principal employer and the workman.

42. In *M. Elangovan and Others Vs. Madras Refineries Ltd., Industrial Catering Services (P) Ltd. and Mr. A. Ravindran, Canteen Contractor, ,*

the issue before a Division Bench of this Court was the claim of regularisation made by 103 workers of Madras Refineries Limited and their writ of

declaration to declare that they are the workmen of the Corporation and to regularise their services. The writ petition was dismissed by the learned

Single Judge. Before the Division Bench the Corporation contended that it was not open to the workmen to argue that the contract was sham and

camouflage as they have conceded before the learned Judge that the contract was not challenged on the ground that it was a sham document and

the same was recorded by the learned Judge in more than one place. The said submission was accepted by the Division Bench. The Division

Bench observed that on the basis of the self serving averments in the affidavit it was not possible to declare that the contracts entered into by the

Corporation with the contractor were sham and nominal and not genuine. The Division Bench followed *Hari Shankar Sharma and Others Vs.*

Artificial Limbs Manufacturing Corporation and Others, where it was held that merely because the employer has complied with the provisions of

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

canteen through the agency of the contractor and there must be something more. In such factual context, the Division Bench observed that the

learned Judge was correct that on the facts of the case that there was nothing to show that the contract between the respondents inter se was sham

and bogus one. Accordingly the finding rendered by the learned Judge that the contract was genuine was confirmed.

43. The claim of the canteen employees for permanent status was considered by the Supreme Court in *Haldia Refinery Canteen Employees Union*

and Others Vs. Indian Oil Corporation Ltd. and Others, . The contention taken by the workers that the management themselves exercised

effective control over the contractor of canteen on certain matters with regard to running the canteen was negated by the Supreme Court by

opining that such control was being exercised to ensure that the canteen was run in an efficient manner and to provide wholesome and healthy food

to workmen of the establishment and it does not mean that the workmen working in the canteen have become employees of the establishment. The

Supreme Court compared the facts in *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, , and on facts held that the

supervisory control exercised by the management to ensure that the workers employed were well qualified and capable of rendering proper service

to the employees of the management would not show that the workers were in effect the workers engaged by the management.

44. In *Haldia Refinery Canteen Employees Union* case there was also a distinguishing feature which was noted by the Supreme Court. In the said

case the employees of the canteen raised a dispute against the contractor. It was found that a statutory settlement was arrived at between them,

wherein certain terms and conditions were agreed upon with regard to some labour issues relating to the workmen employed by the contractor,

which was followed by another settlement. In such circumstances the Supreme Court observed that the settlement clearly goes to show that the

workmen were treating themselves to be the employees of the contractor and not of the management.

45. In *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, , the issue before the Supreme Court was

the demand made by the Employees of the Karnataka Government Secretariat Departmental Canteen claiming permanent status. The High Court

granted the relief in favour of the employees by directing the Government to regularise the services of six petitioners, who have put in ten years of

service. The Supreme Court considered the earlier decisions on the point and observed that it was not proper for the High Court to decide such

disputed questions in a proceeding under Article 226 of the Constitution of India. The Supreme Court noted that the State was not obliged to run a

canteen for its employees. In the said factual context, the Supreme Court observed that the question as to whether the employees of the canteen

were in fact only employees of the State or whether their services should be directed to be regularised or not, in view of several decisions of the

Supreme Court would depend upon the issue as to whether the canteens are required to be made in terms of the provisions of a Statute or

otherwise. In short, the Supreme Court indicated that each case has to be decided on its own peculiar facts.

46. The issue regarding claim of permanent status by the contract employees was recently considered by the Supreme Court in *International*

Airport Authority of India Vs. International Air Cargo Workers' Union and Another, . The Supreme Court held that it is open to the industrial

adjudicator to grant the relief sought for by the workmen, if it finds that contract between principal employer and the contractor was sham, nominal

and merely a camouflage to deny employment benefits to the employees and that there is in fact a direct employment. The Supreme Court

indicated the following tests in such matters.

(i) Who pays the salary;

(ii) who has the power to remove/dismiss from service or initiate disciplinary action;

(iii) who can tell the employee the way in which the work should be done,

(iv) who has direction and control over the employee.

The application of the tests in the facts of a given case was indicated by the Supreme Court thus:

20. ...The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding

out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour,

necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would

not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the

contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done

by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to

be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision

and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only

when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the

principal employer but that is secondary control. The primary control is with the contractor.

47. In International Airport Authority the Supreme Court noted that the workers

Union did not plead that the arrangement was sham and nominal.

THE STATUTE:

48. In accordance with the mandate of Section 46 of the Factories Act, 1948 the Government of Tamil Nadu have framed rules with respect to

the conduct of canteens. Rules 65 to 71 relates to the provision of canteens in factories and the nature of working arrangement in such canteens.

49. The salient features of the rules regarding conduct of statutory canteen reads thus:

(a) The occupier of the factory shall provide in the factory or near the factory an adequate canteen according to the standards prescribed in the rules.

{Rule 65(2)}

(b) The occupier or the Manger of the factory shall submit for the approval of the Chief Inspecto, Plans and site plan of building to be constructed or adapted for the use as a canteen.

