REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 8081-8082 OF 2011

THE DIRECTOR
STEEL AUTHORITY OF INDIA LTD. .....Appellant(s)

VERSUS

ISPAT KHANDAN JANTA MAZDOOR UNION .....Respondent(s)

WITH

CIVIL APPEAL NO(s). 8084 OF 2011

J U D G M E N T

Rastogi, J.

1. These appeals arise from the judgment dated 6th September, 2010 passed by the Division Bench of the High Court of Madhya Pradesh in Writ Petition No. 10963 of 2009 and 12485 of 2009 setting aside the award passed by the Central Government Industrial Tribunal(CGIT), Jabalpur dated 16th September, 2009 answering the reference in the affirmative form and directing the

contract labourers who were in the employment of SAIL from 1993 till 1996(17th March, 1993 to April 1996) to be reinstated, and their cases be considered for regularisation in accordance with Para 125 of the Judgment of this Court in ***Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and Others***[1] declining to grant them back wages.

2. The case involves a chequered history and almost after four rounds of litigation, the matter has reached at a stage where the reference was made by the appropriate Government under Section 10(1) of the Industrial Disputes Act, 1947 to decide the industrial dispute raised by the Union, namely, Ispat Khadan Janta Mazdoor Union vide notification dated 27th January, 2003 followed with 22nd February, 2005.

3. The seminal facts in brief which may be relevant for the present purpose are that the appellant Steel Authority of India Limited (hereinafter being referred to as "SAIL") is a Government of India undertaking and is a State within the meaning of Article 12 of the Constitution of India and has steel plants in different

1 2001(7) SCC 1

parts of India. SAIL has one of the captive lime stone and dolomite mines in Kuteshwar in the District of Katni of Madhya Pradesh. Limestone and Dolomite are necessary ingredients for manufacture of steel. The SAIL did blasting work as this work had been departmentalised vide Notification dated 15th December, 1979 w.e.f. 22nd June, 1980. The contract labour of the contractors at Kuteshwar Lime Stone Mines were doing the same jobs as enumerated in schedule of the prohibition Notification No. S.O. 707 dated 17th March, 1993 issued under Section 10(1) of the Contract Labour(Regulation & Abolition) Act, 1970(hereinafter referred to as "CLRA Act").

4. It is not disputed that the establishment of the appellant(SAIL) is the registered establishment in terms of Section 7 of the CLRA Act and the contractors through whom the contract labour was engaged were also holding a valid licence under Section 12 of the CLRA Act and the workmen engaged as contract labour by the contractor in the establishment of the appellant(SAIL) were paid their due wages in terms of the tri-partite agreement entered into from time to time not less than the

rates so prescribed by the authority under the Minimum Wages Act, 1948.

5. The appropriate Government at a later stage issued a prohibition notification of employment of contract labour for the establishment wherein their services hired by the appellant SAIL under Section 10(1) of the CLRA Act dated 17th March, 1993, the extract of which is referred to hereunder:-

> "4. The Notification No.S.O.707 dated 17-3-93 was issued and published by the Government of India whereby prohibited with effect from the date of publication of this notification, the employment of Contract Labour in the works specified in the following schedule in the Lime Stone and Dolomite Mines in the country namely:
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> SCHEDULE
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> a. Raising of minerals including breaking sizing sorting of Lime Stone Dolomite and,
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> b. Transportation of limestone and dolomite which includes loading and unloading from trucks, dumpers, conveyors and transportation from mine site to factory."

6. Pursuant to a prohibition notification issued by the appropriate Government under Section 10(1) of the CLRA Act, the relationship of contractor and contract labour stands ceased and by legal fiction, contract comes to extinct and the indisputed fact

which has come on record is that no fresh agreement, in the interregnum period, was executed and the existing agreement to whom the appellant & contract labour is a signatory was extended from time to time by the competent authority and the contract labour was allowed to continue on the same terms and conditions till their services were terminated by the contractor in the month of April, 1996.

