CHAPTER - IX

THE CLAIMS OF CONTRACT LABOUR – THE DEFEATS
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9.1. The Contract Labour (Regulation and Abolition) Act, 1970 – The Basic Purpose:

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. The Second Five Year Plan made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where the system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

The proposed Act is aimed to abolish the contract labour system in respect of such categories as may be notified by the appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not
possible. The Act provided for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registration of establishments and contractors. Under the Scheme of the Act, the provision for maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against defaults in the matter of wage payment.¹

The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work for contract labour. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act. The Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation of such labour.²

¹. Gazette of India, Ext., Pt, II, S. 2, p. 634 dated 31-7-1967
². Gammon India Ltd v Union of India (1974) I SCC 596.

330
The framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that appropriate Government may after consultation with the Central Board or the State Board, as the case may be, prohibit by notification in Official Gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.3

The Contract Labour (Regulation and Abolition) Act, 1970 was enacted by the Parliament to deal with the abuses of contract labour system. Parliament adopted twin measures to curb the abuses of employment of contract labour—the first is to regulate employment of contract labour suitably and the second is to abolish it in certain circumstances. This approach is clearly discernible from the provisions of the Act, which came into force on 10-2-1971. A perusal of the Statement

of Objects and Reasons shows that in respect of such categories as may be notified by the appropriate Government, in the light of the prescribed criteria, the contract labour will be abolished and in respect of the other categories the service conditions of the contract labour will be regulated.4

The Act is not a complete Code by itself. It is silent on the question of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government. Hence, as far as the question of determination of the status of the workmen is concerned, it remains open for decision by the industrial adjudicator. In the exercise of the said jurisdiction, the industrial adjudicator can certainly make a contract between the workmen of the ex-contractor and the principal employer and direct the principal employer to absorb such of them and on such terms as the adjudicator may determine in the facts of each case.5

The Act does not provide for total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. So long as the contract labour system continues, the principal employer is enjoined to ensure payment of wages to the contract labour and to provide all other amenities envisaged under

the Act and the Rules including provisions for food, potable water, health and safety and failure thereof visits with penal consequences. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1) the embargo to continue as a contract labour is to put an end and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the employer from committing breach of the provisions of the Act and to put an end to exploitation of the labour and to deter him from acting in violation of the constitutional right of the workmen to attain decent standard of life, living wages, right to health etc. When the appropriate Government finds that the employment is of perennial nature etc. contract system stands abolished, thereby, it is intended that if the workmen were performing the duties of the post which were found to be of perennial nature on par with regular service, they also require to be regularized. The Act did not intend to denude them of their source of livelihood and means of development, throwing them out from employment. The Act is socio-economic welfare legislation. Right to socio-economic justice and empowerment are Constitutional rights. Right to means of livelihood is also a Constitutional right. Right to facilities and opportunities are only part of and means to right to development. Without
employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood.  

The Act is an exclusive legislation for regulating or abolishing the contract labour in all establishments; though the Act by its own force applies to contractors or establishments employing 20 or more workmen, the Government can under the proviso to S. 1 (4) apply the Act to any establishment or contractor. Under Sec. 10, the Government is empowered to prohibit employment of contract labour in any process or operation or other work in any establishment. The Act is, thus, self-contained and covers the entire subject of contract labour.

9.2. Applicability of the Act:

The Act applies to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour. Also the Act applies to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. The appropriate Government may, after giving not less than two months' notice of its intention so to do, by

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6. Air India Statutory Corporation V United Labour Union and Others (1997) 9 SCC 377. This view was overruled by the Constitutional Bench of the Supreme Court in Steel Authority of India (Supra).

7. 1975 LIC 165 (A.P)
notification in the Official Gazette, apply the provisions of the Act to any establishment or contractor employing such number of workmen less than twenty.\(^8\)

9.3. **Advisory Boards:**

The Central Government and State Governments are required to set up Central and State Advisory Contract Labour Boards to advise the respective Governments on matters arising out of the administration of the Act as are referred to them. The Boards are authorized to constitute Committees as deemed proper. The Contract Labour Advisory Boards are tripartite in character having the representation from the Government and equal representation from the employer/contractor and the workmen.\(^9\)

The legislation however, does not provide expressly the functions and the time framework for the Advisory Boards within which they have to tender their advice to the appropriate Governments. In practice the Advisory Boards have consumed elaborate time in tendering advice to the appropriate Governments on matters arising out of the administration of the Act especially in matters relating to abolition of the contract labour system under Sec. 10 of the Act. Perhaps this is one reason as to why

\(^8\) See Sec. 1 (4) cl. (a) and (b) of the Act.

\(^9\) See Sec. 3, 4 and 5 of the Act.
the performance of the appropriate Governments under Sec.10 is highly unimpressive.

