A MUNICIPAL CORPORATION OF GREATER MUMBAI

v.

K.V. SHRAMIK SANGH AND ORS.

APRIL 12, 2002

B [D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.]

Labour Laws:

C *Contract Labour (Regulation and Abolition Act, 1970)—Contract Labour—Employment of—Allegation that contract was sham—Denial of allegation by principal employer—High Court ordered for abolition of contract labour system and absorption of identified contract labourers directly without referring it to State or Industrial Adjudicator—Contract held to be sham on the ground that the principal employer and the contractors did not comply* D *with the provisions of the Act—On appeal—Held, order of High Court not sustainable—High Court could have directed the appropriate Authority to pass Orders instead of taking up the task on itself—When disputed questions of fact arise Court cannot arrive at conclusion that the contract was sham as a matter of law for non-compliance of the provisions of the Act—Absorption of Contract Labourers cannot be automatic.*

E

Constitution of India, 1950—Article 226—Jurisdiction under—Adjudication of disputed question of fact—Held, not permissible.

Workmen, represented by the respondent-Union, who were working in Solid Waste Management Department, one of the Sections of appellant- F **Corporation as contract labourers, filed writ petition seeking abolition of contract labour system in the Department and for their absorption in the Department as permanent employees. They alleged that the contractors as well as the Corporation did not comply with the provisions of Contract Labour (Regulation and Abolition) Act, 1970; that the Contract was a sham** G **arrangement. The Union, in support of its petition referred to complaints filed by it to the Labour Commissioner, and to the recommendations of Labour Commissioner, Labour Minister and Labour Contract Advisory Board with regard to abolition of Contract Labour under Section 10 of the Act. The Corporation denied that the arrangement was sham or illegal.**

H **On interim direction by High Court to verify the authenticity of the List**

of the workmen claiming to be members of the Union, Labour Commissioner in his Reports pointed out that investigation regarding authenticity of workmen could not be carried out as the contractors did not maintain any record. He also suggested that in absence of any record, the list of the workers, as submitted by the Union, might be considered as valid list. A

High Court held that although powers to abolish contract labour vested in the Government but since the State/Authority could not take action to prohibit employment of contract labour due to Election Code of Conduct, the Court instead of referring the matter to State/Authority and relying on *Air India's* case ordered for abolition of Contract Labour System in the Department and ordered for absorption of 782 identified workers. It held the Contract as sham in view of the fact that the Corporation and the contractors did not comply with the provisions of the Act. However, it did not record a finding that the contract was sham or camouflage considering the material on record. B C

In appeal to this Court, Corporation contended that High Court was not justified in exercising jurisdiction under Article 226 of the Constitution, when the case involved disputed question of fact; that it was for Industrial Adjudicator to decide in appropriate proceedings; that High Court was wrong in ordering automatic abolition of contract labour on the basis of Judgment in *Air India's* case as the same stood overruled by Judgment in *Steel Authority's* case. D E

Respondent-Union contended that contract labour system may be characterised as sham if the work is of continuous nature, supervision and control is by principal employer, and the work is of statutory nature; that normally High Court inquires as to whether the contract labour system is a sham, and direct absorption under Article 226, but where facts are by and large undisputed and many years have passed and all the authorities have commended the absorption of workers but the ultimate authority has failed to act for a long time and it would be an act in futility and waste of time and also cause injustice to the workers, High Court could go into the question of facts and pass orders instead of remanding the matter. F G

Allowing the appeal, the Court

HELD: 1.1. The conclusion of the High Court that the contract labour system in the present case was sham cannot be sustained when the disputed questions of fact arose for consideration in the light of rival contentions raised H

A by the parties. The conclusion cannot be arrived at as a matter of law for non-compliance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, but a finding must be recorded based on evidence, particularly when disputed, by an industrial adjudicator. High Court did not go into the question of the contract being sham and did not record a finding that the Labour Contract in the present case was sham or camouflage considering the material on record; even otherwise this being a serious and disputed fact, High Court could not have appropriately adjudicated on the issue exercising jurisdiction under Article 226 of the Constitution.