{Rule 65(3)}

(c) The canteen building shall be constructed in accordance with the plan approved by the Chief Inspector and shall accommodate at least a dining hall, kitchen room, pantry and washing places separately for workers and for utensils.

{Rule 65(5)}

(d) The specifications of the canteen building.

{Rule 65(6) to 65(9)}

(e) The canteen shall be maintained in a clean and sanitary condition. Suitable arrangement shall be made for the collection and disposal of garbage.

{Rule 65(10)}

(f) Specifications of the dining hall, floor area of the dining hall and separate enclosure for women workers in proportion to their number and washing places.

{Rule 66(1) to 65(3)}

(g) Sufficient tables, chairs or benches shall be available for the number of diners.

{Rule 66(4)}

(h) Soaps and towels should be provided at the washing place in the canteen for the use of the workers.

{Rule 66(5)}

(i) Sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of the canteen shall be provided and

maintained. Suitable clean clothes for the employees serving in the canteen shall also be provided and maintained.

{Rule 67(1)}

(j) The Furniture, utensils and other equipment shall be maintained in a clean and hygienic condition.

{Rule 67(2)}

(k) Food and food materials should be stored in fly-proof safe and handled with the help of wooden ladles or suitable metal forceps whichever is

convenient. Vessels once used should be scalded before being used again.

{Rule 67(3)}

(l) Medical Examination of canteen staff who handles food stuffs; routine and bacteriological testing of faeces and urine for germs of dysentery and

typhoid fever at intervals of not more than six months; routine blood examination at intervals of not more than twelve months and other

examinations including chest x-rays are prescribed.

{Rule 67-A (i) to (iii)}

(m) Medical charges shall be paid by the occupier.

{Rule 67-A (a) & (b)}

(n) Rule 68 deals with the prices to be charged.

{Rule 68}

(o) While computing the price of food items certain items of expenditure like rent for the land and building; depreciation and maintenance charges

of the building and equipments provided for the canteen; cost of purchase, repairs and replacement of equipments including furniture, crockery,

cutlery and utensils; water charges and expenses for providing lightning and ventilation; interest on the amount spent on provision and maintenance

of the building, furniture and equipment provided for the canteen; the cost of the fuel required for cooking or heating foodstuffs or water shall be

excluded from consideration.

{Rule 68(1-A) (a) to (f)}

(p) While calculating the price of food stuffs, wages of the employees serving in the canteen and the cost of uniform if any provided to them shall be excluded.

{Rule 68(1-A) (g)}

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

{Rule 69(1)}

(r) The accounts pertaining to the canteen shall be audited once in every twelve months by registered accountants and auditors.

{Rule 69(2)}

(s) The manger shall appoint a canteen Managing Committee which shall be consulted from time to time as to the quality and quantity of food stuffs to be served in the canteen, the arrangements of the menu; time of meals in the canteen and any other matter as may be directed by the Committee.

{Rule 70(1)}

(t) The functions of the Managing Committee was enumerated in Rule 70(2) to (5).

{Rule 70 (2) to (5)}

(u) In case the workers of a factory in which a canteen has been provided by the occupier in accordance with Rules 65 to 67 for the use of the workers, desire to run the canteen by themselves on a co-operative basis with share capital contributed by themselves, the management may permit them to run the canteen in accordance with the by-laws of the Co-operative Society.

{Rule 70(6)}

(v) The provisions regarding Rules 68(1), 69(2) and 70(1) to (5) shall not apply to canteens which are run on co-operative basis by the workers themselves and which are recognised by the Chief Inspector.

{Rule 70(7)}

50. The statutory rules as indicted above clearly shows that the management

was obliged to provide a canteen. The cost of food stuffs and other items served in the canteen shall be fixed on non-profit basis. A careful reading of Rules 65 to 70 clearly shows that the management was bound to run the canteen by managing the affairs through the canteen Managing Committee. The exception to such arrangement is the formation of a Co-operative Society by the workers in case the workers exercises such an option. The entrustment and conduct of canteen by a private contractor or by a Co-operative Society without the participation of the workers of the factory, were outside the purview of Rules 65 to 70. In fact Rule 70(7) indicates that it was only in case the Society was run by the workers of the factory, the provisions with regard to fixation of prices, maintenance of accounts and the constitution of a managing committee could be waived. Therefore there was a clear indication in the Rules that the canteen has to be conducted only by the management. The Society as formed in the subject case was not the one contemplated under Rule 70(6) of the Tamil Nadu Factories Rules, 1950.

51. The Rules provide only one exception to the conduct of canteen directly by the management. The said exception relates to formation of a Society by the workers of the factory. However such a desire has to originate from the workers. In short, in case no expression of interest was shown by the workers to form a Society to run the canteen by themselves on Co-operative basis with share capital contributed by them, the canteen has to be provided and run by none other than the management.

52. The issue as to whether the second respondent Society was sham and nominal has to be considered in the light of the Factories Act and Rules made there under. The issue has also to be considered in the light of the by-laws of the Society.

