(1995) 01 MAD CK 0083

Madras High Court

Case No: Writ Petition No''s. 1935 and 4256 of 1994

Workmen Employed in The Canteen run by SRF Ltd.		APPELLANT
	Vs	
Government of Tamil Nadu and ors		RESPONDENT

Date of Decision: Jan. 25, 1995

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10, 12, 13, 23, 25
- Employees State Insurance Act, 1948 - Section 1(4), 2(12)
- Factories Act, 1948 - Section 119, 16, 2, 46, 46(1)
- Industrial Disputes Act, 1947 - Section 10(1), 12(3), 2, 25, 25K

Citation: (1996) 73 FLR 1354

Hon'ble Judges: T. Somasundaram, J; K.A. Swami, J

Bench: Division Bench

Judgement

Somasundaram, J.

As some of the parties to these writ petitions and the points involved are common, they are disposed of by this common order. For the sake of convenience, the petitioner in these writ petitions are referred to in this order as canteen employees and the second respondent in Writ Petition No. 1935 of 1994 is referred to as SRF Company and the third respondent in Writ Petition No. 1935 of 1994 who is the second respondent in Writ Petition No. 4256 of 1994, viz, the Management of Industrial Catering Services (Private), Ltd., Royapuram, Madras 13, is referred to as contractor.

2. Writ Petition No. 1935 of 1994 is filed by the workmen employed in the canteen provided by SRF Company and run by the contractor, for the issue of a writ of mandamus for bearing the SRF Company from dispensing with the services of 119 canteen employees without prior permission as per S. 25N of the Industrial Disputes

Act, 1947 (hereinafter referred to as the Act). The SRF Company has got a factory which is registered under the Factories Act, 1948, at Manali, Madras. They are engaged in the manufacture of fibers, synthetic yarn etc. The SRF Company is having 1500 workers in their rolls. Under S. 46 of the Factories Act, they are obliged to run a canteen. The said S. 46 states that the canteen shall be provided and maintained by the occupier for the use of the workers. The canteen was established in the year 1990 and the said canteen is run through a contractor who is the third respondent in Writ Petition No. 1935 of 1994. The canteen is run in the very premises where the factory is situated and the building where the canteen is situated belongs to SRF Company. The case of the petitioners viz., the canteen employees is that the workers in the canteen are employed through the contractor on the terms prescribed by SRF Company. It is the SRF Company which organises the canteen. The furniture, utensils, electricity etc., for the canteen is provided by the SRF Company. According to the petitioners the contractor is only a device and the contract between the SRF Company and the contractor cannot be relied on by the SRF Company to deny the employer and employee relationship between SRF Company and the canteen employees. SRF Company''s contract with the contractor to run the canteen is a sham one. The further case of the petitioner is that one Kishore Babu, supervisor of SRF Company controls the work of the canteen employees and he prepares the day-to-day menu. He oversees the attendance of the canteen employees as well as discharges of these other functions. The said Kishore Babu is the person employed by the SRF Company for the enforcement of discipline among the canteen workers. According to the petitioners, the canteen employees are working directly under the SRF Company and that since the canteen is a part of the industrial establishment of SRF Company they have to take permission under S. 25N of the Act before the services of the canteen workers are dispensed with and that admittedly, the SRF Company has not applied for such permission.

3. The SRF Company filed a counter affidavit in Writ Petition No. 1935 of 1994 contending that the statutory requirements of S. 46 of the Factories Act is that the company should arrange to provide the canteen facility for its workers and there is no obligation that it should run the canteen by employing its own workmen. The further case of SRF company is that the company is entitled to entrust the work of preparation of food stuffs and its supply to its workmen through the contractor and that in doing so, the only requirement is that the company should register itself as principal-employer and the contractor should take out a licence under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to (Contract Labour Act). In the year 1980, the SRF Company entered into a contract with the third respondent in Writ Petition No. 1935 of 1994 by which the third respondent viz. the contractor, would prepare the food and supply the same to the workmen of SRF Company. The said contract between SRF Company and the contractor entered into in the year 1980 was periodically renewed and the last of

such contract was made on March 28, 1991 and it was to remain in force till December 31, 1993. The further case of SRF Company is that all the canteen employees were appointed by the contractor and that they cannot have any claim against SRF Company merely because the contractor is making use of the services of the canteen employees in the premises of SRF Company. According to the SRF Company, they are not the employer of the canteen workmen and that they were employed by the contractor and that they have also accepted that position for more than 10 years. The further contention of SRF Company in their counter-affidavit is that Writ Petition No. 1935 of 1994 is mainly directed against SRF Company that it is a private company and as such it is not amenable to the writ jurisdiction of this Court and the writ petition is not maintainable in law.

4. Writ Petition No. 4256 of 1994 is also filed by the canteen employees for the issue of a writ of certiorari to quash the order, dated February 22, 1994 in Application No. 6 of 1993 on the file of the Commissioner of Labour (Authority under S. 25O of the Industrial Disputes Act), Madras-6, the first respondent in the said writ petition.

5. The contractor, viz., The Management of Industrial Catering Services (Private), Ltd, filed the Application No. 6 of 1993 before the Commissioner of Labour under S. 25O of the Act seeking permission to close down their canteen in SRF Company employing 116 workers with effect from 1st April 1994. The case of the contractor in the said closure Application No. 6 of 1993 is that the canteen employees are engaged only for SRF Company canteen and even though the contractor is running a canteen in another establishment viz., Britannia Industries Ltd., Padi, Madras, there is no scope for employment for the canteen workers in question in the said canteen. The further case of the contractor is that their establishment is not an industrial establishment or an undertaking of industrial establishment as defined under the Act. The further case of the contractor is that the existing contract with the SRF Company who are the principal employers was terminated with elect from January 1, 1994 and subsequently that contract was extended upto March 31, 1994 and that the contractor is entitled to permission under 5. 25-O of the Act in as much as his contract with the principal employer to run the canteen in SRF Company is terminated and that there is no scope for employing the canteen workers in question in their canteen in Britannia Industries, Ltd., at Padi, Madras.

6. The canteen employees filed their counter in the closure Application No. 6 of 1993 contending that the contract system resorted to by the SRF Company to run its canteen is only a device to deny the canteen employees of their regular employment, under SRF Company and that they are in fact the direct employees of SRF Company and that the contractor is not the employer of the canteen employees. The contractor filed a reply statement contending that the petitioner in Application No. 6 of 1993 is only a contractor and that it is not running an industrial establishment or undertaking of an industrial establishment and that the business which it is carrying on in the SRF Company is the business of catering and hence, the

contractor cannot be said to be having an industrial establishment or an undertaking of an industrial establishment. The further contention of the contractor is that there is no need to seek any permission for the closure of its business consequent to the termination of the contract by the SRF Company with effect from 31st March 1994 and that the Application No. 6 of 1993 filed seeking permission under S. 25O is filed only by way of abundant caution.

7. The Commissioner of Labour on 22nd February 1994 passed an order in the Closure, Application No. 6 of 1993 holding that the Industrial catering Service (Private) Ltd., is not an industrial establishment under the Act since it is not a factory or a mine or plantation. The Commissioner of Labour further held that the application filed by the contractor is not really required under S. 25O of the Act since the business of the contractor does not fall within the ambit of the definition of the industrial establishment under S. 25L of the Act and consequently, the question of passing orders granting or refusing permission under Sub-Section (3) of S. 25O of the Act does not arise. The Application No. 6 of 1993 has been disposed of by the Commissioner of Labour in the above terms. Aggrieved by the order of the Commissioner of Labour in Application No. 6 of 1993 holding that the establishment of the contractor is not an industrial establishment, the canteen employees have filed the Writ Petition No. 4256 of 1994 to quash the order of the Commissioner of Labour, dated 22nd February, 1994 in Application No. 6 of 1993.

8. The case of the canteen employees in Writ Petition No. 4256 of 1994 is that as per S. 46 of the Factories Act it is the SRF Company which is their employer and not the contractor and, therefore, the contractor cannot file the application for permission to close the establishment under S. 25O of the Act. According to the Canteen employees the contract between SRF, Ltd., and the contractor to run the canteen is a sham one and that the canteen is part and parcel of the factory in view of S. 16 of the Factories Act. The further case of the canteen employees is that the canteen run by the contractor in the premises of SRF Company is a factory under S. 2(m) of the Factories Act and that it is an Industrial Establishment under S. 25L of the Act. The canteen employees further attacked the order of the Commissioner of Labour made in the Closure Application No. 6 of 1993 contending that the order of the Commissioner holding that the canteen is not a factory and it is not an industrial establishment under S. 25L of the Act proceeds on a total lack of understanding of the legal position. The contention of the contractor, as second respondent in Writ Petition No. 1256 of 1994, is that the canteen run by, them in the premises of SRF, Ltd., is not an industrial undertaking or an industrial establishment, that the provisions of Chapter V-B of the Act would not apply to the establishment of the contractor that though application under S. 25O of the Act was not necessary it was filed only by way of abundant caution, and that the order of Commissioner of Labour challenged in Writ Petition No. 4256 of 1991 is valid and it is not liable to be quashed.

9. In the light of the pleadings and the contentions raised by the parties in both the writ petitions, the following points arise for consideration in these writ petitions :-

(1) Whether the workmen employed in the canteen run by the third respondent in Writ Petition No. 1935 of 1994 as contractor of SRF, Ltd., in the premises of SRF, Ltd., employees of SRF Company or they are the employees of the contractor ?