[1137-H; 1138-A; 1136-F; 1136-D-E]

Steel Authority of India Ltd. v. *National Union Waterfront Workers,* [2001] 1 SCC 1, followed.

1.2. The material *viz.* the complaints of the Union recommendations of the Labour Commissioner, Labour Minister and the Labour Contract Advisory Board in regard to abolition of contract labour under Section 10 of the CLRA Act could not be a foundation or basis to say that the labour contract was sham, camouflage or a devise to deny the statutory benefits to the workers. [1137-B]

Air India Statutory Corporation and Ors. v. *United Labour Union and Ors.,* [1997] 9 SCC 377, referred to.

1.3. The code of conduct relating to election, because of which the State and Contract Labour Advisory Board were unable to act prohibiting employment of Conduct Labour, related to 1998. The High Court instead of taking up the task on itself could have directed the State Government/ Authority to pass orders within a given time. [1138-B]

1.4. The impugned Judgment and Order are set aside leaving it open to the Union to seek remedies available in terms of Judgment of the Constitution Bench in *Steel Authority's* case before the State Government or the Industrial Adjudicator as the case may be. [1139-H; 1140-A]

Steel Authority of India Ltd. v. *National Union Waterfront Workers,* [2001] 1 SCC 1, followed.

2. The direction of the High Court that workmen required for work in the Solid Waste Management Department should not fall within the purview of the Act at all, but that they should be absorbed as direct employees of the

Bombay Municipal Corporation, cannot be sustained. Absorption of Contract Labourers cannot be automatic and it is not for the Court to give such direction. [1139-F, G, H]

Steel Authority of India Ltd. **v.** *National Union Waterfront Workers*, **[2001] 1 SCC 1, followed.**

3. Merely because the records are not maintained by the contractors, it may not be appropriate to accept the list of workers given by the Union. Even from the reliefs granted by the High Court it is clear that 782 contract labourers were identified as working through contractors. These directions themselves indicate as to the disputed questions that arose for consideration. [1139-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2675 of 2002.

From the Judgment and Order dated 9.8.99 of the Mumbai High Court in W.P. No. 1027 of 1997.

T.R. Andhyarujina, Minoo Sisodia, Pallav Sisodia, S.H. Ujjaiwala and D.N. Mishra for J.B.D. and Co., for the Appellant.

Colin Gonsalves, Ms. Aparna Bhat, Ms. Sweta Kakkad, K.J. John, S.V. Deshpande, Ashwini Kumar, S.S. Shinde and Vishwajit Singh for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. Leave granted.

This appeal is filed by the Municipal Corporation of Greater Mumbai challenging the correctness and validity of the impugned judgment and order made in the writ petition by the High Court. The writ petition was filed by a registered trade union called Kachara Vahatuk Shramik Sangh (hereinafter referred to as 'Union'). It claims to represent 2000 workmen doing the work of lifting, transporting and dumping of debris, garbage, silt, house gully material etc., at the various dumping grounds of the Bombay Municipal Corporation. The appellant herein is the respondent no. 1 in the writ petition (hereinafter referred to as 'Corporation') and respondent nos. 2-33 are different contractors who had been entrusted with the above-mentioned work on contract basis. Respondent no. 34 is the State of Maharashtra and respondent no. 35

A is the Contract Labour Board established under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA Act). Respondent No. 36 is the Commissioner of Labour for the State.