BY-LAWS OF THE SOCIETY:

53. The relevant provisions of the by-laws reads thus:

(i) MEMBERSHIP:

(a) Those persons who are above eighteen years of age, working as on the date of registration of the Society under the contractors engaged for

Canteen, Sanitation at BHEL, Ranipet.

(b) Those persons whose lands were acquired for the establishment of BHEL,

Ranipet and are eligible for employment in BHEL but not employed in BHEL on the date of registration of the Society.

(c) The management of BHEL.

(ii) ADMISSION OF MEMBERSHIP:

The Board of Directors shall be the competent authority to grant admission of membership in the Society.

(iii) BOARD OF MANAGEMENT:

(a) Executive Management of the Society shall vest in the Board of Directors consisting of not more than seven Directors as follows:

(1) Nominees of BHEL : 3

(2) State Government Nominee : 1

(3) Worker Member Nominees : 3

(b) Members of the Board of Directors other than the nominees of BHEL and State Government shall be elected by the General Body for a period of three years from amongst the members.

(c) The quorum for the Board meeting shall be five.

(d) The President or the other presiding member shall have a casting vote.

(e) The President shall have a general control over the affairs of the Society and shall keep in touch with the day-to-day administration of the Society.

(f) There shall be a whole time Secretary of the Society, who will be responsible for the Executive Management of the day-to-day affairs of the Society, without a voting right.

(g) A suitable officer of the State Government on deputation may act as Secretary to the Society. The condition of deputation of such official shall be decided by the Board of Directors in consultation with the Management of BHEL.

(iv) GENERAL BODY:

The ultimate authority of the Society shall vest in the General Body. The General Body, shall not, however, interfere with the action of Board of Directors in exercise of the powers conferred on them by the by-laws.

(v) BUSINESS:

The Board of Directors shall be competent to obtain contract from BHEL and other Government and Public Bodies.

(vi) DISPOSAL OF NET PROFITS:

The net profits of the Society as declared by the Registrar every year shall be appropriated in the manner shown indicated in by-law No. 21.

AMENDED BY-LAWS:

54. The by-laws were amended subsequently. As per the amended by-law BHEL was entitled to nominate three Directors. The President and

Vice President shall always be the nominees of BHEL. Therefore election would take place only to elect the three Directors from the workers of

the canteen. The President, who is the nominee of BHEL was given the casting vote. This is a clear indication that BHEL was exercising persuasive

control over the Society. The total Directors being seven and BHEL having three Directors nominated by it with the President exercising the

casting vote in respect of any decision, naturally only the decision of BHEL management would prevail.

55. The moto of the Co-operative movement is ""Each for all and all for each"". Democratic functioning is the hall mark of a co-operative institution.

The normal practice would be to elect the President and Vice President from among the elected Directors of the Society. Therefore every Director

would be given a chance to contest the election to the office of the President and Vice President at all point of time. However very strangely by

way of an amendment to the by-laws, BHEL has retained the power to nominate the President and Vice President. The President is the principal

functionary in the day-to-day management of the Society. The President discharges his functions through the Secretary. The Secretary has no other

independent powers except to execute the decision taken by the Board. Therefore the presence of a paid Secretary or an officer on deputation

from the Government will not suggest that the management of the Society vests only on the Chief Executive Officer.

56. Before the Labour Court, several documents were marked to demonstrate the functioning of the Society. The minutes of the meetings of the

Board of Directors was marked as Ex.M.9 for the purpose of considering the nature of functioning. I have gone through the minutes of the

meetings of the Board of Directors and the decisions taken in such meetings. The

following particulars are material for arriving at the decision as to whether BHEL has got any say in the functioning of the Society.

RECORDS SPEAKS ITSELF:

(i) BOARD RESOLUTION DATED 2.1.1988:

Sub: Recruitment of workers to the Society in future.

Resolution:- It has been resolved that it will be done in consultation with Personal and Administration Department of BHEL, Ranipet.

(ii) BOARD RESOLUTION DATED 18.4.1988:

Sub: Categorisation of worker members.

Resolution:- It is resolved to send a letter to M/s. BHEL Management about new requirement which will be forwarded by the Secretary on 25th

April, 1988 after having detailed discussion with Member Directors and with Vice-President.

(iii) BOARD RESOLUTION DATED 06.1.1990:

(a) Sub: To record the letters from BHEL, Ranipet regarding enhancement of the wages to the workers to Rs. 25/- per day per head and the

service charges payable to the Society at Rs. 36.50 w.e.f. 28.11.1989 (vide letter of BHEL dated 29.12.1989)

Resolution:- Recorded.

(b) Sub: Commissioning of the new dining hall in the Administrative building on 10.1.1990.

Resolution:- In view of the letter dated 6.1.1990 from the Senior Manager (Personnel) BHEL, Ranipet it is resolved to commission the new dining

hall in the Administrative Building on 10.1.1990 and to avail the following facilities.

(1) Enhancement of the daily wage to the workers to Rs. 25/- per day.

(2) Receipt of a lumpsum grant of Rs. 3,400/- per month for the payment of cooking allowance at the rate of Rs. 3/- per day per head for the 25

kitchen staff and 6 Supervisors and Night duty allowance of Re.1/- per day per head for the workers attending to the duty in Night Shifts.

