Visakhapatnam Contrast Labour Union Vs Steel Authority of India Limited & Anr.

Court: ANDHRA PRADESH HIGH COURT

Date of Decision: April 21, 2017

Acts Referred: Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Industrial Disputes Act, 1947, Section 2, Section 11,

Hon'ble Judges: Sri S.V. Bhatt

Bench: SINGLE BENCH

Advocate: M. Kesava Rao, S. Ram Reddy, Salloori Ramesh, C.R. Sridharan

Judgement

1. The Visakhapatnam Contract Labour Union is the petitioner in these three writ petitions. The petitioner states that it is espousing the cause of

contract labour working in Steel Authority of India Limited (for short ""SAIL"").

2. The prayers in these three writ petitions read as follows:

W.P. No. 21548 of 2002:

To call for and peruse the records pertaining to I.A. No. 122 of 2002 in ITID No. 5 of 1992 dated 21.10.2002 on the file of Industrial Tribunal-

cum-Labour Court, Visakhapatnam and quash the order dated 21.10.2002 by issuing a writ of Certiorari.

W.P. No. 140 of 2003:

To call for the records in I.A. No. 96 of 2002 in ITID No. 5 of 1992 dated 21.10.2002 on the file of 2nd respondent and quash the same by

issuing a Writ of Certiorari.

W.P.No.25073 of 2009:

Prayed for Mandamus declaring the action of respondents/SAIL in not taking steps for engaging the members of the petitioner union in spite of

representation as illegal, and consequently direct the respondents to engage the members of petitioner union in preference to fresh contract

workers in pursuance of tender notification reference No. VIZ/WH/HC/2009 dated 05.08.2009.

3. At the outset, the primary circumstances leading to the filing of these cases are adverted and thereafter, the averments in W.P. No. 21548 of

2002 are stated. The learned counsel appearing for the parties have treated W.P. No. 21548 of 2002 as the main writ petition and have agreed

that the outcome of the companion writ petitions depends on the disposal of W.P. No. 21548 of 2002.

4. The petitioner is a registered trade union consisting of 65 members. The members are stated to be working in SAIL as loading and unloading

Operators under different contractors for several years. Government of Andhra Pradesh issued G.O.Ms.No.375 dated 05-06-1981 abolishing

employment of contract labour in the processes or operations in the industries notified therein. Hindustan Steels (previously known as Hindustan

Steels Operations) is covered by (II) and the engagement of contract labour for the following operations was prohibited.

1. Loading and unloading of wagons and stocking and loading of trucks.

2. Loading of rails into tractors

3. Watch and Ward.

5. The petitioner alleges that engaging contract labour in SAIL for the prohibited operations and continuing to engage the contract labour for

prohibited operations firstly is illegal and further not treating the members of petitioner union as workmen of SAIL was arbitrary, illegal and

discriminatory. Therefore, the petitioner filed W.P. No. 12798 of 1989 for the relief of absorption of members of petitioner trade union in SAIL as

regular workmen. On 25.10.1989, the writ petition No. 12798 of 1989 was disposed of by directing the State Government to refer the dispute of

non-regularisation to the appropriate Industrial Tribunal/Labour Court for adjudication. It is further held that pending reference of the dispute, the

members of petitioner union may be continued in employment in view of the fact that the contract between the respondent and the contractor was

subsisting.

6. The members/contract labour filed W.P. No. 442 of 1991 praying for direction to the State Government to refer the dispute of non-

regularisation for adjudication by the Tribunal. The State Government issued G.O.Rt.No.1227 dated 05.06.1992 referring the said dispute to the

Industrial Dispute for adjudication which reads thus:

Whereas the Government of Andhra Pradesh is of opinion that an industrial disputes exists between the management of Steel Authority of

India Limited, Sotckyard, Kancherapalem and their workmen represented by Visakhapatnam contract Labour Union, Visakhapatnam, in

respect of the matters specified in the annexure to this G.O.

and whereas, in the opinion of the Government of Andhra Pradesh it is necessary to refer the said dispute for adjudication.

Now therefore in exercise of the powers conferred by clause (C) and the 1st provision to Clause (d) of subsection (i) of section 10 of the

Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Andhra Pradesh hereby refers the said dispute for adjudication

to the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

The Industrial Tribunal-cum-Labour Court shall submit its award, on the above dispute to the Government within a period of 6 months from

the date of this G.O.

7. I.Whether the demand of the Visakhapatnam Contract Labour Union, Visakhapatnam, for absorption of contract workers in loading and

unloading operations at Stockyard, Kancherlapalem, of the contractor namely, Sri Krishna Engineering Works, Visakhapatnam as regular

employees of Steel Authority of India Limited consequent on the abolition of employment of contract labour in loading and unloading operations in

Steel Authority of India Limited, Stockyard Visakhapatnam as per G.O.Ms.No.375 LEN and TE LAB-II Department dated 05.06.1981 is

justified.

II. If so to what relief the workmen are entitled?

(emphasis added)

8. The dispute referred through G.O.Rt. dated 05.06.1992 has been taken on file as ITID No. 5/1992 before the Industrial Tribunal.

9. SAIL filed W.P. No. 851 of 1991 for Mandamus permanently restraining the State and the Assistant Commissioner of Labour and Licencing

Authority from enforcing G.O.Ms.No.375/81, LEN & TE (Labour-II), Department dated 05.06.1981. For convenience the outcome of W.P.

No. 851 of 1991 is referred at this stage of narration. On 04.03.2004, W.P.No.851 of 1991 was allowed and the operative portion of the order

in W.P.No.851 of 1991 reads thus:

No counter has been filed. However, the learned Government Pleader submits that the matter be left open to Government to issue fresh

notification in accordance with the rules.

Inasmuch as there is violation of Section 10(2) of the Act, without going into other issues of the case on merits, I am inclined to set aside the

G.O.

Accordingly, the writ petition is allowed. G.O.Ms.No.375 dated 5.6.1981 is set aside. However, this order does not preclude the

Government for issuing fresh notification as required under law if the Government so chooses. The relief in the Writ Petition is only confined

to the petitioner and cannot be made applicable to other establishments. No costs

10. It is a matter of record that the State Government filed WAMP No. 1292 of 2010 in WASR No. 91805 of 2010 against the order dated

04.03.2004 in W.P. No. 851 of 1991. On 13.12.2013, the Division Bench declined to condone the delay and dismissed the WAMP. Therefore,

the order dated 04.03.2004 in W.P. No. 851 of 1991 has become final. The effect of these two orders is that the prohibition from engaging

contract labour by SAIL is in operation.

