Krantikari Suraksha Rakshak Sanghatna, Thane Vs A.L. Alaspurkar and Others

Court: Bombay High Court

Date of Decision: Oct. 13, 1995

Acts Referred: Industrial Disputes Act, 1947 â€" Section 19, 2, 20, 21, 22
Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 â€" Section 1, 19, 2(10), 20, 21
Payment of Gratuity Act, 1972 â€" Section 2
Trade Unions Act, 1926 â€" Section 22, 23, 3, 30(1), 5

Hon'ble Judges: B.N. Srikrishna, J

Bench: Single Bench

Judgement

B.N. Srikrishna, J.
These three writ petitions under Articles 226 and 227 of the Constitution of India raise the same issues of law and arise

under circumstances which are almost similar, though marginally variant. Hence, they can be disposed of by a common judgment and order.

2. The Petitioner in each of these writ petitions is a registered Trade Union which represents a category of workmen known as "Security Guards".

These writ petitions are directed against three orders made by the Industrial Court constituted under the Maharashtra Recognition of Trade Unions

and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "ULP Act") dismissing the complaints under the provisions of the

Act as not maintainable. The Employers in whose establishment the Security Guards were rendering services, the State Government, the Security

Guards Board for Greater Bombay and Thane District, a statutory body constituted under the provisions of the Maharashtra Private Guards

(Regulation of Employment and Welfare) Act, 1981, and the Industrial Tribunal and Industrial Courts which gave the impugned orders are also

party Respondents to these writ petitions.

3. To appreciate the legal controversy thrown up by these writ petitions, it is necessary to take a quick survey of the historical background against

which the legal controversy arises.

Historical Background :

4. Prior to 1981, the work of watch and ward the security was entrusted by a large number of industrial establishments to Security Guards

supplied on contract by a number of Security Agencies. A Committee was appointed by the Government of Maharashtra to go into the service

conditions of the Security Guards who were engaged through Security Agencies, who acted as contractors or middlemen. The Committee after

studying a number of cases was of the view that the contract system, in so far as it pertains to Security Guards, was being used to exploit the

situation of wide-spread unemployment of security watchmen at the lowest grades. It was seen that the system had resulted in total lack of security

of employment, because as soon as betterment of conditions of service was demanded by or on behalf of the Security Guards, the Principal

Employer would terminate the contract itself and the contractor in turn would discharge the Security Guards. It was also noticed that there were

hardly any facilities as to benefits of health and safety extended to these Security Guards employed through contractors. After making a detailed

survey and analysis, the Committee by its report recommended to the Government that the Security Guards, numbering about 70,000 employed in

various factories and establishments all over the State, by about 200 to 250 Security agents operating in different regions, were badly in need of

the protection of law. Consequently, to put an end to the exploitation to the unprotected Security Guards and to provide them better service

conditions, a notification was issued under the Contract Labour (Regulation and Abolition) Act, 1970 by the State Government abolishing the

contract system of employment of Security Guards. This notification was struck down by this Court on the ground that the order was a non-

speaking order. The State Government thereafter considered whether the provisions of the Maharashtra Mathadi, Hamal and Other Manual

Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "the Mathadi Act") could be made applicable to Security

Guards by amending the schedule listing the categories of employment to which the said Act applies. The State Government, however, thought it fit

to bring forth an independent legislation applicable to the Security Guards. By an Ordinance issued on 31st August, 1988, the Maharashtra Private

Security Guards (Regulation of Employment and Welfare) Ordinance, 1981 (Maharashtra Ordinance V of 1981) and the Maharashtra Private

Security Guards (Regulation of Employment and Welfare) Scheme, 1981 were simultaneously brought into effect. A detailed survey of the factual

background and the conditions which existed prior to coming into force of the Act have been culled out and succinctly set down in the judgment of

Justice P.B. Sawant (as His Lordship then was) in Tradesvel Security Services Pvt. Ltd. Vs. State of Maharashtra, . The Ordinance was

subsequently replaced by the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (hereinafter referred to as

"the Security Guards Act").

5. Broadly stated, the Security Guards Act makes only skeleton provisions for certain matters, the nitty-gritty being left for delegated legislation by

the Executive u/s 3 of the Act. Section 3 of the Act empowers the State Government to formulate one or more schemes providing for registration

of employers and Security Guards in any factory or establishment to provide for the terms and conditions of employment of registered Security

Guards and make provision for the general welfare of such Security Guards. Sub-section (2) of Section 3 indicates the matters which the Scheme

has to provide for. Sub-section (3) of Section 3 provides for punishment for contravention of any provision of the Scheme and Sub-section (4) of

Section 3 provides for protection against dismissal, discharge, retrenchment or termination of any Security Guard by an Employer in order to avoid

registration under the Scheme.

6. As a result of the Act and the Scheme, there is total prohibition against employment of Security Guards who are not registered with the Board

constituted u/s 6 of the Security Guards Act.

7. The expression "Security Guard" is defined in section 2(10) of the Security Guards Act. The main body of the definition applies to a Security

Guards engaged through an intermediate contractor while the inclusive portion takes into its fold the employment of a Security Guard even directly

by an employer, but not as a direct and regular employee. Sub-section (4) of Section 1 of the Security Guards Act provides that the Act would

apply only to persons who work as Security Guards in any factory or establishment, but who are not direct and regular employees of the factory or

the establishment, as the case may be. The purpose of this Act appears to be to abolish the middlemen in the employment of the Security Guards.

An employer is free to employ his own Guards for security work as long as the Security Guard is taken up in direct and regular employment of the

industrial establishment. If the employer does not desire to employ Security Guards as direct and regular employees, he has no choice except to

abide by the scheme. The Scheme requires all Security Guards, who were erstwhile employees of the Security agencies, to register themselves

with the Board. Conversely, it also requires all employers desiring to employ Security Guards on any basis other than as direct and regular

employees, to register themselves. Any employer who desires to employ registered Security Guards is prohibited from employing Security Guards

other than Security Guard allotted to him under Clause 9(e) of the Security Guards Scheme. The result is that, an employer who desires to employ

a Security Guard on a basis other than as direct and regular employee is required to make a requisition to the Board indicating his requirements

and that the job of security work is available in his establishment. The Board the assesses the requirements and allots the requisite number of

registered Security Guards to such establishment.

8. Clause 6 of the Security Guards Scheme gives sweeping powers to the Board with regard to the operation of the scheme including the power to

determine the wages and allowances and other conditions of service including the age of retirement of Security Guards. It also empowers the

Board to settle disputes between a registered employer and registered Security Guards. The Board is entitled to call upon the employer to remit to

it the amount of wages and allowances payable to the registered Security Guards allotted to the registered employer. In addition thereto, it also

empowers the Board to collect from the registered employer a levy towards cost of operating the Scheme. The Board is empowered to fix the levy

at such rates as it thinks necessary after taking into consideration all facts.

9. Under Clause 23, when a Security Guard in the pool presents himself for work and, for any reason, the work cannot commence or proceed and

he is relieved within two hours of his attending for work, he shall be entitled to disappointment money from the employer at a rate as may be fixed

by the Board as appropriate to the category to which he belongs. A Security Guard detained for more than two hours shall be paid full wages

inclusive of Dearness Allowance.

10. Clause 24 of the Scheme prescribes four holidays with pay at such rates as may be specified by the Board. It is also provided that the

registered employer may require any Security Guard to work in the factory or establishment on all or any of those days, subject to the condition

that for such work the Security Guard should be paid overtime at the rate as may be specified by the Board under clause 29 of the scheme.

11. Clause 25 provides that every registered Security Guard shall be deemed to have accepted the obligations of the Scheme. Sub-clause (2)

provides that a registered Security Guard in the pool, who is available for work shall, not engage himself for employment under a registered

employer, unless he is allotted to that employer by the Secretary of the Board. Sub-clause (3) provides that a registered Security Guard in the pool

who is available for work shall carry out directions of the Board and shall accept employment under any registered employer for which he is

considered suitable by the Board. Sub-clause (4) of Clause 25 provides that a registered Security Guard, who is available for work when allotted

by the Board for employment under a registered employer, shall carry out his duty in accordance with the directions of such registered employer or

his authorized representative or supervisor and the rules of the employment or place where he is working.