7. Prior to the judgment of the Constitution Bench of this Court**[Steel Authority of India Ltd. and Others(supra)]**, the three Judge Bench of this Court in ***Air India Statutory Corporation and Others*** **Vs.** ***United Labour Union and Others***[2] discussed the legal consequence of the prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour, it was held that on abolition of contract labour system from any establishment under Section 10 of the Act by the appropriate Government, the logical and legitimate consequences were that the erstwhile regulated contract labourer covered by the sweep of such abolition for the activities concerned would be entitled to be treated as direct

2 1997(9) SCC 377

employee of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees from the day on which the contract labour system in the establishment for the work which they were doing gets abolished.

8. The effect of the prohibition notification under Section 10(1) of the CLRA Act issued by the appropriate Government at the later stage, came to be examined by the Constitution Bench of this Court in ***Steel Authority of India Ltd. and Others*** (supra) wherein it was held that there is no provision under CLRA Act whether expressly or necessary implication which provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under Section 10(1), prohibiting employment of contract labour in any process, operation or other work in any other establishment and overruled the judgment in ***Air India Statutory Corporation and Others*** (supra) making it clear that neither Section 10 nor any other provision in the CLRA Act provides for automatic absorption of contact labour on issuance of a notification by the appropriate Government under Section 10(1) of the CLRA Act and

consequently the principal employer is not required by operation of law to absorb the contract labour working in the establishment. The exposition of law will be discussed at the later stage.

9. It reveals from the record that after the Constitution Bench Judgment of this Court, the matter was agitated by the workers union before the appropriate Government and after failure of the conciliation proceedings, the case of 3404 workmen was referred for adjudication by the appropriate Government vide its notification dated 27th January, 2003 followed with 22nd February, 2005 to the Central Government Industrial Tribunal(CGIT) is reproduced hereunder:-

> 1. "The Government of India, Ministry of Labour vide its Notification No.L-29011/97/2002-IR(M) dated 27-1-2003 has referred the following dispute for adjudication by this tribunal:-
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> "I. "Whether the action of the Mines Manager, Koteshwar Lime Stone Mines of Steel Authority of India Ltd. in terminating services of 3404 (3380+24- as per list attached) mine workers in April 1996 who ceased to be contract labour after prohibition of employment of contract labour in Lime Stone Mine vide Notification No.S.O.707 dated 17-3-93 was legal, fair and justified? If not, what relief the concerned workmen or heirs in case of deceased worker are entitled to?

II. Whether the action of the Mines manager, Koteshwar Lime Stone Mines of Steel Authority of India ltd. in denying terminal benefits of gratuity retrenchment compensation and exgratia applicable to VRS seeking employees is fair and justified. If not, to what relief these workers/heirs are entitled to?

III. Whether the action of the management of the Mines Manager, Koteshwar Lime Stone Mines of Steel Authority of India Ltd. in disregarding Clause-8 of Memorandum of Agreement signed between the Steel Authority of India, New Delhi and their Unions including HMS and employing workers through contractors on jobs of permanent and perennial nature in Mines between 5-20 years even without ensuring statutory wages and service conditions was legal, fair and justified? If not, to what relief concerned workmen/heirs are entitled?"

CORRIGENDUM

"Whether the employment of the workmen mentioned in this Ministry's order of even number dated 27-1-2003 through contractors is sham and bogus and whether in effect there is direct employment by the company? If so, to what relief the workmen concerned are entitled?"

10. The learned Tribunal(CGIT), as a fact finding authority, taking note of the pleadings on record framed the following issues:-

"I. Whether the reference R/40/03 is maintainable?

II. Whether the employment of the workmen through contractors is sham and bogus and whether the said employment is considered to be direct employment by the management?

III.Whether the action of the Mines Manager, Kuteshwar Lime Stone Mines of the Steel Authority of India Ltd. in terminating the services of 3404(3380+24) as per list attached mine workers in April 1996 who ceased to be contract labour after prohibition of employment of contract labour in lime stone vide Notification No.S.O.707 dated 17-03-93 was legal, fair and justified?

IV.Whether the said contact workers/heirs are entitled the terminal Benefits of gratuity, retrenchment compensation and ex-gratia applicable to VRS from SAIL?