(iv) BOARD RESOLUTION DATED 10.8.1990:

Sub: Payment of arrears of wages and lumpsum amount to the members and staff of the Society.

Resolution:- Resolved to pay a sum of Rs. 5/- per day as wage arrears for the period from 1.9.1989 to 27.11.1989 to all the workers and staff of the Society together with a lumpsum amount of Rs. 300/- each as per M/s. BHEL letter dated 7.8.1990.

(v) BOARD RESOLUTION DATED 20.11.1990:

Sub: Disciplinary action against Thiru S. Rajendran, Sanitary member, who is said to have involved in a criminal case.

Resolution:- Resolved to suspend Thiru S. Rajendran, Sanitary worker-member until further on the basis of the letter received from Senior Security

Officer, BHEL dated 20.11.1990.

57. The management of BHEL as per letter dated 30.7.1988 agreed to pay over time wages in respect of four employees on account of break-

fast service introduced during the third shift. As per Ex.W.2 dated 22.10.1986 the management sanctioned ex-gratia of Rs. 4,500/- to the Society.

Ex.W.5 dated 18.4.1988 shows that the management has agreed to pay wages to the workers of the canteen and the amount of wages were also

fixed by none other than BHEL. In the said letter there was an indication that a sum of Rs. 23/- was agreed to be paid to the Society, the break up

being a sum of Rs. 15/- towards wages to the workers, Rs. 1.25 as bonus, Rs. 1.50 as Provident Fund, Rs. 1.50 as Uniform and Washing

allowance and a sum of Rs. 4/- as Establishment charges.

58. BHEL found that the Society was in a difficult situation and accordingly a sum of Rs. 5,000/- per month was sanctioned with effect from

25.3.1988. Ex.W.6 dated 27.10.1989 shows that the request of the Society to pay higher wages to the workers was considered by BHEL. The

proposal to revise the wages was examined and it was decided as an interim measure to enhance the rate of wages to the workers by Rs. 5/- with

effect from October, 1989.

59. Ex.W.14 contains an amendment made to by-law No. 13(a) whereby and whereunder BHEL was permitted to nominate the President, Vice-

President and one women Director. Ex.W.7 dated 29.10.1993 also shows the wages fixed by BHEL in respect of supervisors, cooking staff,

service and cleaning staff and sanitation workers of the Society. Ex.W.10 shows that BHEL has recommended the case of an individual for

appointment into the canteen department. The employment notification issued

by the Society shows that only the relatives of BHEL staff members were eligible to apply for employment in the canteen.

60. Before the Labour Court both the management as well as Union adduced oral evidence. The Union examined two witnesses.

EVIDENCE:

61. W.W.1 Nedunchezian joined the canteen during 1983. In his evidence, W.W.1 deposed that originally a contractor had been running the canteen on behalf of BHEL. Subsequently the second respondent Society was floated and he continued to work in the said establishment. During his cross examination W.W.1 deposed that canteen and sanitary workers employed in BHEL alone are the members of the Society. The contractor, who was running the canteen earlier was replaced by the Society.

62. W.W.2 - M. Muthusamy was working as cook and he was in the service since 2.9.1981. In his evidence he has stated that all the workers, who are working in the canteen under the contractor were employed in the statutory canteen subsequent to the formation of the Society. It was his evidence that bonus and other payments were decided only by BHEL. Similarly it was his evidence that supervisors are deputed by BHEL to supervise the canteen. Those supervisors are permanently working in the canteen. The function of the supervisors includes maintaining quality of food. They supervise the work of purchasing the materials required for the canteen. The supervisors deputed by BHEL would work in shift system. One of the supervisors would work in the first shift from 6.00 a.m. to 2.00 p.m. and another supervisor would work in the shift from 2.00 p.m. to 8.00 p.m. The store keeper is also an employee of BHEL.

63. The management examined their Supervisor Thangaraj as M.W.1. He has given an account of the usual functioning of the canteen including the supervision by BHEL. The relevant cross examination reads thus:

CROSS EXAMINATION - ON BEHALF OF THE PETITIONER:

One Gopinath who is an employee under the control of the first respondent like me, is working as a supervisor with me in the canteen run by the 2nd respondent. Similarly, the employees of R.1 namely Muthukumar and Neelamegam are working as Assistant Supervisor in the aforesaid canteen. Similarly the three persons namely, Thiru Devadas, Sampath and