12. Under Clause 26 of the Scheme the Board is given power to control the disbursement of wages and allowances to the Security Guards. If so

directed by the Board, the registered employer shall disburse to the Security Guards the wages and allowances directly and send to the Board a

statement of such payment within such time and in such form as may be specified by the Board. In the alternative, the registered employer shall

remit to the Board the amount of wages and allowances in addition to the levy payable to the Security Guard within such time and in such manner

as may be specified by the Board. Under Sub-clause (8) of Clause 26 of the Scheme, it is provided that if a registered employer fails to make

payment of any amount due from him to the Board under aforesaid clauses, within the time specified by the Board, the Secretary of the Board

shall, without prejudice to the right of the Board to take any other action under the Scheme to which the employer may be liable for the said

default, serve a notice on the employer to the effect that unless he pays his dues within three days from the date of receipt of the notice the supply

of registered Security Guards to him shall be suspended. On the expiry of the notice period, the Secretary is empowered to suspend supply of

registered Security Guards to the defaulting employer until he pays all the dues. This power of the Board is without prejudice to right of the Board

to take any other action under the Scheme.

13. Under Clause 27, though there is general prohibition that the registered employer shall not engage for employment a Security Guard unless he

is a registered Security Guard or directly employed Security Guard, there is relaxation of the prohibition in cases of emergency when, by prior

approval of the Secretary or prior intimation to the Security and prior approval of the Chairman or post facto approval of the Chairman, even

unregistered Security Guards may be employed only to meet unforeseen contingencies. Sub-clause (3) of Clauses 27 of the Scheme provides that

a registered Security Guard in the pool may provided he fulfills fully his obligations under Clause 25, take up employment elsewhere on those days

on which he is not allotted for work by the Board.

14. Clauses 29, 31 and 32 are crucial and they need to be reproduced fully :-

29. Wages, allowances and other conditions of service of Security Guards. - (1) Without prejudice to the provisions of any award, it shall be

unless otherwise specifically provide for in this Scheme, an implied condition of the contract between a registered employer that the rates of

allowances and overtime, hours of work, rest intervals, leave with wages and other conditions of service including supply of uniforms, boots,

torches, batteries, etc., necessary for the proper and efficient execution of their duties, shall subject to the provisions of Sub-clauses (2), (3), (4),

(5) and (6) of this clause, be such as may be fixed by the Board for each category of Security Guards.

(2) For the purpose of fixing rates of wages, allowances and overtime, hours of work, rest intervals, leave with wages and other conditions of

service (hereinafter collectively referred to as ""the conditions of service"") for the registered Security Guards or for revising or modifying the same,

the Board shall call upon the Associations of Employers and Associations or Trade Unions of Security Guards covered by this Scheme to make

such representations as they may think fit, as respects the conditions of service which may be fixed or revised or modified under this Scheme in

respect of registered Security Guards. If there is no such Association of Employers and Association of Unions of Security Guards then such

representations from registered employers and Security Guards may be invited on a notice published in such manner as the Board may think fit.

(3) Every such representation shall be in writing and shall be made within such period as the Board may specify and shall state the conditions of

service which in the opinion of the person making the representation would be reasonable having regard to the capacity of the employers to pay the

same or comply with or to any other circumstances which may seem relevant to the person making the representation.

(4) The Board shall take into account the representations aforesaid, if any, and after examining all the material placed before it, shall fix or revise

or, as the case may be, modify the relevant conditions of service of registered Security Guards.

(5) In fixing, revising or, as the case may be modifying the conditions of service of the registered Security Guards, the Board shall have regard to

the cost of living, the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employers to pay

and any other circumstances which may seem relevant to the Board.

(6) The conditions of service fixed, revised or as the case may be modified by the Board shall take effect prospectively or retrospectively from

such date as the Board may decide. The decision of the Board shall be communicated to the registered Security Guards and the registered

employers in such manner as the Board thinks fit.

31. Disciplinary procedure. - (1)(i) On receipt of the information, whether on a complaint or otherwise, that a registered employer has failed to

carry out the provisions of the Scheme the Personnel Officer shall investigate the matter and on being satisfied in that behalf give him a warning in

writing, or (ii) Where in his opinion, a higher penalty is merited, the Personnel Officer shall report the case to the Chairman who may then cause

such further investigation to the made as he may deem fit and censure in his record sheet.

(2) A registered Security Guard in the pool who fails to comply with any of the provisions of this Scheme or commits any act of indiscipline or

misconduct may be reported in writing to the Personnel Officer who may after investigating the matter give him a warning in writing.

(3) Where in the opinion of the Personnel Officer, a higher punishment than that provided in sub-clause (2) is merited he shall report the case to the

Chairman.

(4) On receipt of the written report from the Personnel Officer under sub-clause (3) or from employer or any other person that a registered

Security Guard in the pool has failed to comply with any of the provisions of this Scheme or has committed an act of indiscipline or misconduct or

has been inefficient in any other manner, the Chairman may make or cause to be made such further investigation as he may deem fit and thereafter

take any of the following steps as regard the Security Guard concerned, that is to say, he may impose any of the following penalties -

(a) give him a warning in writing;

(b) suspend him for a period not exceeding four days;

(c) terminate his services after giving one month"s notice or one month"s wages inclusive of dearness allowance in lieu thereof; or

(d) dismiss him.

(5) Before any action is taken under this clause the person concerned shall be given an opportunity to show cause why the proposed action should

not be taken against him.

(6) During the pendency of investigations under Sub-clauses (2) and (4) above, the Security Guard concerned may be suspended by the

Chairman.

32. Termination of employment. - (1) The employment of registered Security Guard in the pool shall not be terminated except in accordance with

the provisions of this Scheme.

(2) A registered Security Guard in the pool shall not leave his employment in the pool with the Board except by giving fourteen days" notice in

writing to the Board or forfeiting fourteen days" wages including of dearness allowance in lieu thereof.

(3) When the employment of a registered Security Guard in the pool with the Board has been terminated under Sub-clauses (1) and (2), his name

shall forthwith be removed from the register or record by the Board"".

15. Under the Scheme there is also provision for punishing the employers who commit breach of the Scheme and for appeals there against. There

is also a provisions for appeals but the Security Guards in respect of action taken against them as well as appeals by employers to the Chairman in

respect of action taken against them. There are also provision regarding the powers of revision of the Chairman, stay of orders in case of certain

appeals and costs of operating the Scheme and provision for amenities and benefits to the registered Security Guards.

16. Under Clause 38, the Board is required to frame and operate rules providing for Contributing Provident Funds for registered Security Guards.

The Board is obliged to make sure that the rate of contribution is not less than the rate specified under the Employees Provident Funds and

Miscellaneous Provisions Act, 1952 (XIX of 1952). Similar provisions are there with regard to payment of gratuity to the Security Guards. In

framing rules for the payment of gratuity to registered Security Guards, the Board is bound to take into consideration the provisions of the Payment

of Gratuity Act, 1972, as amended from time to time. These broadly are the material provisions of the Scheme which governs employment of

registered Security Guards.

Factual Matrices :

17. Then we turn to the facts leading to the legal controversy in these three writ petitions :

(a) Writ Petition No. 45 of 1991 :

The petitioner filed Complaint (ULP) No. 337 of 1988 before the Labour Court at Thane on behalf of the Security Guards working in M/s. Blue

Star Limited (the Second Respondent in the writ petition). The petitioner alleged in the complaint that, between 30th June and 30th September,

1988 there was a theft of material in the Company worth about Rs. 1.75 lakhs for which a complaint was lodged at Kapurbawadi Police Station

by the Company, that the registered Security Guards working in the said factory apprehended that the Second Respondent registered Employer

would approach the Security Board to remove all the allotted Security Guards and replace them by a fresh set of Security Guards, without any

opportunity for them of being heard. This likely and apprehended action on the part of the Second Respondent Employer was alleged to be in

contravention of the provisions under the Industrial Disputes Act, 1947 and unfair labour practice within the meaning of item 1(b), (d) and (f) of

Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Though initially interim relief

was granted by the Labour Court in the matter, when the application for interim relief was heard for confirmation of interim relief, objection with

regard to maintainability of the complaint was raised by the Second Respondent Employer and the Security Board which was a party Respondent

to the complaint. Both the registered employer and the Security Board, placing reliance upon the terms of the Security Guards Act and the Security

Guards Scheme, contended that there was no relationship of employer - employee between the Security Guards and either registered employer or

the Security Board. The registered employer as well as the Board denied that it was the ''Employer'' within the meaning of section 3(6) of the ULP

Act and intended that the complaint was not maintainable. The learned Judge of the Labour Court accepted this contention and held that the

Security Board was not an ''industry'' within the meaning of section 2(j) of the Industrial Disputed Act, 1947, that neither the registered employer,

nor the Security Guards Board, was an employer within the meaning of Section 3(6) of the ULP Act and that the Security Guards were not

''workmen'' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 in as much as there was no contract of employment between

them and the registered employer or the Security Guards. Consequently, the Labour Court held that they were not ''employees'' within the meaning

of Section 3(5) of the ULP Act. However, by an order dated 13-7-1990 the Labour Court dismissed the complaint. The petitioner carried the

matter to the Industrial Court, Thane, in Revision Application (ULP) No. 11 of 1990. By an order dated 4-12-1990 the Industrial Court, Thane,

confirmed the order of the Labour Court and dismissed the revision application. These orders of the Labour Court dated 13-7-1990 made in

Complaint (ULP) No. 337 of 1988 and the order of the Industrial Court dated 4-12-1990 made in Revision Application (ULP) No. 11 of 1990

are impugned in this writ petition.