V. Whether Lime Stone Mines violated the provision of Clause-8 of the memorandum of agreement signed between the SAIL, New Delhi and their Unions and employing workers through contractors on jobs of permanent and perennial nature was justified, legal and fair?

VI.Whether the workmen/heirs are entitled to the wages to the post in which they were engaged with parity of wages with that of regular employees of the management with all consequential benefits?

VII.Any other relief, the workmen/heirs are entitled to?"

11. The parties to the reference were called upon to lay evidence in support of their respective claim and after taking note of the evidence(oral & documentary), the Tribunal recorded the facts in seriatim emerging from the records as under:-

(1) The evidence shows that the respective contractors employed the contract labours for their own and they were the appointing authority.

(2) Wage slips, wagesheets and the evidence of the witnesses clearly show that the contractors were paying wages to the contract labours.

(3) Exhibit M/8 filed in R721/05 and the evidence of the witnesses show that the contractor dismissed the employee and also transferred some of the employees from the place of work and had disciplinary authority.

(4) The contract papers entered into between the management and the contractors and the evidence of the witnesses clearly show that contractors had full control and supervision over the work. The management had only to see that the labour laws were being implemented and specified approved grade of lime stone was being supplied.

(5) The contract papers and the evidence show that the contractors had full control over the skilled and professional work.

(6) It is further clear from the contract papers that the SAIL had right to reject the limestone, if it was not within the specified approved grade as per terms and conditions of the agreement.

(7) The contract agreements further show that there was penal clause, if there was any breach of contract.

12. The Tribunal taking note of the evidence including oral and documentary adduced in support of the reference held that the contract between the Management(SAIL) and the contractors was genuine and not sham and bogus and the contract workers were allowed to continue even after the prohibition notification under Section 10(1) dated 17th March, 1993 under the CLRA Act on the

same terms and conditions and the services of the contract labourer were terminated by the Contractor in April, 1996.

13. It may be noted that status of the workers after the issuance of notification dated 17th March, 1993 has also been examined by the Tribunal and held as follows:-

(1) The contract labours after notification cease to function.

(2) The contract labours were still working in the establishment from 1993 to April 1996 under the umbrella of the contractors who may be called as agent of the Principal employer or were intermediary between the contract labours and the Principal Employer after the publication of notification.

(3) The contract between the Principal Employer and the contractors after publication of the notification ceases to exist and became not genuine.

(4) The wages were being paid to the contract labour by the so called contractors in the same way as from before.

(5) The principal Employer was in need of the workers for the specified works even after the publication of the notification as same workers were continuing in work till April, 1996.

(6) There is no evidence on the record to show that the principal employer adopted the procedure of regularization and had intended to employ regular workers as has been directed by the Hon'ble Apex Court at Para 125 sub-para-6 in the Constitution Bench Judgment in the case of SAIL versus National Union Water Front Workers (Supra) after the contract was found genuine before the notification.

(7) There was no automatic absorption of contract labour on issuing the notification prohibiting the employment of contract labours.

(8) Contract labours were found employees of the respective contractors before notification.

14. At the same time, in para 85 of the Award, the Tribunal further held that after issuance of the prohibition notification dated 17th March, 1993 in the instant case, the principal employer(SAIL) was prohibited to employ any contract labour in any process, operation or other work in the establishment and when the contract with the contractors after prohibition notification became void and not genuine and the extension of the period of contract of the respective contractors which has been allowed to continue in the establishment by operation of law became ab-initio void and sham and bogus. Para 85 of the Award is as under:-

> **"85.** It is an established fact that the notification dated 7-3-93 came to the effect prohibiting the employment of contract labours from the date of its publication. As such, in the light of the constitutional bench judgment in SAIL versus National Water Front Workers Union & others (Supra) the contract of Principal employer with contractor in regard to the contract labour comes to an end beyond shadow of doubts and the contract with regard to the contract labours subsequently after the notification dated 17-3-

> 1993 becomes not genuine. The Principal employer was prohibited to employ any contract labour in any process, operation or other work in the establishment in any process, operation or other work in the establishment to which the notification relates at any time thereafter. It is evident that when the contract of the contractors after notification became itself void and not genuine, the extension of the period of contract of the respective contractors would be ab-initio void and sham and bogus. Thus it is established that the contract of Principal employer with contractors in regard to the contract labours became subsequently sham and bogus after the notification No. S.O. 707 dated 17-3-1993 coming into the effect from the date of its publication."

