
(2013) 02 DEL CK 0081

In the Delhi High Court

Case No : W.P. (C) 14828/2006 and CMs 2387 and 9739/2012

The Management of Ashok Hotel

APPELLANT

Vs

Their Workman and Another

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) LLR 352

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By the present petition the Petitioner impugns the award dated 5th October, 2005 whereby the Petitioner was directed to frame a policy and consider the case of 20 members of the Respondent No. 1 for regularization in terms of the policy. Learned counsel for the Petitioner contends that the impugned award is contrary to the law laid down by the Constitution Bench in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., wherein it was held that for violation of Sections 7 and 12 of the Contract Labour (Regulation and Abolition) Act (in short "the CLRA Act") action is provided under Sections 23 and 25 of the CLRA Act and the scope cannot be extended beyond it. As settled in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, the industrial adjudicator can grant relief only if it is found that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment to the employee and to hold that in fact direct employment exists, the following test are required to be applied, that is, who pays the salary, who has the power to remove/dismiss from service or initiate disciplinary action, who can tell the employee the way in which work should be done. In a case where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. Applying

the test laid down by the Hon"ble Supreme Court there is nothing on record that the Petitioner paid salary to the members of the Respondent No. 1. Further the Petitioner had no control over them as regards their dismissal etc. was concerned. The three tests laid down by the Hon"ble Supreme Court are in favour of the Petitioner. Thus the finding of the Tribunal that there exists an employer employee relationship is erroneous.

2. Learned Trial Court has selectively relied upon the documents and even as per the documents relied upon no case is made out to come to a conclusion that there exists an employer employee relationship. The identity cards of WW1, WW3 and WW4 were issued by M/s. Sparkling Enterprises. Even as per the document Ex. WW4/5 the employer's contribution to the provident fund was being deposited by M/s. Sparkling Enterprises which had its own code number. In the tripartite settlement arrived at between the parties and relied by the learned Trial Court, since M/s. Helpline Hospitality had not given the wages for the months May to July, 2000, the Petitioner paid the wages and the same cannot be a ground to come to the conclusion that the Petitioner was paying the salary. Ex. WW6/3A is a computer generated document and does not show that this was the wage sheet of the employees of the Petitioner. Further the Management witness MW1 has not been confronted with this document. A perusal of the tripartite settlement Ex. WW6/6 would show that the payment wage sheets were supplied by the Respondent as agreed in the agreement. The Management witness has been confronted with the letter dated 20th April, 2004 which is not exhibited in the case and thus cannot be looked into. Further the said document only informs the contractor regarding the legal position under the Shops and Establishment Act relating to the sanction of leaves. Further this letter was related to N.M. Manpower Ltd. and was not connected with the case of the Respondents/workmen in the present petition.

3. Thus the documents relied upon do not conclusively prove an employer and employee relationship between the Petitioner and members of the Respondent No. 1. The contention of the Respondent No. 1 that the job was perennial in nature and must be prohibited could not have been considered as for the said grievance, recourse was required to be taken u/s 10 of the CLRA Act. Issue No. 2 raised by the Petitioner that the Industrial Dispute Act, 1947 (in short the "ID Act") was not applicable has been brushed aside by the Tribunal in view of the fact that it held that there existed an employer employee relationship. Thus the finding on Issue No. 2 erroneously flows from the finding on Issue No. 1. The finding is contrary to the law laid down in Steel Authority of India (Supra). The Respondent nowhere averred that the agreement between the Petitioner and the contractor was a sham and camouflage. In fact, WW1 Kailash in his cross-examination admitted that the salary was being paid by the contractor. WW2/22 Jagpal has stated that the contractor used to pay salary to the workman either directly or through him after receiving the same from the Petitioner. Though MW1 produced agreement with M/s. Sparkling Enterprises Ex. MW1 despite the same it was not held that the contract was sham or camouflage. Thus the impugned

award be set aside.

4. Learned counsel for the Respondent No. 1 on the other hand contends that M/s. Sparkling Enterprises has not been made a party in the present petition though it was a party in the Tribunal. M/s. Sparkling Enterprises Ltd. the Management No. 2 before the Tribunal admitted in its written statement that it was working under the Petitioner for service charge @10%. Though the various contractors have changed however, the workmen continued to be the same. Since the Petitioner did not lead any evidence in compliance of Sections 7 and 12 of the CLRA Act nor was the agreement between the Petitioner and M/s. Sparkling Enterprises placed before the Tribunal, it rightly held that there existed an employer employee relationship. Reliance on International Airport Authority of India (supra) is misconceived. In Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, was upheld which judgment has been relied upon by the learned Tribunal. M/s. Sparkling Enterprises was only a facilitator and not a contractor as it took the commission of 10% per annum. The Respondent has led sufficient evidence of work place, salary of the workmen, deduction of provident fund by the Petitioner and, an account maintained by the Petitioner in the name of Asoka Hotel Employees Provident Fund Trust which has its own rules. M/s. Sparkling Enterprises is only the service provider which maintains no records. Though the contracts were entered into in the year 1999 and thereafter however, some of the employees were employed since 1995. Their existed no agreement before 1999 and after 2005. International Airport Authority of India (supra) bars the relief under ID Act only if the contract is for a certain period. The Respondent has led evidence to show that the contract was a sham and produced documents in this regard. Further the contract was perennial in nature and thus it was sufficient to hold the contract as sham. Reliance is placed on Ex. WW6/6 the tripartite agreement to show that the salary was paid by the Asoka Hotel. The leave was sanctioned vide letter dated 20th December, 2004 by the General Manager and the signature on the exhibit was admitted by MW1.