Where the appropriate government had consulted the Advisory Board while issuing a notification under Sec. 10 held it would not become vitiated merely because one of the Board's members had ceased to represent the industry because of coal mine nationalization. There is nothing in the Act or the Rules that a Board member, on ceasing to represent his purported interest, shall forthwith cease to be a member of the Board.\textsuperscript{10}

While constituting the Board it is not necessary that each and every establishment or each specific industry may be consulted. No provision is made as regards consultations in the Act. In Rule 3 of the Karnataka State Rules it is \textit{inter alia} stated that the industry shall be consulted before nominating the representatives of the industry and the contractor on the Board. However, if the names of the representatives of the industry and that of the contractors are called for from different organizations and associations, that will be sufficient compliance with the provisions of the Rules. The provisions pertaining to the consultation are made in the Rules and not in the Act and this is merely directory requirement. This is not a mandatory requirement. The powers of the Government while taking

\textsuperscript{10} 1981 LIC 641 Bom.
action under Sec. 10 are quasi-legislative while exercising these powers, it is not necessary to afford an opportunity of being heard to the parties.\textsuperscript{11}

9.4. Registration of Establishments Employing Contract Labour:

The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to such conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as laid down in the rules.\textsuperscript{12}

No principal employer of an establishment, to which this Act applies, shall employ the contract labour in the establishment (i) in the case of an establishment required to be registered under Sec. 7, but which has not been registered within the time fixed for the purpose under that section; and (ii) in the case of an establishment the registration in respect of which has been revoked under the Act.\textsuperscript{13}

\textsuperscript{11} Saurashtra Chemicals and Another v. State of Gujarat and Others. 1995 II LL.J. 379 (Guj) (DB).
\textsuperscript{12} See Sections 6, 7, 8 and 9 of the Act.
\textsuperscript{13} See Sections 8 and 9 of the Act.
The combined effect of Sections 2, 7, 12, and 29 makes it clear that for a valid employment of contract labour, two conditions must be fulfilled, viz., (1) every principal employer of an establishment must be registered and (2) the contractor must have a valid licence. In other words, the mere registration by the principal employer or the holding of licence by contractor alone will not enable the management to treat the workmen as contract labour. Whilst considering the provisions of the Act, it must be kept in mind that this Act is a piece of beneficial legislation. The aim of the Act is to regulate conditions of service of contract labourers and to abolish contract labour under certain circumstances.14

9.5. Effect of Non-Registration:

The Act merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Sec. 10. It is not therefore for the Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under Sec. 10. The only consequences provided in the Act where either

the principal employer or the labour contractor violates the provisions of Sec. 9 and Sec.12 respectively is the penal provision, contained in Sec. 23 and Sec.25. Therefore, in proceedings under Art. 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the Rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer.\textsuperscript{15}

9.6. Prohibition of Employment of Contract Labour:

The appropriate Government under Sec. 10 (1) of the Act is authorized, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment, in any process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are as follows:

(a) Whether the work is of perennial nature;

\textsuperscript{15} Dena Nath v. National Fertilizers Ltd. AIR 1992 SC457.
(b) Whether the work is incidental or necessary for the work of an establishment;

(c) Whether the work is sufficient to employ a considerable number of whole-time workmen;

(d) Whether the work is being done ordinarily through regular workman in that establishment or in a similar establishment.

In spite of the decades after passing the enactment, the fundamental issue remained unanswered i.e., who has to move for abolition of contract labour system and the absorption of the contract employee in the service of the principal employer. Of course the ratio laid down in Gujarat Electricity Board (Supra) has shown the solution to some extent, which again suffers with certain incongruities. This issue was answered aptly by the Bombay High Court in Mahindra and Mahindra Limited & Another v State of Maharashtra and Others16 wherein it was held that the Act does not prescribe the authority who has to move for abolition of contract labour system and the absorption of the contract employee in the service of the principal employer. The workmen of the contractor can raise such dispute. When the workmen are members of a union, they can act through the union. The question of locus standi cannot be determined for the relief's available under a statute by resorting to entirely different operations in different fields.

16. 1997 I LL.J. 900 (Bom).
Thus it is very clear from above discussion that the power to abolish a genuine contract labour system lies only with the appropriate Government under section 10(1) of the Act. In terms of judicial verdicts a genuine contract means a contract labour system, which is being carried on, by the principal employer after registering his establishment duly under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

However, various situations of employment of contract labour by the principal employer be it a private employer or public sector enterprise the claims of the contract labour pertaining to regulation of their service conditions have figured before the judiciary from time to time.

As already discussed the fundamental flaw in the legislation as regards to the regularization of the service conditions of the erstwhile contract labour when once the system is duly abolished by the appropriate Government under section 10. This was the issue that the judiciary is supposed to answer immediately after the enactment of this legislation. The answer was found through the judgment of the Supreme Court in *Air India Statutory Corporation and others v. United Labour union and others,* but this ratio stood in existence for a short period. The

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17. (1997) 9 SCC 377 (The Bench consisted of K. Ramaswamy J., B.L. Hansaria J., and S.B. Majmudar, JJ). (Abolition of contract labour system in a establishment- on principal employer’s failure to absorb the erstwhile contract labourers, held, High Court and Supreme Court in exercise of powers under articles 226 and 32 can properly mould the relief and direct the appropriate authority to act in accordance with the law and submit report to the Court for giving proper relief accordingly).
Constitutional Bench of apex Court in Steel Authority of India Ltd., and others v. National Union Waterfront Workers and others,\textsuperscript{18} unprovokingly reversed the ratio laid down in Air India Corporation Case,\textsuperscript{19} and has laid down altogether difficult propositions for the erstwhile contract labour to satisfy their claims pertaining to their regularization of their service conditions as the regular employees of the principal employer.