Dakshinamoorthy who are the employees of the 1st respondent are working as in-charge of the godown in the canteen. In a similar line, the employees of the 1st respondent namely, Ananda Gounder, Murugesan and Saroja are working as Attender in the Canteen. The canteen is not run by R.2. But, the workers in the Canteen work on behalf of R.2. The Special Officer appointed by the government worked as the President of R.2 Society. R.1 appoints the President of the Administrative Committee in the Society run by R.2. The Deputy General Manager of the first respondent Thiru Mohan is the Vice-President of the Administrative Committee of the R.2 Society. Similarly, Thiru Jayaprakash working as Labour Officer in the factory of R.1 is the Vice President of the Administrative Committee of the R.2 Society. In a similar manner, Selvi. Banumathy, the Labour Officer of the first respondent Factory is working as another Vice-President of R.2 Society. The management of the R.1 factory issued necessary order in respect of the aforesaid persons namely, Thiru Mohan, Thiru Jayaprakash, Selvi Banumathi to act in the R.2 Society. The materials required for the preparation of food items in the canteen will be purchased by R.1 and stored in the R.2 society building. Those materials required will be taken by the employees of R.1 who are in-charge of the godown and given for the daily usage. The aforesaid canteen is situated within the premises of R.1 factory. The office of R.2 society is not found within the aforesaid canteen. But, the R.1 factory is functioning in a separate building situated within the premises. The first respondent only gives the money required for the purchase of materials to prepare the food items in the canteen. That work is not undertaken by R.2 society. The other equipments fitted in the aforesaid canteen were given by R.1. Those equipment do not belong to the R.2 society. The canteen workers have to work in accordance with the "shift system" that is followed in the R.1 factory. So, accordingly, the employees of R.1 only allows the workers to enter the premises of the factory as per their timings. If there is any enhancement of salary to the canteen workers, it will not be decided by R.1. It would be decided only by R.2 society. I am not aware of the fact as to who gives the additional salary to the workers. I do not know as to whether bonus is granted to the canteen workers as given to the R.1 factory employees. I am not aware of the fact as to whether the R.2 society

was established as per the instruction specified in Ex.M.1. I am a B.Com., graduate and have obtained a diploma in Catering Technology. The first respondent appointed me on the basis of my educational qualification. I do not know the details regarding the fact as to whether the profit gained in the canteen to have food has to pay the money to the concerned employee, get the token, give that to the concerned section and get the required food. This procedure is followed in the canteen. The work of giving the coupon and getting the money is being done only by the R.1 factory worker. If it is stated that, the salary and other statutory benefits are granted to the canteen workers only by the R.1 factory, then, I do not know regarding that. If it is stated that, R.1 factory gives the amount towards the salary in respect of the canteen workers as grant, then, I am not aware of the said fact. Apart from the administrative committee of R.2 factory as stated above, there is another organisation as Food Administrative Committee. The President and members of the said Food Administrative Committee are selected by the workers of the R.1 Factory. Thiru Raj, the Deputy General Manager of the Factory is functioning as the President of the Food Administrative Committee.

64. The learned Counsel for the petitioner contended that BHEL was only paying fixed amount to the Society and it was up to the Society to pay wages to the workers as per the rate fixed by them. However the facts projected in this case speaks otherwise. Ex.W.6 shows that BHEL has decided to enhance the rate of wages for workers by Rs. 5/- provisionally.

65. There are similar indications in other exhibits also which goes to show that right from the purchase of provisions and vegetables and till settling the accounts, BHEL plays a predominant role. Ex.M.7 shows that the election was only to elect three Directors from among the workers as BHEL has already nominated the President, Vice-President and a women Director. Ex.W.10 gives an indication that the workers were appointed as per the recommendation of BHEL.

66. The learned Counsel for the petitioner attempted to explain the position as according to him Ex.W.10 was only a stray letter and the same cannot be made use of against the management to decide that the entire work force in the canteen were recruited only at the instance of BHEL.

However the vacancy notification dated 9.1.1988 and the contents of the

document in Ex.W.10 shows that even in the selection of workers it was only BHEL which exercises persuasive control.

67. The agreement executed between BHEL and the Society also shows that BHEL was given an upper hand. The company was given the right to

terminate the agreement and the Society has no such liberty. If it is an ordinary licensee, BHEL was liable only to pay the service charges. There

was no necessity for BHEL to fix the wages and to revise the same periodically like any other employer. In fact in Ex.M.4 there was a clear

observation that the wage revision for the canteen workers could be considered only after the wage revision of BHEL employees. In case workers

of the Society were not treated as workers of BHEL, there was no necessity for BHEL to take up the issue regarding revision of wages with the

Society. Similarly it was not necessary to link the revision of wages of the workers of the Society with that of the workers of the factory.

68. M.W.1 deposed that two Assistant Supervisors are functioning as Supervisors in the canteen. Similarly six other workers of BHEL are

working as godown in-charge as well as attenders of the canteen.

69. The Supreme Court in Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, , indicated the broad features of a

statutory canteen for the purpose of arriving at a decision as to whether there was an employer-workmen relationship between the management

and the workers of the canteen.

70. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, the Supreme Court indicated that the formula evolved

cannot be concretised into fixed formula for universal application and the mere availability of any one or more or their absence in a given case

cannot by itself be held to be decisive.

71. Therefore it is necessary to consider the facts of this case in the light of the facts projected in Indian Petrochemicals Corpn. Ltd. and Another

Vs. Shramik Sena and Others, , as well as the tests indicated therein.

COMPARITIVE TABLE

SL. No.

Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others,

BHEL CASE

(SUBJECT CASE)

a The canteen has been there since the inception of the appellant's factory.

Same position

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.

Same position

c The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the management.

