N.T.P.C. & ORS.
*v.*
BADRI SINGH THAKUR & ORS.
(Civil Appeal Nos. 5494-5505 of 2005)

AUGUST 11, 2008

**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Contract Labour (Regulation and Abolition) Act, 1970 – Constitution of India, 1950 – Article 254 – Abolition of contract labour – Absorption of workmen – Respondents employed through contractor as workman under the Corporation – Writ petition by respondents claiming absorption – Case of respondents that the 1960 Act applicable to Corporation, thus, entitled to same wages as workman of Corporation and contract labour to be abolished on regular basis – Set aside by High Court holding that the 1970 Act was applicable; that they being the contract labours were not employees of Corporation; and that no Notification was issued to abolish the contract labour – However, order of Single Judge of High Court set aside by Division Bench– On appeal, held: Order of Division Bench of High Court not sustainable – Single Judge correctly analysed the position in law – In terms of proviso to Article 254, legislative power of Parliament has been enlarged in the sense that it can add to, amend, vary or repeal the law made by legislature of State – M.P. Industrial Relation Act, 1960.*

**It is the case of the respondents that they were employed through the contractor and were working as electricians under the appellant No.1-Corporation. Respondents filed writ petition seeking their absorption as workmen of the Corporation as they are contract labours. They contended that they worked for the colonies owned and controlled by the Corporation and officers of the Corporation supervised their work; that the Corporation entered into series of contracts with the contractor; that the Cor-**

poration engaged the respondents on job work basis to avoid absorption of contract labour; and that the provisions of M.P. Industrial Relation Act, 1960 are applicable to the Corporation and as such were entitled to the same wages as the workmen of the Corporation and there could be abolition of contract labour on regular basis. Appellant-Corporation contended that it is a registered establishment u/s 7 of the Contract Labour (Regulation and Abolition) Act, 1970; that the contractor employed the respondents; that there was no relationship of master and servant between the Corporation and the respondents; that once legislation is passed by the Parliament in respect of any field covered under the Concurrent List, the same would have preference over the State law; and that the 1970 Act was applicable. The Single Judge of High Court held that relationship of employer and employee is not established; that the 1970 Act is applicable to the writ petitioners, thus, respondents could not rely on the provisions of 1960 Act for enforcing their claim; that they being the contract labours are not employees of the Corporation; that there was no Notification issued by the appropriate government abolishing the contract labour; that there was no scope for granting any relief; and that the decision in *Air India Statutory Corporation* case did not apply to the facts of the case.

Respondents filed Letters Patent Appeal. Appellants contended that the respondents could not claim to be employees of the principal employers and their absorption did not arise in view of *Steel Authority of India Ltd.* case which inter-alia over-ruled the earlier decision in *Air India's* case. The Division Bench of High Court held that the object of the Act was to regulate the employment of the contract labour in certain establishments and to provide for its abolition in certain circumstances and the matters connected therewith; that though there was an over-riding effect yet the beneficial provision of the statute was not

extinguished; that once Notification is issued u/s. 10 of the Act the matter would be different and the decision rendered by this Court in *Steel Authority's* case would be applicable in full force; that in the absence of Notification the other general relevant law would be applicable; that with reference to various provisions of 1960 Act, the view of Single Judge of High Court was not correct. Hence, the present appeal.

Allowing the appeals, the Court

HELD: 1. Clause (1) of Article 254 of the Constitution speaks about over-riding effect of a law made by Parliament which the Parliament is competent to enact. Same is the position in respect of a provision of existing law with respect of one of the matters enumerated in concurrent list which is subject to operation of Clause (2). So far as Clause (2) is concerned when a law is made by the legislature of the State with respect to one of the matters enumerated in the concurrent list and it contains any provision repugnant to earlier law made by Parliament or in the existing law with respect of that matter then the law so made by legislature of the State shall if it has been reserved for the consideration of the President and has received the assent prevail in that State. In that case, the assent of the President becomes the determinative factor. The proviso to Clause (2) curtails the ambit of Clause (2) by providing that Parliament can enact a law with respect to the same matter in which the State Legislature has made the law and by such law the Parliament can add to, amend, vary or repeal the law made by the legislature of the State. In other words, in terms of the proviso in Article 254 the legislative power of the Parliament has been enlarged in the sense that it can add to, amend, vary or repeal the law made by the legislature of the State. [*Para* 19] [1198-C-G]