The author places on record the decisions of the apex Court pertaining to the claims of the contract labour for the regularization of their service conditions as regular employees of the principal employer. The reaction of judiciary was different when the claims of the contract labour relate to public sector undertakings.

In B.H.E.L. Workers' Association, Hardwar V Union of India\textsuperscript{20}, the matter came to the Court by way of writ petition filed by the workmen under Article 32. It was contended that out of 16000 and odd workmen employed in the premises, a thousand workers were treated as contract labour though they did the same work as in the case of regular employees, they were not paid the same wages. Hence it was violative of Articles.14 and 19(5) (g) and a declaration was sought from the Court that the system of contract labour was illegal, the contract employees were the

\textsuperscript{19} Supra Note. 17.
\textsuperscript{20} (1985) I SCC 630.
direct employees of the Co. and are entitled to equal pay as the workmen
directly employed.

The Court held that it was not possible under Art.32 to embark
upon an enquiry whether the thousand odd workmen working in various
capacities and engaged in multifarious activities did work identical with the
work done by the workmen directly employed and whether for that reason,
they should not be treated as contract labour but as direct employees of
the company. There are other forums created under other Statutes to
decline such questions. It was further observed that the counsel wanted
the Court to abolish the employment of contract labour by the State and in
all Public Sector Undertakings which was not possible since that would be
nothing but the exercise of legislative activity with which the Court was not
entrusted under the Constitution. While holding this the Court, however,
directed the Central Govt. to consider whether the employment of contract
labour should not be prohibited under Sec.10 of the Act in any process,
operation or other work in B.H.E.L. The Court also directed the Chief
Labour Commissioner to enquire into the question whether the work done
by the contract labour is the same type of work as that done by the regular
workmen of B.H.E.L.
In *Catering Cleaners of Southern Railway V Union of India*,\(^\text{21}\) the petitioners filed a writ petition under Art. 32, claiming that they were catering cleaners of the Southern Railway and that, since a long time, they were agitating for the abolition of the contract labour system under which they were employed to do cleaning work in the catering establishments and pantry cars and for their absorption as direct employees of the principal employer, viz., the Southern Railways. Although the contract labour system had been abolished in almost all the Railways in the Country, the Southern Railway persisted in employing contract labour for doing the work in question. Hence to direct the respondent to exercise their power under Sec. 10 (1) of the Act and to abolish the contract system and to regularize the services and to extend to them the service benefits then available to other categories of employment in the catering establishment.

The Court referred to the report of the Parliamentary Committee, which had held that the job of cleaning in Railways catering units was of a permanent nature and the work if entrusted to the direct employees would only marginally increase the cost. The Committee had recommended the employment of cleaners directly by the Railways to avoid their exploitation. After analyzing the provisions of the Act, the Court held that on the facts it is clear that the work of cleaning catering establishments and pantry cars was necessary and incidental to the industry or business of the Southern

\(^\text{21}\) (1987) 1 SCC 700.
Railway in the country and that the work required the employment of sufficient number of whole time workmen and thus the requirement of Cl. (a) to (d) of Sec.10 (2) of the Act were satisfied. However, even on these findings, the Court held that the writ petition could not invite the Court to issue mandamus directing the Central Government to abolish the contract labour system because under Sec.10 of the Act the Parliament had vested such power in the appropriate Government. In the circumstances, the appropriate order to make according to Court, was to direct the Central Govt. to take suitable action under Sec.10 of the Act within six months from the date of the order. It was also observed that without waiting for the decision of the Central Govt., the Southern Railway was free on its own motion to abolish the system and to regularize the services of the employees. The Court also directed that the work involved should be done departmentally by employing those workmen who were previously employed by the contractors with the similar service conditions to that of regular workmen employed for the same purposes.

In Sankar Mukherjee V Union of India the State Govt. exercising the power under Sec.10 of the Act prohibited employment of contract labour in cleaning and stacking and other allied jobs in the brick department. Loading and unloading of bricks from wagons and trucks was not abolished. The Writ petition under Art.32 of the Constitution was filed before the Supreme Court. The Court held that the Act requires to be

22. AIR 1990 SC 520
constructed liberally so as to effectuate the object of the Act. The bricks transportation to the factory, loading and unloading is continuous process; therefore all the jobs are incidental to or allied to each other. All the workmen performing these jobs were to be treated alike. Loading and unloading job and the other jobs were of perennial nature. Therefore there was no justification to exclude the jobs of loading and unloading of bricks from the wagons and trucks from the purview of the notification under Sec.10. The Court directed to abolish the contract labour system and to absorb the employees working in loading and unloading the bricks which is of perennial nature.

Next comes *Dena Nath V. National Fertilizers Ltd* 23, wherein the judiciary has to confront with altogether a new proposition and finally has to yield in favour of the employer.