11. The Hon''ble Supreme Court in AIR India Statutory Corporation v. United Labour Union and others, AIR 1997 SC 645 considered the

scope, object of the Contract Labour (Regulation and Abolition) Act (37 of 1970) (for short ''the CLRA Act'') and laid down as one of the

principles which is the appropriate Government viz. State or Central Government to refer disputes to Industrial Tribunal for adjudication.

12. SAIL bearing in view and also relying upon the principle laid down in AIR India case (1 supra) filed writ petition No. 29865 of 1997

challenging G.O.Rt. No. 1227 dated 05.06.1992. On 03.11.1997, the challenge to G.O.Rt.No.1227/1992 failed, SAIL filed Writ Appeal No. 80

of 1998 against order in W.P. No. 29865 of 1997 dated 03.11.1997. The Writ Appeal was admitted and later on transferred to Hon''ble

Supreme Court as T.C. No. 1 of 2000. T.C.No.1 of 2000 tagged with Steel Authority of India Limited v. National Union Water Front Workers,

(2001) 7 SCC 1 (for short SAIL case'')

13. On 30.08.2001, a Constitution Bench of the Hon''ble Supreme Court rendered decision in SAIL case and has extensively considered the

object, scope and safeguards under the CLRA Act, and overruled the decision of Apex Court in Air India case (1 supra).

14. The T.C. was heard and disposed of by the common order dated 30.08.2001 and the order reads thus:

Writ Appeal No. 80 of 1998 on the file of the High Court of Judicature at Andhra Pradesh was transferred to this Court and numbered as

T.C.No.1 of 2000. The writ appeal is directed against the order of learned Single Judge dismissing W.P.No.29865 of 1998 on

03.11.21997. The petitioner questioned the competence of the State Government to make reference of the industrial dispute to the Labour

Court at Visakhapatnam. It will be open to the Labour Court to decide the question whether the reference was made by the appropriate

Government on the basis of the main judgement. Transferred Case No. 1 of 2000 (Writ Appeal No. 80 /1998) is dismissed accordingly.

15. The learned counsel for either sides have relied upon the conclusions recorded in Paragraph 124 in SAIL case, hence to avoid repetition the

conclusions are excerpted hereunder:

The upshot of the above discussion is outlined thus: (1) (a) Before January 28, 1986, the determination of the question whether Central

Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of

the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration

carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of

any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the

affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of

the State in which the establishment was situated, would be the appropriate Government,

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in

clause (a) of Section 2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is

included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway

company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to

any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other

work in any establishment has to be issued by the appropriate Government : (1) after consulting with the Central Advisory Board or the

State Advisory Board, as the case may be, and;

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the afore-said

requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that

on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment,

shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for

automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting

employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot

be required to order absorption of the contract labour working in the concerned establishment;

(4) We over-rule the judgment of this court in Air Indias case (supra) prospectively and declare that any direction issued by any industrial

adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India"s case (supra), shall hold

good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been

given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in

an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to

consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for

the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to

evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not

genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be

directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it

for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned

establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other

work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to

employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing

the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the

contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

16. While matters stood thus and when the stay against hearing of I.D. was vacated, the 2nd respondent has taken up the I.D. for consideration.

At that stage of the matter, SAIL filed I.A. No. 122 of 2002 under Section 11 of the Industrial Disputes Act,1947 (for short "the I.D. Act") to

reject the reference in G.O.Rt. No. 1227 dated 05.06.1992. The case of SAIL for rejecting the dispute is that at the instance of petitioner herein

the State Government issued G.O. Rt.No.1227 dated 05.06.1992 referring the dispute for decision. The premise for reference is G.O.Ms.No.375

dated 05.06.1981. Now the decision in Air India case (1 supra) was reversed by the Apex Court in SAIL case (2 supra) on the entitlement of

absorption and it is held as follows:

We are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in

the concerned establishment on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of

contract labour in a given establishment.

17. Therefore, it is contended that the parties to the Industrial Dispute are parties to the Judgment in SAIL case (2 supra). In Paragraph 124 of

SAIL case (2 supra), the 2nd respondent is directed to dispose of the dispute as per the main judgment. According to the main judgment, as

absorption is not one of the options even in the event of prohibition of engaging contract labour in an industry or operations, the reference is

specific and the 2nd respondent, in view of the categorical pronouncement in SAIL case (2 supra) rejects the dispute by passing nil Award.

18. On the other hand, the petitioner opposed the rejection of industrial dispute. The petitioner relies upon Paragraph 124 in the SAIL case (2

supra) to canvass that by operation of Paragraph 124 (5) of the reported judgment, the 2nd respondent decides whether the contractor has been

interposed in engaging workers etc. Petitioner further contends that W.P.No.29865 of 1997 was dismissed on 03.11.1997, Writ Appeal No. 80

of 1998 is transferred as TC No. 1 of 2000 and the T.C. is also dismissed. Therefore, it is contended that SAIL having accepted not to question

the legality of G.O.Rt. No. 1227/1992 cannot now ask for rejection of the I.D., but the other aspects are gone into by 2nd respondent. Briefly

stated, according to petitioner, the dispute is subsisting, the 2nd respondent has jurisdiction and prayed for rejecting the prayer in I.A. No. 122 of

2002. The 2nd respondent after considering rival submissions through the order under challenge in W.P. No. 21548 of 2002 allowed the I.A. and

dismissed I.D. The operative portion of the order dated 21.10.2002 reads thus:

The observation of Their Lordship relating to T.C.No./2000 is ""W.A.No.80/98 on the file of the High Court of Judicature of A.P. was

transferred to this court and numbered as T.C.1/2000. The Writ Appeal is directed against the order of the learned single judge dismissing

W.P.No.29865/98 on 13.11.97. The petitioner questioned the competency of the State Government to make reference of the industrial

dispute to the Labour Court at Visakhapatnam. It will be open to the Labour court to decide the question whether the reference was made

by the Appropriate Government on the basis of the main judgement. Transferred Case No. 1/2000 (W.A.No.80/98) is dismissed

accordingly.

So far competency of State Government to make reference to this tribunal is concerned it is set at rest in view of the memo filed on

19.12.2001 in the main I.D. on behalf of the management, conceding State Government is the appropriate Government.