In the writ petition, it was emphasized that the nature of work carried out by the contract labour is perennial; merely because the Corporation has B chosen to employ system of contract labour for discharging its statutory obligations, the contract labour does not cease to be workman of the principal employer-the Corporation. According to the writ petitioners (Union) , if at all, contract labour system was to be permitted, it could be done only in accordance with the provisions of the CLRA Act; an employer could not be C allowed to carry on work through contract labour unless provisions of the statute were strictly complied with and that the Corporation was carrying on the work through contract labour for almost 15 years even without registering itself as a principal employer, that too through contractors who were not holding any licence under the CLRA Act. It is the further case of the Union that it kept on complaining to the Labour Commissioner about the gross D violation of law and the legal rights of the workmen concerned. The Labour Commissioner, after investigation into the complaints, addressed letter dated 18.7.1998 to the Chief Secretary of the State recommending abolition of the contract labour system observing that Solid Waste Management Department is one of the sections of the Corporation, which is in operation for more than E hundred years; in this Department the work of collection, transportation, dumping and disposal of the garbage, refuse, debris etc. is performed. The Labour Commissioner also stated in the letter that the Solid Waste Management Department had applied for registration as principal employer under the CLRA Act on 17th December, 1996. In the meanwhile, the writ petition had already been filed, so the said application was kept in abeyance. He also stated that F none of the contractors had obtained licence under the provisions of the CLRA Act. He further pointed out that by the letters of 25th October, 1997 and 19th May, 1998, the Union had made representations to the Chairman of the State Contract Labour Advisory Board requesting him to advise the State Government to abolish the system of employment of contract labour in the G Solid Waste Management Department of the Corporation. In the letter of the Labour Commissioner, it is also stated that the work performed by the workers employed by the contractors is of regular and permanent nature. In the writ petition, it is also stated that the contract entered into by the Corporation with the contractors is a sham arrangement. The workmen concerned with the writ petition are in law and in fact employees of the Corporation, particularly so, H when the task of sweeping and cleaning roads, gullies and removal of debris

and garbage etc. are the statutory duties to be performed by the Corporation under Sections 61(C) , 365 and 367 of the Bombay Municipal Corporation Act, 1888 (for short the 'Act'). It is also stated in the writ petition that the conditions of service of these workmen are horrible inasmuch as they are required to handle corpses of animals, excreta of animals and human-beings from house gullies and garbage dumps toxic and other danger material etc. In support of the writ petition, reliance was placed to the Circular dated 26.4.1985 issued by the Govt. of Maharashtra relating to Bhangi Mukti (prevention of scavenging), Circular dated 30.8.1996 issued by the Corporation on the precautionary measures to be taken while engaging contract labour, the letter dated 27.11.1996 addressed to the Additional Commissioner, Corporation, by the then Chairman of the Standing Committee of the Corporation Shri Hareshwar Patil stating that the garbage workers were not properly treated; there was no difference between the permanent workers of the Corporation and the contract workers; their conditions were really pitiable and steps are to be taken to improve the situation. Reference is also made to the letter of the Labour Commissioner dated 18.7.1998 addressed to the Chief Secretary of the State requesting to recommend the matter to the State Contract Labour Advisory Board for abolition and prohibition of the contract labour system. The Minister for Labour of the State addressed a letter dated 4.2.1999 to the Commissioner of the Corporation recommending for abolishing the existing contract system. In the writ petition, the following reliefs were sought :

"(a) for a Writ of Mandamus or any other appropriate Writ, order or direction, directing the State of Maharashtra and Contract Labour Board, Bombay Municipal Corporation to forthwith abolish the contract labour system in the Solid Waste Department and for regularization of the services of all the workmen concerned with this Petition with retrospective effect forthwith and to pass appropriate order forthwith.

(b) for an order directing the Respondent to maintain status quo in respect of the employment of the workmen concerned with this Petition.

(c) For an order directing the Respondent No. 1 to forthwith absorb all the workmen concerned with this Petition as regular and permanent workmen with retrospective effect from their initial date of work.

(d) For an order directing the Respondent No. 1 to treat all the

A workmen concerned with this case on par with the permanent workmen in terms of wages and all service conditions....."

In reply to the writ petition the Corporation in the affidavit filed on its behalf inter alia submitted that the writ petition should be dismissed declining B to entertaining it under Article 226 of the Constitution to adjudicate the disputed questions of facts. Section 61(2) of the Act imposes a statutory duty on the Corporation for removal of garbage. The Solid Waste Management Department has employees, mukadams and overseers engaged in the activity of removal of garbage. For this purpose the Department uses its own staff and not contract labour. It has its own vehicles for the purpose of removal C of garbage. Because of insufficiency of vehicles it also hires private vehicles on contract basis for the removal of garbage; the vehicle owners supply the vehicles with a driver and cleaner; and only the Corporation employees are engaged in removal of garbage.