15. The Tribunal finally held that the employment of the contract labourer through contractors was not sham and bogus before notification dated 17th March, 1993, but after publication of the said notification, by operation of law, the contract through contractors could not be considered to be genuine but became void and sham as the contract labour was allowed to continue in the establishment till April 1996. It was further observed that the Union is at liberty to take recourse of the penal consequences as mandated under Section 23 to 25 of the CLRA Act. Rest of the issues framed by the Tribunal(Issue nos. 3,4, 5 & 6) have been consequently decided accordingly under the Industrial Award dated 16th September, 2009.

16. The appellant(SAIL) and the workers Union both filed writ petitions in the High Court of Madhya Pradesh. The Union assailed the award dated 16th September, 2009. At the same time, SAIL challenged the finding which was recorded in reference to the consequence of the prohibition notification as observed in Para 85 to that extent in the writ petition.

17. The High Court in its limited scope of judicial review examined the matter as a Court of Appeal reappreciated the evidence threadbare and based on the same set of evidence(oral/documentary) reversed the finding of fact recorded by the Tribunal and observed that the contract to be sham and bogus and observed as under:-

> "41. As we have found the contract to be not genuine but mere camouflage in the facts and circumstances and considering prohibition notification under Section 10(1) of CLRA Act, inevitable conclusion is that the contract labours have to be treated as employees of the principal employer.
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> 42. Considering the large number of workers involved in the instant case and the notification issued under Section 10 of CLRA Act, the regular workmen have to be ultimately employed by the SAIL. We decline to grant the backwages to the workers in the instant case. It would not be appropriate to saddle the huge liability of back wages. However, we direct that the SAIL to start the process of regular employment. The workers who were in the employment from 1993 till 1996 are ordered to be reinstated, and their cases

> be considered for regularization in accordance with the directions issued by the Apex Court in para 125 of Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others (supra)."

18. The judgment of the High Court dated 6th September, 2010 is a subject matter of challenge before us in these appeals.

19. Sh. Ranjit Kumar and Sh. Parag P. Tripathi, learned senior counsel for the appellant submit that the CGIT in its award dated 16th September, 2009 has not only extensively considered the oral and documentary evidence placed on record but also took note of the judgment of the Constitution Bench of this Court in ***Steel Authority of India Ltd. and Others***(supra) and being the appropriate industrial adjudicator, after going into merits and the evidence led by the respective parties to the contract between management SAIL and contractors, arrived to the conclusion that the contract was genuine and not sham and bogus under its award dated 16th September, 2009 and the finding of fact recorded by the Tribunal has attained finality and unless the approach of the Tribunal was wholly perverse in the sense that the Tribunal has acted on no evidence, it was not justified for the High Court to interfere over the award of the industrial

adjudicator sitting as a Court of First Appeal to reappreciate the evidence and even if on the basis of the material on record, two views are possible and one view has been expressed by the Tribunal it was not open for the High Court to substitute its view under the limited scope of judicial review under Sections 226 and 227 of the Constitution of India. In the given circumstances, the finding of fact which has been reversed by the High Court under its impugned judgment holding the contract is not genuine but a mere camouflage, is legally not sustainable and deserves to be interfered by this Court.

20. Learned counsel further submits that normally the industrial adjudicator is the final Court of facts and on its extensive discussion based on the material available on record, it was held that there is no employer and employee relationship between the appellant and respondent workmen and, therefore, the question of compliance of Section 25(n) of the Act does not arise and it was the contractor who had terminated their services in April 1996 and it was the contractor who had full control and supervision over the work of the labourers. It has also concluded after examining the witness and appraisal of the documentary

evidence on record that the wage slips and identity cards were issued to them by the respective contractors and it were the contractors who paid wages to the contract labour and few of the witnesses have also supported payment through contractors.