(2) Whether the contract between the third respondent in Writ Petition No. 1935 of 1994 and SRF, Ltd., to run the canteen in the premises of SRF, Ltd., is a sham one and only a device adopted by SRF, Ltd., to deny the employer-employee relationship between SRF, Ltd., and the canteen employees ?

(3) Whether the canteen run in the premises of SRF, Ltd., is an industrial establishment within the meaning of S. 25L of the Industrial Disputes Act, whether prior permission under S. 25O of the Industrial Disputes Act is necessary to enable the employer to close the canteen and whether the order of Commissioner of Labour, dated February 22, 1994, in Closure Application No. 6 of 1993 is valid ?

(4) Whether the Writ Petition No. 1935 of 1994 filed by canteen employees against SRF, Ltd., a private company, is maintainable in law ?

(5) To what relief, if any, the canteen employees are entitled to in these writ petitions ?

10. Points Nos. 1 and 2 : Ms. Vaigai, learned counsel for the petitioners, in both the writ petitions submitted in the first place that it is a statutory obligation of the owner of the factory, having more than 250 workmen, to provide and maintain a canteen that when the SRF, Ltd., runs the canteen either by themselves or through the contractor. It is in the course of running their undertaking and, therefore, the canteen employees are the employees of the owners of the factory viz., the SRF Company and not that of the contractor. The learned counsel for the petitioners further submitted that the canteen is part of the activity of the SRF, Ltd., in running a factory and that the liability of the SRF. Ltd., to provide and maintain a canteen is a liability imposed by S. 46 of the Factories Act and that it has nothing to do with the definition of employer-employee in other enactments like the Bombay Industrial Relations Act. The Employees'' State Insurance Act, Railway Establishment Manual etc. The learned counsel for the petitioner also contended that a combined reading of S. 2(s) of the Industrial Disputes Act. With S. 2L and S. 46 of the Factories Act would clearly go to show that the canteen employees are the employees of the occupier of the factory and not that of the contractor. In support of the above contention, the learned counsel for the petitioner relied on the following decisions :-
(1) Ahmedabad Manufacturing and Calico Printing v. Workmen 1953 II LLJ 647 (Bom)

(2) Sir Silk, Ltd. v. Employees'' State Insurance Corporation 1964 I LLJ 71 AP

(3) The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others,

(4) N. Jagga Rao v. (Union of India 1975 L. & I.C. 1574

(5) Indian Explosives Ltd. v. State of Uttar Pradesh 1981 I LLJ 423 All

(6) M. M. R. Khan v. Union of India 1990-II CLR 261

(7) Chandran Nair and others v. Indo French Times Industries Ltd., 1992 I LLN 489

(8) Management of E. I. D. v. Additional Labour Court (Judgment dated 24th November 1978 in Writ Petition No. 4755 of 1976 of Madras High Court)

(9) Canteen Employees of Rodier Mills v. Management of AFT (Writ Appeal 1092 of 1984, dated 20th March 1990. Division Bench of High Court of Madras.)

11. Section 46(1) of the Factories Act empowers the State Government to make rules requiring that in any specified factory wherein more than 250 workmen are ordinarily employed in a canteen or canteens shall be provided and maintained by the occupier for the use of the workmen. Rules 65 to 71 of the Tamil Nadu Factories Rules contain several provisions relating to the canteen provided and maintained by the occupier of the factory as contemplated in S. 46 of the Factories Act. As per S. 46 of the Factories Act, the management of SRF Company is bound to provide and maintain a canteen for the use of their workmen as there are more than 250 workmen in their factory. The SRF Company has in fact provided the entire infrastructure for running a canteen. They have provided building, untensils, electrical fittings, etc., for the said purpose. But, they are not running the canteen by themselves. They are providing and maintaining the canteen through a contractor. In the year 1980, the SRF Company, entered into a contract with the Industrial Catering Services, Ltd., Madras 13. As per the contract the contractor would prepare the food and supply the same to the workmen of the SRF Company. The contract entered into between the SRF Company and the contractor in the year 1980 was periodically renewed and the last of such contract was made on March 28, 1991 and it was to remain in force till December 31, 1993. In as much as the SRF Company is employing more than 20 workmen in the canteen as contract labours, it has taken a certificate of registration as principal employer under S. 7 of the Contract Labour (Regulation and Abolition) Act. Similarly as the contractor was employing more than 20 workmen in the canteen, it has taken a licence under S. 12 of the said Act. Clauses 10 to 24 in the contract, dated March 28, 1991, entered into between the SRF, Ltd., and the contractor are relevant for the purpose of this case and they run as follows :

12. It shall be the responsibility of the contractor to provide adequate staff to ensure prompt and efficient service in the canteen and in the department at the scheduled timings/service points as noticed by the company.

13. Any canteen staff member found to be medically unfit by the company shall be withdrawn by the contractor, if so desired by the company. The contractor shall remove from service, any employee/s hired by him, if in the opinion of the company, his continued presence in the canteen is detrimental to the company''s interests.

14. The items served in the canteen shall be displayed in the canteen both in Tamil and English, along with the prices charged by the company.

15. The contractor shall cover all his employees under the Employees'' State Insurance Act and also follow all the statutory rules, as amended from time to time. The contractor shall also make provisions for provident fund, retrenchment compensation, bonus, etc., and such other requirements which he is statutorily required to observe as applicable to workmen in the canteen/ catering establishment. The employees of the contractor are his own and the company is in no way connected with them.

16. It is clearly understood that the company, shall not be liable for fulfillment of any of the above requirements which is the sole and exclusive responsibility of the contractor. The contractor shall file all statutory returns as required by him to the concerned authorities, with a copy to the company.

17. The price list of snacks/refreshments, lunch/dinner to be served in the canteen is indicated in Annexure B and the quantity of the same is also indicated.

18. The contractor shall be paid during the contract period 100 per cent. of the cost of snacks/refreshments, lunch/dinner as subsidy (on coupon sales based on rates provided in Annexure B).

19. In Addition to Rs. 30,000 per month being paid as service charges in the earlier contract, additional service charges of Rs. 13,000 per month is payable from April 1, 1989 onwards to December 31, 1989. This additional service charges shall be increased to Rs. 25,000 for the period January 1, 1990 to December 31, 1990 and to Rs. 37,000 for the period January 1, 1991 to December 31, 1993.

20. The contractor shall be paid 1.50 per cent. of the total collection of coupons in a month for every five points (as in first of every month) increase over and above the basic figures of 650 points (Madras City Cost of Living Index 1960 : Base-Simla series) and there shall be a neutral zone form 625 to 650 points and there shall be de-escalation below 625 points in the same manner as escalation above 650 points. This is applicable from 1st April 1989.

21. In respect of any additional service point the contractor provides after 1st January 1990, the company agrees to compensate the contractor at the rate of Rs. 1,000 per month for every additional workman provided.

22. The contractor shall be paid Cost of Living Index Benefit on the service charges paid every month as per details given below :

(a) On the service charges of Rs. 30,000 payable from April 1, 1989, the contractor shall be paid 1.5 per cent. on 50 per cent. (i.e. on Rs. 15,000) for every five points increase over and above the basic figure of 650 points. There shall be a neutral zone from 650 to 625 points and there shall be de-escalation below 625 points in the

same manner as above 650 points. This is applicable with effect from 1st April 1989.

(b) On the additional service charge of Rs. 25,000 payable from January 1, 1990, the contractor shall be paid 1.5 per cent. on 50 per cent. of the additional service charges (i.e. on Rs. 12,500) for every five points increase over and above the basic figures of 885 points. There shall be a neutral zone from 885 to 860 points and there shall be de-escalation below 860 points in the same manner as escalation above 885 points. This is applicable with effect from 1st January 1990.

(c) On the additional service charges of Rs. 12,000 payable from January 1, 1991, the contractor shall be paid 1.5 per cent. on 50 per cent. of the additional service charges (i.e. on Rs. 6,000) for every five points increase over and above the basic figure of 9.85 points. There shall be a neutral zone from 985 points to 960 points and there shall be de-escalation below 960 points in the same manner as escalation above 985 points. This is applicable with effect from 1st January 1991.

(d) In respect of additional workmen provided as per Para. 19 above no cost of living index benefit is payable for workmen provided for the period January 1, 1990 to December 31, 1990. For these additional workmen and for any other workmen provided from January 1, 1991 onwards the contractor shall be paid on 1.5 per cent. on 50 per cent. of Rs. 1,000 paid for every workman, cost of living index benefit for every 5 points increase over and above the basic figure of 985 points. There shall be a neutral zone from 985 points to 960 points and there shall be de-escalation below 960 points in the same manner as de-escalation above 985 points. This is applicable with effect from January 1, 1991.

23. The contractor shall be paid for Vegetarian Special Continental Lunch and Special Lunch, type B, as per Annexure C meant for company''s guests.

23. (a) The service charges referred to in point No. 17 above shall be paid on or before 7th day of each month for his services rendered in the previous month, on receipt of the bill submitted by the contractor. This service charge is provided to the contractor in order to observe the following :

(i) The contractor is required to cater to the company''s employees round the clock service for all the shifts that may be operated from time to time without any delay.

(ii) The contractor shall take adequate steps to provide clean uniform for catering staff at his own expenditure so that a neat appearance is presented.

(iii) The contractor shall get all his personnel medically examined periodically as per the requirement of Factory Inspector.

(iv) The contractor shall, at his own cost, have first-aid box, adequately equipped for meeting any urgent needs of his staff when required.