(b) Writ Petition No. 1409 of 1993 :

The petitioner filed Complaint (ULP) No. 342 of 1992 before the Industrial Court invoking Item 1(a) of Schedule II and Items 5, 6 and 9 of

Schedule IV of the ULP Act. The petitioner alleged in the complaint that the registered employer was annoyed by the agitation of the Petitioner

Union on behalf of the Security Guards that they were being paid extremely low wages compared to the directly employed Security Guards and

that it was apprehended that the entire set of Security Guards deployed on the premises of the registered employer, S.M. Dyechem Ltd. (First

Respondent to the petition), was likely to be withdrawn and substituted by a fresh set of Security Guards to be reallotted to the said establishment.

It was contended that there was a direct relationship of employer-employee between the First Respondent (S.M. Dyechem Ltd.) and the Security

Guards allotted to the establishment of the First Respondent (S.M. Dyechem Ltd.). It was contended that once the Security Guards had been

allotted by the Security Guards Board to the establishment of the First Respondent, the Board had no further power in the matter and the allotted

registered Security Guards thereafter became direct employees of the First Respondent registered employer and any attempt to remove from the

said establishment would be hit by the provisions of Section 25F and Section 25N of the Industrial Disputes Act, 1947. The Complaint was based

on an apprehension of a likely breach of the provisions of the Industrial Disputes Act, amounting to unfair labour practices as alleged in the

complaint. Thus complaint came to be dismissed by the Industrial Court by the impugned order dated 16-12-1992. The Industrial Court held that

it had no jurisdiction to entertain the complaint as there was no employer-employee relationship between the registered Security Guards and the

registered employer (S.M. Dyechem Ltd.). It also held that, though the Security Board had been impleaded as party Respondent to the complaint,

the Board was not the employer of the Security Guards as it was merely a statutory body carrying on statutory duties under the Security Guards

Act and Security Guards Scheme. Thus according to the Industrial Court, the complaint was misconceived and untenable and liable to be

dismissed. Apart form dismissing the complaint on the preliminary objection raised by the First Respondent to the complaint the learned Judge of

the Industrial Court also recorded clear findings on merits even assuming there was jurisdiction to entertain the complaint. The Industrial Court held

that, in as much as all material allegations in the complaint had been traversed and denied stoutly by the First Respondent and no evidence had

been placed on record in support of the allegations, no case had been made out on merits. Being aggrieved by the order dated 16th December,

1992, dismissing the complaint, the petitioner is before this Court.

(c) Writ Petition No. 3862 of 1993 :

In this case the Security Guards Board allotted certain Security Guards to the establishment of Tata Hydro Electric Power Supply Company

Limited (Respondent No. 2 in the writ petition). Initially, the Security Guards were allotted to work in Unit No. 5 of the establishment of the

Second Respondent. Some time in 1985, a new establishment called Unit No. 6 was constructed after which, though allotted to Unit No. 5 by the

Security Guards Board, the allotted Security Guards continued to physically work in Unit No. 6. It was alleged in the complaint that from 30th

June, 1990 the Security Guards allotted to Unit No. 5 were withdrawn by the Security Guards Board and allotted to some other employer. This

action was alleged to amount to illegal termination of services of the Security Guards by way of victimization, for patently false reasons and undue

haste, amounting to unfair labour practices within the meaning of Items (d) and (f) of Schedule IV of the ULP Act. The Industrial Court held that it

had no jurisdiction to entertain the complaint as there was no employer-employee relationship between the registered Security Guards on one hand

and the registered Employers or Security Guards Board on the other hand. Even on merits, the Industrial Court held on the evidence on record

that no unfair labour practice as contemplated by Items 1(a), (c), (e) and 4(f) of Schedule II and Item 9 of Schedule IV of the ULP Act has been

proved. The complaint was, therefore, dismissed by the Industrial Court. Hence this writ petition.

Legal Controversy :

18. Mr. Singhvi, learned Advocate for the Petitioners, urged that the view taken by the Industrial Tribunal/Industrial Court in these three cases, that

the complaint under the ULP Act was untenable as neither the Registered Employer, nor the Security Guards Board was the "Employer" of the

Security Guards, is erroneous in law and arises out of misconception of the position in law. He referred in extenso to the detailed provisions of the

Security Guards Act and Security Guards Scheme. He relied on the Visakhapatnam Dock Workers (Regulation of Employment) Scheme framed

under the Dock Workers (Regulation of Employment) Act, 1948 and contended that the provisions of the Security Guards Act and Security

Guards Scheme were borrowed from the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare)

Act, 1969 and the Scheme thereunder, which were in turn based upon the provisions under the Dock Workers (Safety, Health and Welfare)

Scheme framed under the Dock Worker (Regulation of Employment) Act. He further contended that the provision of the Dock Workers Schemes

were, in turn, borrowed from and were substantially ad idem with the Dock Workers (Regulation of Employment) Scheme framed under the Dock

Workers (Regulation of Employment) (Amendment) Order 1977 I, which operates in England. After having invited my attention to the three

Schemes and the three Parent Acts. Mr. Singhvi then urged that the Supreme Court has decided the issue of the existence of the employer-

employee relationship in the case of Vizagapatam Dock Labour Board Vs. Stevedores Association, Vishakhapatnam and Others, under the

Visakhapatnam Dock Workers (Regulation of Employment) Scheme, 1959 (hereinafter called as "Visakhapatnam Dock Workers Scheme,). He

urged that, in a parallel provision of law the Supreme Court has expressed its view that under the provisions of the Scheme a contractual

relationship of employer-employee was to be found between the registered employers and the Pool Workers. Hence, the same reasoning should

follow while interpreting the provisions of the Security Guards Act and the Security Guards Scheme, is the submission of the learned Advocate.

Though, at first blush, the argument seems attractive, upon careful scrutiny, I am unable to accept this contention, for reasons which follow.

19. The mainstay of the argument of Mr. Singhvi is the judgment of the Supreme Court in Vizagapatam Dock Labour Board Vs. Stevedores

Association, Vishakhapatnam and Others, . The contention of Mr. Singhvi that the Visakhapatnam Dock Workers. (Regulation of Employment

Scheme and the Security Guards Scheme are similar in material aspects, is only partly true. Upon a comparison of the two Schemes. I am satisfied

that there is substantial dissimilarity on several material aspects. It is unnecessary for me to carry out a detailed exercise of comparison of the

provisions of Visakhapatnam Dock Workers Scheme and the provisions of the Security Guards Scheme, since the exercise has been carried out

already in the reported judgment of this Court in Messrs Tradesvel Security Services Pvt. Ltd. (supra). At this stage, it would be enough only to

highlight the material distinctions in the two schemes pointed out by Mr. Rele on behalf of the registered employer based upon which it was

contended that the judgment of the Supreme Court in Vizagapatnam Dock Labour Board was distinguishable and could not be said to have

concluded the controversy in the present case.