21. Thus, the conclusion which has been arrived at by the Tribunal that the contractors were exercising exclusive control over the contract labours and tools and equipment were supplied by the contractors as per the terms of the contract and payment was made by respective contractors to the contract labourers and not by the principal employer and it was the contractors who terminated the services of the contract labourers because they proceeded on illegal strike in April 1996 and all the agreements between the management and the contractors entered into are of prior to the notification dated 17th March, 1993 prohibiting employment of contract labour and subsequently it was only extended by the competent authority from time to time until the services of the contract labour were terminated, holding disciplinary powers against the contract labour being supported by the cogent evidence on record was not open for the High Court

to sit as a Court of Appeal and reappraised the evidence under its impugned judgment.

22. Learned counsel placed reliance on the judgment of this Court in ***Dena Nath and Others*** ***Vs.*** ***National Fertilisers Ltd. and Others***[3] and submits that mere violation of the prohibition notification under Section 10(1) of the CLRA Act would not entail absorption of the contract labour and at the best could be considered as further continuation to be illegal resulting in penal consequences envisaged under Section 23 to 25 of the Act.

23. Per contra, Sh. Colin Gonsalves, learned senior counsel for the respondent, on the other hand, while supporting the finding recorded by the High Court in the impugned judgment further submits that the Tribunal has committed a manifest error in not appreciating the documentary/oral evidence on record and thus on reappraisal of the evidence, the High Court was convinced that the finding of fact recorded by the Tribunal under its award dated 16th September, 2009, being perverse, based on no evidence, has rightly interfered and recorded a finding that the

3 1992(1) SCC 695

contract was sham and bogus and in consequence thereof in terms of the Constitution Bench judgment of this Court, the workmen became employee of the principal employer (SAIL) in the instant case and entitled for the wages payable to the regular employee of the appellant SAIL and be considered for regularisation of service.

24. Learned counsel further submits that the employees are entitled for the back wages which has been wrongly denied by the High Court without any justiciable reasons and as they are contesting their claim immediately after their services were terminated, the delay in fact has caused because of 3-4 rounds of litigation and was also due to the fact that earlier it was held by this Court in ***Air India Statutory Corporation and Others case*** (supra) that immediately on the issuance of a prohibition notification under Section 10(1) of the CLRA Act, the contract labour become entitled for automatic absorption in the establishment wherein he was working prior to passing of the notification under Section 10(1) of the CLRA Act, which has been although overruled by the Constitution Bench of this Court in

Steel Authority of India Ltd. and Others(supra) at a later point of time but at least there are no latches on the part of the employees and they are entitled for wages for the period they have worked and discharged their duties in the establishment of SAIL and denial of their actual wages by the High Court in the impugned judgment is legally not sustainable.

25. Learned counsel further submits that High Court has taken note of various tests for determining nature of contract which has been laid down from time to time by the judicial pronouncements i.e. supervision and control, effective and absolute control, disciplinary action, payment of wages etc., the primary tests as the determining factor in arriving to a conclusion as to whether any contract entered in contradistinction to the tests laid down, if any, between the contractor and the contract labour that indeed is sham and bogus. The High Court on appraisal of the evidence recorded its satisfaction on all the tests cumulatively and rightly held that the contract between the contract labour and the contractor was sham and bogus and once the finding has been recorded under the impugned judgment, the consequence is restoring the relationship of the principal employer and of

contract labour as an employer and employee and this makes the respondent entitled for their regularisation of service and the difference of salary which has been paid to their counterparts who were regular in employment of the appellant establishment which indeed could not have been denied to the respondent. In the given facts and circumstances, no error has been committed by the High Court in the impugned judgment which may call for any interference.

26. Learned counsel for the respondent contended that the judgment in ***Dena Nath and Others*** (supra) is not applicable for the reason that it was of much prior to the Constitution Bench Judgment of this Court and it has no application for the further reason that it was a case where the effect of failure of compliance of Section 7 and 12 of the CLRA Act was a question and there was no such prohibition notification under Section 10(1) of the CLRA Act which came into consideration. Thus, what has been expressed by this Court may not be of any assistance to the appellant.