Further, according to the Corporation, under Section 367 of the Act its D Commissioner provides or appoints in proper and convenient situations public receptacles, depots and places for the temporary deposit or final disposal of the refuse/debris. Under Section 368, if the owner or occupier of any trade premises desires permission to deposit trade refuse, collected daily or periodically from the premises, temporarily upon any place appointed by the E Commissioner in this behalf, he may, on the application and on payment of such charges, allow the applicant to deposit refuse/debris. The Corporation merely provides its services to those generators of debris like MHADA or private land owners or builders, who are liable to pay stipulated charges for the work of disposal of debris performed by the Corporation. For the purpose of removal of debris the Corporation accepts separate tenders from the F contractors. This work, not being the statutory responsibility of the Corporation, is not done by its employees. Copy of the tender submitted by the contractor for removal of debris and copy of the contract entered into by the Corporation with the contractors, as per Ex.-5 and 6, clearly show that the workers engaged in the said activity of removal of debris are not employees of the Corporation. G The allegations that merely paper arrangements are made by the Corporation to avoid statutory liabilities and that such contracts are sham and illegal are denied by the Corporation. It is also stated that the Corporation has been taking stringent action against the contractors so that they should comply with the statutory requirements such as Minimum Wages Act and the contractors are also directed to provide the labourers with good quality of H raincoats with caps, gum boots and hand gloves etc. It is denied that the

Corporation is using the contract labour as slaves or bonded labour. It is the specific case of the Corporation that the workers engaged by the contractors are not its employees

It is further the case of the Corporation that CLRA Act does not abolish contract labour as alleged by the Union; the power to abolish contract labour vests with the appropriate Government and in this case the appropriate Government is State Government. The appropriate Government before abolition of contract labour under Section 10 of the CLRA Act must consult State Board, constituted under Section 4 of the CLRA Act being an expert body, before contract labour can be provided. Further, the relevant factors such as whether the work is incidental or necessary for the establishment is to be taken into consideration as contemplated under Section 10 of the CLRA Act. Based on these statements made in the affidavit the Corporation prayed for dismissal of the writ petition.

The High Court by its order dated 18.11.1998 in Writ Petition No. 2135/98 ordered the Labour Commissioner to authenticate the list of workmen of the respondent No. 1 - Union. The Labour Commissioner on 9.2.1999 gave his report to the High Court stating that it was not possible for him to verify the authenticity of the list of workmen.

However, the High Court allowed the writ petition and made the following order:-

"(a) The system of employing contract labour on the work in Solid Waste Management Department shall be discontinued by the first Respondent-Corporation with immediate effect.

(b) 782 contract labourers who have been identified as working through contractors on the work of Solid Waste Management Department shall be absorbed as permanent employees in the employment of the first Respondent-Corporation on the appropriate wage scales and extended all conditions of service as available to other permanent employees doing same or similar work in the employment of the first Respondent-Corporation.

(c) A Committee comprising of an officer to be nominated by the Commissioner of Labour, an officer to be nominated by the Municipal Commissioner and a representative of the Petitioner-Union, shall verify the claims of all workmen other than those whose claims have already been verified by the Commissioner

A of Labour, after taking such evidence as the said Committee desires.

(d) The said Committee shall make a report to the Municipal Corporation indicating the persons who were actually working as contract labourers in the Solid Waste Management B Department on the date on which the Writ Petition was filed. Immediately on receipt of such report, the first Respondent Corporation shall absorb such workmen also as permanent workmen in the Solid Waste Management Department and extend to them pay and all conditions of service and benefits as given to other permanent workmen doing same or similar C work.

(e) Though, strictly speaking, under the principles laid down in *Air India's* case (supra) , the workmen would have to be absorbed as permanent employees and given all the benefits from the dates of their respective employment, as we have found some D difficulty with regard to identification, we direct that the absorption into service as permanent employees and extension of all benefits shall be done as from the date of the Writ Petition i.e. from 1st July, 1997."