The question involved was whether, if the principal employer does not get registration under Sec.7 and the contractor does not get license under Sec.12 of the Act, the labour engaged by the principal employer through the contractor is deemed to be the direct employees of the principal employer or not. On this point there are conflicting decisions of the Delhi, Calcutta, Punjab, and Kerala High Courts on one hand and Madras, Bombay, Gujarat and Karnataka High Courts on the other. The view taken by the former High Courts was that the only consequence of

the non-compliance of the provisions of Sections 7 and 12 of the Act was that the principal employer and the contractor as the case may be, are liable only for prosecution under the Act, whereas the view taken by the latter High Courts was that in such a situation the contract labour become the direct employees of the principal employer. After noticing the decision in *Standard Vacuum Refining Co* 24 and going through the genesis of the Act, the Court held that it is not for the High Court to enquire into the question and decide whether the contract labour in any process, operation or other work in any establishment should be abolished or not. It is a matter for the appropriate Govt. to decide after considering the matters as required by Sec.10. of the Act. It was further held that the only consequence provided under the Act where the principal employer or labour contractor violates the provisions of Section 7 or 12 as the case may be is the penalty as envisaged under section 23 and 25 of the Act. Merely because of a contractor or an employer has violated a provision of the Act or Rules, the Court cannot issue any mandamus for deeming the contract labour as having become the employees of the principal employer. Further the Court stated that the view taken by the Calcutta and Delhi High Courts were correct and approved of the same.

In *R.K. Panda v. Steel Authority of India*25, the labourers employed through contractors at Rourkela Plant of the Steel Authority of India, by the

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24. AIR 1960 SC 948.
instant writ petition claimed parity in pay with regular employees and also regularization in the employment of the said Authority. They were continuing in employment for periods ranging from 10 to 20 years and were allegedly being treated as contract labourers only for defeating their claims. The contractors used to be changed but the new contractors were made, under the terms of agreement, bound to retain the workers of the predecessor contractors. For 8 years prior to the decision, many of the contract labourers were continuing only by virtue of interim orders granted by the Court. Meanwhile out of 246 jobs in the Steel Plant, in which such contract labourers were employed, the State Government of Orissa identified 104 jobs for abolishing contract labour. In the remaining 142 jobs contract labour continued. The respondent contended that the management was prepared to give the contract labourers option to retire voluntarily or to be absorbed in regular employment. Moreover, due to a modernization scheme, there was likelihood of retrenchment. In such circumstances the Supreme Court, although observing that normally it would not exercise its jurisdiction under Article 32 or 136 to adjudicate on such disputes, normally, the Labour Court and the Industrial Tribunal, are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them, gave, inter alia, the following directions:
(i) Such of the contract labourers as were continuing in respondent's employment for the last 10 years in spite of change of contractors and had not crossed the age of superannuation and were medically fit, should be absorbed as regular employees.

(ii) On such absorption their inter se seniority to be determined department/job-wise on the basis of continuous employment.

(iii) Regular wages will be payable only for the period subsequent to absorption and not for the period prior thereto. If in respect of any group of contract labourers no rates of wages had been fixed, the minimum rate payable to unskilled workmen doing other similar jobs should be applied to such contract labourers.

(iv) This order would not constitute a bar to retrenchment in accordance with law.

(v) Dispute, if any, as to identification of the contract labourers to be absorbed should be decided by Chief Labour Commissioner (Central) on evidence.

(vi) Persons retrenched but taken back in terms of the Supreme Court's directions shall also be entitled to the benefit of this decision.
The aforesaid period of 10 years would count for calculating retrenchment benefit in case of retrenchment.

Further the Court held that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that appropriate Government may after consultation with the Central Board or the State Board, as the case may be, prohibit by notification in Official Gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.26

In National Federation of Railway Porters, Vendors & Bearers V Union of India 27, the Court was to consider whether the Railway Parcel Porters working in the different Railway stations were contract labour for

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26. Ibid.
27. 1995 SCC (L & S) 1119.
several years. The Court directed the Central Asst. labour Commissioner to enquire and find out whether the job is a permanent and perennial nature and whether the petitioners were working for a long period. On finding the report favourable to the workmen, the Court directed the Railway Administration to regularize them into the service.

This is an authority for the proposition that in an appropriate case the Court can give suitable direction to the competent authorities, to enquire and submit a report. Once the report received is favourable to the workmen the Court could mould the relief in an appropriate manner to meet the given situation. Perhaps this was the only case wherein the Court granted the suitable relief in the given circumstances, under the Act, till 1995.

In *Gujarat Electricity Board V Hind Mazdoor Sabha*28 the following issues stood before the Court for consideration:

1. Whether an industrial dispute can be raised for abolition of the contract labour system in view of the provision of the Act.
2. If so, who can raise such dispute?
3. Whether the Industrial Tribunal or the appropriate Govt. has the power to abolish the contract labour system and

4. In case the contract labour system is abolished, what is the status of the erstwhile workmen of the contractors?

On the basis of the provisions of Sec. 10, it was contended that no industrial dispute can be raised to abolish contract labour in any process, operation or other work in any establishment. The said section gives exclusive authority to the appropriate Govt. to prohibit contract labour after following the procedure laid down there in, such as consultation with Advisory Board as the case may be: and secondly after having due regard to the provisions laid down in Sub Sec (2). Hence the decision of the appropriate Govt. in that behalf is final and the decision is not liable to be challenged in any Court including before the industrial adjudicator.

