* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.03.2022
Date of decision: 31st May, 2022

\+ **LPA 172/2021 & CM APPL. 17589/2021**

CENTRAL WAREHOUSING CORPORATION ..... Appellant
Through: Mr.Vikas Singh, Sr. Adv. with Mr.K.K. Tyagi and Mr.Iftekhar Ahmad, Advs.

versus

GOVT OF INDIA AND ORS ..... Respondents
Through: Mr.R.V. Sinha, Sr.CGC with Mr.A.S. Singh, Mr.Amit Sinha & Ms.Sharanya Sinha, Advs. for R-1.
Mr.Asha Jain Madan & Mr.Mukesh Jain, Advs. for R-2 to R-225.
Mr.Neeraj Shekhar, Dr.Sumit Kumar, Mr. Abhishek Pandey & Mr. Hemant Kumar Sunny, Advs.for R-227.
Mr.Harvinder Singh & Mr.Akhand Pratap Singh, Advs. for Suman Forwarding Agency Pvt. Ltd.

\+ **LPA 173/2021 & CM APPL. 17645/2021**

CENTRAL WAREHOUSING CORPORATION ..... Appellant
Through: Mr.Vikas Singh, Sr. Adv. with Mr.K.K. Tyagi and Mr.Iftekhar Ahmad, Advs.

versus

VIJAY BAHADUR PAL AND ORS ..... Respondents

Through: Mr.Ashok Agarwal, Mr.Kumar Utkarsh, Mr.Manoj Kumar, Advs. for R-1 to R-107.
Mr. Neeraj Shekhar, Dr.Sumit Kumar, Mr. Abhishek Pandey & Mr. Hemant Kumar Sunny, Advs.for R-227
Mr.Harvinder Singh & Mr.Akhand Pratap Singh, Advs. for Suman Forwarding Agency Pvt. Ltd.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. These two appeals have been filed by the appellant challenging the Impugned Judgment and Order dated 17.05.2021, passed by the learned Single Judge in CM No.1291 of 2021 and CM No.2812 of 2021 filed in W.P.(C) 482 of 2021 (challenged in LPA 173 of 2021) and CM No.742 of 2021 in W.P.(C) 4114 of 2008 (challenged in LPA 172 of 2021). By way of the Impugned Order, the learned Single Judge has directed the appellant herein to continue the services of the workmen who were on the rolls of M/s Suman Forwarding Agencies Private Limited (hereinafter referred to as 'M/s SFPL'), the earlier contractor of the appellant, as on 05.01.2021 and continue to deploy at them at the concerned establishment, that is, the Inland Clearance Depot (in short, 'ICD'), Patparganj, Delhi, through a contractor of its choice, on the same terms and conditions, till such time a final decision is reached in the pending

proceedings, which would include W.P.(C) 4114 of 2008 and in the two references, that is, I.D. No.142 of 2015 and I.D. No.57 of 2015.

2. W.P.(C) 4114 of 2008 had been filed by the appellant herein challenging the Notification dated 17.11.2006 of the Government of India, Ministry of Labour and Employment (hereinafter referred to as the 'Notification dated 17.11.2006'), prohibiting the employment of contract labour in the works of handling of import and export containers and cargo, their loading and unloading from road vehicles, and their stuffing or destuffing in and from containers, in the establishment of the Central Warehousing Corporation (hereinafter referred to as the 'CWC'), Village Ghazipur, Patparganj, Delhi (hereinafter referred to as 'ICD, Patparganj').

3. CM No. 742 of 2021 was filed by the respondent nos. 2 to 225 in W.P.(C) 4114 of 2008, claiming therein that many of the respondents/workers have been working for the appellant at the ICD, Patparganj, for the last about three decades and have raised an industrial dispute, being I.D. No. 57 of 2015, claiming regularisation of their services, which is pending adjudication before the Central Government Industrial Tribunal-cum-Labour Court (in short, the 'CGIT'). The respondents/workmen prayed for a stay on termination of their services.

4. W.P.(C) 482 of 2021 was filed by 105 workmen against the appellant, M/s SFPL and M/s Rahul Roadways (hereinafter referred to as 'M/s RR'), claiming that they had been appointed as contract labour on different dates during the period ranging from the year 1985 to the year 2002. Though several contractors were changed, the workmen were

continued in services as contract labour with the appellant/CWC being the principal employer. The workmen, who were the petitioners in the writ petition alongwith certain other workmen, raised an industrial dispute, which was referred by the Government of India for adjudication to the CGIT, vide order dated 04.06.2015 and has been registered as I.D. No. 142 of 2015. The same is pending adjudication before the CGIT, however, in the absence of a Presiding Officer, the same is being adjourned from time to time. They claimed that in the meantime, as the appellant/CWC threatened termination of their services, they have filed the said writ petition praying for a restraint on the appellant/CWC from terminating their services during the pendency of the above stated industrial dispute.

5. The application, being CM No. 1291 of 2021, was filed by the workmen/writ petitioners, in W.P.(C) 482 of 2021, praying for interim orders restraining the appellant/CWC from terminating the services of the petitioners.

6. On the above application, the learned Single Judge, vide order dated 13.01.2021, directed M/s RR, the new contractor employed by the appellant/CWC, to maintain *status quo* with regard to the workmen/writ petitioners, obtaining as on 13.01.2021, till further orders.

7. Another application, being CM No. 2812 of 2021, was thereafter filed by the workmen/petitioners in W.P.(C) 482 of 2021, claiming that in spite of the interim order dated 13.01.2021, M/s RR was not allowing the petitioners therein to resume duty. The petitioners therein, therefore, sought clarification of the order dated 13.01.2021 and, in the alternative,

prayed for a direction to M/s RR, who had been impleaded as the respondent no. 3 in the said writ petition, to permit the petitioners therein to forthwith resume their duty.