E On behalf of the Corporation it was contended:

(a) That the disputed questions of facts arose for consideration in the writ petition. Hence the High Court was not right and justified in adjudicating those disputed questions of facts exercising jurisdiction under Article 226 of the Constitution; as F held by this Court in various decisions in matters like this it was for the industrial adjudicator to decide in appropriate proceedings; even assuming that all the conditions of contract labour under Section 10 of the CLRA Act were shown to exist it was for the court to order abolition of contract labour;

G (b) The matter ought to have been left to be decided by the Government as to abolition of contract labour as laid down by this Court in *BHEL Workers Association, Hardwar and Ors.* v. *Union of India and Ors.*, [1985] 1 SCC 630, *Catering Cleaners of Southern Railway* v. *Union of India and Ors.*, [1987] 1 SCC 700 and *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat* v. *Hind Mazdoor Sabha and Ors.*, [1995] 5 SCC 27. H

(c) The High Court was also wrong in ordering automatic abolition of the contract labour on the basis of judgment of this Court in *Air India Statutory Corporation and Ors.* v. *United Labour Union and Ors.*, [1997] 9 SCC 377; the said judgment now stands overruled by the Constitution Bench judgment of this Court in *Steel Authority of India Ltd.* v. *National Union Waterfront Workers*, [2001] 1 SCC 1.

(d) Neither there was enquiry nor finding was recorded by the High Court that the labour contracts with the contractor were sham or camouflage or only device to deprive the worker of the benefits otherwise available to him; the High Court has not ordered absorption of the labours on the ground that the labour contracts were sham or bogus; the High Court without enquiry and consideration whether such contracts were sham proceeded to say so on the ground that such labour contracts were made without complying with the provisions of the CLRA Act and, therefore, there is automatic absorption.

(e) The Union has not filed cross-objections against the High Court judgment complaining that the High Court ought to have recorded a finding that such contracts were sham; further such investigation as to whether contracts were sham could be investigated only by an industrial adjudicator as strongly held by this Court in several cases including in the reasoned Constitution Bench judgment in *SAIL* (supra).

On behalf of the Union submissions were made supporting the impugned judgment and order, contending that

(a) contract labour system may be characterized as sham if the work is of continuous nature, supervision and control is by the principal employer, the work is of statutory nature, the principal employer and the contractor cannot produce any records such as pay slips, muster roll, attendance cards or wage registers to show that the workers were actually employed through a contractor, the workers work in the establishment of principal employer, neither the principal employer nor the contractors have obtained licences or certificates under the CLRA Act, the nature of work is essential to the work of the establishment, the establishment rules itself provide that contract labour shall not

A be used for perennial work and workers are kept in bondage.

(b) Normally the High Court, under Article 226 of the Constitution, enquire as to whether the contract labour system is a sham, and direct absorption, but where facts are by and large undisputed, many years have passed and all the authorities have B recommended the absorption of workers but the ultimate authority has failed to act for a long time and it would be an act in futility and waste of time and also cause injustice to the workers, the High Court could go into the question and pass orders instead of remanding the matter.

C On behalf of both the sides our attention was drawn to relevant material on record in support of their respective contentions.

After the High Court passed the impugned judgment and order, request was made on behalf of the Corporation for staying the order to enable it to approach this Court challenging the same. After hearing both sides, the High D Court stayed the order for a period of six weeks subject to certain conditions in the following terms:-

"(a) There shall be stay of our order for a period of six weeks, except the direction pertaining to the appointment of the E Committee and the work to be done by it as provided in paragraphs (c) and (d) above.

(b) All 782 workmen who have already been identified by the Office of the Commissioner of Labour shall be provided work by the first Respondent-Corporation and paid daily wages of F Rs. 100 without prejudice to the rights and contentions of the first Respondent-Corporation and also without prejudice to the rights and contentions of the concerned workmen.

(c) The first Respondent-Corporation is not obliged to extend any other conditions of service except safety and sanitary equipments G to the concerned workmen during the period of six weeks from today."

On 26.10.1999, this Court passed order to maintain status quo till the matter came up before the Motion Bench. On 5.11.1999, this Court issued notice to the respondents and ordered to maintain status quo regarding H employment of the concerned employees till further orders.