20. Before taking up for consideration the points of distinction urged by Mr. Rele. I might refer to a few salient features of the Visakhapatnam

Dock Workers Scheme. Under the Visakhapatnam Dock Worker (Regulation of Employment) Scheme, 1959, there is a total prohibition on

employment of Dock Labour except by a registered employer in accordance with the Scheme. All labourers working on the premises of the Dock

are defined as Dock Labour and obliged to register themselves with the Statutory Board. Similarly, all employees required to carry out work in or

in connection with the Dock are styled as Dock Workmen. There are detailed provisions made in the Visakhapatnam Dock Workers Scheme for

appointment of registered employees, for determination of their service conditions, for taking disciplinary action against them and for directions to

registered employer with regard to conditions of service of monthly workers.

21. Though some of these features are found in the Security Guards Scheme also, the similarity stops there. In the Visakhapatnam Dock Workers

Scheme the administration of the Scheme is not vested solely in the Statutory Board known as Dock Labour Board. Certain matters such as

disbursement of wages, etc., are entrusted to another body known as ''Administrative Body'' and other factions are vested in the Dock Labour

Board. It happened that the Administrative Body was the local Stevedores Association of the registered employees. Turning to the facts in the case

before the Supreme Court in Vizagapatnam, (supra), it appears that a demand for payment of bonus for the years 1964-65, 1965-66 and 1966-

67 was preferred on behalf of the registered Dock Labour by their respective Unions. Interestingly, this demand was preferred only against the

Stevedores Association and was referred for adjudication to the Industrial Tribunal. Before the Industrial Tribunal also, by a detailed statement of

case filed by the Union appearing on behalf of the registered Dock Labours, the claim for bonus was made only against the Stevedores

Association. Though the trial could have proceeded on the footing that the demand for Bonus had to be met only by the Stevedores Association,

the Tribunal held that the Dock Labour Board was liable for payment of bonus. This Award of the Industrial Tribunal was challenged in appeal

before the Supreme Court. The Supreme Court has formulated in paragraph 7 of the judgment the two issues canvassed by the learned Attorney

General, on behalf of the Dock Labour Board. The first, that the Tribunal has acted illegally and without jurisdiction in making the Board liable for

payment of bonus when the claim of the workmen for such payment was only against the Stevedores Association and its members and, the

second, that having due regard to the provisions of the Act and the Scheme and the functions discharged by the Board, the Tribunal should have

held that there was no employer-employee relationship between the Board and the Dock Labour and as such the Board could not be made liable

for the claim. Analysing the pleadings before the Tribunal, the Supreme Court had no difficulty in reaching the conclusion that the claim for bonus

had been made only against the Stevedores Association and, therefore, the Tribunal was wrong in holding the Dock Labour Board liable for

payment of bonus. Though this finding could have really concluded in appeal, the Supreme Court went on to decide the second question as to

whether the Board could be considered the employer of the Dock Labour. After detailed consideration of the provisions of the Visakhapatnam

Dock Workers Scheme, the Supreme Court reached the conclusion that, despite prerogative powers of deployment, recruitment, disciplinary

powers including the right of de-registering the Dock Labour, the Dock Labour Board could not be considered to be the employer of the Dock

Labour Workers. The Supreme Court formulated its conclusion in paragraph 23 thus :

We have rather elaborately gone into the various matters dealt with under the Act and the Scheme as that will give a true picture of the nature of

the functions and duties that the Board discharges in respect of the work carried on in the port. From the various provisions of the Act and the

Scheme referred to above, it is evident that the Board is a statutory body charged with the duty of administering the scheme, the object of which is

to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers are available for the efficient

performance of dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions

of service of the Dock Workers. The purport of the scheme is that the entire body of worker should be under the control and supervision of the

Board. The registered employers are allocated monthly workers by the Administrative Body and the Administrative Body supplies, whenever

necessary, the labour force to Stevedores from the Reserve Pool. The workmen who are allotted to the registered employers are to do the work

under the control and supervision of the registered employers and to act under their directions. The registered employers pay the wages due to the

workers to the Administrative Body and the latter in turn, as agent of the registered employers, pay them over to the concerned workmen"".

In my view, the authority relied upon by Mr. Singhvi does not carry his contention any further on the first issue decided by the Supreme Court and

is really against him on the second issue decided by the Supreme Court. I might mention here that, in so far as recruitment, registration,

deployment, allotment, re-allotment, transfer of Security Guards, disciplinary action against Security Guards and termination of service of the

Security Guards are concerned, the provisions of Visakhapatnam Dock Worker Scheme pertaining to ''Pool workers'' are substantially similar to

the provisions contained in the Security Guards Scheme. On parity of reasoning, it could be contented that the reasoning of the Supreme Court

holding that the Dock Labour Board was not the employer of the registered pool dock workers, is equally applicable to hold that the Security

Guard Board is not the employer of the registered Security Guards. The conclusion recorded by the Industrial Court in the three judgments

impugned in these writ petitions holding that the Security Guards Board is not the employer of the Security Guards is, therefore, correct and needs

to be upheld.

22. Mr. Singhvi submitted that he was really not interested in urging that the Security Guards Board was the employer of the Security Guards

under the Security Guards Act and the Security Guards Scheme. He was at pains to contend that, under the terms of the Security Guards Scheme,

a registered employer would become the employer of the Security Guard from the moment the Security Guard was allotted to the register

employer. Before dealing with this contention, I might dispose of one subsidiary contention of Mr. Singhvi which appears to be no longer tenable.

Mr. Singhvi contended that though Clause 16 of the Security Guards Scheme bears the heading ""Promotion and transfer of Security Guards"", there

is no provision whatsoever contained in the entire Clause 16 with regard to transfer of Security Guards. Hence, the Security Guards Board has no

power to transfer a Security Guard from one establishment to another, in the submission of Mr. Singhvi. He contends that the power of allotment

of Security Guards to the industrial establishment of the registered employer possessed by the Security Guards Board is exhausted upon one time

exercise thereof. Once the Security Guard is allotted to a registered employer, the power is exhausted and there is no further power in the Board,

directly or by implication, under the Security Guards Scheme, to withdraw the Security and to re-allot him to another registered establishment.

Though prima facie attractive, this contention is not sound, in my view, apart from being no longer res integra.

23. The Division Bench of this Court in Suraksha Rakshak and General Kamgar union v. M.S.S.I.D.C. & Ors. (Writ Petition No. 2671 of 1992,

dated 23rd March, 1993, per Smt. Sujata Manohar and S.H. Kapadia, JJ.) has considered and rejected this contention. The Division Bench

pointed out that direct employment and coverage under the Act are anathema to each other. In view of the specific provisions in the Security

Guards Act u/s 1(4), the Act would apply to persons who work as Security Guards engaged in any factory of establishment, but are not direct and

regular employees of the industrial establishment. Secondly, upon examination of the provisions of the Scheme, the Division Bench took the view

that the Security Guards Board has the additional power to allot registered Security Guards to any registered employer and also terminate the

employment and these powers would include the power to withdraw allotment to a given registered employer and re-allot the guard to another

registered employer. The requirement of a registered employer may vary from time to time and commensurately the Board is entitled to adjust the

allotment from time to time. The Division Bench also pointed out that both the power of allotment as well as the power of termination are with the

Board and a proper implementation of the scheme requires that the Board to possess the power to allot Security Guards to such registered

employer as it thinks fir and there is nothing in the scheme to indicate that the allotment once made is irrevocable or cannot be changed. The fact

that when a Security Guard is on leave the Board has the power to allot another Security Guard, also indicates that the allotment of Security

Guards is entirely under the control of the Board and the Security Guard cannot claim a right of permanent allotment to any particular registered

employer. In my view, looking to the observations and the findings made by the Division Bench (supra), the contention of Mr. Singhvi cannot be

accepted. Under Clause 26(8) of the Security Guards Scheme where an employer makes persistent default of payments of wages and allowance

and levy to the Board, the Board has the right to suspend supply of the Security Guards. The existence of such a power of suspension of supply of

registered Security Guards to a registered employer spells out the existence of the power of withdrawal of the Security Guards.

24. Mr. Singhvi then contended that the historical background of the legislation shows that the Security Guards Act was intended to abolish the

agents or middlemen, to abolish the practice of hire and fire and to provide better and more secure employment to Security Guards. According to

him, this can only be ensured if the principal employer is held to be the employer of the Security Guards. It is difficult to accept the contention as

urged by the learned counsel. It may be possible, upon analysis of the detailed provisions of the Security Guards Scheme, to postulate that for

certain purposes the registered employer may be held to be the employer of the registered Security Guards, but it is not possible to accept the

contention that upon allotment of a Security Guard to a registered employer, the registered employer should be held to be the employer of the

Security Guard for all purposes.