8. The learned Single Judge, by way of the Impugned Order, observed that it is not in dispute that although as many as four contractors have been changed by the appellant/CWC between 2001 and 05.01.2021, when M/s RR was appointed as one of the contractors, a substantial number of workmen have remained on the rolls of one contractor or the other. It was also not in dispute that the industrial dispute(s) raised by the workmen are pending adjudication before the learned CGIT. The learned Single Judge has held that the *status quo* was disturbed by the appellant/CWC without taking express permission of the Industrial Tribunal under Section 33(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act'), which, according to the learned Single Judge, was attracted to the facts of the petition. The learned Single Judge has further held that though the Notification dated 17.11.2006, prohibiting the employment of contract labour at the ICD Patparganj, had been stayed by the Court in the writ petition filed by the appellant/CWC, being W.P.(C) 4114 of 2008, vide order dated 28.05.2008 (which was made absolute on 26.04.2010), the said interim order did not efface either the findings of the Central Advisory Contract Labour Board (hereinafter referred to as the 'CACLB') or the Notification dated 17.11.2006, which was based on these findings. The learned Single Judge has held that the appellant/CWC was therefore, wrong in replacing the workmen while the above disputes were pending consideration.

Background Facts

9. Before we take note of the submissions made by the learned counsels for the respective parties, the facts leading up to the present appeals need mention and are stated as under:

9.1 The appellant/CWC has been operating the ICD Patparganj on licence being granted by the Customs Authorities since 1985. For the purpose of handling and transporting the containers, the appellant/CWC appoints the handling and transport contractors.

9.2 In January 2000, one Sh. Inderdev Paswan and 96 others, filed a writ petition before this Court, being Civil Writ Petition No. 48 of 2000, *inter alia*, claiming for regularisation of their services and issuance of a notification for abolition of contract labour at the ICD facility of the appellant/CWC. A similar writ petition, being Civil Writ Petition No. 4407 of 2000, was filed by one Sh. Subhash Chaurasia and 58 others. An interim order, directing that the services of the petitioners be not replaced with any other contract labour, was passed by this Court in the said writ petitions.

9.3 The above-said writ petitions were disposed of by an order dated 17.10.2000, referring the dispute between the parties to the CACLB for making an appropriate recommendation, if any, on whether the contract labour requires to be abolished. In the meantime, the interim order was directed to be continued till the disposal of the reference and it was clarified that the services of the petitioners therein would not be substituted with any other contract labour, however, that would not mean that the petitioners were at liberty to flout any legal and valid orders

passed by the respondents pertaining to their duties and shifts. It was further clarified that the petitioners therein would, if entitled, be paid overtime allowances.

9.4 The CACLB, in the minutes of its 53rd meeting held on 11th – 12th March, 2003, made recommendations to the Government of India for prohibiting the employment of contract labour in the work of handling of import and export containers and cargo, their loading and unloading from road vehicles and their stuffing and destuffing in or from containers in the ICD Patparganj. In making the said recommendation, the CACLB reached the following findings:

> " *The Board after taking into account the submissions of the parties, the report of the Committee constituted by it and the factors set out in sub section (2) of Section 10 of the Contract Labour Act came up with the following findings:-*
>
> *(a) The work of storage of handling of import and export container/cargo, loading and unloading of import and export cargo from road vehicle, their stuffing/destuffing in containers is being carried out in the establishment of ICD at Patparganj, CWC since 1985 through contract labour. Contractors have changed but the workers engaged by them remain the same.*
>
> *(b) The workers are paid minimum wages as prescribed by the Government of NCT of Delhi which is approximately Rs.2700/- to Rs.3000/- per month and quite low in comparison to the wages paid to the lowest category of regular employees which comes to about Rs.5500/- to Rs.7500/-. No leave. enhancement of wages on an yearly basis medical facilities, bonus etc. are available to the workmen engaged through contractors though welfare amenities to be*

provided under the Act have been adhered to.

(c) The processes/operations carried out are perennial in nature and of sufficient duration which has been established by the fact that these workmen are working in the establishment since its inception that is 1985.

(d) There is sufficient work to employ considerable number of whole time workmen because though there has been gradual mechanization of the operations as endenced by the decline in the manpower deployed in the year 2002 as against the year 2001, the fact remains that even the mechanical operations cannot be run without the help of manual labour, however, less the number may be.

(e) Reduction in business due to coming up of a Mega Container Terminal at Dadri and withdrawal of licence by the customs authorities are only assumptions which cannot be taken into account. Even if the licence is withdrawn, similar treatment as would be applicable to regular workmen can be accorded to existing contract labour, if they are regularized.

(f) The work is ordinarily done through regular workmen in the similar establishment of Container Corporation of India."

9.5 Based on the recommendation of the CACLB, the Government of India, Ministry of Labour and Employment, issued the Notification dated 17.11.2006, prohibiting the employment of the contract labour in the works of handling of import and export containers and cargo, their loading and unloading from road vehicles and their stuffing, destuffing in

and from containers in the establishment of the appellant/CWC from the date of publication of the Notification dated 17.11.2006.

9.6 Aggrieved of the above Notification dated 17.11.2006, the appellant/CWC challenged the same before this Court by way of a writ petition, being W.P.(C) 2849 of 2007. The said writ petition was disposed of by this Court vide order dated 24.04.2007, with the observation that in view of the judgment of the Supreme Court in ***ONGC* v. *Collector of Central Excise*[1],** the disputes are first to be raised before a High-Powered Committee for appropriate clearance.

9.7 By a communication dated 01.05.2008, the Government of India communicated its clearance for the appellant/CWC to pursue its remedy in a writ petition before this Court, whereafter, the appellant/CWC filed the petition, being W.P.(C) 4114 of 2008 (out of which the present appeal, being LPA No.172 of 2021, arises), challenging the Notification dated 17.11.2006.