2. The Division Bench of High Court was not justi-

A **fied in its conclusions and on the contrary, Single Judge had correctly analysed the position in law. [Para 21] [1200-G]**

*Air India Statutory Corporation Steel Authority of India Ltd. v. National Union Waterfront Workers* **2001 (7) SCC 1;** *Gujarat Electricity Board, Thermal Power Station, UKAL*
B *Gujarat v. Hind Mazdoor Sabha and Ors.* **1995 (5) SCC 27**; *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh and Ors.* **2002 (4) SCC 609;** *Deep Chand v. State of Uttar Pradesh and Ors.* **AIR 1959 SC 648;** *Zaverbhai Amaidas v. State of Bombay* **AIR 1954 SC 752**; *M. Karunanidhi v. Union*
C *of India* **AIR 1979 SC 898 – referred to.**

**Case Law Reference**

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| **2001 (7) SCC 1)** | **Referred to.** | **8** |
| **1995 (5) SCC 27** | **Referred to.** | **14** |
| **2002 (4) SCC 609** | **Referred to.** | **15** |
| **AIR 1959 SC 648** | **Referred to.** | **17** |
| **AIR 1954 SC 752** | **Referred to.** | **17** |
| **AIR 1979 SC 898** | **Referred to.** | **18** |

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5494-5505 of 2005

F From the final Judgment and Order dated 5.12.2003 of the High Court of Madhya Pradesh at Jabalpur in I.P.A. Nos. 89, 90, 91, 92, 93, 95, 6 97, 98, 99, 100 and 101 of 1998

G.E. Vahanvati, S.G. Ranjit Kumar, Bharat Sangal, P. Das, Guru Krishna Kumar, Girish Patwardhan, S. Sukumaran, Rajesh,
G Alok Rai, R.D. Upadhyay, Urmila Sirur, T.V. George, Vikas Upadhyay, B.S. Banthia, Rajesh, V.N. Raghupathy and K. Rajeev for the Appearing Parties.

The Judgment of the Court was delivered by

H **Dr. ARIJIT PASAYAT, J.** 1.Challenge in these appeals and

writ petition are to the order passed by a Division Bench of the Madhya Pradesh High Court. By a common order several Letters Patent Appeals were disposed of. The Letters Patent Appeals were filed by present respondents on the ground that they have been employed as Electricians since 1987 as workmen under Appellant No.1 i.e. National Thermal Power Corporation (in short the 'Corporation') for maintenance of Korba Super Thermal Power Project colonies. Though the writ petitioners were not directly employed by the Corporation, but were employed through contractor. Prior to such engagement they were employed through other contractors. It was the stand in the writ petition that their work was supervised by competent officers of the Corporation and the materials for their job were supplied by the Corporation and they worked for the colonies owned and controlled by the Corporation and series of contracts have been entered into by the Corporation with the contractor. It was therefore their stand that they have to be treated as employees of the Corporation. It was stated that the Corporation wanted to avoid absorption of contract labour despite their perennial nature of work. With a view to frustrate mandate of this Court, they engaged them on job work basis and the whole endeavour was to defeat the absorption of the contract labours. It was claimed before the learned Single Judge that the M.P. Industrial Relation Act, 1960 (in short '1960 Act') governs the conditions of the employment between the Corporation and the contract labour and they were entitled to the same wages as the workmen of the Corporation and there can be abolition of the contract labour on regular basis.