25. Mr. Singhvi then urged that under the Security Guards Scheme the control and supervision of the work carried out by the Security Guards is

indubitably vested in the registered employer. He also urged that the application of the ''Economic Control'' test and the ''organization'' test would

demonstrate that under the scheme the principal employer is the real employer of the Security Guards. He, therefore, canvassed that this Court

should hold that, for all purposes, the Security Guards became employees of the registered employer upon allotment. The employers canvass the

other extreme view that under no circumstance could a Security Guard be held to be an employee of the registered employer. It is not possible to

accept both these extreme contentions. Fortunately my task has been rendered less formidable on account of an extremely lucid and well

considered judgment rendered by this Court (per Sawant J. as His Lordship then was) in Messrs Tradesvel Security Services Pvt. Ltd. (supra). A

careful and detailed consideration of the said judgment and the principles enunciated therein is called for.

26. Messrs Tradesvel Security Services Pvt. Ltd., who had employed a number of Security Guards and also other employers who were utilising

their services for employing Security Guards as contract labour, challenged several provisions of the Security Guards Act and Security Guards

Scheme a unconstitutional for inconsistency with Articles 14, 19(1)(g), 245, 254 of the Constitution of India. The Court undertook a survey of the

historical background against which the said statute and statutory Scheme were enacted, made an in-depth analysis of all the provisions of Security

Guards Scheme for dealing with the contentions raised before it. Though the contentions raised before me are not identical, the observations of this

Court in Messrs Tradesvel Security Services Pvt. Ltd. serve as a beacon light in arriving at the true construction of the statutory provisions.

27. The contentions urged for consideration of the Court in Tradesvel are reproduced at pages 644 and 645 of the report. I am only concerned

with contention No. 9 which was :-

Assuming without admitting that the Agencies are abolished, the Act read with the Scheme makes the principal employer the regular employer of

the Security Guards. This tantamounts to compelling the principal employer to undertake security work in the sense of maintaining a separate

security establishment which the employer is not willing to do and therefore such compulsion amounts to a breach of Art. 19(1)(g) of the

Constitution.

Interestingly, the petitioners in Tradesvel Security, consisting both Principal Employer and Security Agencies had urged that, as a consequence of

Security Guards Act and Security Guards Scheme coming into force, the principal employer would become the real employer of the Security

Guards and since this amounted to compulsion on the principal employer to undertake security work in the sense of maintaining the security

establishment, such compulsion amounted to infringement of the fundamental right to carry on business guaranteed under Article 19(1)(g) of the

Constitution of India. This Court, repelling this contention on two grounds, pointed out :

..... that neither the Act nor the Scheme spell out any employer-employee relationship, either between the Board and the registered Security

Guards or between the registered employers and the registered Security Guards. The petitioners therefore argued that to that extent the registered

Security Guards are left without a remedy at law for their grievances arising out of their employment. Whereas hitherto there was a definite

relationship of employer and employee between the Agencies and the Security Guards and they could approach the adjudicating machinery under

the Industrial Disputes Act and other labour legislation for enforcing their rights, they are now left without any such remedy, in the absence of an

employer against whom proceedings could be taken. The Security Guards are therefore no benefited by the legislation but are worse off because

of the same. It was therefore submitted that the restrictions imposed on the rights of the Agency are neither in the interests of the Security Guards

nor in the interests of the petitioner''s business. Hence the legislation is neither reasonable nor in the interests of the public"".

Hence, it was contended that the Act and the Scheme were unreasonable restriction on the fundamental right to carry on business and amounted to

infringement of the fundamental right guaranteed under Article 19(1)(g) of the Constitution.

28. The petitioners in that case pointedly had referred to Clause 29(2) of the Scheme made under the Maharashtra Mathadi, Hamal and other

Manual Workers (Regulation of Employment and Welfare) Act, 1969, which declares that the registered worker in the pool who is available for

work shall be deemed to be in the employment of the Board. The attention of the Court was invited to Sections 19, 20 and 21 of the Security

Guards Act which provides that for the purposes of the three statutes mentioned therein viz., the Workmen''s Compensation Act, 1923, Payment

of Wages Act, 1936 and the Maternity Benefit Act, 1961, the principal employer would be treated as the employer when he makes payment of

wages to the Security Guards and the Board is declared to be the employer where the Board makes the payment. The Court repelled the

contention on two grounds. Firstly, it was held that there was no warrant for the assumption that the employer should be discernible in every piece

of labour welfare legislature; conversely, under the Act and Scheme challenged, that it may be difficult to discern and identify the employer, was no

ground on which the Act or Scheme could be declared unconstitutional. Secondly, even on the assumption that it was necessary to identify the

employer, the Court was satisfied that under the Security Guards Act and Security Guards Scheme, the registered employer or principal employer

is the employer of the Security Guards allotted by the Board. This finding is relevant and it would be necessary to notice some of the observations

made by Sawant, J. in Tradesvel Security, case. The learned Judge observed at page 697 :

There is no doubt that independently of Ss. 19, 20 and 21 of the Act, there is no provision whereby either the principal employer or the Board is

named the employer of the Security Guards. But the contention proceeds on the assumption that there is a need to name an employer in the

present case"".

Then the learned Judge posed the question :

Assuming however that there are some service condit

ions of the Security Guards which are not provided for in the Act, the question is, is there no employer against whole the Security Guard can

proceed?

The learned Judge then considered the judgment of the Patna High Court in Sarat Chatterjee and Co. Private Ltd. and Others Vs. Chairman,

Central Government Industrial Tribunal and Others, , the judgment of the Kerala High Court in C.V.A. Hydross and Son and Others Vs. Joseph

Sanjon and Others, , and the judgment of the Supreme Court in Vizagapatam Dock Labour Board Vs. Stevedores Association, Vishakhapatnam

and Others, , which were cited for consideration and the provisions of the Vizagapatnam Dock Workers (Regulation of Employment) Scheme,

1959, and held :

What is necessary to note is that all these decisions are under one Act and under identical Schemes under the said Act. The Act and the Scheme

with which we are concerned in the present case have some provisions which are similar, but both differ from each other in other matters. These

differences are relevant and noteworthy"".

The learned Judge then highlighted the differences between the Visakhapatnam Dock Labour Scheme and the Security Guards Scheme and that

distinguished the judgment of the Supreme Court in the Vizagapatnam Dock Labour Board case (supra) by observing :

These distinction in the two legislations should make difference in applying the ratio of the decision of the Supreme Court reported in

Vizagapatnam Dock Labour Board, (supra) to the facts of the present case"".

It was urged before the learned Judge in Tradesvel, that though the Visakhapatnam Dock Workers Scheme contained a deeming provision that a

registered worker in the reserved pool when available for work would be deemed to be in the employment of the Board, yet the Supreme Court

had held in Visakhapatnam Dock Labour Board, (supra) that the Stevedore"s Association was the employer to meet the liability of the workers.

From it, it was deductively argued that absent similar provision in the Security Guards Scheme there should be no difficulty for the Court to hold

that there was all the more reason to take the view that the registered employer or the principal employer would be the real employer of the

Security Guards.

29. Sawant, J. then considered the judgments of the Supreme Court in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops

and Establishments and Another, , and in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, , both of which lay

down that the right of control and supervision would be a strong index of a contract of employment.

30. Out of the several indicia of a contract of employment, some of which are (a) the right of recruitment and the corresponding right of termination

of service, (b) the right and obligation of disbursement of wages/emoluments, (c) right of determining the other conditions of service including the

right of transfer and deployment according to requirements, (d) the right of initiating and proceedings of disciplinary action and, the last but not the

least, (e) the right of continued supervision and control over the work, a survey of the decided cases shows that judicial opinion has emphasised

different tests at different times. In Silver Jubilee Tailoring House and in Mangalore Ganesh Beedi Works, the Supreme Court went of the extent of

saying that the ultimate test of rejecting the end product for non compliance with the quality requirement is the real test of supervision of work

indicating the existence of contractual relationship of employer-employee.

30(A). In the instant case, the Security Guards Scheme has several provisions which highlight different indicia of employment. A survey of such

provisions would be enlightening.