9.8 This Court, vide its interim order dated 28.05.2008, was pleased to stay the operation of the Notification dated 17.11.2006. The interim order was confirmed by this Court vide its order dated 26.04.2010.

9.9 182 workmen, employed by M/s SFPL, raised their industrial dispute, being I.D. No. 57 of 2015. Another industrial dispute, being I.D. No. 142 of 2015, was also initiated at the instance of 115 workmen purportedly employed by M/s SFPL.

[1] (2004) 6 SCC 437.

9.10 Pursuant to an open tender, M/s RR was appointed by the appellant/CWC as a contractor in the handling and transportation of ISO containers and allied services at the ICD, Patparganj.

9.11 M/s RR claims that vide its letter dated 05.01.2021, it supplied a list of 120 authorised employees to the Manager, CWC, stating that they would start their work from 06.01.2021. From 06.01.2021 these workmen started to work at the ICD facility.

9.12 The respondent nos. 2 to 225 filed an application, being CM No. 742 of 2021, in W.P.(C) 4114 of 2008, praying for a stay on the termination of their services. Notice in the application was issued by the learned Single Judge vide order dated 08.01.2021. In the meantime, 105 other workmen filed their independent petition, being W.P.(C) 482 of 2021. On this writ petition, the learned Single Judge, vide order dated 13.01.2021, directed M/s RR to maintain *status quo*.

9.13 Another application, being CM No. 1291 of 2021, was filed by the writ petitioners in W.P.(C) 482 of 2021, complaining that in spite of the order dated 13.01.2021, they were not allowed to work by M/s RR.

9.14 As noted hereinabove, the learned Single Judge was pleased to dispose of the above three referred applications by way of Impugned Order.

Submissions of the Appellant

10. Mr Vikas Singh, the learned senior counsel for the appellant, submits that in terms of the judgment of the Supreme Court in ***Steel Authority of India Ltd. & Ors.*** **v.** ***National Union of Waterfront***

Workers[2], no right to claim employment with the principal employer, accrues in favour of the contract labour, even if a notification prohibiting contract labour is issued by the appropriate government. He submits that, in any case, the Notification dated 17.11.2006 having been stayed by this Court in the writ petition filed by the appellant/CWC, no reliance thereon can be placed for the present to grant any interim protection of employment to the respondent-workmen. He submits that, therefore, the reliance of the learned Single on the Notification dated 17.11.2006 in the Impugned Order cannot be sustained.

10.1 He further submits that the reliance of the learned Single Judge on Section 33 of the ID Act also cannot be sustained, inasmuch as, as of now, the contract labour has not been declared as sham or bogus. The contract labour continues to be governed by the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the 'CLRA Act'), which provides for a complete code dealing with the contract labour. In fact, the industrial dispute raised by the workmen is itself not maintainable before the CGIT.

10.2 The learned senior counsel for the appellant further submits that, even otherwise, the Notification dated 17.11.2006 issued by the Central Government, is not sustainable and is liable to be set aside by this Court. He submits that the CACLB, in issuing its recommendations, had wrongly stated that the similar establishment of Container Corporation of India is getting the same work through regular workmen. This is factually incorrect. He submits that the recommendations were even otherwise

[2] (2001) 7 SCC 1.

based on the conjunctures and failed to take into account relevant circumstances.

10.3 The learned senior counsel for the appellant further submits that the Impugned Order is liable to be set aside inasmuch as it has granted final relief at the interim stage. The Impugned Order further directs *status quo ante*, which could not have been granted at an interim stage.

10.4 He further submits that the appellant/CWC has, in fact, introduced a number of SVRS Schemes and as against the regular employee strength of 8579 in the year 2000-01, the strength in the year 2021 is only 2642. The total number of Twenty Equivalent Units (in short, 'TEUs') handled at the ICD, Patparganj, in the year 2000 was 47496, which has been reduced to 17183 in the year 2020 and has further gone down drastically thereafter. He submits that the Impugned Judgment would make the entire functioning of the ICD, Patparganj unviable, which may even lead to the closure of the unit. He submits that M/s RR, the new contractor, is being paid on the basis of the TEUs and not on the basis of workmen employed. He submits that therefore, the implementation of the interim order passed by the learned Single Judge, will lead to an irreparable injury to the appellant/CWC and M/s RR.

Submissions on behalf of M/s RR

11. To maintain the continuity of the submissions made against the Impugned Judgment, we now record the submissions made by Mr Neeraj Shekar, Advocate appearing on behalf of M/s RR.

11.1 He submits that pursuant to the Notice Inviting E-Tender dated 29.09.2020, for being appointed as a contractor for the handling and

transportation of ISO containers and allied services at the ICD, Patparganj, floated by the appellant/CWC, M/s RR, being successful, was awarded the contract, vide letter dated 11.12.2020. In terms of the tender document, M/s RR, vide letter dated 05.01.2021, supplied a list of 120 employees to the Manager, CWC, stating that they would start their work on 06.01.2021. These employees started the work from 06.01.2021. He submits that M/s RR has applied for a Contract Labour Licence under the CLRA Act. He further submits that neither the tender document nor the Agreement provides that M/s RR is required to employ the respondents/workmen, on a contractual basis or otherwise, for discharging the obligation under the contract and, therefore, no direction could have been issued against M/s RR for continuing with the employment of respondents/workmen. He submits that no employer-employee relationship ever existed between the respondents/workmen and M/s RR.

Submissions on behalf of M/s SFPL

12. As noted hereinabove, we first are taking note of submissions made against the Impugned Judgment. Accordingly, we take note of submissions made by Mr Harvinder Singh, Advocate appearing on behalf of M/s SFPL.

12.1 He submits that directions, as issued by the Impugned Judgment, could not have been passed till the final decision is reached in the industrial dispute(s) raised by the workmen. He further submits that the workmen have been taking an inconsistent stand in various proceedings by, first, contending to be contract labour, and later, claiming that such a

contract was a sham. He further adopted the submissions of Mr. Vikas Singh, the learned senior counsel appearing for the appellant/CWC.