It appears the management is tempted to the observations made by Their Lordship in the above decision, ""the concept of automatic

absorption of the contract labour on issue of notification under Section 10 prohibiting the employment of contract labour in an establishment,

is neither alluded to the report of the joint committee of the parliament on the Central Labour (Regulation and Abolition) Bill, 1967 or in the

statement of objects and reasons of the Act. The Scheme of the Act is to regulate conditions of workers in contract labour system and to

provide for its abolition by the appropriate Government as provided under Section 10 of the Contract Labour (Regulation and Abolition)

Act. The various regulatory and welfare measures provided under the various provisions of the Act clearly be speak treatment of contract

labourer as employees of the contractor and not of the principal employer.

It is true this observation of Their Lordship goes to the root of the case on hand by touching letter and spirit of the terms of reference made

by the Government to this Court. Considering notification under Section 10(1) of Contract Labour (Regulation and Abolition) Act Their

Lordship observed, ""The impugned notification issued by the Central Government on December,1996 does not specific the requirements of

Section 10. It is quashed but we do so prospectively i.e. from the date of this judgement.

It was also observed in para 122(iv) of the judgement.

we overrule the judgment of this court in Air India"s case prospectively and declare that any direction issued by any industrial

adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India"s case shall hold good and

that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to

it as becomes final.

In the case on hand the matter is pending and therefore the reference is not yet answered at all. Therefore, the question of absorption of the

workmen is not there in the case on hand as such, it cannot be said that the said observations of the Hon"ble Supreme Court is prospective

and there is no application. Intention of Their Lordship is that in case contract labourers were already absorbed and regularised in view of

the judgment rendered in Air India"s case, the position will be disturbed in case the judgment is followed. Therefore, Their Lordship

observed application of the judgment prospectively only. In view of specific observation of Their Lordship, ""automatic absorption of

contract labour by principal employer is not contemplated under the Contract Labour (Regulation and Abolition) Act.

The reference made to this Court ipso-facto answered. This Tribunal cannot go beyond the scope of reference. Under the circumstances,

the point is answered by allowing the petition.

19. In the result, the petition is allowed and each party is directed to bear its own costs.

19. The petitioner filed I.A. No. 96 of 2002 in ITID No. 5 of 1992 praying for reopening the matter to afford opportunity to workmen to adduce

evidence. For the sake of brevity, it is observed that the gist of the objections raised in the counter filed in I.A. No. 122 of 2002 constituted the

basis for the prayer to reopen the matter and afford opportunity to workmen to adduce evidence. Likewise, the stand of SAIL in I.A. No. 122 of

2002 is reiterated as counter to I.A. No. 96 of 2002. Hence for brevity the pleadings in I.A. No. 96 of 2002 are not referred.

20. The 2nd respondent through order dated 21.10.2002 dismissed the application and the operative portion reads thus:

This petition is closed as infructuous since in ITID No. 5 of 1992, nil award is passed.

Hence, writ petition No. 140 of 1992.

21. While writ petition No. 21548 of 2002 is pending, SAIL issued tender notification dated 05.08.2009 inviting tenders for handling Iron and

Steel materials at Visakhapatnam warehouse of Steel Authority of India Limited, Central Marketing Organisation. The grievance of petitioner is

that SAIL is entrusting loading and unloading handling of Iron Steel etc to a third party agency and the inaction of SAIL in engaging members of

petitioner union in spite of representation, is illegal, arbitrary and unconstitutional.

22. The SAIL filed counter affidavit and has taken preliminary objections to the maintainability of the writ petition and also the right and entitlement

of members of petitioner union for engaging as labour in the loading and unloading operations.

Averments in writ petition No. 21548 of 2002:

23. After referring to the circumstances till the filing of transfer case and the decision of Apex Court in SAIL case (2 supra) the petitioner alleges

that SAIL through its counsel represented before the 2nd respondent on 19.12.2001 that the management is not questioning the reference made to

the Labour Court. Therefore, G.O. Ms. No. 375 dated 05.06.1981 and the reference in G. O. Rt. No. 1227 dated 05.06.1992 cannot be

questioned at that stage of hearing I.D. It is asserted that in view of SAIL case (2 supra), it is essential for the workmen to adduce evidence on

their behalf to consider the question whether the contractor has been interposed to produce any given result for the establishment or for supply of

contract labour for work of the establishment under a genuine contract or is a near ruse/camouflage to evade compliance of beneficial legislation

and deprive the workers the benefits of those beneficial legislation. If the workmen on the contrary can demonstrate that the contract is not genuine

and also a camouflage and the employment of contract labour is a ruse the labour Court having regard to the principles laid down by the Apex

Court in SAIL case (2 supra) could mould the relief. It is stated I.A. No. 96 of 2002 was filed for adducing evidence on behalf of workman.

When I.A. No. 96 of 2002 is pending, SAIL filed I.A. No. 122 of 2002 to reject the reference made in G.O.Rt.No.1227 dated 05.06.1992 on

the ground that in view of the law declared by the Apex Court in SAIL case (2 supra) the contract labour cannot claim automatic absorption as

employees of Principal employer and the very reference does not survive. The grounds against the order impugned are that the reference in G.O.

Rt.1227 dated 05.06.1992 had attained finality in view of the orders in SAIL case (2 supra) particularly in Para No. 124 while disposing of T.C.

No. 1 of 2002. The representation of counsel for management on 19.12.2001 has given quietus to the debate on legality on G.O.Ms.No.375

dated 05.06.1981and G.R.Rt.No.1227. The SAIL case (2 supra) is prospective but not retrospective. It is further pointed out that the Industrial

Tribunal/2nd respondent failed to appreciate that the dispute is pending before it before the pronouncement of judgment in SAIL case (2 supra).

According to petitioner, the issue for consideration in ITID No. 5 of 1992 is whether the contractor has been interposed or is a mere camouflage.

Therefore, the petitioner prays for setting aside the order in I.A. No. 122 of 2002.

24. The 1st respondent through its Manager filed counter affidavit and the stand of the 1st respondent is that the writ petition is completely

misconceived, for the order impugned in the writ petition is passed by following SAIL case (2 supra) and the writ petition does not point out an

error apparent on the face of record or that the 2nd respondent lacked the jurisdiction to pass the impugned order. It is stated that the respondent

has undertaken reorganisation of its business activities and therefore, in implementation of such reorganization has decided to discontinue the

operations at stockyard of South Eastern Railway, Waltair. The very reference of dispute through G.O.Rt.No.1227 does not survive. The attempt

of petitioner virtually amounts to enlarging the scope of reference by introducing altogether a different and independent issue for decision by

Industrial Tribunal and such course is impermissible in law. The 2nd respondent has no jurisdiction or power to keep the reference pending and

entertain the issues which are definitely not ancillary or incidental to the dispute referred to it. The order of 2nd respondent in I.A. No. 122 of 2002

for all purposes is followed the ratio laid down by the Apex Court in SAIL case (2 supra). The 1st respondent in great detail refers to merits of the

matter and as the counsel confined their submissions to the outcome of instant dispute In the light of SAIL case (2 supra), I am not proposing to

refer to several averments in the counter affidavit. The 1st respondent prays for dismissing the writ petition.