31. Clause 15 which provides for registration of existing and new Security Guards.

32. Clause 16 vested the Security Board with power of promotion and transfer of Security Guards (to the extent as indicated by the Division

Bench).

33. Then comes Clause 25(3) which Provides, -

A registered Security Guard in the pool who is available for work shall carry out direction of the Board and shall accept employment under any

registered employer for which he is considered suitable by the Board"".

34. Clause 25(4) provides in clear terms :

A registered Security Guard who is available for work when allotted by the Board for employment under a registered employer shall carry out his

duty in accordance with the directions of such registered employer or his authorised representative or supervisor and the rules of the employment

or place where he is working.

35. Clause 29 provides that the determination rates of wages, allowances and overtime, hours of work, rest intervals, leave with wages and other

conditions of service including supply of uniforms, boots, torches, batteries, etc., necessary for the proper and efficient execution of the duties of

the Security Guards shall be one by the Board for each category of Security Guards. Undoubtedly, there is detailed provision in this clause as to

the manner in which each condition is to be decided, but, nonetheless, it is the Board which is empowered.

36. There is provision in Clause 30 for disbursement of wages and other allowance to Security Guards or for remitting the said amount to the

Board for the purposes of disbursement to the Security Guards.

37. Clause 31 provides for disciplinary action and here also the power is vested in the Board. Any grievance as to the misconduct on the part of

the Security Guard has to be reported to the Personnel Officer of the Board and action would be taken against him by the Chairman of the Board.

The registered employer has no say in the matter whatsoever.

38. Similarly, Clause 32 provides that the employment of a registered Security Guard in the pool shall not be terminated except in accordance with

the provisions of the Scheme. He is required to give fourteen days'' notice in writing, not to the registered employer, but to the Board, or forfeit

fourteen days'' wages including of dearness allowance in lieu thereof. When the termination of the employment of registered Security Guard is done

by the Board, his name is to be removed from the register by the Board.

39. It is the Chairman of the Board who is empowered under Clause 33 to hear appeals preferred by the employees against disciplinary action and

decide the appeals.

40. It would appear that, out of the several indicia of the contract of employment mentioned above, the right left in the hands of the registered

employer is only the right of supervision and control of the work carried out by the Security Guards, all other indicia of contract of employment,

without doubt being vested in the Board. A reading of the judgment of Sawant, J. in Tradesvel Security, case suggests, sub silentio, that the learned

Judge felt that the right of supervision and control of the manner of work must be given greater weightage as an index of contract of employment.

The reliance placed by the learned Judge on the observations of the Supreme Court in Silver Jubilee Tailoring House and Mangalore Ganesh Beedi

Works, both of which were cases where the Supreme Court held such power as a definite index of employer-employee relationship, supports this

conclusion. Lingering doubts, if any, are dispelled by the following observations of Sawant, J. (at pages 708 and 709 of the Report) :

It is in the light of the tests of the master and servant relationship laid down in the aforesaid decisions that we have to answer the question as to

who is an employer of the Security Guards in the present case. Under Sub-clause (4) of Clause 25 of the Scheme, a registered Security Guard

when allotted for employment under a registered employer is under an obligation to carry out his duty in accordance with the directions of such

employer or his authorised representative or supervisor and the rules of the employment or place where he is working. Under Clause 31(2) of the

Scheme, the employer can report any act of indiscipline or misconduct of the guard to the Personnel Officer of the Board who has the power to

warn him. In case of a misconduct deserving higher punishment either the Personnel Officer or the employer may report the matter to the Chairman

of the Board who is authorised even to dismiss the guard. During the pendency of the investigation into the complaint of misconduct, the guard can

be suspended by the Chairman. Further the employer pays the wages of the guard working with him either directly or through the Board. He also

pays in the form of the levy, for the other benefits including the retirement benefits of the guard. Merely because it is not his hand which recruits or

punishes the Guard, the principal employer does not cease to be the employer of the Guard. On the basis of the tests laid down by the Supreme

Court as above, therefore, it will have to be held that the registered employer or the principal employer as defined under the Act is the employer of

the registered Security Guards for the purposes of matters not covered by the Act and the Scheme. The provisions of Ss. 19, 20 and 21 of the Act

will have therefore to be construed as being limited to the purposes of the specific statutes mentioned therein. The pervasions are not to be

countered negatively to mean that except for the said Acts, neither the board nor the principal employer is the master of the registered security

guards.

In the circumstances, my conclusion is that in the first instance, there is no need to identity an employer in the present case. Assuming however that

there is such a need, for purposes not provided for the legislation, the employer will be the principal employer as defined in the Act. The present

legislation cannot therefore be said to be unreasonable or not in the public interests"".

41. An in-depth analysis of the judgment of Sawant, J. in Tradesvel, became necessary in view of the fact that both sides in this group of petitions,

with equal vehemence, contend that the judgment of Sawant, J. supports them. In my view, the opinion of the learned Judge (Sawant, J.), is

reflected in his observation ""for the purposes not provided for the legislation (Security Guards Act/Security Guards Scheme), the employer will be

the principal employer, that is, the registered employer as defined in section 2(3) of the Security Guards Act"". The learned Judge took the view that

the Security Guards Scheme was almost a complete code in itself as it provides for most of the conditions of service for which there is either a

provision or a manner indicated of having them suitably prescribed or revised. It is true that Clause 29 of the Security Guards Scheme deals with

most aspects of the conditions of service and also indicated the mode by which they can be bettered. But, for that reason, it is not possible to

postulate that there can exist no condition of service, not provided for in the Security Guards Scheme or Security Guards Act, or that the exercise

of the identification of the employer is always redundant. In my considered view, there can be several situations not provided by the Security

Guards Act and the Security Guards Scheme, wherein it would be necessary to identify the employer so that the Security Guards may have a

remedy against him. The case on hand is one such instance.

42. The ULP Act is an act brought on the statute book for the purpose, inter alia, of defining unfair labour practices ""to constitute courts (as

independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair

practices; and to provide for matters connected with the purposes aforesaid"". Unfair labour practices have been defined by Clause 3(16) of the

ULP Act to mean unfair labour practices as defined in Section 26. Section 26 provides that, unless the context requires otherwise, unfair labour

practice mean any of the practices listed in Schedules II, III and IV to the Act. The different items in Schedule II indicate several activities on the

part of the employer which may have the effect of stifling healthy and legitimate trade Unionism. The ULP Act frowns upon such practices.

Correspondingly, it also gives a remedy to the aggrieved employees for redressal. Similarly, in Schedule IV are listed general unfair labour

practices on the part of the employers for which an appropriate forum and an appropriate remedy has been provided.

43. It is difficult to accede to the contention of the employers in this case that all relevant matters having been taken care of by the Security Guards

Act and the Security Guards Scheme, there can be no other purpose for which an exercise of identification of the employer under the said Act and

Scheme becomes necessary. For the purpose of "unfair labour practices" under any of the Items under Schedule II of ULP Act, it would very

much necessary to identify the employer. I am unable to accept the contention of learned counsel for the employers and the Board that the

provisions of the Security Guards Act and the Security Guards Scheme take care of this contingency also. On the other hand, it appears to me,

after careful perusal of the Security Guards Act and Security Guards Scheme, that they contain no provision whatsoever with regard to relief

against an unfair labour practice. True, that there is provision for betterment of service conditions, but lack of proper service conditions is not the

only content of an unfair labour practice. Even the Security Guards are entitled to unionise; in fact they are unionised as members of the petitioner

Union. Since they are entitled to unionise, their right to associate, form an union of their choice and to pursue their legitimate union activities has to

be guarded against unwarranted interference from the employer - may be registered employer, in a given case. It is not unthinkable that the

registered employer may indulge in several acts intended to stifle trade union activities of his own Security Guards or those allotted to him by the

Board. As long as the probability of such a situation exists, and it is not demonstrable from the provisions of the Security Guards Act and Security

Guards Scheme that there is a suitable remedy and a proper forum for adjudication of complaints of unfair labour practices, I must hold that unfair

labour practice is one subject for the purpose of which it is necessary to identify the employer. Such subject not having been adequately taken care

of by the Security Guards Act and Security Guards Scheme, I am of the opinion that, it is one area in which the registered employer must be held

to the employer atleast for the purpose of unfair labour practices complaints. I am, therefore, of the view that the Courts below were wrong in

holding that there could never be a legal relationship of employer-employee between the registered employer and the Security Guards for any

purpose whatsoever. Though, out of the several strands of the vinculum jurist which go to make the employment contract, most may have been

snapped by statute, as long as even a single strand remains, the policy of the statute, as declared by this Court in Tradesvel Security, is that, for

that purpose, the registered employer must be considered the employer of the registered Security Guards. In this view of the matter, I am of the

opinion that the complaints could not have been dismissed on the preliminary objection as untenable and the Courts below armed in upholding the

preliminary objection as to tenability of the complaints. The three complaints were perfectly tenable against the registered employer, since they

would be employers for the purpose of the unfair labour practice complaints.