2. Returns were filed by the Corporation. Stand of the Corporation was that it is a registered establishment under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the 'Act'). The contractor who was impleaded as respondent No.4 in the writ petitions was awarded the contract after inviting tenders. The contractor employed writ petitioners and there was no relationship of masters and *servants between* the Corporation and the writ petitioners. It was canvassed that the writ petitioners had initiated conciliation proceedings under

A the 1960 Act and once they have taken recourse to alternative remedy available to them under industrial law they cannot invoke the extraordinary jurisdiction of the Court. The contractor who was impleaded as respondent No.4 supported the stand of the Corporation and its functionaries. It was stated that it is a partnership B firm and it had full control over the employees as the salaries were being paid by the firm. It was also stated that it had obtained a licence under Section 12 of the Act and was entitled to engage 75 workmen as per the said licence. It was pointed out that the writ petitioners were not permanent employees and their C services last during the continuance of the contract and it had come to an end after the term of the contract had expired.

3. Before the learned Single Judge it was urged by the writ petitioners that the provisions of 1960 Act are applicable to the Corporation and inasmuch as in Item No.10 of the Notification dated D 31.12.1960, there is a mention that the said Act is applicable to electricity generation and distribution in which the Corporation was engaged and was thus covered by all corners of the Statute.

4. Reliance was placed by the present appellants on Entries 22, 23 and 24 of the concurrent list of Schedule VII of the E Constitution of India, 1950 (in short 'Constitution') to buttress the contention that once legislation is passed by the Parliament in respect of any field covered under the Concurrent List, the same would have preference over the State law.

F 5. It was also submitted that Act in essence obliterated the definition of employer and employee under the 1960 Act. Learned Single Judge held that there was hardly any doubt that the relationship of employer and employee is established; that the Act is applicable to the writ petitioners and, therefore, they G cannot rely on the provisions of 1960 Act for enforcing their claim. It was also held that they being the contract labours are not employees of the Corporation within the meaning of Section 2(13)(a) read with sub-clause (e) of Section 2(14) of 1960 Act after coming into force of the Act.

H 6. A prayer had been made by the writ petitioners to ab-

sorb them as its workmen for the Corporation as they are contract labours. Learned Single Judge held that there was no Notification issued by the appropriate government abolishing the contract labour under Section 1 of the Act. There was no scope for granting any relief. It was held that the decision in *Air India Statutory Corporation etc. v. United Labour Union and Ors. etc.* (AIR 1997 SC 645) does not apply to the facts of the case.

7. Before the Division Bench, stand of the writ petitioners who were the appellants was that learned Single Judge was not justified in holding that 1960 Act had no application because of the Act inasmuch as no Notification was issued under Section 10 of the Act and in the absence of a Notification the conclusion arrived at is bound to suffer.

8. Stand of the present appellants was that the writ petitioners cannot claim to be employees of the principal employers and the question of absorption does not arise in view of what has been stated by this Court in *Steel Authority of India Ltd. v. National Union Waterfront Workers* (2001 (7) SCC 1) which inter-alia over-ruled the earlier decision in Air India's case (supra).

9. The High Court held that the object of the Act was to regulate the employment of the contract labour in certain establishments and to provide for its abolition in certain circumstances and the matters connected therewith. Reference was made to Sections 21 and 30 of the Act and it was held that though there was an over-riding effect yet the beneficial provision of the statute was not extinguished. It was further observed that once Notification is issued under Section 10 of the Act the matter would be different and the decision rendered by this Court in Steel Authority's case (supra) would be applicable in full force. In the absence of Notification the other general relevant law would be applicable. With reference to various provisions of 1960 Act it was held that there can be reconciliation of both the decisions rendered by Division Benches of the High Court. When there is a dispute with regard to wage structure qua class of employees they have to move the Labour Court as per the provisions of

A Sections 51 and 52 of the 1960 Act and if it is an individual, he can move the High Court under Schedule II. Accordingly, it was held that the view of learned Single Judge was not correct.