In this regard reliance placed on the ratio laid down by the Supreme Court in Vegoils Pvt. Ltd29, B.H.E.L. Workmens’ Association30, Catering Cleaners of Southern Railways 31, and Dena Nath32, wherein it was held that the question to decide whether the contract labour in any process, operation or any other work in any establishment should be abolished or not is exclusively vested with the appropriate Govt. which has to take the decision in accordance with the provisions of Sec.10 of the Act. After considering these decisions the Court held that, after the coming into

29. AIR 1972 SC 1942.
30. 1985 (5) FLR 205.
31. AIR 1987 SC 777.
32. 1992 (64) F.L.R. 39 SC.
operation of the Act, the authority to abolish the contract labour is vested exclusively with the appropriate Govt. this conclusion has been arrived at on the interpretation of Sec.10. of the Act. Further it was held that the authority to abolish the contract labour under Section10 of the Act comes into play where there exists a genuine contract. In other words, if there is no genuine contract and the so called contract is sham or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the concerned workmen can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer, the Court or the industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief.

As regards the other contention that the decision of the Govt. under Sec.10 as to whether it should be abolished or not, is final and cannot be challenged in any Court or before the industrial adjudicator, The Court observed that the decision of the Govt. is final and of course subject to the judicial review on the usual grounds. However, as stated earlier, the exclusive jurisdiction of the app. Govt. under Section 10 arise only when the labour contract is genuine and the question whether the contract is genuine or not can not be examined and adjudicated upon by the Court or the industrial adjudicator as the case may be. Further it was held that, it is no doubt true that neither Sec.10 nor any other provisions thereof in the Act provides for determination of the status of the workmen of the
erstwhile contractor once the app. Govt. abolishes the contract labour. In fact, on the abolition of the contract, the workmen are in a worse condition since they can neither be employed by the contractor nor is there any obligation cast on the principal employer to engage them in his establishment. We find this is a vital lacuna in the Act.

The legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labour in the principle establishment on the abolition of the contract labour, fearing that such provision would amount to forcing the contract labour on the principal employer. The industrial adjudicator however is not inhibited by such considerations. He has the jurisdiction to change the contractual relationship and also make new contracts between the employer and employees under the Industrial Disputes Act 1947.

The answer to the question as to what would be the status of the erstwhile workmen of the contractor, once the contract labour system is abolished is therefore that where an industrial dispute is raised, the status of the workmen will be determined by the industrial adjudicator. If the contract labour system is abolished while the industrial adjudication is pending or is kept pending on the concerned dispute the adjudicator can give direction in that behalf in the pending dispute. If, however, no
industrial dispute is pending for determination of the issue, nothing prevents an industrial dispute being raised for the purpose.

The last but equally important question is who can raise an industrial dispute for absorption of the workmen of the ex-contractor by the principal employer. As had been pointed out earlier, if the contract is not genuine, the workmen of the contractor themselves can raise such dispute, since in raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. Hence the dispute would squarely fall within the definition of industrial dispute under Sec.2 (k) of the Industrial Disputes Act being a dispute between the employer and the employees. In that case, the dispute would not be for abolition of the contract labour, but for securing the appropriate service conditions from the principal employer on the footing that workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute, the workmen are required to establish that the so called labour contract was sham and was only a camouflage to deny their legitimate claims.

However the situation is obviously different when the labour contract is genuine and there is no relationship of employer-employee between the principal employer and the workmen of the contractor. No industrial dispute can be raised by the workmen of the contractor either
before or after the contract labour system is abolished by the app. Govt. under Sec. 10 of the Act. This hurdle in raising the dispute will however disappear if it is so raised by the workmen of the principal employer who have (i) a community of interest with the contract labour, (ii) a substantial interest in the subject matter of the dispute and (iii) when the employer can grant the relief as it was held in workmen of *Dimakuchi Tea Estate V Management of Dimakuchi Tea Estate*33.

The Court finally made the following conclusions and answers to the issues raised—

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

(ii) If the contract is sham or not genuine the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and claiming the appropriate service conditions. When such disputes are raised, it is not a dispute for abolition of the labour contract and hence the provisions of Sec. 10 of the Act will not bar either the raising or the

33. AIR 1958 SC 353
adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, then he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine he may refer the workmen to the app. Govt. for abolition of the contract labour under Sec.10 of the Act and keep the dispute pending. However, he can do so only if the dispute is espoused by the direct workmen of the principal employer. If the regular workmen of the principle employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Sec.2 (k) of the ID Act. He will not be competent to give relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the app. Govt. under Sec 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and for their absorption. However the dispute will have to be raised by the direct employees of the principal employer.
The industrial adjudicator, after receipt of the reference of such dispute will have to first direct the workmen to approach the app. Govt. for abolition of the contract labour system under Sec.10 and keep the reference pending. If pursuant to such reference, the contract labour system is abolished by the app. Govt. the industrial adjudicator will have to give an opportunity to the parties to place the necessary evidence before him to decide whether the workmen of the contractor should be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can direct the workmen to be absorbed and on what terms.