44. Mrs. Desai, learned counsel appearing for the Security Guards Boards, urged that, in as much as I have held that the Board is not the

employer of the registered Security Guards, I must uphold the finding of the Courts below that the Board is not an ''industry'' within the meaning of

Section 2(j) of the Industrial Disputes Act and not amenable to the provisions of the Industrial disputes Act and not the ''Employer'' within the

meaning of Section 3(6) of the ULP Act and, therefore, the complaints must be dismissed on the short ground as against the Board. The contention

is only partly sound and cannot be fully accepted. To the extent that the Security Guards Board is neither an ''Industry'''' nor the ''employer'' of the

Security Guards, the contention is correct and needs to be upheld. It is true that under the ULP Act, a complaint at the instance of the workmen or

the Union may not be tenable wholly against the non-employer. But, I am unable to accept the contention that even when the properly identified

employer is a principal party Respondent to the complaint, a non-employer cannot be made party-Respondent to it. A bare reading of Section

28(1) of the ULP Act shows that where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or

any employer or any Investigating Officer may, within ninety days of the occurrences of such unfair labour practice, file a complaint before the

Court competent to deal with such complaint either u/s 5, or as the case may be, u/s 7 of this Act. Section 30(1) also provides that where a Court

decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may pass appropriate orders. These

provisions, in my view, contra-indicate the contention urged. I am, hence, of the view that the Board could, under appropriate circumstances, be

impleaded as an additional party - Respondent to a complaint at the instance of the Security Guards, though not as the principal Respondent-

employer, provided the principal Respondent-employer is impleaded. The contention of Mrs. Desai must, therefore fail.

45. Though Mr. Singhvi vehemently urged that upon deployment of a Security Guard to the service of the registered employer, the Security Guard

gets all rights under the contract of employment, I have already pointed out that this contention can, at best, be only party correct. While it is

possible to uphold the contention to the extent that the registered employer would be the employer of the Security Guard for a purpose which has

not been adequately taken care of under the Security Guards Act and Security Guards Scheme, it is not possible to accept the extreme contention

of Mr. Singhvi that the registered employer would be the employer for all purposes including the conditions of service. I am, therefore, unable to

accept the contention of Mr. Singhvi that the Security Guards fortuitously deployed to the registered employer have a right to demand absorption

as regular employees of the registered employer. This extreme contention of Mr. Singhvi does not appeal to me and is rejected.

46. Mr. Singhvi then contented that if the Security Guards are held to be employees of the Board, then the Board would be nothing but a

contractor and such a situation would negate the intendment of the legislator itself. In my view, the contention is unsound. It is true that the Security

Guards Act is intended to regulate employment of the Security Guards employed in the establishments and factories through middlemen such as

agents and agencies by abolishing them. This is precisely what has happened under the Security Guards Act and Security Guards Scheme. The

Statutory Board has been substituted in the place of contractor for the purpose indicated in the statute. Being a statutory authority, it is not only

acceptable, but is charged with the duty of guarding the interests of and acting for the benefit of the Security Guards hitherto employed in the

establishments. The substitution of a benign statutory agent charged with statutory duty of safeguarding the interests of workmen, is the policy of

the Act.

47. Since I am of the view that the Security Board is not the employer of the Security Guards, it is unnecessary to consider further the contentions

of Mr. Singhvi based on this assumption. It is also unnecessary to consider the contention of Mr. Singhvi based on the assumption that the Security

Guards are employees of neither the Board nor registered employer, in as much as I have held that they are employees of the registered employer

for a limited purpose, though not to the full extent as urged by Mr. Singhvi. I am unable to accept that under the Security Guards Scheme there is

no security of service to the Security Guards. There is a right vested in the Board to allot or re-allot the registered Security Guards to different

registered employers. This, per se, does not militate against security of employment and careful analysis of the statutory Scheme shows that the

Security Guards, bar the situation of dismissal or discharge by the Board and consequent de-registration, would continue in employment till the age

of superannuation prescribed under the Scheme. This, in my opinion, is sufficient security of service, which could never have been hoped for in the

past prior to the Act.

48. Mr. Singhvi urged one incidental contention that while under the Dock Workers Scheme there is provision that a registered pool worker not

allotted work to the establishment of the registered employer is entitled to minimum guaranteed wages for 21 days per month, there is not even

such a provision in the Security Guards Scheme. From the absence of such a corresponding provision, Mr. Singhvi argued that, if the Board

withdraws a Security Guard from a register employer and is unable to give him alternate employment, then, in the interregnum, such a Security

Guard would be without wages. Mr. Singhvi submitted that the case of a Security Supervisor in Writ Petition No. 1409 of 1993, is that of one

who had not been allotted work in any other establishment after he had been withdrawn from the establishment of one registered employer. Merely

because there may exist a hypothetical possibility of such a situation, and perhaps that is a lacuna - advertent or inadvertent - on the part of the

legislating authority, it does not mean that the consequence which Mr. Singhvi contemplated would automatically come into existence. May be, it is

a lacuna to be filled in; may be it is an omission to be rectified. But, from such omission to infer a relationship of employer-employees between the

registered employer and Security Guards, is completely non-sequitur, in my opinion. Mrs. Desai rejoins and disputes that such a situation factually

exists as the Security Supervisor has been allotted to a different registered employer. It is not possible to resolve this factual dispute in this writ

petition. Suffice it to say that even the existence of a theoretical possibility of such nature does not persuade me to hold in favour of Mr. Singhvi on

the contention urged.

49. Mr. Singhvi then brought to my attention the judgment of the Supreme Court in Security Guards Board for Greater Bombay and Thane Distt.

Vs. Security and Personnel Service Pvt. Ltd. and Others, . He highlighted the observations of the Supreme Court in paragraph 89 and contended

that these observations conclusively indicate the view of the Supreme Court that once the Security Guard is allotted to a registered employer he

becomes a full-fledged employee of that registered employer. A careful reading of the judgment and its underlying reasoning does not support such

a view in my judgment. In fact, since the passage referred by the learned counsel is a short paragraph, it may be worthwhile to quote it :

One of the submissions of the learned counsel was that if S. 23 was read in the light of S. 22 it would follow that an agency could ask for

exemption from the operation of the Act of all Security Guards employed through them. We do not see how that follows. All that S. 22 provides in

effect is that the right or privileges of any registered Security Guard shall not be altered to his detriment. It only mean that if hitherto as an employee

of the agency, the terms and conditions of his services were more attractive on the whole than the terms and conditions of service offered by the

Act and the Scheme under the factory or establishment, the original terms and conditions of service will be preserved and become applicable to

their service under the factory or establishment. It was submitted by the learned counsel that the Act and the Scheme did not provide for

termination of the contract of employment between the agency and the Security Guard or for the transfer of the services of the Security Guards

from the employment of the Agency to that of the factory or establishment. We do not agree with the submission. By necessary implication, the

services of the Security Guards will stand transferred on allotment to the service of the factory or establishment on allotment to it by the Board. It is

in that fashion, among other things, that security of service is secured to the Security Guards"".

The emphasised observations of the Supreme Court do not suggest, in my view, the meaning that the learned counsel ascribes to them. The

Supreme Court reproduced the provisions of Section 22 of the Security Guards Act which protect the better benefit, if any, available to the

workmen prior to coming into force of the said Act and said that all that Section 22 provides in effect is that the rights or privileges of a registered

Security Guard shall not be altered to his detriment. It only means that, if, hitherto, as an employee of the agency, the terms and conditions of his

services were more beneficial as a whole than the terms and condition of service offered by the Act and the Scheme under the factory or

establishment, the original terms and conditions of service will be preserved and become applicable to his service while allotted to the factory or

establishment. The expression ''service'' has not been used by the Supreme Court in this passage as equivalent to a full-fledged contract of

employment. The word ''service'' has been used in this passage as equivalent to work and engagement and not as ''employment'', as properly

understood. I am, therefore, unable to accept the contention canvassed by Mr. Singhvi that upon deployment to the registered employer the

Security Guards become the employees of the registered employment and are entitled to all benefits as the direct employees of that establishment.