(v) The contractor shall employ adequate persons in all the shifts to maintain efficient and prompt catering service.

(vi) To cover any deficit that may arise in supplying foodstuff at the agreed rates.

Further the contractor shall draw his bills up to 15th/31st of every month and submit to the company and the payments shall be made by the company on 22nd/7th respectively.

23.(b) In case the contractor fails to provide proper and adequate service, as agreed to in this contract, due to any problem on his side, he shall be liable for penal damages for non-fulfilment of contractual obligations.

24. Deposit for milk will be made by the company with the Tamil Nadu Co-operative Milk Producers Federation Ltd. Cost of the milk will be paid in advance by the company and the same will be recovered subsequently from the contractor from the bills payable to him and/or from the service charges.

Payments by the contractor to the canteen staff :

It shall be the sole and exclusive liability of the contractor to pay all the amounts legally due to its employees like wages, provident fund, Employees'' State Insurance, bonus, uniform and all or any amenities to which they are entitled as per statute or contract. If due to default by the contractor in discharging his statutory obligations, the company suffers any monetary damage or loss the same shall be recovered from the contractor from the payments due to him under this contract."

25. The preamble to the Contract Labour (Regulation and Abolition) Act, 1970 says that it is an Act enacted to regulate the employment of contract labour in certain establishments and to provide for the abolition in certain circumstances and for matters connected therewith. Section 7 of the said Act provides for registration of principal employer of establishments to which the Act applies. Section 10 empowers the appropriate Government, to issue a notification prohibiting the employment of a contract labour in any process, operation or other work in any establishment. Section 12 deals with the licensing of contractors. Canteen workers can be appointed by a principal employer who is obliged to provide and maintain a canteen under S. 46 of the Factories Act by resorting to contract labour as provided under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 provided the following three conditions are satisfied :

(a) The principal employer must get himself registered as a principal employer under S. 7 of the Contract Labour Act.

(b) The contractor must obtain a licence under S. 12.

(c) There shall be no notification issued under S. 10 of the Contract Labour Act prohibiting contract labour in the canteens provided and maintained under S. 46 of Factories Act.

26. There is no dispute that no notification has been issued by Government under S. 10 of the Contract Labour Act, prohibiting contract labour in canteens run in the

industrial establishments or factories. Again admittedly, in the present case, the SRF Company have registered themselves as the principal employer under S. 7 of the Contract Labour Act and the contractor also has obtained a licence as a contractor under S. 12. Thus both the principal employer and the contractor have satisfied the requirements of the provisions of the Contract Labour Act. As rightly contended by Sri P. Chidambaram, learned senior counsel appearing for the SRF Company, the statutory requirement is that the SRF Company should arrange to provide a canteen facility for its workers and that there is no obligation on the part of the SRF Company that they themselves should run the canteen by employing their own workmen and that it is open to the SRF Company to entrust the work of preparation of foodstuff and its supply to its workmen through a contractor and that in doing so, the only requirement is that the company should register itself as the principal employer and that the contractor should take out a licence under the provisions of the Contract Labour Act. The mere fact that the SRF Company has the responsibility to provide and maintain a canteen for their workmen under S. 46 of the Factories Act, cannot make them automatically the employer of the canteen employees in all cases and for all purposes, as contended by the learned counsel for the petitioners. We are also unable to accept the contention of the learned counsel for the petitioners that even if the statutory canteen is run by a contractor, in view of the statutory obligation to provide and maintain the canteen under S. 46, the proprietor is presumed to run the canteen and by a legal fiction, the relationship of employer and employees is created between the proprietor and the canteen employees. The question whether there exits the employer-employee relationship between the proprietor of the factory, and the canteen employees, is not a matter of presumption, but it is a question of fact, which has to be decided in each case on the facts and circumstances of such case. The statutory canteens may be run by independent contractors or by co-operative societies of the workers as provided under rule 70(6) of the Tamil Nadu Factories Rules or may be run by the occupier of the factory itself in discharge of the obligation under S. 46 of the Factories Act. In the first two categories, the workers in the canteen cannot be considered to be employees of the occupier of the factory in the absence of specific evidence showing that even such canteen employees are the employees of the occupier of the factory. When the occupier of the factory who is a registered principal employer under S. 7 of the Contract Labour Act, entrusts the responsibility of running canteen to a contractor, who has taken out a licence under S. 12 of the Said Act. as in the present case, the workmen employed in the canteen by such contractor cannot be treated as workmen of principal employer viz., occupier or proprietor of the factory. In such a case there is no employer-employee relationship between the proprietor of the factory and the canteen employees. When the canteen is run by the contractor or co-operative societies, the employer in relation to the workers engaged in the canteen will be the contractor or the society, as the case may be and not the proprietor of the factory, and in such cases, all the claims of the canteen employees have to be met by the contractor or the co-operative societies as the case may be.

27. In Workmen employed in Workmen of Ashok Leyland Ltd. and others Vs. Ashok Leyland Ltd. and Others, the question arose whether the workmen employed in the statutory canteen run by the co-operative society can be considered as employees of the occupier of the factory. In that case, the canteen was started and was being run on a co-operative basis and for this purpose the second-respondent-society was formed and registered under the provisions of the Tamil Nadu Co-operative Societies Act. The petitioners in that case were all employees in the second-respondent canteen. The second respondent-canteen run by the co-operative society incurred huge loss and eventually it ceased to function and the services of the petitioners were terminated. The petitioner-Union issued a demand to respondents 1 and 2 calling upon them to reopen the canteen and re-employ all the workmen with continuity of service with full-back wages. The demand was not complied with by the respondents 1 and 2, therefore, the petitioner raised a dispute, which has been referred for adjudication to the third respondent in Industrial Dispute No. 306 of 1977. On September 21, 1983, the third respondent passed an award in Industrial Disputes No. 306 of 1977, holding that the non-employment of the petitioners was Justified. As against the order of the third respondent in industrial Dispute No. 306 of 1977 the petitioners filed writ petition No. 8646 of 1984 to quash the award passed in Industrial Disputes No. 306 of 1977. Relying on the decision of the Supreme Court in Saraspur Mills Company Ltd. v. Ramanlal Chimanlal and others (supra) it was contended on behalf of the canteen employees before the Division Bench of this Court that a statutory duty is cast on the occupier of the factory to run the canteen by S. 46 of the Factories Act. Therefore, though the canteen was run by the co-operative society, by virtue of the definition of "worker" given in S. 2(1) of the Factories Act, 1948, the workers of the co-operative society must be considered as the workers of the proprietor of the factory and, therefore, the first respondent is bound to reinstate the canteen employees in their service. Relying the above contention, the Division Bench of this Court to which one of us is a party (Somasundararn. J), held as follows :- (pp. 13, 14) -

"It is one thing to say that the first respondent is bound to provide and maintain a canteen under S. 46 of the Factories Act, and it is another thing to say that when the canteen run by a co-operative society, as a separate entity, became defunct, the first respondent is bound to provide employment to its workmen. Section 46 of the Factories Act, of course enjoins upon the occupier to provide and maintain canteens for the use of the workers. With regard to and for the discharge of that obligation cast upon by the statute, the occupier need not necessarily become the employer. In fact, the set of rules adumbrated in the Tamil Nadu Factories Rules, 1950, contemplate and provide for running of such canteens; and in particular, rule 70(6) prescribes that the workers of the factory can, by themselves, run the canteen on a coo-operative basis and in such a case the running of the canteen will be governed by the law governing co-operative societies. This is exactly what seemed to have happened in the present case.

The reliance placed by the learned counsel for the petitioners on the decision in Saraspur Mills Company Ltd. v. Ramanlal Chimanlal and others (Supra) in our view is not an appropriate one. There, the Supreme Court was more concerned with the definition of an ''employee'', as found in the Bombay Industrial Disputes Act, 1938. The factual findings rendered by the Labour Court, in the present case, is that the second respondent was a distinct and a separate entity and the first respondent in such a contingency could not have the role of an employer with reference to the workmen employed in the canteen run by the second respondent. We have to decide the case on the facts exposed. By mere reference to S. 46 of the Factories Act, it is not possible to spell out a conclusive theory, Without reference to the facts, that there ought to have existed the relationship of employer and employee in all cases."

28. In Cominco Binani Zinc Ltd. Vs. Pappachan, , the Kerala High Court has also taken a similar view that if the canteen is run by a contractor or a co-operative society in the premises of the factory, the employer in relation to the workers engaged in the canteen will be the contractor or the co-operative society as the case may be and not the proprietor of the factory.

29. In General Labour Union (Red Flag) Vs. K.M. Desai and others, , the Bombay High Court has also taken the view where a company appointed a contractor to run its canteen and register the contract under S. 7 of the Contract Labour Act, the employees of the contractor did not become the direct employees of the company even though the contractor failed to register the contract under S. 13 of the Contract Labour Act.