In view of the order of this Court dated 10.10.2001, the ex-officio Member Secretary, State Contract Labour Advisory Board and Commissioner of Labour at Mumbai filed additional affidavit on behalf of respondent no. 35 saying that the Union by its letter dated 19.5.1998 requested the State Contract Labour Advisory Board to take up the matter regarding prohibition of contract labour system prevailing in the Solid Waste Management Department of Corporation. Pursuant to the direction received from the Government of Maharashtra dated 9.2.1999, the Board in its meeting held on 6.3.1999 heard the representatives of the Corporation and the Union and advised the Corporation to abide by the CLRA Act and the Minimum Wages Act, 1949 and to provide all facilities to the contract labourers employed in the Solid Waste Management. It is further stated that in view of the impugned judgment and due to the pendency of Special Leave Petition in this Court, the State Contract Labour Advisory Board has kept the matter in abeyance.

The High Court noticing the duties of the Municipal Corporation under the Act contained in the various Sections held that the said provisions imposed statutory duties on the Corporation to keep the city clean free of garbage, rubbish, refuse etc. The High Court took the view that if the Corporation chose to employ some other agency to discharge its obligation, it could do so provided it is consistent with the applicable legal provisions; after the enforcement of the CLRA Act under Section 7, the Corporation being principal employer was compulsorily required to register itself with the appropriate registering authority and every contractor was required to obtain a licence under Section 12 of the Act but neither the Corporation nor the contractors complied with the said provisions in spite of the grievances voiced by the union repeatedly. The High Court looking to the letter of the Labour Commissioner dated 18th July, 1998 to the Chief Secretary of the State recommending abolition of the contract labour system, letters dated 4th February, 1999, 5th April, 1999 and 10th may, 1999 addressed by the Labour Minister to the Commissioner of Corporation dealing with the working conditions of the contract labour and inaction of the Corporation and finally recommending for abolition of the contract labour system ordered for absorption of workers directly. During the course of the argument, the learned Addl. Govt. Pleader was asked as to why the said Contract Labour Abolition Advisory Board and the State of Maharashtra should not issue an order prohibiting employment of contract labour in the Solid Waste Management Department, it was informed that on account of election code of conduct, decision could not be taken in the matter. In this view, the High Court felt that the fate of the workers could not be left hanging on the sweet mercy of

A the Corporation and/or the State Government and it has become the responsibility of the Court to discharge its constitutional duty to see if the Union was entitled to relief in law and grant them such relief by then and there itself. Thereafter, the High Court referring to various decisions cited and mainly relying on the decision of this Court in Air India case (supra) and applying the principles stated therein to the present case and allowed the writ petition granting the reliefs to the union in terms already stated above.

In a recent Constitution Bench judgment of this Court in *Steel Authority of India Ltd. and Anr.* v. *National union Waterfront Workers and Ors.*, [2001] 7 SCC 1 *Air India* case (supra) is specifically overruled. In the said judgment, after referring the various decisions of this Court including the decisions cited before us and on elaborate consideration and analysis, the Constitution Bench in para 125 of the said judgment, outlined the conclusions. To the extent they are relevant for the present purpose read:-

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

(1) .....

(2) .....

(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 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 shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in

regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to 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 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."

Para 126 of the same judgment reads:-

"126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by the High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

A Division Bench of the Bombay High Court following the judgment of this Court in *Air India* case (supra) had directed the appellant to absorb the contract labour but the Constitution Bench judgment in view of the overruling of *Air India* case (supra) set aside the judgment of the High Court leaving it open to the contract labour to seek appropriate relief in terms of

A the main judgment as stated in para 136 of the Constitution Bench judgment. Similar orders were passed as can be seen from paras 137, 140 and 146 of the same judgment dealing with other cases where orders were passed by the high Court relying on *Air India* case (supra) .

We do not consider it necessary to refer to the decisions cited by the B learned counsel in the light of the authoritative pronouncement of the Constitution Bench of this Court aforementioned.