Next comes the landmark decision of the Supreme Court in Air India Statutory Corporation. V United Labour Union34 wherein certain far reaching principles were laid down touching the Constitutional guarantees

34. (1997) 9 SCC 377. Unfortunately the ratio in this case on vital issue is overruled by the Supreme Court in Steel Authority of India Ltd v National Union Waterfront Workers (2001) 7 SCC 1.
of right to livelihood; the concept of social justice and "the concept of Welfare State". The following issues were considered by the Court:

i. Whether on abolition the contract labour are entitled to be absorbed; if so, from what date?

ii. Whether the High Court under Art.226 has power to direct their absorption on abolition; if so, from what date?

iii. Whether it is necessary to make a reference under Sec. 10 of the ID Act for adjudication of dispute qua absorption of the contract labour?

iv. Whether the view taken by this Court in Dena Nath\(^35\) and Gujarat State Electricity Board's case\(^36\) is correct in law?

v. Whether the workmen have got a right for absorption and, if so, what is the remedy for enforcement?

The Court held that the Act does not provide for total abolition of the contract labour system. The Act regulates contract labour system to prevent their exploitation and provides for its abolition in certain circumstances but also provides for "matters connected there with". This phrase "matters connected there with" gives clue to the intention of the Act.

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\(^35\) 1992 (64) F.L.R. 39 SC.
\(^36\) AIR 1995 SC 1893.
The enforcement of the provision to establish canteen under Sec.16 is to supply food at the subsidised rates to the workmen, as it is a right to food, a basic human right. The provision in Sec.17 to provide rest rooms to the workmen is a right to leisure contained in Art.43 of the Constitution. Supply of wholesome drinking water, establishment of latrines and urinals as enjoined under Sec. 18 are part of basic human right to health assured under Art.39 and right to just and human conditions of work ensured under Art. 42. All of them are fundamental human rights to life guaranteed under Art. 21. When the principal employer is enjoined to ensure those rights and payment of wages while the system is under regulation, the question arises whether after abolition of the system that workmen should be left in lurch denuding them of the means of livelihood and the enjoyment of the basic fundamental rights provided while the contract labour system is regulated under the Act. When once contract labour system stands abolished under Sec.10 the concomitant result would be that the source of regular employment becomes open. Does the Act intend to deny the workmen to continue to work under the Act or does it intend to denude them of the benefit of permanent employment and if so, what would be the remedy available to him. The phrase "matter connected there with" in the preamble would furnish the consequence of abolition of contract labour. In this behalf, the *Gujarat Electricity Board case*37, attempted, to fill in the gap but it also fell short of full play and got beset with respect insurmountable difficulties in its working. With due

37. AIR 1995 SC 1893.
respect, such scheme is not within the spirit of the Act. The Act did not intend to denude the workmen of their source of livelihood and means of development, throwing them out from employment. Right to facilities and opportunities are only part of and means to right to development. Without employment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, at least they had the work and thereby earned livelihood. The Division Bench in *Dena Nath*\(^{38}\) has taken too narrow a view on technical considerations without keeping at the back of the mind the Constitutional animations and the spirit of the provisions and the object which the Act seeks achieve. The abolition of Contract labour system ensures right to workmen for regularization of them as employees in which they were hitherto working as contract labour. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen of the erstwhile contractor. The *Gujarat Electricity Board's case*\(^{39}\) being of the co-ordinate Bench appears to have softened the rough edges of *Dena Nath's ratio*\(^{40}\). The object of the Act is to prevent exploitation of labour. Sec.7 and Sec 12 enjoin the principal employer and the contractor to register and obtain the license under the Act, to supply the number of labour required by the principal employer through the contractor, to regulate their payment of wages and conditions of service and to provide

\(^{38}\) 1992 (64) F.L.R. 39 SC.

\(^{39}\) AIR 1995 SC 1893.

\(^{40}\) 1992 (64) F.L.R. 39 SC.
welfare amenities during the subsistence of the contract labour system. The failure to get the principal employer and the contractor registered under the Act visits with penal consequences under the Act. The object, thereby, is to ensure continuity of work to the workmen in strict compliance of law. On abolition of contract labour, the intermediary, i.e., contractor is removed from the field and direct linkage between the labour and principal employer is established. Thereby, the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified.

If the interpretation in Dena Nath's case\textsuperscript{41} is given acceptance, it would be an open field for the principal employer to freely flout the provisions of the Act and engage workmen in defiance of the Act and adopt the principle of hire and fire making it possible to exploit the appalling conditions in which the workmen are placed. The object of the Act thereby gets unduly shattered and easily defeated. Dena Nath's\textsuperscript{42} ratio falls foul of the constitutional goals of trinity, i.e., viz Preamble, the Fundamental Rights and the Directive Principles, they are free launchers to exploit the workmen. The contractor is an intermediary between the workmen and the principal employer. The moment the system stands prohibited under Section 10(1), the direct relationship has been provided between the workmen and the principal employer.