Writ petition No. 140 of 2003:

25. I have perused the affidavit and counter affidavit of petitioner and first respondent respectively and after taking note of the averments made

therein, the legal grounds and objections, this Court is of the view that the averments in this writ petition need not be restated, for they are

substantially same or similar to the averments in writ petition No. 21548 of 2002.

W.P. No. 25073 of 2009:

26. The petitioner refers to interim orders passed by this Court in W.P.M.P. No. 26989 of 2002 in W.P. No. 21548 of 2002, the orders in

W.P.M.P. No. 3740 of 2002 and finally the order passed by the Division Bench of this Court in W.A. No. 527 of 2003 on 01.04.2003. It is

further alleged that in the year 2000, Railways did not permit the 1st respondent to operate loading and unloading in the stockyard for the reason

that Railways are constructing new coach maintenance complex and remodelling the yard to accommodate more number of local trains. In view of

refusal by Railways from 2002 onwards, the respondent company started entrusting loading and unloading work to a consignment Agent. The

petitioner union therefore prayed for a direction to continue the services of members of petitioner union by the consignment Agent till the disposal

of the main writ petition.

27. The 1st respondent/SAIL filed counter affidavit stating that the party to whom the handling work is entrusted acts as the Agent of SAIL for

storage and handling of iron and steel material for establishments by employing own labour and equipment, therefore, the consignment agent

engaging the union members does not arise. SAIL is now constructing its warehouse at Auto Nagar at Visakapatnam and likely to open the

warehouse within a short period. SAIL issued tender notification No. BYZ/WH/2009 dated 05.08.2009 for appointing contract labour for

handling iron and steel material at Visakhapatnam warehouse and Central Marketing Organization. In view of entrustment of loading and unloading

work to a contractor, the works cannot be entrusted to members of petitioner union. Hence, the writ petition for a direction to engage the services

of the members of petitioner union.

28. The respondents have raised several objections on the maintainability of writ petition. Respondents/SAIL raised objections on the probability

of several members of petitioner union working from the dates stated by them in the writ affidavit and annexures. It is replied that the writ prayer

without challenging the tender process is illegal and not maintainable. It is contended that the members of petitioner union have no right to pray for

consideration of their cases by the contractor who will be finally entrusted with the work of handling operations at the warehouse and at the yard.

Therefore, SAIL prays for dismissing the writ petition.

29. Sri M. Keshava Rao appearing for petitioner contends that G.O.Rt.No.1227 dated 05.06.1992 is on account of orders passed by this Court

in writ petition Nos. 12798 of 1989 and 442 of 1991. The engagement of contract labour was prohibited by G.O. Ms. No. 375 dated

05.06.1981 therefore the members of petitioner union are entitled for absorption as workmen in SAIL. He further contends that the counsel for

SAIL in 2001 has gone on record by stating that SAIL does not question the legality of either G.O.Ms.No.375 dated 05.06.1981 or

G.O.Rt.No.1227 dated 05.06.1992. He contends that ITID No. 5 of 1992 could not be disposed of having regard to the orders passed by this

Court in W.P. No. 29865 of 1997 read with Writ Appeal No. 80 of 1998. Therefore, even assuming that Air India case (1 supra) was reversed in

SAIL case (2 supra), the members of petitioner union are entitled to get the industrial dispute referred for adjudication and decided by the labour

Court. Therefore, the labour Court is bound to hear and dispose of the reference in accordance with the guidelines covered by paragraph 124(5).

Further, it is contended that the Apex Court dismissed Transferred Case No. 1 of 2000 with a direction to dispose of the reference in accordance

with the main judgment i.e. SAIL case (2 supra). Therefore, according to him, the industrial dispute can be disposed of only on merits after

evidence is adduced but not by following paragraph Nos. 124(3) and (4) of SAIL case (2 supra). He further contends that while considering the

prayers in I.A. No. 96 and 122 of 2002, G.O.Ms.No.375 was in operation and therefore, the rejection of I.D. is illegal, amounts to refusing to

exercise the jurisdiction conferred on 2nd respondent. He further contends that the union in its representative character can espouse the cause of

contract labour and therefore, even if the union is the petitioner before the 2nd respondent, the dispute cannot be wound up by the labour Court by

accepting the prayer in I.A. No. 122 of 1992. He relies upon Indian Airports Employees Union v. AIR India, 1997 ILLJ 1027 . Therefore, he

prays for setting aside the orders impugned in writ petition Nos. 21548 of 2002, 140 of 2003 and further prays for a direction to SAIL to engage

members of petitioner union either as contract labour or workmen.

30. Sri C.R. Sridharan learned senior counsel contends that the petitioner has not made out any ground attracting the jurisdiction of this Court to

issue a writ of Certiorari against the orders impugned in W.P. No. 21548 of 2002. He contends that G.O.Rt.No.1227 dated 05.06.1992 was

issued on the premise of abolition of contract labour through G.O. Ms. No. 375 dated 05.06.1981. Therefore, the industrial dispute referred for

adjudication proposes to deal with the demand of petitioner for absorption of its members who are working as contract labour in loading and

unloading operations is justified or not. Without prejudice to other legal contentions, he argues that the SAIL filed writ petition No. 851 of 1991

for Mandamus permanently restraining the State and the Assistant Commissioner of Labour from enforcing G.O.Ms.No.375 dated 05.06.1981.