5. The Respondent moved applications before the Tribunal seeking directions to the Petitioner to produce documents and since the documents were not produced adverse inference should be drawn against it. Reliance is also placed on Bharat Heavy Electrical Limited Vs. State of U.P. and Others, to contend that non-filing of the relevant documents by the company also support the finding that the workmen were the employees of the establishment. Strict rules of evidence are not applicable in the proceedings under the ID Act. Thus the documents which are not properly exhibited and proved can also be looked into. The tripartite settlement Ex. WW6/6 shows that the Petitioner was paying salary. Reliance is placed on R.M. Yellatti Vs. The Assistant Executive Engineer, to contend that the scope of interference is limited and in case the employer fails to produce the documents adverse inference should be drawn. Reliance is also placed on Haryana State Electricity Board Vs. Suresh to contend that the Tribunal rightly lifted the veil to find out the relationship between the Petitioner and the Respondent. Hence the present petition be dismissed.

6. I have heard learned counsels for the parties. Briefly the facts in nutshell are that the following 26 workmen raised an industrial dispute.

7. On a dispute being raised the following terms of reference were sent for adjudication:

Whether Shri Perumal and 25 others workmen whose names are shown in Annexure "A" are entitled to regularization and wages at par with their regular counterparts in the post of Houseman/Safaiwala. If so, what directions are necessary in this respect?

8. In the claim the workmen stated that they were working continuously with the Petitioner as Safaiwala/houseman in Kitchen department, though the Petitioner has been changing the contractors from time to time. Initially the contract was given to M/s. Sparkling Enterprises from 1995 to 1999, thereafter to M/s. Helpline Hospitality and M/s. Office Care who functioned up to 17th June, 2001 where after contract was again awarded to M/s. Sparkling Enterprises. It was stated that there was no agreement of M/s. Sparkling Enterprises with the Petitioner and the job carried out was perennial in nature and since the workmen were working in the hotel industry continuously and had completed more than 240 days in each calendar year they were entitled to regularization with the Petitioner. It is stated that the Petitioners were violating the Payment and Wages Act. Since more than 100 posts are vacant against the post of houseman/safaiwalas, the Petitioner be directed to regularize all the workmen on permanent jobs. In the written statement filed by the Petitioner it was stated that there was no relationship of master and servant between the Petitioner and the workmen. It was further contended that the reference made by the State Government was void ab-initio as the appropriate Government in the matter is Central Government and not the State Government. The dispute raised is not an industrial dispute in the absence of a valid and legal espousal. It was denied that the job carried out by the workmen was perennial in nature or that they had worked for 240 days in each calendar year. It was further stated that the management No. 2 i.e. M/s. Sparkling Enterprises was deducting provident fund and also ESIC and depositing the same with the concerned authority in accordance with law. The agreement of the management M/s. Sparkling Enterprises was placed on record as Ex.MW1 which showed that M/s. Sparkling Enterprises was working for a service charge at 10% on the minimum wages alone.

9. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether there is relationship of employer and employee between the management no. 1 and the workmen. If not, its effect.

2. Whether the Industrial Disputes Act is not applicable" If so, its effect.

3. Whether Delhi Government is not the appropriate Government to send the reference" If so, its effect.

4. Whether the dispute has been properly and validly espoused" If not, its effect.
5. Whether demand notice was sent before raising the dispute" If not, its effect.
6. To what relief, if any, and from which of the management as per the terms of reference, the workmen are entitled to?