30. The contention of the learned counsel for the petitioner that the canteen employees are employees of the SRF Company which is the owner of the factory and not of the contractor, cannot be countenanced in view of the settlement dated 29 January 1992 entered into between the canteen employees on the one hand and the contractor on the other hand under S. 12(3) of the Act. Under the said 12(3) settlement, dated January 29, 1992, the canteen employees and the contractor have entered into a settlement with regard to wages. Allowances and other service conditions of the canteen employees. Further, the said 12(3) settlement entered into between the canteen employees and the contractor in the presence of the Conciliation Officer will go to show that the SRF Company has nothing to do with the said settlement which regulate the conditions of service of the canteen employees. The said settlement under S. 12(3) of the Act clearly goes to show that the canteen employees are employees of the contractor and that they cannot have any claim against the SRF Company, merely because the contractor is making use of the premises of the SRF Company. Further, the petitioner has not produced any evidence to show that they are the employees of the SRF Company. It is not the case of the petitioner that the canteen employees entered into an agreement with the SRF Company regarding the conditions of service of workers engaged in the canteen. Clauses 10 to 34 of the contract, dated March 28, 1991, entered into

between the SRF Company and the contractor extracted above also clearly go to show that the canteen employees are the employees of the contractor and that the canteen employees are not the employees of the SRF Company. In view of the documentary evidence referred above viz., the settlement deed, dated 29 January 1992, entered into between the contractor and the canteen employees under S. 12(3) of the Act, the contract between the SRF Company and the contractor, dated March 28, 1991, the registration certificate under S. 7 of the Contract Labour (Regulation and Abolition) Act, 1970, obtained by the SRF Company, registering itself as the principal employer for the prima facie purpose of running the canteen employing contract labour and the licence under S. 12 of the Contract Labour (Regulation and Abolition) Act, 1970, obtained by the contractor, the canteen employees cannot contend that they are the employees of SRF Company and not the employees of the contractor. However, if the canteen employees dispute the settlement, dated January 29, 1992, under S. 12(3) of the Act between the canteen employees and the contractor and contend that they are the employees of the SRF Company, the only remedy available to them is to raise an industrial dispute and prove before the appropriate forum that the canteen employees are the employees of the SRF Company. On the basis of the materials produced before us, it is not at all possible to come to the conclusion that the canteen employees are the employees of the SRF Company. On the other hand, there is ample evidence to show that the canteen employees are the employees of the contractor.

31. Now, let us examine the various decisions relied on by the learned counsel for the petitioner in support of her contention that even if the statutory canteen is run by a contractor, the principal employer is deemed to run the canteen and that there is employer and employee relationship between the principal employer and the canteen employees. In the case reported in Saraspur Mills Company Ltd. v. Ramanlal Chimanlal (Supra) strongly relied on by the learned counsel for the petitioner, the question arose whether on a proper consideration of Clause 13 and 14 of S. 3 of Bombay Industrial Disputes Act, 1938, the workers employed in the canteen which was being run by a co-operative society in the premises of the appellant mills could not have been held to be the employees of the appellant viz., the proprietor of the factory. According to sub-clause (c) of Clause 14 of S. 3 of the Bombay Industrial Disputes Act, 1938, "employer" includes, where the owner of any undertaking in the course of or for the purpose of conducting the undertaking entrusts the execution of the whole or any part of work which is ordinarily a part of the undertaking, to any person otherwise than as the servant or agent of the owner, owner of the undertaking. The term employee under the Bombay Industrial Disputes Act had been given an extended meaning. In the said decision, the Supreme Court, while confirming the order of the Industrial Court holding that the employees of the co-operative Societies who were working in the canteen were not employees of the appellant referred to certain factual and legal aspects of the case in Paras 7 and 8, at page 425 of the judgment in the following terms :-

"7. The Industrial Court was of the view that the term ''employee'' under the Act had been given an extended meaning. An employee was not only a person who was employed by the employer or over whom the employer had control, but also certain types of persons who had been constituted statutory employees under the Act. Before such a person could become the employee of the owner of the undertaking, the conditions that must be fulfilled were :

(1) the owner of the undertaking must entrust to any person the execution of the whole or any part of any work;

(2) such entrustment must be in the course of or for the purpose of conducting the undertaking;

(3) such entrustment must be otherwise than as the servant or agent of the owner and :

(4) such work must be any work which is ordinarily a part of the undertaking.

8. The Industrial Court referred to the earlier decisions including that of the Labour Appellate Tribunal and of the Bombay High Court and examined the circumstances in which the relevant provisions of the Act came to be amended. It was pointed out that in the statement of objects and reasons appearing in the Bill to the Amending Act, it was stated that the definition of an employee was being amended so as to cover persons employed by a contractor or any other person to whom the owner of an undertaking had entrusted the execution of any work which was ordinarily part of the undertaking. The definition of ''employer'' was also amended correspondingly. According to the Industrial Court, there was a statutory obligation on the part of the mills to provide a canteen and this obligation had been discharged by the mills by entrusting that task to the co-operative society, even if there was no positive evidence of such entrustment of work. It was pointed out that the activities of running the canteen could hardly have been undertaken by the co-operative society unless it was entrusted to it by the millis. It was finally held that although co-operative society which was the real employer and not the present appellant, by virtue of the fiction created by the amendment introduced in the Act, the employees of the society became the employees of the appellant. They were, therefore, entitled to the benefits of the awards."

32. It is clear that the Supreme Court in the above decision is more concerned with the definition of employee as found in the Bombay Industrial Disputes Act, 1938. The above decision as well as the decision in Ahmedabad Manufacturing Calico Printing Company, Ltd. v. Their Workmen (supra), which is referred to in Saraspur Mills case (supra) are the decisions rendered under S. 3(14) of the Bombay Industrial Disputes Act, 1938, and they turned on the interpretation of S. 3(14)(e) of the said Act, and therefore, they are not authorities for the proposition that even though the statutory canteen is run by a contractor complying with the provisions of the Contract Labour (Regulation and Abolition) Act, (hereinafter referred to as Contract

Labour Act), a principal employer is deemed to run the canteen and that there is employer-employee relationship between the principal employer and the canteen employees.

33. In M. M. R. Khan v. Union of India (supra) the Apex Court on an interpretation of paras 2832 and 2830 in Chapter XXVIII of Railway Establishment Manual and Section 46 of the Factories Act held that the employees in the statutory and non-statutory recognised railway canteens are entitled to be treated as railway employees. The Supreme Court further held that since in terms of the rules made by the State Government under S. 46 of the Factories Act, it is obligatory on the Railway Administration to provide a canteen, and the statutory railway canteens have been established pursuant to the said provisions those canteens are incidental to are connected with the manufacturing process, or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2832 of Railway Establishment Manual acknowledges that although the Railway Administration may employ anyone such as a staff committee or a co-operative society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the Railway Administration. In these circumstances, the Apex Court pointed that even where the employees are appointed by the staff committee/co-operative society it will have to be held that their appointment is made by the department through the agency of the committee/society as the case may be. In Paras. 26 to 28, at pages 270 and 271 of the judgment, the Supreme Court on the basis of material available before it recorded the following findings :-

"25. In fact as had been pointed out earlier the Administrative Instructions on Departmental Canteens in terms state that even those canteens which are governed by the said Act have to be under the complete administrative control of the concerned department and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be takers according to the rules made in that behalf by the said department. In the circumstances, even where the employees are appointed by the staff committee/co-operative society it will have to be held that their appointment is made by the department through the agency of the committee society as the case may be. In addition as stated earlier, the Railway Board by its circular, dated June 8, 1981 had communicated that it was decided to treat the employees of all statutory canteens, as railway servants irrespective of the type and management of the canteens, and to extend to them the conditions of service and emoluments of the railway servants as existed on October 21, 1980, with effect from October 22, 1980. No doubt it was stated in this letter that the said decision would prevail till Government decided otherwise. Subsequently on March 11, 1982, the Board also prescribed the pay-scales, dearness allowance, house rent allowance, city compensatory allowance, and productivity bonus, and fixed the age of their superannuation. As also pointed out earlier, this court in its decision in Kanpur Suraksha Karamchari Union v. Union of India 1988 II CLR 470 subsequently

directed that for the purpose of calculating pensioner benefits the service rendered by the said employees prior to October 22, 1980 would he computed. What is further, the Ministry of Railways by its letter of May 13, 1983 placed on record the fact that not only the employees of all the statutory canteens but the employees of eleven Delhi based non-statutory canteens had been treated as railway servants with effect from October 2, 1980. It must be remembered in this connection that neither the Railway Ministry nor the Railway Board had stated in their letters/orders that the employees of the statutory canteens and of the eleven Delhi based non-statutory canteens were being treated as railway servants only for the purpose of the Factories Act or that they were to be so treated till further decision of this Court.