Now, we proceed to consider the validity and correctness of the impugned judgment and order in the light of judgment of the Constitution Bench in *SAIL* case (supra) . The High Court held that the work entrusted to C the members of the Union continued to be basically the work of the Corporation itself of perennial nature; the Corporation has chosen to carry out the work under so-called system of labour contract without complying with the provisions of the CLRA Act and as such the labour contract was a camouflage. We must state here itself that the Union in the writ petition D alleged that the labour contract was sham and the Corporation specifically denied it in its counter affidavit but the High Court did not go into this question and did not record a finding that the labour contract in the present case was sham or a camouflage considering the material on record; even otherwise this being a serious and disputed fact in terms of the Constitution Bench judgment aforementioned, the High court could not have appropriately E adjudicated on the issue exercising jurisdiction under Article 226 of the Constitution. It appears to us that the High Court proceeded to conclude that the labour contract was not genuine and the workers of the Union were employees of the Corporation because the Corporation and the contractors did not comply with the provisions of the CLRA Act. Conclusion that the F contract was sham or it was only camouflage cannot be arrived at as a matter of law for non-compliance of the provisions of the CLRA Act but a finding must be recorded based on evidence particularly when disputed by an industrial adjudicator as laid down in various decisions of this Court including the Constitution Bench judgment in SAIL. The cases on which the High Court placed reliance were the cases where finding of fact was recorded by the G labour courts on evidence. In para 34 of the impugned judgment, it is stated:-

> "This court is hardly competent to record evidence or appreciate it in exercise of its powers under Article 226 of the Constitution. This Court as well as the Supreme Court have always taken the view that writ jurisdiction should not be permitted to be invoked if disputed H questions of facts are involved, is the submission of the learned

counsel. The submissions are wholly unexceptionable. If the facts were not clear, we would have hardly allowed our writ jurisdiction to be invoked. The material which we have referred to at several places hereinbefore, is more than adequate, in our view, to come to the conclusion we have arrived at." A

The material referred to relates to the complaints of the Union, recommendations of the Labour Commissioner, Labour Minister and the Labour Contract Advisory Board in regard to abolition of contract labour under Section 10 of CLRA Act but that material could not be a foundation or basis to say that the labour contract was sham, camouflage or a devised to deny the statutory benefits to the workers. From the judgment under challenge, it is clear that *Air India* case (supra) weighed with the High Court which judgment now stands overruled as already stated above. The High Court rejected the contention that jurisdiction to abolish the contract labour system vested with the appropriate Government under Section 10 of CLRA Act and that power could be exercised after obtaining advice of the Contract Labour Advisory Board which in turn had to keep several factors enumerated in clauses (a) to (d) of Section 10(2) of CLRA Act stating that in the present case in almost 15 years, there was no registration of principal employer; none of the contractors ever held a licence under the Act; the work that was being carried on fell within the parameters of clauses (a) to (d) of Section 10(2) of the Act and having regard to what was said by the Chairman, Standing Committee of the Corporation and the contractors and the recommendation of the Labour Commissioner to abolish the contract labour system. Further the Minister for Labour of Govt. of Maharashtra went on to record in clear terms that the Government had taken a decision to abolish system of contract labour in the Solid Waste Management Department of the Corporation, the High Court thought that there was sufficient material for abolishing the contract labour system. The High Court drew an inference that the State admitted that all the requirements were satisfied for acting under Section 10(2) but because of the election code of conduct it was unable to act and passed order for absorption of workers saying that it had no impediment to do so in view of its conclusions. Referring to *Air India* case (supra) , the High Court observed that the said judgment suggested that a contract labour system can be said to be genuine only if it is carried in compliance with the provisions of the CLRA Act and anything contrary thereto would lead to the presumption that the purported contract labour system was merely a devise and sham. In our view, the conclusion of the High Court that the contract labour system in the present case was sham cannot be sustained in the light of what is stated above B C D E F G H

A and particularly when the disputed questions of fact arose for consideration in the light of rival contentions raised by the parties. We have detailed them above to say so.

The code of conduct relating to election related to 1998. The High Court at the time of passing the impugned order could have directed the State B Government/authority to pass orders within a given time frame but the High Court took up the task itself.