27. We have considered the rival submissions made by the parties and with their assistance perused the materials available on record.

28. Before we proceed to examine the question raised in the instant appeals any further, it may be apposite to take note of the indisputed facts which has come on record and take a note of the facts recorded by the High Court in the impugned judgment.

29. It is not disputed that the appellant SAIL is a Government of India undertaking and a State within the meaning of Article 12 of the Constitution of India and has its steel plants in the different parts of India. SAIL has one of the captive lime stone and dolomite mines in Kuteshwar in the District of Katni of Madhya Pradesh. Limestone and Dolomite are necessary ingredients for manufacture of steel. The SAIL did blasting work as this work had been departmentalised by Notification dated 15th December, 1979 w.e.f. 22nd June, 1980 and various tripartite agreements were executed between the principal employer(SAIL), contractor and contract labour and from time to time wages to which the contract labour was entitled for in terms of tripartite agreement

which indisputedly was higher in comparison to the minimum wages notified by the appropriate Government from time to time under the Minimum Wages Act, 1948 was paid to each of the contract labour who had worked in the establishment of the appellant.

30. It is also not disputed that the contract labour which is represented through union had worked in the schedule work which has been prohibited by the appropriate Government under its notification issued under Section 10(1) of the CLRA Act, dated 17th March, 1993 and there is no challenge to the prohibition notification dated 17th March, 1993 at least in the instant proceedings.

31. After 3-4 rounds of litigation, a reference was made by the Government of India, Ministry of Labour vide its notification dated 27th January, 2003 followed by 22nd February, 2005 wherein respective claims with supporting oral and documentary evidence were placed by the contesting parties. CGIT under its award dated 16th September, 2009 recorded a finding of fact holding that the contract was not sham and bogus and if, at all,

there was any violation in continuation of the contract labour after issuance of the prohibition notification dated 17th March, 1973 that entail penal consequences as referred to under Sections 23 to 25 of the CLRA Act and further held that the respondent workmen were not entitled for reinstatement and answered the reference accordingly under its award dated 16th September, 2009. The finding of fact in return came to be overturned by the High Court in its limited scope of judicial review under Article 226 & 227 of the Constitution of India under the impugned judgment dated 6th September, 2010.

32. Before we may advert to examine the question in the instant appeals any further, it will be apposite to take note of the legal effect of the prohibition notification issued by the appropriate Government in exercise of power under Section 10(1) of the CLRA Act and its exposition by the Constitution Bench of this Court in ***Steel Authority of India Ltd. and Others*** (supra) overruling the judgment in ***Air India Statutory Corporation and Others*** (supra). The legal consequence of Section 10(1) of the CLRA Act, has been noticed in paragraph 68, 88, 105 and 125 as follows:-

"68. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub-section (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour, is neither spelt out in Section 10 nor indicated anywhere in the Act. In our view, the following consequences follow on issuing a notification under Section 10(1) of the CLRA Act:

(*1*) contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(*2*) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(*3*) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(*4*) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(*5*) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

(*6*) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act.

The point now under consideration is: whether automatic absorption of contract labour working in an establishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert to this aspect shortly.

88. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labour system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labour in the establishment covered by the prohibition notification, by a principal employer so as to leave no option with him except to employ the workers as regular employees directly. Section 10 is intended to work as a permanent solution to the problem rather than to provide a one-time measure by departmentalizing the existing contract labour who may, by a fortuitous circumstance be in a given establishment for a very short time as on the date of the prohibition notification. It could as well be that a contractor and his contract labour who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labour engaged on the relevant date over the contract labour employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labour in the CLRA Act.

105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and

authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of the CLRA Act.

125.*The upshot of the above discussion is outlined thus*:

(1)(*a*) Before 28-1-1986, the determination of the question whether the 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 Central Government company/undertaking concerned or any undertaking concerned 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 a railway company; or

(*c*) by a 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
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> (2) having regard to
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> > (*i*) conditions of work and benefits provided for the contract labour in the establishment in question, and
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> > (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 9-12-1976 does not satisfy the aforesaid 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 the 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 establishment concerned.