34. It is possible to place a liberal construction on these letters/orders and interpret the relevant direction namely, ''till further directions from the Government'' as being the directions after the decision of this Court in the present matters, and for the sake of argument we may proceed on that basis while dealing with the present contention. The admitted facts, however, are that these canteens have been in existence at their respective places continuously for a number of years. The premises as well as the entire paraphernalia for the canteens are provided by the Railway Administration and belong to it. The employees engaged in the canteens have also been in service uninterruptedly for many years. Their wages are reimbursed in full by the Railway Administration. The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the Railway Administration, whether the agency is the staff committee or the society. In fact, as stated by the Railway Administration in its Establishment Manual the legal responsibility for running the canteen ultimately rests with it, whatever the agency that may intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the administration. As has been pointed out earlier, much before the order of this Court dated October 22, 1980, the employees of the departmental canteen/tiffen rooms were declared as holders of civil posts under the Government of India Notification No. 6(2) 23/77 - Welfare, dated December 11, 1979, which notification is Annexure 4 to the Administrative Instruction referred to above. That notification stated that all posts in the said canteen/tiffen rooms are to be treated as posts in connection with the affairs of the Union, and accordingly, present and future incumbents of such post would qualify as holders of civil posts under the Central Government. The notification further stated that necessary rules governing the conditions of service of the employees would be framed under proviso to Article 309 of the Constitution to have retrospective effect from October 1, 1979. Accordingly, the service rules were framed under Article 309 as per the Notification No. GSR-54 issued by the Government of India, Department of Personnel and Training on December 23, 1980. These rules contained both the recruitment rules and conditions of service of the said employees including the procedure for disciplinary action to be taken against

them. As stated earlier the Administrative Instructions are applicable to the canteens/tiffen rooms run by all the ministries including the Railway Ministry unless they had previously decided to be exempt from them and had framed their own rules in that behalf. On behalf of the respondent, one Sri Sud, Joint Director of Establishment, Ministry of Railways, has filed an affidavit contending that Section F of Chapter XXVIII of the Railway Establishment Manual (to the relevant paragraphs of which we have made a reference earlier) contains the necessary instructions for running the canteens and hence the Railway Administration should be deemed to have been exempted from the operation of the said Administrative instructions, Although there is nothing expressly on record to show that the railway canteens are exempted from the said instructions, we will proceed on the assumption that they are so exempted by virtue of the relevant provisions of the Railway Manual. But the fact remains that there are as yet no notification on the lines of 11 December 1979 and 23 December 1980, issued for the benefit of the employees in the Railway canteens. Whatever the difference in the nature of work performed by the other staff in the different ministries, it cannot be argued that there is any difference in the work performed by the employees in the canteens run in the establishments of the ministries. Hence, we are of the view that if the said two notifications are applicable to the employees in the canteens run by the other departments of the Government of India, there is no reason why the same should not apply also to the employees in the canteens run by the Railways. On behalf of the Railway Administration no material has been placed before us to treat the employees in their canteens as a class separate from the employees in the canteens run by the other departments of the Government. In the circumstances, it would be highly discriminatory not to apply the said two notifications to the employees in the Railway canteens. It would be violative of Articles 14 and 16 of the Constitution. We are, therefore, of the view that the employees in the statutory canteens of the Railways will have to be treated as railway servants.

35. Thus, the relationship of employer and employee stands created between the Railway Administration and the canteen employees from the very inception .....

36. The facts of the present case are clearly distinguishable from those in the case of M. M. R. Khan (supra). In M. M. R. Khan case (supra) the Administrative Instructions on Departmental Canteens and the Railway Establishment Manual set out detailed rules with regard to the running of canteens and the canteens in question were being run in accordance with those instructions. Those instructions and the undisputed facts placed on record led the Supreme Court to take the view that in the case of employees of statutory and non-statutory recognised canteens, the workmen were entitled to the declaration that they were railway servants. However, in the case of non-statutory non-recognised canteens, the Railway Administration having no control over their working, such declaration was not given. Further, the fact that the employees in the first two categories of canteens had been treated as railway employees by the Railway Board in some of the canteens also contributed to

the decision of the Supreme Court in M. M. R. Khan case (supra). Most of the circumstances referred to in Para. 31 of the judgment in M. M. R. Khan case (supra) are not present in the case on hand. In M. M. R. Khan case (supra), the entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the Railway Administration. The number and category of the staff engaged in the canteen is strictly controlled by the Railway Administration. The employees of the Departmental Canteens/tiffen rooms were declared as holders of civil posts under the Government of India Notification No. G(2) 33/77/-Welfare, dated December 11, 1972. The service rules framed under Article 309 contained both recruitment rules and conditions of service of the said employees including the procedure for disciplinary action to be taken against them. In these circumstances, we are of the view that the decision in M. M. R. Khan case (supra), will not be of any avail to the petitioner herein in as much as the decision turned on the peculiar facts of that case.

37. In the present case, SRF Ltd., is a registered principal-employer under S. 7 of the Contract Labour Act and the contractor is a licensed contractor under S. 12 of the said Act. Further, there is a settlement under S. 12(3) of the Act between the canteen employees and the contractor which goes to show that the canteen employees are only the employees of the contractor and not that of SRF Ltd. On ground also the M. M. R. Khan case (supra), can be distinguished.

38. Above all the decision of the Supreme Court in M. M. R. Khan case (supra) is subsequently explained by the Apex Court in Surendra Prasad Kungsal Vs. M.M.T. Corpn. of India and another, . In that case, the petitioners are canteen employees employed in the canteens in the public sector corporations, like National Small Scale Industries Corporation (NSIC), Food Corporation of India (FCI), Minerals and Metals Trading Corporation of India (MMTC) etc. The relief claimed by the petitioners in those writ petitions filed under Article 32 of the Constitution is that the canteen workers be treated on par with the Central Government employees and be granted the similar status as that of the civil servants with all the benefits and pay, scales. The canteen workers in this case have contended that though the canteen in which they work is a non-statutory one, it is run or managed by the Government of India. In support of their contention. The petitioners relied on the decision of the Apex Court in M. M. R. Khan case (supra). The public sector corporations contended that the decision in M. M. R. Khan case (supra), will not be applicable to the case of the canteens run by, public sector corporations. After referring to the rival contentions of the parties, the Apex Court held as follows, in Para. 6, at page 180 :

"We have heard both the parties in all the petitions at some length. The petitioners in all the petitions placed their reliance on die decision in M. M. R. Khan''s case 1990 II CLR 261 (supra). However we find that the said case which admittedly concerned the canteen workers both in the statutory canteens and recognised non-statutory canteens was decided on the facts in those cases including the provisions of the

Railway Manual, the notifications and circulars issued by the Railway Board from time to time and other documents which pertained to the workers employed in the said canteens. None of the material which was taken into consideration there has relevance to the workers concerned in the present canteens. On the other hand, there are disputed facts in the present case which cannot be resolved in a writ petition under Article 32. We, therefore, find that this Court is not the proper forum to decide the present disputes. However, we cannot lose sight of the fact that these petitions have been pending before this Court since 1984/85. We, therefore, direct the Delhi Administration to refer the industrial dispute between the petitioner-canteen Mazdoor Sabha and the respondent - National Small Scale Industries Corporation in Writ Petition No. 16081 of 1994 to the Industrial Tribunal under S. 10(1)(d) of the Industrial Disputes Act, 1947, within four weeks from today.

Similarly, we direct the Central Government to refer the industrial dispute between the petitioner-canteen Mazdur Sabha and respondent-FCI in Writ Petition No. 16082 of 1994 and the industrial dispute between the petitioner-canteen Mazdur Sabha and the respondents in M.M.T.C. - in Writ Petitions Nos. 11211 of 1985 to the Industrial Tribunal under S. 10(10(d) of the Industrial Disputes Act, 1957, within four weeks from today."

39. The reasons given by the Apex Court in the above decision for not applying the ratio of M. M. R. Khan case (supra), to the facts of that case are equally applicable to the facts of the case on hand. Therefore, M. M. R. Khan case (vide supra), does not in any, way advance the case of the petitioners.

40. The decision of a Division Bench of this Court in Canteen Employees of Rodier Mills, Pondicherry v. Management of Anglo-French Textiles Ltd. [Writ Appeal No. 1992 of 1984, dated March 30, 1990], relied on by the learned counsel for petitioner 2 is also clearly distinguishable on facts. The above case arises out of the award passed by the Labour Court on the basis of the evidence let in by the parties. The Labour Court in that case on a consideration of the evidence on record found that the 19 canteen employees working in the canteen in the premises of the first respondent in that case are the employees of the first respondent. The Division bench confirmed the said factual finding recorded by the Labour Court and on the materials available and on the basis of the materials placed before the Labour Court. The Division Bench of this Court further found that the contractor in that case had been an agent of the first respondent who was under an obligation to run the canteen and that the said contractor acted on behalf of the first respondent in running the canteen. That is not the position in the present case. A perusal of the various clauses of the contract, dated March 28, 1991, entered into between the SRF, Ltd., and the contractor for the purpose of running a canteen in the premises of SRF, Ltd., the settlement under S. 12(3) of the Act entered into between the contractor and the canteen employees referred above clearly go to show that the contractor in the present case is an independent contractor and that he is not an agent appointed

by SRF, Ltd., for the purpose of running the canteen. As already pointed out, the contractor is a licensed contractor under S. 12 of the Contract Labour Act and SRF, Ltd., is a registered principal-employer under S. 7 of the said Act which will also go to show that the contractor in the present case is not an agent of SRF, Ltd.

41. Another distinguishing counting factor is that in the decision referred above, though, the canteen contractors changed from time to time, the canteen employees continued to be the same throughout, which is not the position in the present case, as the contractor continued to be the same throughout.

42. In Management of E. I. D. Parry Ltd. v. Additional Labour Court, Madras, and another [Writ Petition No. 4755 of 1976, dated November 24, 1978], a learned Single Judge of this Court has confirmed the award of the Labour Court holding that the canteen workers employed by the co-operative society formed for the purpose of running the canteen in the premises of the company are not the employees of the co-operative society, but the employees of the company. This is also a case which arises out of the award of the Labour Court where the parties had the opportunities of letting evidence both oral and documentary. The following factual features which are available in the present case are not available in the case decided in Writ Petition No. 4755 of 1976 :

(a) the contract, dated March 28, 1991, between the SRF Ltd., and the contractor for the purpose of running a canteen.

(b) the registration of SRF Ltd., as principal-employer under S. 7 for the purpose of running the canteen in the premises of the company.

(c) the licence obtained by the contractor under S. 12 of the Contract Labour Act as a licensed contractor, and

(d) the settlement entered into between the contractor and the canteen employees under S. 12(3) of the Act with regard to the wages and other service conditions of the canteen employees.