Submissions of Ms Asha Jain Madan, the learned counsel appearing for the workmen in LPA 172/2021

13. Ms. Madan, the learned counsel for the workmen in LPA 172 of 2021, submits that the respondents/workmen herein have been working with the appellant/CWC with effect from different dates from the year 1986. Though the contractors have been changed, yet the respondents/workmen have continued in the employment of the appellant/CWC and have been seeking regularisation of their services ever since the year 2000 and that, except 25 workmen, the other respondents, who were the petitioners in the writ petitions, being Civil Writ Petition 4407 of 2000 and Civil Writ Petition 48 of 2000, have continued in service of the appellant/CWC.

13.1 She further submits that the CACLB, in its recommendations, found that the work carried out by the workmen is perennial in nature and that their employment through contract labour should be prohibited for the appellant/CWC. This recommendation has been accepted by the Government of India. Merely because the Notification dated 17.11.2006 has been stayed by this Court, the workmen cannot be put in a worse position and be made to go out of their job.

13.2 She further submits that the Supreme Court, in ***Steel Authority of India*** (*supra*), relied upon by the appellant/CWC, has held that the workmen can prove that they were, in fact, employed by the principal employer and the contract labour was a sham. Even otherwise, the

contract labour cannot be replaced by another contract labour. She submits that, therefore, the respondents/workmen were, at least, entitled to be given preference in employment by the new contractor.

13.3 On Section 33 of the ID Act, she submits that the respondents/workmen have also raised an industrial dispute, which is pending adjudication before the learned CGIT. In view of Section 33 of the ID Act, the employer is bound to maintain *status quo* as regards the services of the workmen. In this regard, she places reliance on the following judgments:

(*i*) ***The Bhavnagar Municipality* v. *Alibhai Karimbhai & Ors.***[3];

(*ii*) ***T.N. State Transport Corporation* v. *Neethivilangan, Kumbakonam***[4]; and

(*iii*) ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.* v. *Ram Gopal Sharma & Ors.***[5].

13.4 She further submits that in the present case, the workmen had immediately approached the learned Single Judge on the new contractor being appointed and on being threatened of being terminated from their services. The learned Single Judge, vide interim order dated 13.01.2021, directed the maintenance of *status quo*. The appellant/CWC and M/s RR did not comply with the said order. The learned Single Judge has, therefore, rightly clarified that *status quo* has to be maintained as on

[3] (1977) 2 SCC 350.

[4] (2001) 9 SCC 99.

[5] (2002) 2 SCC 244.

05.01.2021. She submits that this is not the case of passing of *status quo ante* as contended by the appellant/CWC.

13.5 She submits that even otherwise, the balance of convenience is in favour of the respondents/workmen inasmuch as they would be out of work and not have any means of earning a livelihood. She submits that while the appellant/CWC contends that the respondents/workmen are not employed by it, M/s SFPL is also not ready to own the respondents/workmen. It is not permitted either in equity or in law.

Submissions of Mr Ashok Aggarwal, the learned counsel appearing on behalf of the workmen in LPA 173 of 2021

14. Mr. Ashok Aggarwal, Advocate appearing for the respondents/workmen in LPA 173 of 2021, submits that the workmen herein have been working with the appellant/CWC for the last 18 to 35 years. Though, since then, nine contractors have changed, yet the respondents/workmen have continued in service. He submits that the respondents/workmen have filed an industrial dispute claiming regularisation of their services. During the pendency of such industrial dispute before the CGIT, the appellant/CWC has, however, in fact, terminated their services, which is in violation of Section 33(2)(b) of the ID Act. He submits that, therefore, the learned Single Judge was justified in granting an interim order in favour of the respondents/workmen.

14.1 He submits that even otherwise, one set of contract labour cannot be replaced with another set of contract labour. In support of his submission, he places reliance on the judgment dated 02.09.2019, titled ***Sh. Hemant Kumar & Ors.*** **v.** ***Employees State Insurance Corporation***

& Ors.[6], and on the judgment dated 26.05.2000, titled ***Rajender Lal & Ors.*** **v.** ***Union of India & Ors***.[7]

14.2 He reiterates that the respondents/workmen have been left without any means of earning livelihood and, therefore, are entitled to a direction of reinstatement in services.

Analysis and Findings

15. We have considered the submissions made by the learned counsels for the respective parties.

CLRA Act

15.1 At the outset, we shall first make a reference to the judgment of the Supreme Court in ***Steel Authority of India*** (*supra*). The said judgment overruled the earlier judgment of the Supreme Court in ***All India Statutory Corporation*** **v.** ***United Labour Union & Ors.***[8], wherein it had been held that though there is no express provision in the CLRA Act for absorption of the contract labour, when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the CLRA Act, from that moment, the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer. In ***Steel Authority of India*** (*supra*), however, the Supreme Court laid down the following

[6] W.P. (C) 6891 of 2019.

[7] Civil Writ Petition No. 3741 of 1998.