10. During the course of hearing, learned counsel for the Petitioner stressed on issue No. 1, 2, 4 & 6. The issues regarding Delhi Government being not the appropriate Government and demand notice being not sent were not agitated before this Court. The contention of the learned counsel for the Petitioner that the Industrial adjudicator had no jurisdiction and if at all, the Petitioner could be proceeded under Sections 23 & 25 of CLRA Act is liable to be rejected for the reason if the contract is found to be a sham/nominal and camouflage, the remedy is purely under the Industrial Disputes Act. In International Airport Authority of India (supra) it was held:

31. In Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, this Court held: (SCC pp. 56 & 63, paras 42 & 53)

42. ...the exclusive authority to decide whether the contract labour should be abolished or not is that of the appropriate Government under the said provision. It is further not disputed before us that the decision of the Government is final, subject, of course, to the judicial review on the usual grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate Government u/s 10 of the Act arises only where the labour contract is genuine and the question whether the contract is genuine or not can be examined and adjudicated upon by the court or the industrial adjudicator, as the case may be. Hence in such cases, the workmen can make a grievance that there is no genuine contract and that they are in fact the employees of the principal employer.

53. (ii) If the contract is a sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is a sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is a sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour u/s 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the

erstwhile contractor even if the labour contract is abolished by the appropriate Government u/s 10 of the Act.

In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No court including the industrial adjudicator has jurisdiction to do so.

34 [Ed.: Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./90/2009 dated 17-7-2009.]. This Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., further held that on a prohibition notification being issued u/s 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham or nominal and merely a camouflage, then the so-called contract labour will have to be treated as direct employees of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose. On the other hand, if the contract is found to be genuine and at the same time there is a prohibition notification u/s 10(1) of the CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age.

35. As noticed above, Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., did not specifically deal with the legal position as to when a dispute is brought before the industrial adjudicator as to whether the contract labour agreement is a sham, nominal and merely a camouflage, when there is no prohibition notification u/s 10(1) of the CLRA Act.

36 [Ed.: Para 36 corrected vide Official Corrigendum No. F.3/Ed.B.J./90/2009 dated 17-7-2009.]. But where there is no abolition of contract labour u/s 10 of the CLRA Act, but the contract labour contend that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principal

employer and the agreement is sham, nominal and merely a camouflage, even when there is no order u/s 10(1) of the CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direction and control over the employee. But where there is no notification u/s 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise.

38. 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 a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. 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.

11. Both the sides have relied upon the decision in the case of Steel Authority of India Ltd. (supra) wherein it was held:

71. By definition the term "contract labour" is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the

work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master-and-servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contract is a mere camouflage as in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, and in *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, ; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour.

87. Now turning to the provisions of the Act, the scheme of the Act is to regulate conditions of workers in contract labour system and to provide for its abolition by the appropriate Government as provided in Section 10 of the CLRA Act. In regard to the regulatory measures, Section 7 requires the principal employer of an establishment to get itself registered under the Act. Section 12 of the Act obliges every contractor to obtain licence under the provisions of the Act. Section 9 of the Act places an embargo on the principal employer of an establishment, which is either not registered or registration of which has been revoked u/s 8, from employing contract labour in the establishment. Similarly, Section 12(1) bars a contractor from undertaking or executing any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 of the Act make contravention of the provisions of the Act and other offences punishable thereunder. With regard to the welfare measures intended for the contract labour, Section 16 imposes an obligation on the appropriate Government to make rules to require the contractor to provide canteen for the use of the contract labour. The contractor is also under an obligation to provide restrooms as postulated u/s 17 of the Act. Section 18 imposes a duty on every contractor employing contract labour in connection with the work of an establishment to make arrangement for a sufficient supply of wholesome drinking water for the contract labour at convenient places, a sufficient number of latrines and urinals of the prescribed type at convenient and accessible places for the contract labour in the establishment, washing facilities etc. Section 19 requires the contractor to provide and maintain a first-aid box equipped with prescribed contents at every place where contract labour is employed by him. Section 21 specifically says that a contractor shall be responsible for payment of wages to workers employed by him as contract labour and such wages have to be paid before the expiry of such period as may be prescribed. The principal employer is enjoined to have his representative present at the time of payment of wages. In the event of the contractor failing to provide amenities mentioned above, Section 20 imposes an obligation on the principal employer to provide such amenities and to recover the cost and expenses incurred therefore from the contractor either by deducting from any amount payable to the contractor or as a debt by the contractor. So

also, sub-section (4) of Section 21 says that in the case of the contractor failing to make payment of wages as prescribed u/s 21, the principal employer shall be liable to make payment of wages to the contract labour employed by the contractor and will be entitled to recover the amount so paid from the contractor by deducting from any amount payable to the contractor or as a debt by the contractor. These provisions clearly bespeak treatment of contract labour as employees of the contractor and not of the principal employer.

105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification u/s 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be for beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification u/s 10(1) of the CLRA Act.

106. We have gone through the decisions of this Court in *VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others*, and *Union of India and Others Vs. M. Aslam and Others etc.*, . All of them relate to statutory liability to maintain the canteen by the principal employer in the factory/ establishment. That is why in those cases, as in *The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others*, the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract labour working in the establishment of the principal employer have to be absorbed as regular employees of the

establishment.