(4) We overrule the judgment of this Court in *Air India case* [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* [(1997) 9 SCC 377] 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 with 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 establishment concerned 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 establishment concerned 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."

33. The exposition of the judgment of the Constitution Bench of this Court made it clear that neither Section 10 nor any other provision in the CLRA Act provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under Section 10(1) of the CLRA Act, and consequently the principal employer is not required or is under legal obligation by operation of law to absorb the contract labour working in the establishment.

34. This court in ***Steel Authority of India Ltd. and Others*** (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an

industrial dispute is raised by any contract labour in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham, nominal or camouflage, then the so-called labour will have to be treated as direct employee of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give

preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age as it appears to be in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

36. It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in ***Silver Jubilee Tailoring House and Others*** ***Vs.*** ***Chief Inspector of Shops and Establishments and Another***[4]; ***Hussainbhai, Calicut*** ***Vs.*** ***Alath Factory Thezhilali Union, Kozhikode and Others***[5]; ***Indian Petrochemicals Corporation Ltd. and Another*** ***Vs.*** ***Shramik Sena and Others***[6] and these cases have been considered by the Constitution Bench of this Court in ***Steel Authority of India Ltd. and Others***(supra) of which a detailed reference has been made by us.

37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labour agreement is sham, nominal or a

4 1974(3) SCC 498
5 1978(4) SCC 257
6 1999(6) SCC 439

mere camouflage has been examined by this Court in ***International Airport Authority of India*** **Vs.** ***International Air Cargo Workers' Union and Another***[7] by the two-judge Bench of this Court. The relevant paras are as under:-

> **"38.** The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> **39.** The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

38. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and

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7 2009 (13) SCC 374

whether the agreement pursuant to which contract labour has been engaged through contractor can be said to be sham, nominal and camouflage.

39. It was not disputed in the instant case that the contract labourer who were working under a tripartite agreement were allowed to continue under the self-same agreement executed prior to the prohibition notification dated 17th March, 1993 and extended from time to time by the competent authority even after issuance of the prohibition notification and the services of the contract workers were terminated by the contractor through whom they were engaged after they proceeded on strike in April, 1996.

40. The Tribunal in its award dated 16th September, 2009 has recorded a finding of fact based on oral and documentary evidence placed by the respective parties on record in reference to the fact whether the contract was sham and bogus which was a primary cause of adjudication and it was observed that the contractors employed the contract labour on their own and they were the appointing authority. Witnesses Mangal and Kodulal

(contract labourer) were examined and in their cross-examination they have stated that before the issuance of notification dated 17th March, 1993, they were workers of the contractor and payment was made to them by the contractors, wage slips also show that the wages were being paid by the contractors. Other witnesses also in cross-examination have supported that half of the PF amount of the workers were deposited by their respective contractors. Exh. W/39 to W/54 submitted by the contract labours are the photocopies of the identity cards, pay slips, PF slips etc. These pay slips and identity cards do not show that all 3079 workers were working after the notification dated 17th March, 1993 without break because number of these documents are of prior to the notification. It further observed that all the agreements between the management and the contractors are entered into prior to the notification dated 17th March, 1993 prohibiting employment of contract labour and only extended thereafter from time to time. It goes to show that there was no fresh contract thereafter ever entered between the parties. Exh. M/8 filed in R-721/05 and the evidence of the witnesses shows that the contractor had terminated the services of the contract labour in April 1996 and transferred some of the contract

labourers from the place of work and was the disciplinary authority.

41. It was further observed that the contractors had full control over the skilled and professional work and the SAIL had right to reject the limestone, if it was not within the specified approved grade as per terms and conditions of the agreement and after extensive appreciation of the oral/documentary evidence on record, CGIT recorded a finding of fact holding that the contract was not sham and bogus at least up to the date of issuance of the prohibition notification dated 17th March, 1993. Although in paragraph 85 of the award the Tribunal has recorded a finding that after the issuance of prohibition notification dated 17th March, 1993 by operation of law, it became sham and bogus but in our considered view, such a finding recorded in para 85 of the Award dated 16th September, 2009 is not sustainable in law for the simple reason that mere issuance of the prohibition notification under CLRA Act will not make the contract/agreement to be *void ab initio* or bad in law and if the employees are allowed to continue in terms of the earlier agreement after the prohibition notification under CLRA Act has

come into force, it may be illegal and continuance of service in the absence of any contract which stands extinguished by virtue of prohibition notification has to face the penal consequences as embedded under the scheme of CLRA Act.