On 04.03.2004, a learned Single Judge allowed the writ petition insofar as SAIL is concerned. The order in writ petition No. 851 of 1991 is

confirmed on appeal by a Division Bench of this Court. Therefore, the very basis for consideration of absorption i.e. G.O.Ms.No.375 dated

05.06.1981 is for all purposes erased and does not operate vis-a-vis SAIL is concerned. Therefore, the labour Court has no basis legal or factual

for examining whether claim for absorption of contract labour exist or not. He further relied on paragraph No. 124 (4) & (5) of SAIL case, which

read thus,

(4) We over-rule the judgment of this court in Air India"s case (supra) prospectively and declare that any direction issued by any industrial

adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India"s case (supra), shall hold

good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been

given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in

an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to

consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for

the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to

evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not

genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be

directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it

for that purpose in the light of para 6 hereunder.

to declare that with the issuance of a notification under Section 10 of CLRA Act, automatic absorption of contract labour in any establishment is

not envisaged under the Act. He lays emphasis on ""consequently the principal employer cannot be required to order absorption of the contract

labour working in the concerned establishment"" and submits that there is no issue for decision by Industrial Tribunal. Therefore, according to him,

G.O.Ms.No.375 dated 05.06.1981 is not subsisting as on date. Alternatively, on the date when the applications are disposed of the labour Court

could not have considered the dispute of abolition of contract labour in loading and unloading and consequential prayer of absorption of contract

labour into SAIL. Therefore, the orders passed by the 2nd respondent cannot and could not be interfered with by this Court. In other words, he

contends that a writ Court does not issue futile writs and in support thereof places reliance on State Bank of Patiala v. S.K. Sharma, AIR 1996

SC 1669 . Mr.C.R.Sridharan further contends that the petitioner does not have locus standi to canvass the grievance, even assuming the members

of petitioner union are engaged as contract labour in loading and unloading operations by SAIL for, for such consideration arises in an individual

dispute raised by contract labour. He relies upon Employers of Express Newspapers (Private) Ltd v. Labour Court, A.P.,Hyderabad, AIR 1963

AP 223 which followed the decision reported in The Bombay Union of Journalists v. The Hindu, 1962 SCR (3) 893 and Gujarat Electricity Board

v. Hind Mazdoor Sabha, (1995) 5 SCC 27 . He further contends that the labour Court cannot traverse beyond the scope of reference and now

consider an issue which would have been taken up for consideration, if a dispute is individually raised by the contract labour. He places reliance

upon Hochtief Gamman v. Industrial Tribunal, Bhubaneshwar, Orissa, AIR 1964 SC 1746 and Senior Regional Manager HPCL Secunderaband

v. P.O. Industrial Tribunal-I, Hyderabad, 2002 (2) ALD 462 . As against the prayers in writ petition Nos. 21548 of 2002 and 140 of 2003, he

contends that order of reference would not constitute a valid industrial dispute within the meaning of Section 2 (K) of I.D. Act for want of

employer and employee relationship and places reliance on Workmen of The Food Corporation of India v. M/S. Food Corporation of India,

(1985) 2 SCC 136 . As regards the prayer in writ petition No. 25073 of 2009 the prayer for Mandamus is not available as far as engaging

contract labour is not prohibited, the prayer for any relief beyond the statutory requirement of the CLRA Act does not arise. He prays for

dismissing W.P. Nos. 21548 of 2002, 140 of 2003 and 25073 of 2009.

31. I have heard learned counsel, perused the material available on record and now the points for consideration are:

1. Whether the petitioner union has made out a case for interfering with orders dated 21.10.2002 in I.A. Nos. 96 and 122 of 2002?

2. Whether the Industrial Dispute referred through G.O.Rt. No.1227 dated 05.06.1992 subsists for decision in view of SAIL case (2

supra) and order in W.P. No. 851 of 1991?

3. Whether the petitioner union can expand and canvass the dispute referred under Section 10 of the I.D. Act by treating the reference as

Industrial Dispute under Section 2 A(2) of the I.D. Act?

32. Points 1 to 3:

Let me first very briefly refer to the reasons given by the 2nd respondent while allowing I.A. No. 122 of 2002.

33. The 2nd respondent referred to the order of Apex Court in T.C. No. 1 of 2000. Thereafter, assuming that the State Government is competent

to make reference in view of Memo dated 19.12.2001, the 2nd respondent proceeded to take note of the following observations from SAIL case

(2 supra)

The concept of automatic absorption of contract labour on issue of notification under Section 10 prohibiting the employment of contract

labour in an establishment is neither alluded to the report of the joint committee of the Parliament on the Contract Labour (Regulation &

Abolition) Bill 1967 or in the statement of objects and reasons of the Act. The scheme of the Act is to regulate the conditions of workers in

the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the Contract

Labour (Regulation and Abolition) Act. Various regulatory and welfare measures provided under the various provisions of the Act clearly

speak about treatment of contract labourers as employees of the contractor and not of the principal employer and referred to overruling Air

India"s case (1 supra) and has taken note of the prospective overruling and proceeded to decide whether ITID No. 5 of 1992 can be

proceeded with or not. The 2nd respondent concluded that automatic absorption of contract labour by principal employer is not

contemplated under the CLRA Act.

34. Against the above findings, the contention of Mr. Keshava Rao is that the 2nd respondent has given effect to sub paras (3) and (4) of Para

124 of SAIL case (2 supra) and refused the relief of absorption. According to him, the Tribunal is under obligation to follow the procedure

stipulated in paragraph No. 124 sub para (5) of SAIL case (2 supra) which reads as follows:

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in

an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to

consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for

the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to

evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not

genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be

directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it

for that purpose in the light of para 6 hereunder.

35. On the other hand, Mr. C.R. Sridharan contends that the dispute referred is whether the demand of petitioner for absorption on the abolition of

employment of contract labour in loading and unloading is justified or not. According to him, even assuming as first argument that contract labour in

loading and unloading in SAIL is abolished still according to SAIL case that does not lead to automatic absorption of workmen working under a

contractor. The industrial dispute referred through G.O.Rt.No.1227 is substantially based on abolition of employment of contract labour vide

G.O.Ms.No.375 dated 05.06.1981. Therefore, according to him, the demand for absorption cannot be a dispute for reference or at this stage of

matter a decision at all in view the law declared by the Apex Court in SAIL case (2 supra). On the contention that the 2nd respondent is required

to examine whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment

or for supply of contract labour for work of the establishment under a genuine contract or is mere rouse/camouflage does not arise for

consideration by reference to paragraph 124 (5) and are to be read and appreciated in the light of the law laid down by the Apex Court in Gujarat

Electricity Board case (7 supra), for Gujarat Electricity Board case envisages examination of these issues in a dispute raised by contract labour but

not by union. He further contends that the very basis of the industrial dispute is traceable to G.O.Ms.No.375. Though on the date of disposing of

I.A. No. 122 of 2002, G.O.Ms.No.375 vis-a-vis the SAIL was concerned was in force. In view of the order in W.P. No. 851 of 1991 dated

04.03.2004, he submits that the very abolition of contract labour in loading and unloading in SAIL is set aside. Once the Government Order

prohibiting employment of contract labour is set aside by this Court, the basis for reference of industrial dispute namely the abolition of employment

of contract labour in loading and unloading abolition in SAIL is effaced. According to him, in view of the dicta laid down by the Apex Court in

SAIL case (2 supra) absorption of contract labour with the issuance of notification of prohibition or abolition does not arise. Therefore, the findings

are justifiable and for additional reason namely that when writ prayers are considered G.O.Ms.375 dated 05.06.1981 does not operate and

consequently there is no abolition of engagement of contract labour in SAIL.