[8] (1997) 9 SCC 377.

consequences on the issuance of 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 utilize 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.*"

15.2 The Supreme Court has held that there is no implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on the issuance of a notification by the appropriate Government under Section 10(1) of the CLRA Act prohibiting employment of contract labour in a given establishment. We quote paragraph 105 of the judgment hereunder:-

"***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.*"

15.3 The Supreme Court has further held that there can, however, be cases 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 was held, in fact and in reality, the employees of the principal employer himself. Such cases do not relate to abolition of contract labour but 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. Again, we may do no better but to quote paragraph 107 of the judgment, as under:-

> "***107.*** *An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) 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; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.*"

15.4 The Supreme Court summarised its findings in the judgment, as under:

> *"**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 co 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

(2) having regard to

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

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

(b)Inasmuch as the impugned notification issued by the Central Government on 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 [Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 : 1997

SCC (L&S) 1344] 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 [Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 : 1997 SCC (L&S) 1344] 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 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.*"
>
> (Emphasis supplied)

15.5 A reading of the above judgment would show that even if the Notification dated 17.11.2006 is upheld by this Court by dismissing the writ petition filed by the appellant/CWC, that is W.P.(C) 4114 of 2008, it would not lead to a position where the respondents/workmen can, as a natural corollary, claim direct employment under the appellant/CWC. Nor can they claim automatic absorption in the appellant/CWC. An independent exercise would have to be carried out, by raising an industrial dispute, that has been so raised by the workmen in the present case, on the issue of whether the contract of employment through the contractors was not genuine but a mere camouflage. It is only when it is so found that the employment through the contractor was a camouflage, that the contract labour will be treated as the employees of the principal employer, that is the appellant/CWC, and shall be directed to be regularised in services of appellant/CWC. On the other hand, on enquiry, if it is found that the contract is genuine, the only direction that can be passed is that where the principal employer, that is the appellant/CWC herein, intends to employ regular workmen, it shall have to give a preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to the 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.

15.6 In the present case, not only is the Notification dated 17.11.2006-prohibiting the employment of the contract labour stayed by this Court vide its order dated 28.05.2008 (as confirmed on 26.04.2010), but also the industrial dispute(s) raised by the respondents/workmen claiming their contract to be a sham and camouflage, pending adjudication before the CGIT.

15.7 Therefore, until the Notification dated 17.11.2006 and the employment of respondents/workmen held to be a camouflage adopted by the appellant/CWC, the respondents/workmen cannot claim to be direct employees of the appellant/CWC or claim absorption in the services of the appellant/CWC as a matter of right. Equally, no protection of their services can be granted in the interim as that would amount to granting a final relief at the interim stage itself. The respondents/workmen would have to succeed in their industrial dispute by showing that their employment as contract labour was a sham and camouflage adopted by the appellant/CWC, before they are held entitled to any relief.

Section 33 of the ID Act

15.8 As far as Section 33 of the ID Act is concerned, its application presupposes an employer-employee relationship to exist between the parties.

15.9 Sub-sections (1), (2) and (3) of Section 33 of the ID Act are reproduced, as under:

"***33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—*** *(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,--*

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he

> *has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.*
>
> *(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--*
>
> *(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or*
>
> *(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,*
>
> *save with the express permission in writing of the authority before which the proceeding is pending.*
>
> *Explanation.-- For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf."*

15.10 Sub-section (1) of Section 33 of the ID Act prohibits the "*employer*" during the pendency of any conciliation proceedings before the conciliation officer or a Board or any proceedings before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute from altering, to the prejudice of the workmen concerned, the conditions of service applicable to such workmen

immediately before the commencement of such proceedings in regard to any matter connected with the dispute or for any misconduct connected with the dispute; discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, except with the express permission in writing of the authority before which the proceeding is pending.

15.11 Sub-section (2) of Section 33 of the ID Act, however, permits the employer to take action against the workmen in regard to any matter not connected with the dispute, however, such action against any protected workmen concerned in such dispute shall not be to the prejudice of such protected workmen or amount to discharge or punishing of protected workman, whether by dismissal or otherwise, save with the express permission in writing of the authority before which the proceeding is pending.

15.12 A reading of the above provisions would show that the relationship of existence of an employer-employee would be a *sine qua non* for attracting provisions of Section 33 of the ID Act.

15.13 In the present case, though the respondents/workmen have claimed, in the industrial dispute raised by them that they are direct employees of the appellant/CWC and the contract labour adopted by the appellant/CWC was a sham and camouflage, such claim is yet to be adjudicated by the CGIT/Industrial Tribunal. Until such adjudication is made, it cannot be presumed for purposes of Section 33 of the ID Act that the employer-employee relationship between the appellant/CWC and the respondents/workmen exists.

15.14 In ***CIPLA Ltd.*** **v.** ***Maharashtra General Kamgar Union & Ors.***[9], the Supreme Court, while considering a case arising out of a complaint of unfair labour practice under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short, the 'Maharashtra Act'), filed by the workmen who had similar claim that they are wrongly shown as "*contract workmen*" working for the contractor, observed as under:

> "***8.*** *But one thing is clear --- if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant Company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate Industrial Tribunal or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all. The respondent Union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question. By this process, workmen repudiate their relationship with the contractor under whom they are employed ·but claim relationship of an employee*

[9] (2001) 3 SCC 101.

under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular Industrial Tribunal/Court under the ID Act.

9. *Shri K.K. Singhvi, the learned Senior Advocate appearing for the respondent, submitted that under Section 32 of the Act the Labour Court has the power to "decide all matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act". Section 32 would not enlarge the jurisdiction of the court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the Industrial Tribunal or the Labour Court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. In the cases at hand before us, whether a workman can be stated to be the workman of the appellant establishment or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act.*
In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising under Section 32 of the Act. Even the· case pleaded by the respondent Union itself is that the appellant establishment had never recognised the workmen mentioned in Exhibit 'A' as its employees and throughout treated these persons as the employees of the second respondent. If that dispute existed throughout, we think·, the Labour Court or the Industrial Court under the Act is not the appropriate court to decide such question, as held by this Court in

> *General Labour Union (Red Flag) v. Ahmedabad Mfg. & Calico Printing Co. Ltd., [1995 Supp (1) SCC 175 : 1995 SCC (L&S) 372] which view was reiterated by us in Vividh Kamgar Sabha v. Kalyani Steels Ltd. [(2001) 2 SCC 381 : (2001) 1 Scale 82.]"*
>
> *(Emphasis supplied)*

15.15 Similarly, in ***Sarva Shramik Sangh* v. *Indian Smelting & Refining Co. Ltd. & Ors.***[10], again, while dealing with the Maharashtra Act, the Supreme Court, after making a reference of the judgment of ***Steel Authority of India*** (*supra*), observed as under:

> "***15.*** *Reference has also been made to Sections 27, 28, 29(d) and 32 of the Maharashtra Act. While Section 27 deals with prohibition on engaging in unfair labour practices, Section 28 empowers filing of a complaint. Any union or an employee or an employer or any investigating agency has the locus to file a complaint. Section 29(d) categorises parties on whom order of the court is binding. Great emphasis was laid on Section 32 of the Maharashtra Act by the appellant to contend that matters connected with the dispute can be gone into under the provision. The expression "all matters arising out of" clearly emphasizes that it has connections, and not that it is the basic issue. There is a gulf of difference between a basic issue and something connected with or arising out of the application. In R. v. Basudeva [AIR 1950 FC 67 : 51 Cri LJ 1011] it was observed that the connection contemplated must be real and proximate, not far-fetched or problematical. By no logic can it be a substitute of the other. "In connection with any assessment" [Canada: Income War Tax Act R.S.C. 1927 (C. 97) S. 66] has been interpreted as "having to do with" in Nanaino Community Hotel, Re [(1945) 3 DLR 225]. The basic question*

[10] (2003) 10 SCC 455.

which was also raised in Cipla case [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] relates to the existence of the relationship, and of any dispute connected with that. For getting protection under the Maharashtra Act, it has first to be established that the complainant is an employee of a person under whom he claims to be an employee and against whom he files a complaint. In other words, the determinative question is, can anybody who is not an "employee" of or under a person against whom a grievance is sought to be made file a complaint under the Act and the answer is inevitably "No". The fundamental issue therefore is whether the complainant is an employee of the person against whom a complaint is made under the Maharashtra Act and if there is a dispute, he has to establish it, first before the appropriate forum designated for adjudication of such industrial disputes. Section 32 does not aid the appellant in the sense that it is not a matter arising out of the application, when the pre-existing relationship of employer-employee is a must and an essential prerequisite. It is the core issue on which only the very locus to make a complaint can at all be claimed. A person who does not answer the description has no legal locus to file a complaint. A jurisdictional fact is one on the existence or otherwise of which depends assumption or refusal to assume jurisdiction by a court, tribunal or authority. The said fact has to be established and its existence proved before a court under the Maharashtra Act can assume jurisdiction of a particular case. If the complaint is made prima facie accepting existence of the contractor, in such a case what has to be first established is whether the arrangement or agreement between the complainant and the contractor is sham or bogus. There is an inherent admission in such a situation that patently the arrangement is between the complainant and the contractor and the claim for a new and different relationship itself is a disputed fact. To put it differently, the complainant seeks for a declaration that such arrangement is not a real one but something which is a facade. There is no

> *direct agreement between the complainant and the principal employer and one such is sought to be claimed but not substantiated in accordance with law. The relief in a sense relates to a legal assumption that the hidden agreement or arrangement has to be surfaced...."*
>
> *(Emphasis supplied)*

15.16 Though the learned counsels for the respondents/workmen are correct in their submissions that the above two judgments were referring to the Maharashtra Act and not to Section 33 of the ID Act, and, in fact, had also held that the ID Act is a more comprehensive and provides for investigation and settlement of the industrial dispute(s) as raised by the respondents/workmen, the fact remains that in the present case, till now there is no finding of any competent tribunal holding that the respondents/workmen are in fact, the employees/workmen of the appellant/CWC and that the contract labour is sham and bogus. In the absence of such a finding, merely raising such a dispute cannot entitle the respondents/workmen to automatic protection under Section 33 of the ID Act against the appellant/CWC.

16. It is important to reach a determination on existence of employer-employee relationship, because Section 33 of the ID Act shall operate only against the "*employer*" of the workmen.

17. Herein, it must also be kept in view that the CLRA Act is a special and complete code dealing with the contract labour. It provides for the rights and the liabilities of the contractor, the principal employer, and the workmen, and the consequences of breach thereof. The

respondents/workmen having invoked the jurisdiction under the CLRA Act on basis of their assertion of being contractual labour, are now trying to set up a case of direct employment and/or a right of regularisation under the appellant/CWC. Till such right is proved and established, no interim relief based on such a right and assertion can be granted.

18. Reliance of the learned counsels for the respondents/workmen on the judgment of the Supreme Court in ***The Bhavnagar Municipality*** (*supra*), in support of the contention that Section 33 of the ID Act is applicable to them, cannot be accepted. In the said case, there was no dispute on the status of the respondent being "*workmen*". The dispute related to several demands, including the demand for the permanent status of daily-rated workers, who were otherwise employed by the industry. It was in that background that the Supreme Court laid down the following features that must be present in order to attract the provisions of Section 33 of the ID Act:

> "*10. In order to attract section 33(1)(a), the following features must be present:*
>
> > *(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.*
> > *(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.*
> > *(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.*
> > *(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.*

> *(5) The alteration of the conditions of service is to the prejudice of the workmen.*"

19. In the said case, as there was no dispute otherwise that the workmen were temporary employees of the industry, the Supreme Court held that Section 33 of the ID Act would be attracted where the industry wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers. In fact, the Supreme Court went on to hold that in a complaint under Section 33A of the ID Act, even if the employer is found to have contravened the provisions of Section 33 of the ID Act, the Tribunal has to pronounce upon the merits of the dispute between the parties. The order passed in an application under Section 33A of the ID Act is an Award similar to one passed in a reference under Section 10 of the ID Act. A complaint under Section 33A of the ID Act takes, as it were, in the form of a reference of the industrial dispute by the appropriate authority and the same has to be disposed of in like manner by adjudicating the matter and making the award on the merits as required under the law.