Therefore, the above decision is also distinguishable on facts.

43. In Indian Explosives Ltd. v. State of Uttar Pradesh, (supra) the petitioner-company maintained a canteen as required by S. 46 of the Factories Act, 1948, and the canteen was run by a contractor. The workmen in the canteen raised disputes claiming bonus, for the year 1975-76 and wages and dearness allowances at the rate at which the company had been paying to their workmen employed in the factory. The disputes were referred to the Industrial Tribunal. The management raised preliminary objection that the dispute was not an industrial dispute as there was no relationship of employer and employee between the petitioner-company and those employed in the canteen as the canteen was being run by a licensed contractor under the Contract Labour (Regulation and Abolition) Act, 1970. The petitioner further contended that in view of the provisions of the Contract Labour

(regulation and Abolition) Act, 1970, the State Government had no jurisdiction to refer any dispute relating to contract labour for adjudication to any Industrial Court and the Industrial Tribunal had no jurisdiction to proceed further in the matter. The Tribunal rejected the preliminary objections and directed the case to be proceeded on merits. Aggrieved by the order of the Tribunal the petitioner-company approached the High Court, for relief by means of a writ petition. In that case, the workmen employed in the canteen have always been asserting that they were not employees of the contractor and that instead they have been employed in service by the principal-employer and as such the contractor does not come into the picture. There is also a finding that the contractor had not obtained a licence under S. 12 of the Contract Labour Act to take the work of a canteen in the petitioner''s establishment. In the above circumstances, a Division Bench of the Allahabad High Court held that it is not permissible to proceed on the assumption that the workmen employed in the canteen are the employees of the contractor and hence the reference of the dispute between the company owning the factory and the workmen employed in the canteen run through a contractor was valid. However, the facts of the present case are different. As already pointed out, in the case on hand, not only the contractor is a licensed contractor under S. 12 of the Contract Labour Act to take work of canteen in SRF Ltd., but also the SRF Ltd., is also a registered principal-employer under S. 7 of the said Act.

44. Similarly, the decisions in Chandran Nair and others v. Indo French Times Industries Ltd., (Supra) Sirsilk Ltd. Sirpur v. Regional Director Employees'' State Insurance Corporation, Andhra Pradesh (supra) and N. Jagga Rao and others v. Union of India and others (supra), are also clearly distinguishable on facts and those decisions turned on the facts present in those cases. In the decisions referred above, also the contractor running the canteen is not a licensed contractor under S. 12 nor the principal employer who is obliged to run the statutory canteen under S. 46 of the Factories Act is a registered principal employer under S. 7 of the Contract Labour Act as in the present case.

45. The second contention of the learned counsel for the petitioner is that the test or determining whether a person is the employee of another depends upon whether the latter exercises "organisation and control" over the work of the employee and whether the work performed is the work of the principal-employer and not of the contractor. If these two tests are satisfied. The employee even if he is appointed by the contractor becomes the employee of the principal-employer and he cannot be considered as the employee of the contractor. The further contention of the learned counsel for the petitioner is that the obligation of SRF Ltd., to provide a canteen is a statutory obligation of the employer under S. 46 of the Factories Act and rules 65 to 71 of the Tamil Nadu Factories Rules, and that the contract entered into between SRF Ltd., and the contractor in this case clearly shows that the canteen employees are employed through the contractor on the terms prescribed by the principal employer, that the contract is a sham one and it is only a device and the same

cannot be relied upon to deny the employer, employee relationship between SRF Company and the canteen employees. In support of the above contention, the learned counsel for the petitioner relied on the following decisions :-

(1) Silver Jubilee case 1974 I LLN 271

(2) Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,

(3) Workmen of Associated Rubber v. Associated Rubber India Ltd. 1985 I LLN 848.

(4) McDowell and Co. Ltd. Vs. Commercial Tax Officer, .

46. It is asserted by the petitioner in Para. 7 of the affidavit file in support of Writ Petition No. 1935 of 1994 that one Kishore Babu, supervisor of SRF Ltd., controls the work of the canteen employees that he prepares the day-to-day menu that he overseas the attendance as well as discharge of the functions by the canteen employees and that he is the person who is employed for the enforcement of the discipline among the canteen workers by SRF Ltd. In the counter-affidavit, SRF Ltd., has specifically denied the above allegations of the petitioners in Para. 7 of the affidavit. Learned counsel for the petitioner also placed reliance on the letters, dated December 20, 1992 & October 28, 1992, produced at pages 43 and 44 of the typed set of papers in Writ Appeal No. 1484 of 1994, which was also heard along with these writ petitions in support of the contention that the above letters would go to show that SRF Ltd., was even taking disciplinary action against the canteen employees. The letter, dated October 20, 1992, is a letter from SRF Ltd., to the contractor stating that the canteen employees have delayed the preparations of lunch on October 20, 1992 and requested the contractor to advise his employees to refrain from such delays in future. Similarly, the letter, dated October 28, 1992, addressed to the contractor the Deputy Manager of SRF Ltd., read thus :
"... Dear Sir,

It is reported that today in "A" shift, Your Shri N. Chandrasekar had served breakfast to employees in the DG, utility and electrical service points. It is further reported that when employees requested him to serve breakfast properly, he had replied in a very arrogant manner disrespecting the employees and hurting their feelings. You are hereby requested to take firm action against the erring employee till such time proper enquiry is done. We are taking action to stop him from entering the factory ..."

47. The letters referred above far from supporting the use of the petitioner that SRF Ltd., was taking disciplinary action against the canteen workers, only go to show that the canteen workers are the employees of the contractor. On the basis of the letters referred above, it cannot be said that SRF Ltd., is having the power to take disciplinary action against the canteen employees. In the light of the factual materials referred above, the petitioner cannot contend that the contract between

SRF Ltd., and the contractor is a sham one and is only device and it cannot be relied upon to deny the employer and employee relationship between SRF Ltd., and the canteen employees. In this context, it is worthwhile to refer the following observations of the Supreme Court in R. K. Panda v. Steel Authority of India 1994 II LLN 378 in Para. 6 at page 382 :

"... Whether the contract labourers have become the employees of the principal-employer in course of time and whether the engagement and the employment of labourers through a contractor is a mere camouflage and a smokescreen as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such, at what point of time a direct link is established between the contract labourers and the principal-employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fore to adjudicate such disputes on the basis of the oral and documentary evidence produced before them ..."

48. However, the Apex Court in the above decision taken note of the peculiar facts and circumstances of that case, namely, that many of the contract labourers were continuing in employment for the past eight years merely on the basis of interim orders of the Supreme Court and a substantial number of jobs (104) in which they were employed were identified by the State Government for abolition of contract labour and the workmen holding such jobs as contract labourers were given by the management option to retire voluntarily or be absorbed, issued directions in that case that all the labourers who had been initially engaged through contractors, but have been continuously working with the respondent in that case for the last ten years on different jobs assigned to them in spite of the replacement and change of contractors shall be absorbed by the respondent, as their regular employees subject to being found medically fit and if they are below 58 years of age, which is the age of superannuation under the respondent in that case. The above decision of the Apex Court, as seen from the facts referred above, turned on the peculiar facts and circumstances present in that case.

49. In Silver Jubilee Tailoring House and others v. Chief Inspector of Shops and Establishments and others (supra) relied on by the learned counsel for the petitioner, the Apex Court considered the question whether the tailors working in the appellant''s tailoring house were employees under S. 2(14) of the Andhra Pradesh Shops and Establishments Act, 1951. The Apex Court on a consideration of the facts and circumstances of that case held that the employer-employee

relationship existed between the parties. On a review of the case law, the Supreme Court further held that in recent years the control test as traditionally formulated has not been treated as an exclusive test. The Supreme Court further held that 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 the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, though an important factor.

50. In Hussainbhai v. Alath Factory Thozhilali Union, Calicut, and others (supra) the petitioner, owner of a rope-making factory, had engaged a number of workmen, through contractors and an industrial award came to be passed. The case of the petitioner before the High Court was that the workmen were not his employees and that they were the employees of the contractor. The High Court negatived the said contention of the petitioner. The Apex Court while dismissing the SLP filed against the order of the High Court held as follows, in Para. 5, at page 398.

"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 workers, is virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract 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.."

51. In Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another, , a company was created wholly owned by the principal company with no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving the dividends from shares transferred to it by the principal company. On the basis of the above materials, the Apex Court held that the new company was formed as device to reduce the gross profit of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The Supreme Court further held that the amount of dividend received by the new company should be taken into account in assessing the gross profit of the principal company. The Supreme Court also observed that it is the, duty of the Court in every cage where ingenuity is expended to avoid taxing and welfare legislations, to get behind the smoke-screen and discover the true state of affairs. The Court is not to be satisfied with form and leave well alone the substance of a transaction.

52. In the three cases referred above and relied on by the learned counsel for the petitioner, the principal-employer is not registered principal-employer nor the contractor a licensed contractor under the provisions of the Contract Labour Act as

in the present case. Again, the clinching documentary evidence, viz., the settlement entered into between the canteen employees and the contractor under S. 12(3) of the Act in the present case is not available in those cases. Therefore, we are of the view that the decisions referred above really turned on the facts of those cases and are clearly distinguishable. Similarly, the decision in McDowell and Co. Ltd. Vs. Commercial Tax Officer, , is one rendered by the Supreme Court interpreting the provisions of the Andhra Pradesh General Sales Tax Act and the principles laid down by the Supreme Court in the above decision have no bearing on the point involved in these writ petitions.