36. The contention of Mr. Keshava Rao that evidence on the nature of contract is allowed to be let in, though at the first look appears to be

persuasive, however, after carefully going through the SAIL case (2 supra) and the conclusions arrived at therein, this Court is of the view that the

relief of absorption of contract labour with the abolition of contract labour in view of Air India case (1 supra) is no more available. Secondly the

law declared by Apex Court is that neither Section 10 of the CLRA Act nor provisions in the Act whether expressly or by necessary implication

provide for automatic absorption of contract labour on a notification being issued by appropriate Government under sub section (1) of Section 10

of the Act prohibiting employment of contract labour, in any process, abolition or other work in any establishment. It is further held the principal

employer cannot be required consequently to order absorption of contract labour working in the concerned establishment.

(Emphasis added)

37. From the above, it is evident that the enquiry or exercise, the 2nd respondent proposes to undertake on the reference made through G.O. Rt

No. 1227 dated 05.06.1992 considers the relief of absorption of contract labour in SAIL as principal employer, such relief according to the

declaration of law in SAIL case (2 supra) is unavailable.

38. The efficacy or effectiveness of industrial dispute as on date centres around G.O. Ms. No. 375 dated 05.06.1981 i.e. whether it is subsisting

or not. The case of petitioner is that the SAIL filed memo dated 19.12.2001 accepting the competence of State Government as appropriate

Government to refer the dispute of absorption to 2nd respondent. Therefore, the objection viz. additional ground by reference to order of this

Court in W.P. No. 851 of 1991 now canvassed by the SAIL should not and ought not to be entertained by this Court. It is already noticed that

SAIL filed writ petition No. 851 of 1991. On 04.03.2004, the writ petition was allowed and confirmed by the Division Bench on 13.12.2013. The

effect of order of this Court in W.P.No.851 of 1991 is that insofar as the SAIL is concerned, the prohibition imposed through G.O.Ms.No.375

dated 05.06.1981 is set aside. Therefore, for all purposes, the very basis which constituted for reference of industrial dispute ceased to subsist.

Therefore, even though these dates and events are subsequent to the order dated 21.10.2002 in I.A. No. 122 of 2002, this Court cannot ignore

the legal effect of these orders and direct 2nd respondent to undertake examination more particularly without any result thereon. The other

objection of Mr.Keshava Rao in this behalf is that SAIL filed writ petition No. 29865 of 1997 challenging the G.O.Rt. No. 1227 dated

05.06.1992 and writ was dismissed on 03.11.1997. While disposing of TC No. 1/2000, Writ Appeal No. 80 of 1998 against writ petition No.

29865 of 1997 was also dismissed. Therefore, the challenge laid to G.O.Rt. No. 1227 was unsuccessful.

39. I have difficulty in accepting the reply of Mr.Keshava Rao on legal implication of the orders in W.P.No.29865 of 1997 read with Writ Appeal

No. 80 of 1998, for writ petition No. 29865 of 1997 was filed basing on the law declared by the Apex Court in Air India case (1 supra) on who

is the appropriate Government for reference of a dispute. Air India case (1 supra) is overruled by the Apex Court in SAIL case (2 supra).

Therefore, even otherwise the issue of appropriate Government raised by reference to Air India case (1 supra) does not survive for consideration.

Further in TC No. 1/2000, the Hon''ble Supreme Court specifically directed the labour Court to decide the question as to whether the reference

was made by the Appropriate Government on the basis of the main judgment. In the considered view of this Court, the very memo dated

19.12.2001 on which the petitioner is relying upon as to who is appropriate Government is a non-issue. Therefore, what is accepted by SAIL

cannot be confused with what is being seriously contested by SAIL from the beginning by reference to the Act. Therefore, the objection raised by

the petitioner is untenable and accordingly rejected.

40. Mr.Keshava Rao further contends that as directed by paragraph 124(5) in SAIL case (2 supra), the industrial adjudicator will have to consider

the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the

establishment and decide the same as matter of fact. The contention raised by the petitioner is directly answered by decision of Apex Court in

Gujarat Electricity Board case (7 supra) and the relevant portion reads as follows:

The legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labour in the

principal establishment on the abolition of the contract labour, fearing that such provision would amount to forcing the contract labour on the

principal employer and making a contract between them. The industrial adjudicator however is not inhibited by such considerations. He has

the jurisdiction to change the contractual relationships and also make new contracts between the employer and the employees under the ID

Act. It is for this reason that in all cases where the contract labour is abolished, the industrial adjudicator, depending upon the facts of the

case will have the authority to direct the principal employer to absorb such of the workmen of the erstwhile contractor and on such terms as

he may determine on the basis of the relevant material before him. Hence the legislature could have provided in the Act itself for a reference

of the dispute with regard to the absorption of the workmen of the erstwhile contractor to the industrial adjudicator after the appropriate

Government has abolished the contract labour. That would also have obviated the need to sponsor the dispute by the direct workmen of the

principal employer. That can still be done by a suitable amendment of the Act.

41. Therefore, keeping in view the above ratio decidendi, this Court has difficulty in accepting the contention that the 2nd respondent at the

instance of petitioner ought to have allowed the prayer for leading evidence by petitioner union on the genuineness of contract entered into from

time to time for providing contract labour to SAIL by different contractors.

42. The further contention of petitioner is that the scope of dispute can be expanded and to meet the ends of justice, the 2nd respondent can be

directed to decide the expanded dispute and grant appropriate relief to the members of petitioner union.

43. I have perused the decisions which Mr. C.R. Sridharan has relied upon to contend that Visakhapatnam Contract Labour Union firstly is not a

union recognised by the SAIL and secondly the enquiry into whether the contract is genuine or not can be taken up at the instance of contract

labour as an individual dispute and not by a union. The citations on which he relies upon are as follows:

In Hochtiff Gammon case (8 supra), it was held as follows:

In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited

jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of

reference passed under Section 10. It is well settled that the terms of reference determine the scope of its power and jurisdiction from case

to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in Section 10.

One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter

appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third

Schedule, to a Tribunal for adjudication. In other words under Section 10(1)(d), the appropriate Government can refer to the Industrial

Tribunal not only a specific industrial dispute, but can also refer along with matters appearing to be connected with, or relevant to, the said

dispute. In that sense the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the

Tribunal.

Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be

confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters

incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it

may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters,

the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that

behalf under section. 18(3)(b) as it now stands.