42. The High Court has taken note of the various provisions of Mines Creche Rules, 1966, Maternity Benefits Act, Mines Act, 1952 and Metalliferous Mines Regulations, 1961 and other statutory measures which are applicable over the establishment of the appellant including various welfare schemes which provide safety and security of the workers. To say so, every establishment is under obligation to implement the mandate of law but that could not be a determining factor/denominator to test the contract agreement entered between the parties in arriving to a conclusion that such an agreement is sham, nominal or camouflage as held by the High Court in its impugned judgment.

43. The High Court appears to be primarily persuaded with the issuance of a prohibition notification under Section 10(1) of the CLRA Act as one of the salient factor to indicate that the committee constituted under the Act, after examining various

factors including perennial nature of work, under the CLRA Act has recommended for abolition of contract labour and accepted by the Central Government coupled with the continuation of employment of contract labour after issuance of the prohibition notification under Section 10(1) of the CLRA Act in holding that the action of the establishment was opposed to the public policy principles enshrined under Section 23 of the Indian Contract Act and taking work from the contract labour was in violation of the statutory notification dated 17th March, 1993 and that appears to be the reason which persuaded to hold that the finding recorded by the Tribunal that contractors had full control and supervision over the work in view of the functioning of the scheme of mines was unsustainable, instead holding the total control and supervision was that of management of the appellant and the contract was sham and bogus and also the fact that in all the agreements executed between the parties, there was a provision of abolition of contract labour in the matter of work of a perennial in nature and certain other conditions of agreement in recording its satisfaction that the contract was sham and bogus.

44. In our considered view, the finding recorded by the High Court under the impugned judgment is not sustainable for the reason that effect of the prohibition notification under Section 10(1) of CLRA Act has been settled by the Constitution Bench of this Court in ***Steel Authority of India Ltd. and Others*** (supra) and this Court has made it clear that neither Section 10 nor any provision in the CLRA Act provides for automatic absorption of contract labour on issuance of prohibition notification by the appropriate Government under Section 10(1) of the CLRA Act and the Tribunal in the first place being the fact finding authority has extensively examined the documentary and oral evidence which came on record and also the relationship of principal employer, contractor and contract labour and the fact that their services were terminated by the contractor after the contract labour proceeded on a strike in April 1996.

45. The Tribunal also considered various other factors in extenso regarding the wage slips, identity cards and the nature of work being discharged by the contract labour subsequent to the prohibition notification dated 17th March, 1993 and other documentary evidence which came on record and recorded the

finding in return that the contract between the contractor and the employee was not sham and bogus and the workmen were not entitled for their absorption in service of the principal employer.

46. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non-compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in ***International Airport Authority of India case***(supra) where the contract was to supply of labour and necessary labour was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labour to be sham and bogus per se.

47. Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principal

establishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came on record, the finding which has been recorded by the CGIT under its award dated 16th September, 2009 in absence of the finding of fact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

48. It is true that judgment in ***Dena Nath and Others*** (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, non-compliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referred to in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.

49. In our considered view, the Tribunal under its award dated 16th September, 2009 has rightly arrived to the conclusion that the contract was not sham and bogus and there shall be no automatic absorption of contract labour on issuance of a prohibition notification under the CLRA Act and the High Court of Madhya Pradesh has committed a manifest error in reversing the finding of fact in return under its impugned judgment dated 6th September, 2010 which, in our view, is not sustainable and deserves to be set aside.

50. The appeals are accordingly disposed of and the impugned judgment of the High Court dated 6th September, 2010 is hereby set aside. The respondent is at liberty to avail remedy for alleged breach of the provisions of the CLRA Act, if so advised, in accordance with law. No costs.

51. Pending application(s), if any, also stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

New Delhi
July 05, 2019