53. The decisions of the Supreme Court in J.K. Cotton Mills case 1963 II LLJ 165 and Ahmedabad Manufacturing and Calico Printing v. Ram Tahel Ramanand 1972 II LLJ 436 are also not helpful to the petitioners because, the former decision turned on the interpretation of the provisions of the Uttar Pradesh Industrial Disputes Act and the latter turned on the interpretation of S. 3(13) of the Bombay Industrial Relations Act.

54. The learned counsel for the petitioner next contended that S. 119 of the Factories Act says that the said Act will have overriding effect over the Contract Labour (Regulation and Abolition) Act and, therefore, the consequences of the statutory obligations under S. 2(1) and S. 46 of the Factories Act, viz., the occupier of the company being the employer of the canteen employees cannot be taken away by entering into a contract under the provisions of the Contract Labour Act. However, we are unable to accept the above contention of the learned counsel for the petitioner. Section 119 of the Factories Act says that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in Contract Labour Act, 1970. There is no provision in the Factories Act which prohibits the principal-employer or the occupier of the factory from resorting to contract labour in the canteens run in the factory premises. As already pointed out, the statutory obligation imposed on the occupier of the factory by S. 46 is that where in any specified factory more than 250 workers are employed, a canteen or canteens shall be provided and maintained by the occupier for the use of workers. The statutory requirement is that the occupier of the factory should provide and maintain a canteen and there is no obligation that the occupier himself should run the canteen by employing his own workmen, particularly when no notifications issued under S. 10 of the Contract Labour Act prohibiting contract labour in canteens run in Industrial Establishments. As pointed out by the Full Bench of the Kamataka High Court in Steel Authority of India Ltd. v. Steel Authority of India Ltd., Contract Workers Union 1992 I CLR 712, whenever contract labour in an establishment is not prohibited, prima facie, it is not unreasonable to assume that such contract labour is necessary for that establishment. Further, on a careful consideration of the provisions of both the acts, we are of the view that there is no inconsistency between the provisions of the Factories Act and the Contract Labour Act.

55. No doubt, the Industrial Disputes Act and the Factories Act are labour welfare legislations enacted with a social purpose and liberal and purposive interpretation has to be given to the various provisions of these enactments. Even so, as per S. 46 of the Factories Act, the occupier of the factory is only responsible for providing and maintaining a canteen for the use of the workers, if there are more than 250 workers in the factory. The mere fact that the occupier of the factory has the responsibility to provide and maintain a canteen for the use of the workers that by itself cannot make the occupier of the factory has the responsibility to provide and maintain a canteen for the use of the workers that by itself cannot make the occupier of the factory the ultimate employer of the canteen employees, even where the occupier of the factory, as a registered principal-employer under S. 7 of the Contract Labour (Regulation and Abolition) Act, runs the canteen through a contractor who has taken a licence under S. 12 of the said Act, as in the present case. Rule 68 of the Tamil Nadu Factory Rules says that food, drinks and other items served in the canteen shall be served on a non-profit basis and the prices charged shall be subject to the approval of the Canteen Managing Committee. Rule 68(IA) of the said rules enumerate certain items of expenditure which shall be borne by the occupier of the factory and shall not be taken into account in fixing the prices charged for the food, drinks and other items served in the canteen to the workers. Clause 16 of the contract, dated 28th March 1991 entered into between SRF, Ltd., and the contractor provides that the contractor shall be paid during the contract period 100 per cent of the cost of the snacks/ refreshments/lunch/dinner as subsidy on coupon sales basis on rates provided in Annexure B to the contract. Clause 17 of the said contract provides for payment of specified amount by SRF, Ltd., to contractor as service charges, merely because SRF, Ltd., compensates the contractor by paying service charges for the workmen employed by the contractor, SRF, Ltd., cannot become the employer of the canteen employees engaged by the contractor. Therefore, even if we give a liberal interpretation to the relevant provisions of the Industrial Disputes Act and the Factories Act, it is not at all possible to accept the contention of the learned counsel for the petitioner that when the statutory canteen is run by SRF, Ltd., which has registered itself as principal-employer under S. 7 of the Contract Labour (Regulation and Abolition) Act, through a contractor, who is licensed contractor under S. 12 of the said Act, SRF., Ltd., is deemed to run the canteen and that there is a deemed employer-employee relationship between SRF, Ltd., on the one hand, and the canteen employees on the other hand even in the absence of any other evidence to prove such employer-employee relationship between SRF. Ltd., and the canteen employees.

56. There is yet another reason for not countenancing the claim of the canteen employees that they are directly employed under SRF, Ltd., and that they are not employees of the contractor. As already pointed out, there is no notification issued under S. 10 of the Contract Labour Act, abolishing contract labour in canteens. SRF, Ltd., has registered itself as a principal-employer under S. 7 of the Contract Labour

Act and entered into a contract with the third respondent in Writ Petition No. 1935 of 1994, who is a licensed contractor under S. 12 of the Contract Labour Act to run the canteen in the premises of SRF, Ltd., by resorting to contract labour. In these circumstances, as rightly contended by the learned senior counsel for SRF., Ltd., accepting the claim of the canteen employees that they are the employees of SRF, Ltd., and allowing Writ Petition No. 1935 of 1994, would amount to abolition of contract labour and directing the absorption of the workmen of the contractor employed in the canteen in the services of the principal-employer SRF, Ltd., which is not the function of the Court, exercising jurisdiction under Article 226 of the Constitution, and which is actually the function of the Government by issuing a notification under S. 10 of the Contract Labour Act. In Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, , the Apex Court, while dealing with the object for which the Contract Labour (Regulation and Abolition) Act is enacted, observed as follows at p. 493 :

"..... The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by S. 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of Section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment ..."

57. In B. H. E. L. Workers Association v. Union of India (1985-I-LLJ-428), the Supreme Court while dealing with the scope of S. 10 of the Contract Labour (Regulation and Abolition) Act, held as follows at (P. 433)

"..... It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under S. 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any, process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under S. 10 of the Act ....."

58. In Dena Nath and others Vs. National Fertilisers Ltd. and others, , dealing with the same question, the Apex Court has held that the Contract Labour (Regulation and Abolition) Act, merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances and that the said Act does not provide for total abolition of contract labour, but it provides for

abolition by the appropriate Government in appropriate cases under S. 10. The Apex Court further held as follows :-

"It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under S. 10 of the Act. The only consequences provided in the Act where either the principal-employer or the labour contractor violates the provisions of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal-employer ....."

59. For all the reasons stated above, we have no hesitation in holding that the workmen employed in the canteen run by the third respondent in Writ Petition No. 1935 of 1994, as a contractor of SRF, Ltd., are not the employees of SRF, Ltd., and that they are the employees of the contractor and, therefore, the workmen employed in the canteen are not entitled to any relief in Writ Petition No. 1935 of 1994, against SRF, Ltd. In view of the documentary evidence available in this case, in the form of the settlement, dated January 29, 1992, under S. 12(3) of the Industrial Disputes Act, entered into between the contractor and the canteen employees, the registration certificate under S. 7 of the Contract Labour Act showing that SRF, Ltd., is a registered principal-employer and the licence obtained by the contractor under S. 12 of the Contract Labour Act, enabling him to run the canteen in the premises of SRF, Ltd., as a licensed contractor and the contract, dated March 28, 1991, entered into between SRF, Ltd., and the contractor, coupled with the fact that the canteen employees have not produced any evidence to show that the contract between SRF. Ltd., and the contractor is a sham one, we are of the view that the contract between SRF, Ltd., and the contractor to run the canteen, in the premises of SPF, Ltd., is not a sham one and that it is not a device to deny the employer-employee relationship between SRF, Ltd., and canteen employees. Point Nos. 1 and 2 are answered accordingly.

60. Point No. 3 : While dealing with the question raised in Point No. 1. namely, whether the canteen employees working in the canteen in the premises of SRF. Ltd., are the employees of SRF, Ltd., or whether they are the employees of the contractor, we have held that the canteen employees are the employees of the contractor and not that of SRF, Ltd. The next question we have to examine is whether the canteen run by the contractor in the premises of SRF, Ltd., is an "industrial establishment" within the meaning of S. 25L of the Act and whether the contractor is obliged to obtain a permission under S. 25-O of the Act to enable him to close the canteen. The

Commissioner of Labour (Authority under S. 25-O of the Act), by his order, dated February 22, 1994, in Closure Application No. 6 of 1993, held that the contractor, namely, the Industrial Catering Service (Private) Ltd., the second respondent in Writ Petition No. 4256 of 1994, is not an "industrial establishment" under the Act, since it is not a factory or a mine or plantation. The Commissioner of Labour further held that the application filed by the contractor is not really required under S. 25-O of the Act, since the business of the contractor is not within the ambit of the definition of the industrial establishment under S. 25L of the Act and consequently, the question of passing order granting or refusing permission under Sub-Section (3) of S. 25-O of the Act does not arise. The Application No. 6 of 1993 was disposed of by the Commissioner of Labour in the above terms. The contention of Miss R. Vaigai, the learned counsel for the canteen employees, is that the canteen is part of the factory belonging to SRF, Ltd., and, therefore, it is an "industrial establishment" within the meaning of S. 25L of the Act. The further contention of the learned counsel for the canteen employees is that even if the canteen is considered separately, it will be a factory under S. 2(m) of the Factories Act, as they manufacture eatables and that the employer will have to take permission under S. 25-O of the Act, in case they want to close the canteen. In order to appreciate the contention of the learned counsel for the canteen employees, it is necessary to refer to the relevant provisions of the Act and the Factories Act. According to S. 25-O of the Act, the employer, who intends to close down an undertaking of an industrial establishment to which Chapter V-B of the Act applies, can do so, only after obtaining the prior permission from the appropriate Government. Section 25K of the Act says that the provisions of Chap. V-B of the Act shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day of the preceding twelve months. According to S. 25L of the Act, "Industrial establishment" means a factory as defined in S. 2(m) of the Factories Act. Section 2(m) of the Factories Act defines factory and the relevant portion of the definition of factory in S. (m) read thus :

".... ''factory'' means any premises including the precincts there of

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, ... does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place ....."