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The next contention raised by Mr. Chatterjee is that M/s Hindustan Steel Ltd. is a necessary party because it is the said concern which is the

employer of the respondents and not the appellant. In either words, this contention is that though in form the appellant engaged the workmen

whom the respondent union represents, the appellant was acting as the agent of its principal and for adjudicating upon the industrial dispute

referred to the Tribunal by the State of Orissa, it is necessary that the principal, viz., M/s Hindustan Steel Ltd. ought to be added as a party.

In dealing with this argument, it is necessary to bear in mind the fact that the appellant does not dispute the respondent Union"s case that the

workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the

employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government

desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes

as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present

proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s

Hindustan Steel Ltd. is a, question incidental to the industrial dispute which has been referred under section. 10(1)(d). This dispute is a

substantial dispute between the appellant and M/s Hindustan Steel Ltd. and cannot be regarded as incidental in any sense, and so, we think

that even this ground is not sufficient to justify the contention that M/s Hindustan Steel Ltd. is a, necessary party which can be added and

summoned under the implied powers of the Tribunal under section. 18(3)(b).

43A. In Employers of Express Newspapers (Private) Ltd. Case (5 supra), it was held as follows:

It was held by the Supreme Court in New India Motors (P) Ltd., New Delhi v. K.T. Morris (AIR 1960 SC 875) , that an individual

dispute could not become an industrial dispute at the instance of the aggrieved individual himself and that there should be a dispute between

the employer on the one hand and his employees acting collectively on the other. This rule is contained in the following remarks of their

Lordships :

It is well settled that before any dispute between the employer and his employee or employees can be said to be an industrial dispute under

the Act, it must be sponsored by a number of workmen or by a Union representing them. It is not necessary that the number of workmen of

the Union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot become an industrial

dispute at the instance of the aggrieved individual himself.

It is thus clear that there cannot be an industrial dispute unless the cause of the aggrieved workmen or group of workmen is taken up by

some of the workmen employed in the establishment. If the cause of the victimised workmen is not taken up by some of the other

employees of the employer, the dispute remains an individual dispute and not an industrial dispute.

44. Therefore at the instance of petitioner union the individual dispute, if any, between Contract Labour and Principal Employer cannot be agitated

or decided.

45. Mr.Sridharan further contends by placing reliance upon Senior Regional Manager HPCL Secunderabad case (9 supra) that the industrial

Tribunal cannot and could not expand or change the complexion of dispute referred to it. The dispute fails for any reason including the reason

stated above, the same cannot be cured by directing 2nd respondent to suitably expand the dispute referred by the Government. He relies upon

the following paragraphs in Senior Regional Manager HPCL Secunderabad case (9 supra).

The functions of an Industrial Tribunal are quasi-judicial but it is not a civil Court. It has not the inherent power to decide any of the disputes

raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government

by an order of reference. In other words, the Tribunal has to function within the limits imposed upon it by the Act and has to act according

to its provisions. In adjudicating upon an "industrial dispute", the Tribunal cannot arrogate to itself powers which the Legislature alone can

confer or do something which the Legislature has not permitted to be done. In R.S. Ramdayal Ghasiram Oil Mills v. Labour Appellate

Tribunal, [1963] II LLJ 65 (SC) and West Bengal Press Workers and Employees Union v. Eighth Industrial Tribunal, [1974] II LLJ 404

(SC) , the Supreme Court held that the Industrial Tribunal acquires jurisdiction to adjudicate upon an "industrial dispute" only after it has

been referred to it In other words, without such a reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute.

Wherein an order referred an industrial dispute to a Tribunal under Section 10(1) of the Act, the "appropriate Government" has specified

the points of dispute for adjudication, the Tribunal shall confine the adjudication to those points and matters incidental thereto. In other

words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its adjudication to the points specifically

mentioned and anything which is incidental thereto. It is well settled that the order of reference by which an industrial dispute is referred to

the Labour Court or Industrial Tribunal for adjudication gives jurisdiction to the Labour Court or the Tribunal, as the case may be, to deal

with the merits of dispute. This position is well settled by the judgment of the Supreme Court in Jharkhand Collieries (P) Limited v. Central

Government Industrial Tribunal, [1960] II LLJ (SC) , and several other judgments to follow. The jurisdiction of the Tribunal being limited to

the matters referred to it by the Government, it would have no right to travel outside the reference, and proceed to adjudicate the matters

not referred to it. This position is also well settled by a catena of decisions of the Apex Court including Gouri Sankar Chatterjee v. Texmaco

Limited and Ors., 2000 (8) Supreme 519 , Workmen of British India Corporation Limited v. British India Corporation Limited, [1965] 11

LLJ 433 (SC) , Delhi Cloth and General Mills Company Limited v. Its Workmen, [1967] I LLJ 423 , the Jaipur Udyog Limited v. The

Cement Work Karmachari Sangh, Sahu Nagar, [1972] I LLJ 437 , and Firestone Tyre and Rubber Company of India Private Limited v.

Workmen, [1981] II LLJ 218 , to cite a few.

An Industrial Tribunal is the creature of the Industrial Disputes Act. Sub-section (4) of Section 10 delineates the perimeter of the jurisdiction

of the adjudicatory authorities viz., the Labour Court, the Industrial Tribunal or the National Tribunal to adjudicate. The word ""jurisdiction

means authority to decide or the legal authority of a Court or Tribunal to do certain things. An Industrial Tribunal being creature of the Act,

its jurisdiction is confined by the Act, thereby meaning that the Tribunal will have no jurisdiction, to adjudicate upon any dispute or lis to

which the Act does not apply. Further, the jurisdiction of the Tribunal has been limited by the provisions of Section 10(4) to confine its

adjudication to ""the points specified in the order of reference and matters incidental thereto."" Where by reason of any limitation imposed by

statute, a Tribunal lacks jurisdiction to entertain any particular matter, neither acquiescence nor consent of the parties can confer jurisdiction

on it. In other words, a party cannot confer jurisdiction where it does not exist because no amount of consent, acquiescence or waiver can

create it or confer it. Nor can a party take away the jurisdiction of the Tribunal by way of objection where it exists. In United Commercial

Bank Limited v. Their Workmen, [1951] I LLJ 621 , Kania, CJ., speaking for the Supreme Court observed:

Nor can consent give a Court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. No

appearance or consent can give a jurisdiction to a Court of limited jurisdiction which is does not possess. The absence of a condition

necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The

distinction clearly is between the jurisdiction to decide matter and the ambit of the matters to be heard by a Tribunal having jurisdiction to

deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the

question is of the jurisdiction of the Tribunal to make the award no question of acquiescence or consent can affect the decision.