20. Applying the above ratio to the facts of the present case, therefore, before attracting Section 33 of the ID Act, a finding would have to be rendered that the respondents/workmen are, in fact, the employees/workmen of the appellant/CWC. Without such determination, and merely on the assertion of the respondents/workmen, Section 33 of the ID Act could not have been invoked by the learned Single Judge.

21. The order dated 04.12.2019 passed by the learned Single Judge of this Court in ***Bharat Heavy Electricals Ltd.*** **v.** ***Udaibir Singh & Ors.***[11], cannot also be used by the respondents/workmen inasmuch as, apart from the fact that the order was passed on a concession of the learned counsels for the parties, there was already an award by the Industrial Tribunal directing the petitioner in that case to pay 75% of the last drawn wages to each of the workmen therein.

22. The judgment of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** (*supra*), cannot also come to the aid of the respondents/workmen as in the said case as well, it was not in dispute that the respondents therein were employees of the appellant-bank, which admission, in the present case, is missing.

23. The reliance of Mr. Aggarwal, the learned counsel on behalf of the respondents/workmen in LPA 173 of 2021, on ***Life Insurance Corporation of India*** **v.** ***D. J. Bahadur & Ors.***[12], also cannot be accepted as the said case dealt with the effect of Section 9A of the ID Act. It is not the case of the respondents/workmen herein that Section 9A of the ID Act is attracted to the facts of the present case.

24. Similarly, the reliance of Mr. Aggarwal, on the judgment of the Supreme Court in ***M. D. Tamil Nadu State Transport Corporation*** **v.**

[11] W.P.(C) 10148 of 2019.

[12] (1981) 1 SCC 315.

Neethivilangan Kumbakonam[13], is also not relevant inasmuch as in the said judgment, the Court was considering the effect of the refusal of the Industrial Tribunal to accord its approval to be taken by the employer, and not rejecting the application filed by the said employer under the proviso to Section 33(2)(b) of the ID Act. It is not the case of the appellant/CWC that the respondents/workmen have been removed under Section 33(2)(b) of the ID Act on account of some alleged misconduct. In fact, the case of the appellant/CWC is that the respondents/workmen are not their employees and therefore, Section 33 of the ID Act has no application at all.

25. In ***Bhilwara Dugdh Utpadak Sahakari* v. *Vinod Kumar Sharma Dead By LRs & Ors.***[14], relied upon by Mr Aggarwal, there was a finding given by the Labour Court that the workmen were employees of the industry and not employees of the contractor, and that the industry resorted to subterfuge to show that the workmen concerned were workmen of the contractor. In the present case, such a finding is yet to be rendered by the concerned Industrial Tribunal, where the dispute in that regard is pending adjudication. The judgment therefore, would have no application to the facts of the present case.

26. In ***Indian Farmers Fertilizer Coop. Ltd.* v. *Industrial Tribunal I, Allahabad & Ors.***[15], the Supreme Court has held that any claim raised by

[13] 2001 LAB. I.C. 1801.

[14] (2011) 15 SCC 209.

[15] (2002) 3 SCC 544.

the workmen that they are not being given work, and in light of the defence taken by the industry therein that these workmen were, in fact, the contract labour, it was necessarily an issue to be decided by the Labour Court as to the nature of the employment of such workmen, as the relief that would be granted to them is dependent upon the same. The CGIT would necessarily have to go into the question of whether such employees were employees of the industry or of the contractor.

27. Similar would be the case in the present appeals, it would be for the CGIT to render a decision, upon evidence, on the issue as to whether the respondents/workmen are employees of the appellant/CWC or the contractor.

28. From the above discussion, it is apparent that the stage for applying or invoking Section 33 of the ID Act has not yet arrived. The applications of the respondents/workmen, on which the Impugned Judgment has been passed, clearly required adjudication of disputed questions of fact for determining whether the claim of the respondents/workmen that they are employees of the appellant/CWC was correct or not. It could not have been so determined in a summary manner. Equally, unless such determination is made, in the facts of the present case, Section 33 of the ID Act could not have been invoked. The learned Single Judge has, therefore, committed an error in placing reliance on Section 33 of the ID Act in granting relief to the respondents/workmen in the Impugned Order.

Other important submissions/material

29. In our view, the learned Single Judge has also failed to take note of the submissions of the appellant/CWC that the contractor hired by CWC are not paid on the basis of workmen employed but on the basis of the tonnage handled by it, which is stated to be measured in TEUs. In this regard, the learned senior counsel for the appellant has drawn our attention to the terms and conditions of the Notice Inviting E-Tender, which resulted in the contract being awarded to M/s RR and the invoices of M/s SFPL. This was an important circumstance to be considered by the learned Single Judge in granting relief to the respondents/workmen, especially at the interim stage, as it would show that there is no obligation, even on M/s RR, to provide a fixed number of workmen to CWC. The work awarded to M/s RR is not to provide workmen but to handle containers.

29.1 As far as the continued employment of the respondents/workmen under M/s SFPL is concerned, the learned senior counsel for the appellant has explained that the due to the interim order dated 17.10.2000, passed by this Court in Civil Writ Petition 48 of 2000, filed by the workmen, and prohibiting the contract labour to be substituted by another contract labour, the appellant has stipulated such conditions in its tender document, directing the contractor to comply with the interim order as the proceedings before the CACLB culminated in the notice dated 17.12.2006, which, in turn, was stayed by this Court in W.P.(C) 4114 of 2008 filed by the appellant herein, this stipulation was not made in the tender floated in the year 2015, in which M/s SFPL was found successful. The appellant/CWC contends that the M/s SFPL continued

with the respondents/workmen at its own discretion and as per its own requirement, thereafter.

29.2 The learned senior counsel for the appellant has also drawn our attention to a chart depicting the number of workmen hired by the contractors from the years 2000 to 2021, to contend that there has not been a fixed number of workmen employed by such contractors, as the same depends upon the volume of business being handled by them.