"Manufacturing process" is defined in S. 2(k). The relevant portion is S. 2(k)(i) of the Factories Act and it runs as follows :

"..... ''manufacturing process'' means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or ..."

61. In the present case, it is not in dispute that food is prepared in the kitchen of the canteen itself for serving the same to the workers of SRF, Ltd. The letter, dated October 20, 1992, sent by SRF, Ltd., to the contractor produced at page 43 of the typed set of papers in Writ Petition No. 1484 of 1994 goes to show that the canteen employees prepared lunch in the canteen itself for serving the same for the employees of SRF, Ltd. According to S. 2(k)(i) of the Factories Act. "Manufacturing process" means any process for making ..... with a view to its use, sale etc. Cooking and preparation of food in the canteen for its use or sale will certainly involve "manufacturing process" within the meaning of S. 2(k) of the Factories Act. Since the "manufacturing process" in the form of cooking in the preparation of food is carried on in the kitchen of the canteen and that the kitchen is part of the canteen or a part of the precinct of the canteen, we are of the view that the canteen in question falls within the purview of the definition of factory under 5. 2(m) of the Factories Act. In G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, , the Apex Court had occasion to consider the question as to whether the hotel run by the appellants in that case are factories within the meaning of the provisions of S. 2(12) of the Employees'' State Insurance Act, 1948. The Apex Court repelling the contention of the appellants in that case that merely because a manufacturing process was carried on in the kitchen, the rest of the premises of the hotel, unless shown to be connected with the kitchen-activities, could not be treated as a factory for attracting S. 1(4) of the Employees'' State Insurance Act, 1948, held as follows in Para. 7 at P. 885

".... It is enough, according to us, that the manufacturing activity has a broad connection with the activities carried on in the rest of the premises. For example, in the present case it cannot be denied that kitchen is an integral part of the hotel business. Those who occupy hotel do depend upon the food and the beverages which are prepared in its kitchen. It is not possible to conceive of a hotel without a kitchen. The lodging and boarding are both essential components of the services rendered by a hotel. Hence, it cannot be denied that the activity in the kitchen has a connection with activities carried on in the rest of the hotel premises. It should not further be forgotten that the definition of certain premises as a factory or of certain activities as an industry, etc., given in social welfare legislations like the present, are necessarily artificial. The object is to extend the welfare coverage to as large a section of the individuals as possible. Such definitions cannot be tested on the anvil of the common usage of the terms defined."

62. Applying the ratio of the above decision to the facts of the present case, we can safely hold that a canteen where cooking and preparation of the food is carried on in the kitchen of the canteen itself is a factory within the meaning of S. 2(m) of the Factories Act. No doubt, a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place, are excluded from the definition of the factory under S. 2(m) of the Act. Canteen run by the contractor in the premises of SRF, Ltd., cannot be considered either as a hotel or restaurant. Similarly, the said canteen is not a mere eating place. In the canteen in question, the manufacturing process in the form of cooking and preparation of food is being carried on and the food so prepared is served to the employees of SRF, Ltd., on whom a statutory obligation is imposed by S. 46 of the Factories Act, to provide and maintain a canteen for the benefit of their employees. Therefore, there is no difficulty in holding that the canteen in question is not excluded from the definition of factory under S. 2(m) of the Factories Act, if we bear in mind he observations of the Supreme Court in G. L. Hotels Ltd. v. T. C. Sarin (Supra), that the definition of certain premises as a factory, given in social welfare legislations are necessarily artificial and the object is to extend the welfare coverage to as large a section of the individuals as possible and such definitions given in the social welfare legislations cannot be tested on the anvil of the common usage of the terms defined. For all the reasons stated above, we are of the view, that the canteen run by the contractor in the premises of SRF, Ltd., is a factory under S. 2(m) of the Factories Act, and consequently, it is an industrial establishment within the meaning of S. 25L of the Act and that the contractor is under an obligation to apply for permission under S. 25-O of the Act, if he intends to close the canteen. Therefore, the order of the Commissioner of Labour, dated February 22, 1994, in Closure Application No. 6 of 1993, holding that none of the activities mentioned in S. 2(k) of the Factories Act is carried out in the canteen, that the canteen service cannot be termed as manufacturing process, that the canteen is not an industrial establishment within the meaning of S. 25L of the Act, that the provisions of Chap. V-B of Act and S. 25-O of the Act are not applicable to the canteen run by the contractor and that the application filed by the contractor under S. 25-O of the Act is not necessary, is clearly erroneous and it is liable to be quashed. We are unable to accept the contention of Sri G. Subrarnaniam, the learned senior counsel appearing for the contractor, that in view of specific stand taken by the canteen employees in the closure application No. 6 of 1993 that they are the direct employees of SPF, Ltd., the question whether the canteen in question is a factory has become academic and that the order of the Commissioner of Labour, challenged in the Writ Petition No. 4256 of 1994, has to be confirmed and that Writ Petition No. 4256 of 1994 is liable to be dismissed on the basis of the stand taken by the canteen employees in the Closure Application No. 6 of 1993. Whatever may be the stand taken by the canteen employees, we must point out that the contractor himself filed the application before the Commissioner of Labour under S. 25-O of the Act, on the specific ground that the canteen employees are his employees. As we have already recorded a finding that the contractor is the

employer of the canteen employees and that the canteen run by him in the premises of SRF, Ltd., is an industrial establishment, the contractor is bound to apply for permission for closure of the canteen under S. 25-O of the Act, if he intends to close the canteen. The Commissioner of Labour has disposed of the Closure Application No. 6 of 1993, holding that such an application under S. 25-O of the Act is unnecessary and that the Commissioner of Labour has not disposed of the closure application on merits. In these circumstances, the order of the Commissioner of Labour, challenged in Writ Petition No. 4256 of 1994, is liable to be quashed and the matter has to be remanded to the Commissioner of Labour with a direction to take the Closure Application No. 6 of 1993 on file and consider the question whether the contractor is entitled to a permission under S. 25-O of the Act to close the canteen and dispose of the matter afresh, on merits and according to law and in the light of the observations made in this order. Point No. 3 is answered accordingly.

63. Point No. 4 : Inasmuch as we have considered the whole question, on merits and rendered a finding on the question raised under point No. 1, that the canteen employees are not the employees of SRF, Ltd., and that they are not entitled to any relief against SRF, Ltd., in Writ Petition No. 1935 of 1991, we are of the view that it is not necessary to go into the question whether Writ Petition No. 1935 of 1994, filed by the canteen employees against SPF, Ltd., a private limited company, is maintainable and the said question is left open. Point No. 4 is answered accordingly.

64. Point No. 5 : In view of our findings on point Nos. 1 and 3 that the canteen employees are not the employees of SRF, Ltd., the petitioner in Writ Petition No. 1935 of 1994, is not entitled to the relief claimed in the writ petition and, therefore, it is liable to be dismissed. Accordingly, Writ Petition No. 1935 of 1994 is dismissed.

65. Writ Petition No. 4256 of 1994 :

66. In view of our finding on point No. 3 the order of the Commissioner of Labour (being authority under S. 25-O of the Act) dated February 22, 1994 challenged in Writ Petition No. 4256 of 1994 is liable to be quashed. Accordingly, Writ Petition No. 4256 of 1994 is allowed, the order of the Commissioner of Labour, dated February 22, 1994, made in Closure Application No. 6 of 1993 is quashed and the matter is remitted to the Commissioner of Labour, for fresh disposal, on merits, according to law and in the light of the observations made in this order. There will be no order as to costs, in both the writ petitions.

67. Immediately on pronouncing the aforesaid order, learned counsel appearing for the canteen workers made an oral application in terms of Article 134A of the Constitution of India for certifying that the case involves a substantial question of law of general importance required to be decided by the Supreme Court. We are of the view that on appreciation of the evidence on record and on applying the principles laid down by the Supreme Court in the decisions referred to in the course of the order, we have arrived at the aforesaid decision. Therefore, in our view, this is

not a case in which the certificate under Article 133 should be granted. Accordingly, the certificate is refused.

68. It is also further submitted that to enable the canteen workers to approach the Supreme Court, an interim order may be passed suspending the operation of the order. It may be pointed out here that one writ petition we have rejected and another writ petition we have allowed and remitted the matter to the Commissioner of Labour to consider the application filed under S. 25-O of the Industrial Disputes Act by the Management of Industrial Catering Services (Private) Ltd. Therefore, we are of the view that there is no justification to stay the further proceedings in the application filed under S. 25-O of the Act. The interests of the workmen are also not affected because as long as the closure application is pending, they continue to be the workmen under the Management of Industrial Catering Services (Private) Ltd. Accordingly the prayer is deferred.