Further, Fazal Ali, J., observed:

Consent cannot give jurisdiction in respect of subject-matter though it might cure a mere irregularity.

The jurisdiction of the Industrial Tribunal being by virtue of the Act and limited by the terms of reference under Section 10, it would not be

open to the workers and the management to confer jurisdiction upon the Tribunal on a question not covered by the reference. The mere fact

that an objection was not taken before the Tribunal, would not give its jurisdiction if it inherently had no jurisdiction. An Industrial Tribunal is

not a Court of general or residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the orders of reference. In

other words, it is an ad hoc Tribunal with ad hoc jurisdiction to determine specific industrial disputes. The Tribunal has to confine itself to the

pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off at a tangent disregarding the pleadings and reach any

conclusion that it thought as just and proper, as held by the Supreme Court in Parry and Company Limited v. P.C. Lal, [1970] II LLJ 429

(SC) .

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In the light of the well settled principles emerging from the decided cases, what has to be seen by us in this writ appeal is whether the

declaration made by the Industrial Tribunal that the workmen concerned are entitled to pay scales on par with regular employees with from

1-12- 1999 could be said to be a decision of the Industrial Tribunal on a matter incidental to the point referred to it by the Government of

India. It cannot be gainsaid that the relief of regularisation and relief to claim wages on par with regular employees are two independent legal

remedies. The considerations which go into the decision making in granting these two reliefs would also vary. The relief granted to the

workmen that they are entitled to pay-scales on par with regular employees is undoubtedly is on the assumption that the workmen

concerned did/do discharge same functions and duties attached to the regular post. The question whether it is so or not, it is trite, is an

incidence of fact. In the first place, the Central Government has no referred the dispute relating to entitlement of the workmen concerned to

pay-scales on par with regular employees. Secondly, the question whether workmen concerned perform same duties and functions on par

with regular employees, being a question of fact, such a question shall be resolved only by permitting the parties to adduce evidence and

after appreciation of such evidence. Thirdly, even in the course of adjudication of the reference, the Industrial Tribunal though chose to

frame points for adjudication/determination did not frame the point relating to the entitlement of the workmen concerned to pay scales on

par with regular employees. In State of Haryana v. Jasmer Singh, 1996 (8) Scale 263 , commenting upon the principle of "equal pay for

equal work", the Supreme Court has opined that that principle is not always easy to apply. There are inherent difficulties in comparing and

evaluating work done by different persons in different organisations, or even in the same organisation; the quality of work performed by

different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications

which may have a bearing on the skills which the holders of office or post bring to their job although the designation of the job may be the

same. There may also be other considerations which have relevance to efficiency in service which may justify differences is pay-scales on

the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited

from persons who have reached the top of the pay-scale. Therefore, we are of the considered opinion that Industrial Tribunal has exceeded

its jurisdiction in declaring that the workmen concerned are entitled to payscale on par with regular employees particularly because that was

not a term of reference and further the Tribunal itself did not frame any issue relating to that entitlement of the workmen.

46. From the above discussion, this Court is of the view that the order of 2nd respondent in I.A. No. 122 of 2002 is in accordance with the

principle laid down by the Hon''ble Supreme Court in SAIL case (2 supra) and the relief of absorption as it stood during the period i.e. Air India

case (1 supra) and SAIL case (2 supra) cannot and could not have been considered by the 2nd respondent and rightly the I.A. No. 122 of 2002

was allowed. The order in I.A. No. 122 of 2002 can be sustained for the additional reasons namely that G.O.Ms.No.375 dated 05.06.1981 by

virtue of decision of this Court in writ petition No. 851 of 1991 is not subsisting vis-a-vis SAIL that the I.D. has been referred at the instance of

union and the enquiry contemplated by paragraph of 124 (5) in SAIL case (2 supra) firstly cannot and could not be directed to be examined by

2nd respondent for it amounts to changing the complexion of dispute referred to it and secondly these issues arise for consideration in an individual

dispute raised by contract labour.

The summary of above discussion is as follows:

(i) The rights and benefits of contract labour are governed by the provisions of CLRA Act.

(ii) The abolition of contract labour in an industry or operation automatically does not result in absorption of contract labour by the Principal

Employer.

(iii) Due to the difference in scope and extent of adjudication in dispute raised by a contract labour or a dispute raised by the union, the relief

of regularisation cannot be considered in a dispute canvassed by the union and is examined by industrial adjudicator in the dispute raised by

the contract labour in the light of directions issued in SAIL case.

(iv) The Industrial Tribunal/Labour Court has to confine its consideration to the dispute referred by appropriate Government and has no

inherent jurisdiction to expand the dispute or decide matters not referred to Industrial Tribunal by the appropriate Government.

47. For the above reasons, the points are answered against the petitioner and in favour of SAIL/respondent No. 1 in W.P. No. 21548 of 2002.

48. The petitioner in W.P. No. 25073 of 2009 prays for relief of engaging the members of petitioner by SAIL.

49. This Court is of the view that having regard to several objections raised by 1st respondent in the counter affidavit filed in this behalf, if the

members of the petitioner union have a case for absorption on the ground that the services rendered by a contract labour are perennial in nature

etc., the case has to be worked out by raising a dispute in accordance with law before the competent forum. Therefore, the prayer for a direction

to engage the services of members of petitioner at the instance of petitioner union cannot be considered by this Court as the same amounts to

deciding a fact in issue in favour of contract labour under Article 226 of the Constitution of India, without proper trial and consideration by the

Industrial Adjudicator.

50. Therefore, it is open to contract labour to raise a dispute for adjudication on these aspects, if they are so advised. The lis between the parties

has been pending for more than two and half decades. The contract labour are engaged by SAIL either by virtue of order of this Court or due to

work exigencies arising in the course of operations and provided employment to these contract labour. Now the writ petitions are decided basing

on the law declared in SAIL case (2 supra). The contract labour should not be denied what they have been otherwise provided namely, engaging

as contract labour by SAIL on account of dismissal of writ petition. SAIL is a public sector undertaking and this Court has no reason to doubt that

the outcome of the writ petitions is not treated as a circumstance for not engaging contract labour i.e. the members who are working for SAIL and

are members of petitioner union as and when exigencies require. Therefore, while engaging contract labour, the services of the contract labourers

whose cases are canvassed in these writ petitions ought not to be denied or deprived the normal expectations from SAIL. For the above reasons

and having regard to the detailed discussions, the writ petitions fail and accordingly dismissed. No order as to costs.

51. Miscellaneous petitions, if any pending, shall stand closed.