\textsuperscript{41} Ibid
\textsuperscript{42} Ibid.
Further it was held that the judicial function of the Court in interpreting the Constitution and the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 requires to build up the continuity of socio-economic improvement to the poor and to sustain equality of opportunity and status and the law should constantly meet the needs and aspirations of the society in establishing the egalitarian social order. When the Instrumentality, Agency or person renders an element of public service and is accountable to health and strength of the workers, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full and social and cultural activities to the workmen. All essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comfort, food, shelter, clothing and health. Due to economic constrain the right to work was not declared as a fundamental right. The right to work cannot, as a right be claimed but after the appointment to a post be it under a State, its agency, juristic person or private entrepreneur it is required to be dealt with as per public element and to act in public interest assuring equality which is the genus of Art.14 and all other commitment rights emanating there from are species to make their right to life real and meaningful. Fundamental Rights and Directive Principles are Fundamental Rights to every citizen. In *Minerva Mills Ltd. V*
Union of India\textsuperscript{43} it was held that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the equalitarian social order. In \textit{Frances Corali Mullin V The Administrator}\textsuperscript{44}, \textit{Olga Tellis V Bombay Municipal Corporation}\textsuperscript{45}, \textit{Delhi Transport Corporation V D.T.C. Mazdoor}\textsuperscript{46}, it was held that the right to life enshrined in Art.12 means something more than survival of animal. It would include the right to live with human dignity. Further it was held in \textit{Olga Tellis}\textsuperscript{47}, that the deprivation of right to livelihood would denude the life itself. In \textit{State of Maharashtra V Chandrabhan}\textsuperscript{48}, it was held that right to dignity, right to health are part of right to life.

Finally it was held that Directives provided in Articles 39, 42, 43 read with Sec.16, 17, 18 of the Act are all fundamental basic human rights to the workmen and facets of right to life guaranteed under Art.21. When the principal employer is to ensure those rights and payment of wage while the contract labour system is under regulation the question arises whether after abolition of the contract labour system should they be left in a lurch denuding them of the means of livelihood and the enjoyment of basic fundamental rights provided under the Act? The Act did not intend to denude them of their source of livelihood once the system is abolished.

\textsuperscript{43} . (1980) 3 SCC 625
\textsuperscript{44} . (1981) 1 SCC 608
\textsuperscript{45} . (1985) 3 SCC 545
\textsuperscript{46} . AIR 1991 SC 101
\textsuperscript{47} . (1985) 3 SCC 545.
\textsuperscript{48} . (1983) 3 SCC 387
The right to means of livelihood is also a constitutional right. Abolition of contract labour system ensures right to the workmen for regularization as employees in the establishment. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen.

There is however, a total unanimity of judicial pronouncements to the effect that in the event, the contract labour is employed in an establishment for seasonal workings, the question of its abolition would not arise; but in the event of the same being of perennial in nature, that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since, involvement of contractor may have its social evil of labour exploitation and thus the contractor ought to go out of scene bringing together the principal employer and the contract labourers, rendering the employment as direct, and resultantly as direct employees.

9.7. Trends during the Dominant Era of Globalisation:

It may be recalled that the Government of India constituted the Second National Commission of Labour in the year 1999 with a two fold terms of reference, followed by two interim assaults. The first being the
Budget Speech of Mr. Yashwant Sinha's as Finance Minister in March 2001 stating that the Government had decided to introduce amendments to the Industrial Disputes Act, 1947 and the Contract Labour (Regulation & Abolition) Act, 1970 the other was the Prime Minister's appointed Task Force on Employment Opportunities under the Chairmanship of Planning Commission member Montek Singh Ahluwalia. The Task Force Report, submitted on July 2, 2001 provided a blueprint for intended adverse labour reforms. With reference to the labour sector, the Report was aimed to amend the three important labour legislations. They are i) the Trade Unions Act, 1926, ii) the Industrial Disputes Act, 1947 and iii) the Contract Labour (Regulation & Abolition) Act, 1970. The justifiable reason according to the report was that "the existing labour laws and particularly the way they have been administered and implemented have unintended effect of discouraging employers from investing and expanding in labour-intensive areas. This has made us uncompetitive in these areas in export markets, denying us the possibility of large expansion in organized sector employment. Thus the Government pending the submission of the Report of the Second National Commission on Labour has already made clear its final decisions on important controversial labour issues.

The Steel Authority Of India V National Union Water Front Workers
and others⁴⁹, the Court considered the following three vital issues:

⁴⁹ (2001) 7 SCC 47.
a. What is the true and correct import of the expression 'appropriate government' as defined in cl. (a) of sub section (1) of Section 2 of the Act;

b. Whether the notification dated December 9, 1976 issued by the Central Government under Sec. 10(1) of the Act is valid and applies to all Central Government companies and

c. Whether automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on issuance of a valid notification under Sec. 10(1) of the Act, prohibiting the contract labour in the concerned establishment.