BHEL provided the entire equipments and premises.

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

Wages fixed by BHEL was given to the Society for payment.

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.

The Supervision and control is exercised by BHEL through the Board. The President of the society is always a nominee of BHEL. Similar is the case of Vice-President and lady Director . The President is given a casting vote. The day-to-day affairs is managed by the President through the

Secretary. Therefore BHEL is in a position to exercise the control of the canteen through those officers. The disciplinary powers are also exercised

by BHEL and the action taken against one S. Rajendran as per the direction given by the Senior Security Officer of BHEL was an indication of

such disciplinary powers of BHEL.

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.

Here again it was only BHEL who controls the entire management through the President. The entire establishment belongs to BHEL. The

supervisors, Assistant Supervisors, godown clerks and attenders are all paid employees of BHEL. The wages of the workers of canteen were

fixed by none other than BHEL.

g The workmen have the protection of continuous employment in the

establishment.

The by-law provides for such protection in the matter of employment.

72. The Supreme Court in Indian Petrochemicals Corpn. Ltd. Case further observed that the above factors taken cumulatively, in addition to the fact that the canteen in the establishment of the Management is a statutory canteen, would prove that the workmen were in fact only the workmen of the Management.

ADDITIONAL FACTORS IN BHEL CASE:

73. (a) The persuasive control is always with BHEL on account of their strategic position in the Board of Management. The President and Vice-

President would be nominated only by BHEL. It was not possible for the workers to become the President or Vice-President of the Society at any

point of time. The by-laws were suitably amended and a specific clause was inserted to the effect that only the nominees of BHEL could become

the President and Vice-President of the Society.

(b) Appointments in the canteen were restricted to the family members of BHEL employees.

(Employment notification dated 9.1.1988 - Ex.W.9)

(c) BHEL recommends the candidature for appointment in canteen. (Ex.W.10)

(d) Disciplinary proceedings were initiated at the instance of BHEL against the workman of the Society.

(Minutes dated 20.11.1990 - Ex.M.9)

(e) Wages to be paid to the workers of the canteen including revision of wages were decided only by BHEL.

(Minutes dated 6.1.1990)

(f) The entire provisions, vegetables and other materials were supplied only by BHEL.

(g) Materials were kept in the custody of BHEL.

(h) Supervisors, Assistant Supervisors, godown incharge and attenders were deputed only by BHEL.

(i) The wage revision to the employees of the canteen were made only after wage revision given to the BHEL employees.

VERY RELEVANT ASPECT:

74. The Tamil Nadu Factories Rules and more particularly Rules 65 to 70 mandates that a canteen has to be provided and maintained by the occupier. The Management of the canteen by the workers of the factory at their option alone was the exception. The workers of BHEL never opted for floating a Society for the purpose of running a canteen. Therefore the workers of the factory have no say in the functioning of the canteen. The necessary conclusion is that canteen was the one opened and operated by BHEL.

75. It is true that the letter sent by the Labour Commissioner was also a source of inspiration for incorporating the second respondent Society.

However, the said initial step cannot be taken as a conclusive proof to show that the Society was an independent entity and BHEL has no control

over it. The fact that BHEL got the by-laws amended and incorporated a fresh provision that the President and Vice-President of the Society shall

always be the nominees of BHEL would speak volumes. BHEL wanted to exercise the financial, supervisory and actual control over the affairs of

the Society. It was only in such circumstances, BHEL got the by-law amended. Because of this amendment one section of members of the Society

could never become the President or Vice President. In fact this amended by-law which gives power to BHEL to nominate the President and

Vice-President on permanent basis goes against the spirit of the Co-operative movement.

76. The learned Counsel for the petitioner placed strong reliance on the judgment in *M. Elangovan and Others Vs. Madras Refineries Ltd.,*

Industrial Catering Services (P) Ltd. and Mr. A. Ravindran, Canteen Contractor, , Haldia Refinery Canteen Employees Union and Others Vs.

Indian Oil Corporation Ltd. and Others, and International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, in

support of his contention.

77. In *Haldia Refinery Canteen Employees Union* case the Supreme Court found that a free hand has been given to the contractor with regard to

engagement of workers in the canteen. There was no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian

Petrochemicals Corporation Ltd., shall retain and engage compulsorily the employees, who were already working in the canteen under the

previous contractor. Similarly there was no stipulation in the contract that the employees working in the canteen at the time of commencement of the contract must be retained by the contractor.

However in BHEL case (subject case) that was not the position. The Society itself was formed by the erstwhile workers of the contractor. The Society was bound to employ the workers, who were working hitherto under the contractor.

78. In Haldia Refinery Canteen Employees Union case there was no reimbursement of wages by the management.

However in the present case the rate of wages itself was fixed only by BHEL and periodical revision was also made by BHEL. The Society was only disbursing the wages fixed by BHEL.

79. In Haldia Refinery Canteen Employees Union case free hand was given to the contractor to recruit personnel.

However in the subject case BHEL was recommending cases for appointment and the family members of the workers alone were eligible for appointment.

80. Similarly in Haldia Refinery Canteen Employees Union case the quality of service was a matter to be looked after by the independent contractor.