50. Though the learned counsel for the petitioners relied on the observations in Hussainibhai v. Alath Factory Tozhilali Union & Ors. 1978 (53)

F.J.R. 278 and contended that the organisation and economic control test had been emphasised by the Supreme Court and invited me to apply

them, I am afraid, that this is not the occasion to do so. The Supreme Court in that case was concerned with a situation where there was

admittedly a principal employer, a contractor and workmen employed by the Contractor. The dispute in the case was that, despite interposition of

a middleman, the employees were really those of the principal employer, the middleman being a sham. Accepting this contention, the Supreme

Court postulated the ''economic control'' test and pointed out that if in such case after applying this test it is possible to show that the middleman

was a sham and the system really was operated for the benefit of the principal employer, then direct relationship of employer-employee could be

presumed. I am afraid, these general observations of the Supreme Court are of no avail when the Act and statutory Scheme are to be interpreted.

In my view, the correct approach would be to interpret the provisions of the Security Guards Act and Security Guards Scheme to spell out the

type of relationship. For this purpose, the observations of the Supreme Court highlighted above are of no assistance.

51. On behalf of the employer, Mr. Rele and Mr. Singh, cited the judgment in Kirloskar Oil Engines Vs. Hanmant Laxman Bibawe, and contended

that under a somewhat similar Scheme the Supreme Court had held that there would be no existence of employer-employee relationship between

the principal employer and the contractor. I am afraid, the decision cited has no situation which is parallel. In Kirloskar, admittedly there was a

principal employer. It appears that there an informal Scheme had been evolved under which watchmen were supplied by the Police Department to

different employers and this Scheme was evolved because it was found that there was a demand for such watchmen by private individuals. Private

persons who required the services of watchmen had to apply to the District Superintendent of Police. The Distract Superintendent of Police

supplied watchmen if he thought suitable watchmen were available. The disciplinary jurisdiction and the right of removal of such employees from

the Scheme was vested in the District Superintendent of Police. The work done by the watchmen was supervised by the subordinate police

officers, particularly at night by the night patrols who knew where police watchmen were employed and looked them up to see if they were alert.

They were entirely under the departmental control and orders of the Superintendent of Police. The scheme also provided for periodical assessment

by the police officials of the quality of work carried out by the watchmen. In my view, it is not possible to consider such an informal scheme as

equivalent to the statutory Scheme as the one before me. Again, Kirloskar was not a case of replacement of a middleman by a Statutory Board. In

these circumstances, I am unable to accept the argument that Kirloskar, in any way militates against the view which I am inclined to take.

52. My attention was invited on behalf of the employers to the judgment of the Supreme Court in General Labour Union (Red Flag), Bombay Vs.

Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others, . I am afraid, this judgment is of no avail to the employers. In this case the workmen

were employed by a contractor who was given a contract to run the canteen in the company and a complaint was filed on the footing that the

workmen were the employees of the contractor and the Industrial Court rightly dismissed the complaint in the absence of employer-employee

relationship between the workmen and the principal employer. This case does not according to me, advance the contention of the employers in the

present case.

53. Mr. Singh also referred to the order of the learned single Judge of this Court in the Suraksha Rakshak and General Kamgar Sena & Anr. v.

The Secretary, Security Guards Board for Greater Bombay & Thane & Ors. (Writ Petition No. 319 of 1980, per Puranik, J., dated 5th February,

1990) which takes the view that the Board being the appointing authority is also clothed with power to transfer or withdraw employees from one

employer and transfer to other employer. Mr. Singh also cited the order of Puranik J., dated 26th September, 1986, in Ambadas Vithal Taklear &

Anr. v. M/s. Martin and Harris (P) Ltd. & Ors. (Writ Petition No. 3826 of 1986), which supports the view that the MRTU and PULP Act was

not applicable to the Security Guards in the face of the Maharashtra Private Security Guards Act. Apparently, this order would show that it is an

order at the admission stage and observes :

On the merits of the case however the view the MRTU and PULP Act is not applicable to the petitioner in the face of the Maharashtra Private

Security Guards Act, 1981 is correct. Hence no material injustice has been caused to the petitioner. No interference in the final order is called for"".

I am afraid, it is not possible to treat this summary order of rejection as a binding precedent laying down any principle of law.

54. Mrs. Desai referred to the judgment of our High Court in Husain Mithu Mhasvadkar v. Bombay Iron and Steel Labour Board & Ors. 1990 II

CLR 860 which takes the view that the Security Guards Board is not an ""industry"" under the Industrial Disputes Act and that it is only a Statutory

Authority in charge of administering the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act,

1969 and the Scheme as provided in the Act subject to statutory control of the State Government. That the Board is merely enjoined by law to

administer the Act and the same is the view which I have accepted.

55. This then takes me to the final order to be passed in each writ petition.

ORDER

(a) Writ Petition No. 45 of 1991

The findings of the Third Labour Court, Thane, dated 13th July, 1990 and of the Industrial Court in its order dated 4th December, 1990 taking the

view that a complaint under the Maharashtra Recognition of Trade Unions and Prevention for Unfair Labour Practices Act, 1971 against the

registered employer under the provisions of the Security Guards Act, 1981 and the Security Guards Scheme, 1981 is not maintainable is hereby

quashed and set aside. It is held that such a complaint on behalf of the Security Guards would be maintainable against the registered employers

under the Security Guards Scheme, 1981.

On the merits of the complaint, however, it appears that the only grievance made was that the Board had no power to redeployed a Security

Guard from the establishment of the Second Respondent Employer''s establishment to any other establishment. The act of the Board in

withdrawing the Security Guards from the establishment of the Second Respondent Employers and posting them elsewhere was alleged to an

unfair labour practice and relief was claimed there against. On merits, I do not see how any relief could have been granted. Following the Division

Bench judgment of our High Court, I am of the view that the Board has full power to withdraw a Security Guard from one establishment and post

him to any establishment of another registered employer. Since there was no other relief prayed for in the complaint, the finding of the Courts

below that the complaint was liable to be dismissed even on merits is correct and liable to be upheld. Hence, there is no need to remand the

complaint for re-trial. In the result, Writ Petition No. 45 of 1991 is hereby dismissed, rule discharged with no order as to costs.

(b) Writ petition No. 1409 of 1993 :

The order of the Industrial Court dated 16th December, 1992 in Complaint (ULP) No. 342 of 1992 holding that the complaint was not

maintainable and that is had no jurisdiction to entertain the complaint, is hereby quashed and set aide. It is held that the complaint is maintainable

and that the Industrial Court has jurisdiction to try the complaint. On merits, the learned Judge of the Industrial Court has held that no unfair labour

practice under item No. 1(a) of Schedule II or Item Nos. 5, 6 and 9 of Schedule IV of the ULP Act had been proved and dismissed the

complaint. Even the finding appear to be correct. The petitioner Union had taken the stand that it did not desire to lead any evidence in the

complaint, though the allegations had been denied by the employers. Consequently, even though I have held that the complaint is maintainable,

there being no evidence of unfair labour practice, the complaint must fail on merits. Though Mr. Singhvi Vehemently argued that I may consider

remanding the complaint for re-trial after giving opportunity to the petitioner Union to lead evidence on merits. I decline to do so. In the

circumstances, it is not possible to accede to the request of the learned Advocate. This petition also fails on merits. Hence, this writ petition is

dismissed and the rule is discharged with no order as to costs.

(c) Writ Petition No. 3862 of 1993 :

In this case also the Security Guards were withdrawn from one establishment of the Second Respondent Employer and re-allotted to another

establishment. This act of the Board was alleged to be an unfair labour practice on the part of the registered employer and the Board. It was also

contended in the complaint that the Board had no power whatsoever to withdraw the Security Guards once allotted. Following the view of the

Division Bench of our High Court, I am of the view that the Board has such power. The complaint in this writ petition must, therefore, fail on merits

and remand would serve no purpose. Consequently, this petition is also dismissed and the rule is discharged with no order as to costs.