Before considering the above noted issues, the Court at the first instance observed that the history of exploitation of labour is as old as the history of the civilization itself. There has been an ongoing struggle by labourers and their organizations against such exploitation but it continues in one form or the other. After the advent of the Indian Constitution, the State is under an obligation to improve the lot of the work force. It is now well settled that in interpreting a beneficial legislation enacted to give effect to Directive Principles of the State Policy, which is otherwise constitutionally, valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting or doing violence to the provisions of
the enactment. The Act was enacted by the Parliament to deal with the abuses of contract labour system. Two methods are adopted to curb the abuses of employment of contract labour – the first is to regulate employment of contract labour suitably and the second is to abolish it in certain circumstances.

For the purpose of clarity and contentment, the ratio that has emerged in respect of the third issue is dealt here. In this context the Court held that, the eloquence of the 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 the 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 longer period earlier. These may be due to some reasons as to why no specific provision is made for automatic absorption of contract labour in the Act.

Sec. 10 of the Act does not provide any implicit requirement of automatic absorption of contract labour by the principal employer in the concerned establishment on issuance of notification by the appropriate Government under Sec. 10 prohibiting employment of contract labour in a given establishment.

Further the Court observed that the judicial decisions rendered before and after the enactment of the legislation have not directed the absorption of contract labour by the principal employer on such abolition of the contract labour system with the sole exception of AIR India Corporation case. (Overruled by this Court in the instant case).

The Court next examined some of its important decisions and analyzed their summary in the following two heads:

1. Where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because

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50. AIR 1997 SC 645.
the industrial adjudicator ordered abolition of contact labour
or because the appropriate Government issued notification
under Sec. 10 (1) of the Act, no automatic absorption of the
contract labour working the establishment could be ordered.

2. Where the contract was found to be a sham
and nominal rather a camouflage, in which case the contract
labour working in the establishment of the principal employer
were held, in fact and in reality, the employees of the
principal employer himself. Indeed, such cases do not relate
to abolition of contract labour but present instances wherein
the Court pierced the veil and declared the correct position
as a fact at the stage after employment of contract labour
stood prohibited, and

Finally the Court held that on an exhaustive consideration of the
provisions of the Act it has already been held herein that neither they
contemplate creation of direct relationship of master and servant between
the principal employer and the contract labour nor can such relationship
be implied from the provisions of the Act on issuing notification under Sec.
10(1) of the Act, a fortiori much less can such a relationship be found to
exist from the Rules and the forms made thereunder.
Further the Court considered the cases where an industrial dispute is raised in regard to service conditions of the contract labour subsequent to issuance of prohibition notification and ruled that the adjudicator can grant the following reliefs:

1. On issuance of prohibition notification under Sec 10(1) of the 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 Tribunal 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.

2. 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 regularize 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 the following para herein.

3. If the contract is found to be genuine and prohibition notification under Sec. 10(1) of the Act in respect of the establishment concerned has been issued by the app. Government, prohibition 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, 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.

The Court also laid down the consequences that follow upon the issuance of notification under Sec 10(1) of the Act.⁵¹

1. The contract labour working in the establishment concerned at the time of issue of notification will cease to function.

⁵¹ These guidelines go contrary to the ratio laid down in Gujarat Electricity Board case, (Supra) wherein the Court held that even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material before him can decide as to who and how many workmen should be absorbed and on what terms.
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 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 utilize the services of the contract labour in any other establishment in respect of which no notification under Sec. 10(1) has been issued where all the benefits under the 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 Industrial Disputes Act, 1947.

9.8. Impact of this Judgment in subsequent decisions of the High Court:
In Municipal corporation of Greater Mumbai v Kachara Vahatak Sramik Sangh⁵², the Court set aside the judgment of Division Bench of Bombay High Court that the labour contract was not genuine and contract workers were the employees of the principal employer, i.e. BMC, because there was no compliance of the provisions of the Act by the contractor and also by BMC. The Court observed that the conclusion that the contract was a sham or it was only camouflage, cannot be arrived at as a matter of law, for non-compliance of the provisions of Contract Labour Act, but a finding must be recorded based on evidence, particularly when disputed by an industrial adjudicator as laid down in various decisions by this Court, including the judgment in case of Steel Authority of India⁵³. Finally the Court held that it is only in industrial adjudication that facts and circumstances can be investigated to ascertain the nature of employment.

9.9. The Observations:

The judgment of the Supreme Court in Steel Authority of India case,⁵⁴ comes in an era where the laissez faire doctrine of 'hire and fire' rule is taking its rebirth in India under the guise of liberalization and globalization competition. The rate of unemployment growth in the country is rapidly increasing due to the fact that the organised sector employment is in the state of complete receding. The exploitation of

⁵² (2002) 4 SCC 604
⁵³ (2001) 7 SCC 01.
⁵⁴, Ibid.
labour under casuliazation, contractlization and temporary situations are rampant in the country. The strength of the unorganized sector workers has increased rapidly in a span of ten years from 1990 onwards. Under these circumstances the Supreme Court calculatedly rendered a judgment, which run counter to the Constitutional philosophy of social justice. The Supreme Court demonstrated this type of trend even in respect of areas relating to important labour rights.