However in the subject case the entire quality of the service was looked after only by the Supervisors and Assistant Supervisors of BHEL. Even attenders were appointed only by BHEL.

81. In Haldia Refinery Canteen Employees Union case there was no disciplinary powers to the Company against the employees of the Society.

However in BHEL case the management was exercising the disciplinary powers, which was evident from the action taken against an employee of the canteen at the instance of BHEL.

82. The other factor which was taken in Haldia Refinery Canteen Employees Union case not to follow the judgment in Indian Petrochemicals Corporation Ltd., was the fact of settlement arrived at between the contractor and the workmen of the canteen in the presence of Assistant Labour Commissioner. The said fact was taken into account by the Supreme Court to decide the point that the workmen were treating themselves to be

the employees of the contractor and not that of the management.

However there was no such settlement between the employees of the Canteen and the second respondent Society in the instant case.

83. The learned Counsel for the petitioner by placing reliance on the judgment of Supreme Court in International Airport Authority of India Vs.

International Air Cargo Workers" Union and Another, contended that mere supervision would not prove that the Society was actually run only by

BHEL. According to the learned Counsel, it was only in accordance with Tamil Nadu Factories Rules, the management was exercising the

supervisory control. Therefore it cannot be said that on account of such supervisory control, the canteen becomes the establishment of the

management.

84. The issue before the Supreme Court in International Airport Authority of India case was regarding the claim made by Loaders and Packers of

M/s. Airfreight engaged in connection with ground handling work. The International Air Cargo Workers Union took up the issue. There were series

of proceedings and the Supreme Court indicated them as first round to seventh (current) round. The Supreme Court examined the issue as to

whether there were materials to hold that wages were being directly paid by the International Airport Authority to the contract labourers. It was

found that the contract between International Airport Authority and the Society contains a provision that a lumpsum consideration has to be paid

by the Corporation to the Society and the Society was responsible for payment to its members who were working as contract labourers. The

workers did not produce any document to show that payment was made by the Corporation directly. The Industrial Tribunal committed a factual

mistake by concluding that the documents produced by the workers established that the payment was directly made. In such circumstances the

Supreme Court observed that the finding was perverse as no evidence was adduced to show that the payment was direct.

85. It is true that in the present case, payment was made only by the Society to its workers. However there is enough evidence before this Court

to conclude that the quantum of wages were fixed by none other than BHEL. Whenever there was a claim for revision of wages, it was only BHEL

who took the decision for such revision. Extra amount necessary for running the

canteen was provided by none other than BHEL. Therefore

though there was no direct payment, the evidence clearly shows that the Society was acting only as a Post-Office to distribute the amount received from BHEL.

86. In International Airport Authority of India case the Supreme Court found that finding was rendered by the Tribunal that penal and disciplinary action by suspending and punishing the contract labour was indicative of the employer-employee relationship. The Supreme Court observed that such a finding was based on no evidence. Not even a notice of suspension or show cause notice for disciplinary action or order imposing punishment was passed by the Airport Authority.

However in the present case, the minutes marked as Ex.M.9 shows that the Society was taking disciplinary action as per the direction issued by BHEL.

87. The other contention in International Airport Authority of India case was regarding direct supervision and control exercised by the Officers of Air port Authority. The Supreme Court observed that the contract labour were engaged in handling cargo i.e. Loading and unloading and movement of cargo in the Cargo Complex of International Air Port Authority of India. Naturally the work had to be done under the supervision of the officers of the Airport authority. It was only in such circumstances the Supreme Court held that exercise of some control over the activities of contract labour while they discharge their duties as labourers is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principal employer.

88. The facts in the present case is entirely different. In case the Society was a separate entity there was no necessity for BHEL to depute its own supervisors. It is true that a duty was cast on the management to ensure cleanliness in the canteen and to supply healthy food to the workers. The facts of the subject case shows that Supervisors, Assistant Supervisors, godown keepers and attenders were provided only by BHEL. The purchase of articles were made only by BHEL. It was kept in the godown of BHEL in the canteen. The godown was operated by the permanent staff of BHEL. Coupons were issued only by BHEL and it was collected from the workers at the entry point again only by the staff of BHEL. The

contribution under various labour legislations were also paid by BHEL.

89. The control exercised by BHEL was an absolute control and it was not partial in nature. The documents produced by the Society shows that

even bonus was liable to be paid only by BHEL. For example Profit and Loss account for the year ending 31 March, 2007 shows that a sum of

Rs. 5,09,452/- was paid as bonus for the year 2006-07. In the receivable column it was recorded that a sum of Rs. 5,09,452/- has to be received

from BHEL on account of bonus paid to the workers. In case BHEL has nothing to do with the Society, they were not bound to pay bonus to the

workers of the canteen.

90. The Tamil Nadu Factories Rules and more particularly Rule 65 clearly shows that the occupier was bound to provide a canteen. The rules

gives a clear indication that the canteen has to be run only by the management. The only exception was running a canteen by a Co-operative

Society of the workers of the factory if such a proposal was mooted by the workers.