29.3 He has further submitted that the volume of business has drastically reduced from 47496 TEUs handled in the year 2001 to 17183 handled in the year 2020 and 9948 being handled by the present contractor, that is, M/s RR between 06.01.2021 to 30.04.2021 at the ICD, Patparganj. The chart referred by the learned senior counsel for the appellants is reproduced herein below:

Sl. No.	Year	No. of workers / contract labour	Volume of business (No. of TEUs handled)	Name of H&T contractor
1	2001	156	47496	M/s. CTA Movers Pvt. Ltd. (01.01.2001 to 01.03.2001)
2	2002	293	52565	M/s. OMMC Pvt. Ltd. (01.03.2001 to 20.12.2006)
3	2003	322	48678	
4	2004	320	53582	
5	2005	311	59395	
6	2006	327	51194	M/s. Aqdas Maritime Pvt. Ltd. (21.12.2006 to
7	2007	327	46318	

8	2008	326	43184	02.01.2013)
9	2009	321	41278	
10	2010	319	43422	
11	2011	319	41600	
12	2012	313	37949	
13	2013	313	41064	M/s. Suman Forwarding Agency Pvt. Ltd. (03.01.2013 to 05.01.2021)
14	2014	310	48611	
15	2015	307	41387	
16	2016	303	37101	
17	2017	301	37797	
18	2018	294	26072	
19	2019	295	24548	
20	2020	289	17183	
21	2021	102	9948	M/s. Rahul Roadways (06.01.2021 to 30.4.2021)

29.4 The learned senior counsel for the appellant has also submitted that, in fact, there has been a regular reduction of staff strength of the appellant/CWC; from 8579 in the year 2000-01 to 2642 in the year 2020-21. He submits that in the light of this reduction, forcing the appellant/CWC to continue with the services of the respondents/workmen, even though they are not required would, in fact, cause irreparable damage to the appellants. The chart showing the staff-

strength of the appellant/CWC in the year 2001 to 2021, referred by the learned senior counsel by the appellant, is reproduced herein below:

Sl. No.	Year	No. of CWC Staff
1	2000-01	8579
2	2001-02	8455
3	2002-03	6984
4	2003-04	6813
5	2004-05	6690
6	2005-06	6413
7	2006-07	6192
8	2007-08	6059
9	2008-09	5936
10	2009-10	5765
11	2010-11	5667
12	2011-12	5492
13	2012-13	5222
14	2013-14	4777
15	2014-15	4557
16	2015-16	4078
17	2016-17	3639
18	2017-18	3570
19	2018-19	3042
20	2019-20	2880
21	2020-21	2642

29.5 The learned Single Judge has also failed to appreciate that M/s RR is carrying out its work under a new contract by employing 120 workmen

only. Therefore, an additional burden of the respondents/workmen herein could not be cast on the appellant and/or M/s RR.

29.6 The above aspects, which in our opinion, are relevant to be considered by the learned Single Judge, have not been so considered while passing the Impugned Order.

29.7 The learned Single Judge has also erred in observing that in spite of the order staying the operation of the Notification dated 17.11.2006 by this Court, the same did not efface either the findings of the CACLB or the Notification dated 17.11.2006. The order of stay granted by this Court has to be given full effect to, and no reliance could have been placed on the Notification dated 17.11.2006 for granting the relief to the respondents/workmen.

29.8 At the same time, it must be acknowledged that the appellant/CWC should have continued with the condition or at least persuaded M/s RR, on its own, to give preference to the respondent/workmen while hiring contractual labour. By not doing so, the appellant/CWC has brought about this unfortunate situation.

Conclusion

30. In the light of the above, the Impugned Order passed by the learned Single Judge cannot be sustained, at the same time, we are of the opinion that the respondents/workmen can also not be left high and dry. A balance has to be struck between the competing claim of the respondents-workmen and the appellant as also those of M/s RR. In our view, this balance was provided by this Court in its interim order dated 17.10.2000, passed in W.P.(C) 48 of 2000, which directed as under:

> " *Learned Counsel for the parties are agreed that the dispute raised in this petition ought to be settled by the Central Advisory Contract Labour Board. Accordingly, the dispute between the parties is referred to the Central Advisory Contract Labour Board for making an appropriate recommendation, if any, whether contract labour requires to be abolished in the areas in which the petitioners are said to be working.*
>
> *The interim order passed on 6th January, 2000, will continue till the disposal of the reference by the Central Advisory Contract Labour Board.*
>
> *It is clarified that the services of the petitioner will not be substituted by any other contract labour but this does not mean that the petitioners are at liberty to flout any legal and valid orders passed by the respondents pertaining to their duties and their shifts.*
>
> *The petitioners will, if entitled, be paid overtime allowance.*"
>
> *(Emphasis supplied)*

31. However, the above order would need a small modification, which is for the reason that M/s RR claims to have already employed 120 workmen. Any order passed, in favour of the respondents/workmen, would be to the deterrence of these workmen.

Relief

32. Accordingly, while setting aside the Impugned Judgment of the learned Single Judge, it is directed that in case, M/s RR is to replace any contract labour already employed by it, preference shall be given to the respondents/workmen, and no third person shall be appointed as a contract labour. In case M/s RR needs to employ further contract labour,

again preference shall be given to the respondents/workmen in such employment.

33. The above interim arrangement shall be without prejudice to the rights and contentions of the parties in the pending writ petitions before the learned Single Judge and/or the reference pending before the CGIT. We make it clear that any observations made by us in the present judgment are only *prima facie* in nature and shall not influence either the learned Single Judge and/or the learned CGIT in any manner. Such proceedings shall be adjudicated on their own merit without being influenced by any observations made in the present judgment.

34. The learned CGIT is directed to expedite the adjudication of the industrial dispute(s) pending before it, in the form of I.D. No. 57 of 2015 and I.D. No. 142 of 2015.

35. The appeals are disposed of, in the above terms, with no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

MAY 31, 2022/Arya/AB/P