It may also be noticed that the High Court by its order dated 18th November 1998 directed the Labour Commissioner to verify the authenticity of the list of workmen claiming to be the members of the Union. After C investigation, the Labour Commissioner made three reports to the High Court on 9th February 1999, 23rd April 1999 and 12th June, 1999. In the report of 9th February, 1999, the Labour Commissioner pointed out that the work of investigation of the authenticity of the members of the Union could not be carried out as the contractors did not maintain any record. In the said report, D it is stated that :

> "In these circumstances mentioned above, it has not been possible for the Commissioner of Labour to verify the authenticity of the list of workmen claiming to be members of Kachara Vahatuk Shramik Sangh."

E

The Labour Commissioner suggested that in the absence of any record of contract labourers maintained by the principal employer/contractors, the list of the workers as submitted by the Union may be considered as valid list. In the said list, the Labour Commissioner had mentioned that about 2000 workmen had been working since last 15 years as contract labourers. In the F report of 23rd April, 1999, after giving the details of the work carried by him, the Labour Commissioner says "that the Government Labour Officers designated by him had interrogated the contract labourers present in the Ward in the morning and filled up 1172 forms after interrogating 1172 workers. It was also noticed that merely 219 workers' names were in the list and G remaining 953 workers' names were not found in the list of that Ward."

In the report dated 12th June, 1999, the Labour Commissioner has also indicated that out of 1540 workmen listed out in the writ petition, he had been able to identify 541 workers. Similarly, out of the 607 contract labourers whose names were annexed to the list exhibited to the Chamber Summons H No. 31 of 1991 in Writ Petition No. 1027 of 1997, he had been able to

identify 138 workers. Thus, he pointed out that, out of the total 2147 workers whose names were put forward by the Union, the Government Labour Officers were able to identify 947 workers while actually working on the dates of the visits of the Government Labour Officers on 20th and 21st May, 1999. A

The Corporation has disputed as to the number of workers under the contract labour system and their authenticity and the period of their work etc. Merely because the records are not maintained by the contractors, it may not be appropriate to accept the list of workers given by the Union. Even from the reliefs granted by the High Court already extracted above, it is clear that 782 contract labourers were identified as working through contracts; a direction was given to constitute a committee to verify the claims of all workmen other than already verified and to make a report to the Corporation indicating the presence who were working actually as the contract labourers in the Solid Waste Management Department on the date on which the writ petition was filed. Further, immediately on receipt of such report, the Corporation shall absorb such workmen as the permanent workmen. These directions themselves indicate as to the disputed questions that arose for consideration. B C D

The High Court having said earlier although the power of abolishing the contract labour system vested in the Government because of delay in doing so, there was no impediment to pass such an order itself. In para 45 of the judgment, the High Court states thus:- E

> "We are inclined to direct that the workmen required for work in the Solid Waste Management Department should not fall within the purview of the Contract labour (Regulation & Abolition) Act, 1970 at all, but that they should be absorbed as direct employees of the Bombay Municipal Corporation." F

This direction cannot be sustained not being consistent with the judgment of the Constitution Bench in *SAIL* case (supra) .

As laid down in the Constitution Bench judgment, absorption of contract labourers cannot be automatic and it is not for the court to give such direction. Appropriate course to be adopted is as indicated in para 125 of the said judgment in this regard. Thus having considered all aspects, we are of the view that the impugned judgment and order cannot be upheld. G

In the result, for the reasons stated and discussion made above, the impugned judgment and order are set aside leaving it open to the Union to H

A seek remedies available in terms of para 125 of the judgment of the Constitution Bench in SAIL aforementioned before the State Government or the Industrial Adjudicator as the case may be. In case, the Union moves the appropriate Government or the Industrial Adjudicator within four weeks from today, they shall consider the same and pass appropriate orders within a period of six months. The order to maintain status quo regarding the B employment of the contract labourers to the extent indicated was passed in the writ petition on 20.4.1998 and even after disposal of the writ petition, the High Court stayed the order for a limited period and further this Court passed order to maintain the status quo on 26.10.1999 which is continuing. In these circumstances, the order of status quo shall continue for a period of six C months. We also make it clear that this order does not prevent the State Government to proceed in accordance with law in the matter of abolition of contract labour system. The appeal is allowed accordingly in the above terms. No costs.

K.K.T. Appeal allowed.