91. The workers of BHEL at no point of time made a proposal for running a canteen. The canteen was earlier run by a private contractor. After

the incorporation of the second respondent Society, the canteen was entrusted to the Society. The rules nowhere provides for constitution of such

a society by the erstwhile workers of the canteen. The Society constituted in this matter is unique in nature. While considering the background of

such Society, the correspondences which originated at that point of time assumes significance. The document in Ex.W.1 dated 12.6.1986 contains

details of meetings attended by the workmen and BHEL. The said document narrates the background facts leading to the formation of the second

respondent Society.

92. There was a reference in Ex.W.1 that BHEL expressed its difficulty to absorb all the workmen on regular basis for want of man power

sanctioned and agreed to organise a Co-operative Society. Though the second respondent was constituted as an independent Co-operative

Society, in its actual functioning, the Society acted as an organ of BHEL. In fact BHEL was running the canteen. The second respondent Society

was only a name lender. The canteen was a statutory canteen in all respects, opened and operated by BHEL.

93. The learned Counsel has also placed reliance on the judgment of the Division Bench in *M. Elangovan and Others Vs. Madras Refineries Ltd.*,

Industrial Catering Services (P) Ltd. and Mr. A. Ravindran, Canteen Contractor, . In the said case the Division Bench found that the workmen

never contended that the Society was sham and bogus. The Division Bench observed that on the basis of mere averments in the affidavit, it was not

possible to declare that the contract entered into by the Madras Refineries with the contractors were sham and nominal.

94. The order challenged before the Division Bench in *Madras Refineries Case* was an order passed by a learned Judge in a writ petition. The

Division Bench found that the claim was made only by way of an affidavit. There was an indication in the judgment that it was not possible to

decide the issue of such sham transactions on the basis of the averments in the affidavit.

95. In the present case, it was the contention of the Union at all point of time that the transaction between the petitioner and the second respondent

Society was sham and nominal and the canteen was run by none other than BHEL. Before the Labour Court, the parties adduced evidence. The

Labour Court on the basis of evidence both oral and documentary arrived at a finding that the canteen was run only by BHEL. The facts in *Madras*

Refineries Ltd. Case being entirely different, the ratio of the said decision has no application to the facts of the present case.

96. The findings rendered by the Labour Court that there was an employer-employee relationship between the petitioner and the workmen of the

canteen was on the basis of evidence and as such no interference is called for in the said finding.

97. The dispute raised by the Union was referred to the Labour Court for adjudication. The entire matter was at large before the Labour Court.

The Management as well as workmen adduced evidence in support of their respective contentions. The matter was considered by the Labour

Court, in the light of the pleadings and evidence. The Labour Court categorised the type of control and answered the issues. The Labour Court is

the final Court of facts. The findings rendered by the Labour Court could not be said as one without the support of evidence. Similarly it cannot be

said that the Labour Court has taken into consideration irrelevant piece of evidence and omitted to consider relevant piece of evidence.

98. Unless and until the petitioner demonstrates that the finding was perverse and no reasonable man would come to such a conclusion from the

given facts of the case, it is not possible to interfere in the factual finding rendered by the Labour Court. Even if two views are possible from the

given set of facts, the view taken by the Labour Court which had the benefit of considering the demeanour of the witness has to be preferred.

99. The dispute was considered by the Labour Court on the facts of the case with due application of law. I do not find any error or illegality in the

said finding warranting interference by this Court by exercising the power of judicial review.

THE RELIEF:

100. The next question is regarding the correctness of the direction given by the Labour Court to grant the status of permanent employees from

23.11.1987 and to pay the entire arrears.

101. The Labour Court gave a positive declaration that the workers of the Canteen are regular workers of BHEL and entitled for such status with

effect from 23.11.1987 on which date they made a demand. While granting such a declaration the Labour Court has not indicated the reasons for

such retrospective grant of benefits.

102. The canteen workers of BHEL made a demand for absorption followed by a strike notice. The Labour Officer attempted to arrive at a

compromise. However it was not successful and ultimately the Government referred the matter to the Labour Court for adjudication. The reference

was taken on file as I.D. No. 93 of 1992. The Labour Court passed the award on 17.12.1999. Admittedly the canteen workers were employed

during the particular point of time. They continued to work during the pendency of the proceedings before the Labour Court. By giving

retrospective effect the Labour Court directed the management to pay arrears from 23.11.1987 onwards.

103. The principle that payment of backwages is not automatic with an order of reinstatement has to be applied in this case, though the case is one

in the nature of absorption.

104. It is true that the Union initiated proceedings for absorption of canteen workers and the dispute was referred at their instance. It was

answered in their favour on 17.12.1999. There is no dispute that the employees

worked continuously and they were paid the prevailing wages with periodical revision. There was no special reason or circumstances warranting retrospective absorption with payment of differential wages at the full rate. Therefore I am of the view that interest of justice would be sub-served in case the absorption is directed to take effect from 17.12.1999 with 50% of differential wages.

CONCLUSION:

105. In the result, the award of the Labour Court regarding declaration of status is confirmed with modification regarding the effective date and payment of differential wages.

106. The writ petition is allowed in part as indicated above. No costs.