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

12. A perusal of the decision of the Constitution Bench in Steel Authority of India Ltd. (supra) makes it amply clear that even where the work of an establishment is carried out by employment of contract labour prohibited because of the notification issued u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour can be ordered. Further, where the contract labour working in the establishment is in fact the employees of the principal employer, then the Court is required to pierce the veil and declare the correct position as a fact. The case of the Petitioner is that there is no prohibition on engagement of contract labour in the Ashok Hotel under the CLRA Act and the contractor has a valid license u/s 12 of CLRA Act, whereas the case of the Respondent is that neither the Petitioner management was registered as a Principal employer nor was the contractor a licensed contractor. Neither the Petitioner nor the contractor have led any evidence to show that the contractor had a valid license. In the present case the case of the Respondent/workmen is that despite change in contractors they continued working, there was no contract in fact and since it was a technical job and the workmen were technical they were continuing despite the change of contractors. In the cross-examination of these workmen, it has not even been suggested that with the change of the contractors the workmen were changed.

13. Learned counsel for the Petitioner has strenuously contended that the Respondent/workmen have nowhere stated that the contract was a sham and a camouflage and hence this issue of lifting of the corporate veil and holding the contract to be sham could not be considered. The claim statement filed by the workmen states that the principal employer is the Petitioner and M/s. Sparkling Enterprises was working as a contractor in the hotel without any agreement illegally and unlawfully. Thus, even if the words sham and camouflage are not used, the so-called illegal agreement between the Petitioner and M/s. Sparkling

Enterprises has been challenged and the Court is thus required to pierce the veil and find out the true position.

14. In the present case the workmen have relied upon the tripartite agreement Ex.WW6/6 to show that the Petitioner was paying the salary. It may be noted that the said tripartite agreement was entered into between the parties when M/s. Helpline contractor did not make the payment to its worker engaged for the month of May 2000 to 16th June, 2000. Thus the Assistant Labour Commissioner directed the Petitioner to make the payment for the period. It is thus evident that even though the liability was for a period of two and a half months but the principal employer was the Petitioner and was making the payment through the contractor and once the contractor failed to make the payment, the principal employer was held liable to make the same. Reliance is also placed by the learned counsel for the Respondent on Ex.WW6/3A wage sheet. It may be noted that this wage sheet relates to the month from May 2000 to June 2000 when the dispute arose with M/s. Helpline Hospitality Pvt. Ltd. A perusal Ex.WW6/6 shows that the Assistant Labour Commissioner directed the workmen to place the wage sheet on record. It is apparently the said wage sheet.

15. The Petitioner has exhibited the agreement with M/s. Sparkling Enterprises Ltd. dated 18th July, 2000 with regard to the award of contract for kitchen cleaning and other allied areas. It may be noted that a lump-sum contract for Rs. 1,90,000/- has been entered into between the Petitioner and M/s. Sparkling Enterprises Ltd. The case of M/s. Sparkling Enterprises Ltd. before the Trial Court was that it was working on a commission basis of 10%. Thus, applying the test laid down by the Supreme Court it can be safely held that the Petitioner is a principal employer of the workmen/Respondent No. 1.

16. Learned counsel for the Petitioner has strenuously argued that there is no finding returned by the Tribunal that the contract was a sham. A perusal of the impugned award shows that the Trial Court held that the management No. 2 i.e. M/s. Sparkling Enterprises Ltd. was working on the basis of 10% commission. The Learned Trial Court on the basis of the evidence adduced by the Respondent/workmen came to the conclusion that the workmen were working at the Ashok Hotel. This position is not disputed by the Petitioner. In Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, it was held that 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 the employment, the naked truth can be discerned though draped in perfect paper arrangement, that the real employer is the management and not the immediate contractor. On the basis of evidence the Tribunal came to the conclusion that the Respondent/workmen had proved that they were working for the Petitioner through M/s. Sparkling Enterprises @ 10% commission on the minimum wages and the Petitioner keeps on changing the contractors. The control of economic activities is in the hand of the Petitioner, though it was not directly paying the salary to the

workmen except for a limited period of May, 2000 to July, 2000. The grievance of the Petitioner with regard to the decision on the issue No. 2 is also unfounded in view of the fact that the Trial Court lifted the veil and came to the conclusion that the contract was a mere camouflage and the Petitioner was the principal employer.

17. Be that as it may, the direction of the Trial Court is that the Petitioner will frame a policy of regularization and consider the cases of 20 workmen out of the 26, except Shri P. Ganesh, Mukesh-I, Manvir, Anil, Sumit and Subramaniam who did not appear in the witness box for regularization. Though the learned counsel for the Petitioner has vociferously denied that the work is of a perennial nature but it cannot be denied that the work in the hotel especially in the kitchen is a continuous perennial work and the Petitioner had been employing the same set of workmen through different contractors. I find no infirmity in the impugned award. Petition and applications are dismissed.