10. In support of the appeals, learned counsel for the appellants submitted that the ratio in Steel Authority's case (supra) has not been appreciated. It was further pointed out that the direction was for absorption and further that the contract labours should be abolished. It was pointed out that the effect of registration under Section 7 and the licence issued has not been considered. Similarly, the effect of Rule 25 has been lost sight of. It is pointed out that the effect of Article 254 has also not been considered. According to learned Solicitor General repugnancy is irrelevant for Sub-Article (2) of Article 254. It is pointed out that the Act refers to regulation and abolition. Section 10 begins with non-obstante clause. Section 7 relates to registration. The employment of contract labour is not prohibited. Only prohibition can be imposed by issuing a Notification.

11. It is pointed out that in Article 254 the question of Presidential assent is also there. It is, therefore, submitted that the judgment of the Division Bench is unsustainable.

12. In response, learned counsel for the respondents submitted that the High Court's view is in line with the beneficial legislation which intends to protect the contract labour from exploitation.

13. In *Steel Authority's* case (supra) it was inter-alia observed as follows:

"10. The CLRA Act was enacted by Parliament to deal with the abuses of the contract labour system. It appears that Parliament adopted twin measures to curb the abuses of employment of contract labour - the first is to regulate employment of contract labour suitably and the second is to abolish it in certain circumstances. This approach is clearly discernible from the provisions of the CLRA Act which came into force on 10-2-1971. A perusal of the Statement of Objects and Reasons* shows that in respect

of such categories as may be notified by the appropriate Government, in the light of the prescribed criteria, the contract labour will be abolished and in respect of the other categories the service conditions of the contract labour will be regulated. Before concentrating on the relevant provisions of the CLRA Act, it may be useful to have a bird's-eye view of that Act. It contains seven Chapters. Chapter I has two sections; the first relates to the commencement and application of the Act and the second defines the terms used therein. Chapter II which has three sections provides for the constitution of a Central Advisory Board by the Central Government and a State Advisory Board by the State Government and empowers the Boards to constitute various committees. Chapter III contains regulatory provisions for registration of establishments which employ contract labour. Section 10 which prohibits the employment of contract labour falls in this Chapter; we shall revert to it presently. Chapter IV contains provisions for purposes of licensing of contractors to make sure that those who undertake or execute any work through contract labour, adhere to the terms and conditions of licences issued in that behalf. Power is reserved for revocation, suspension and amendment of licences by the Licensing Officer and a provision is also made for appeal against the order of the Licensing Officer. Chapter V takes care of the welfare and health of contract labour obliging the appropriate Government to make rules to ensure that the requirements of canteen, restrooms and other facilities like sufficient supply of wholesome drinking water at convenient places, sufficient number of latrines and urinals accessible to the contract labour in the establishment, washing facilities and first-aid facilities, are complied with by the contractor. Where the contractor fails to provide these facilities the principal *employer is enjoined* to provide canteen, restrooms etc., mentioned above, for the benefit of the contract labour. Though the contractor is made responsible for payment of wages to each worker

A employed by him as contract labour before the prescribed period yet for effective implementation of this requirement, care is taken to ensure presence of a nominee of the principal employer at the time of the disbursement of wages. Here again, it is prescribed that if the contractor B fails to pay the wages to the contract labour, the principal employer shall pay the full wages or unpaid wages, as the case may be, to the contract labour and a right is conferred on him to recover the same from the amount payable to the contractor; if however, no amount is payable to him C then such amount is treated as a debt due by the contractor to the principal employer. Chapter VI deals with the contravention of the provisions of the Act, prescribes offences and lays down the procedure for prosecution of the offenders. Chapter VII is titled "Miscellaneous" and it D contains eight sections which need not be elaborated here."

14. In *Gujarat Electricity Board, Thermal Power Station, UKAL Gujarat v. Hind Mazdoor Sabha and Ors.* (1995 (5) SCC 27) it was inter alia observed by this Court as follows:

E "**53.** Our conclusions and answers to the questions raised are, therefore, as follows:

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

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

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

(*iii*) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however,

A the contract labour is not abolished, the industrial adjudicator has to reject the reference.

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

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15. Similarly, the view of this Court in *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh and Ors.* (2002 (4) SCC 609) is relevant. The position in law which has considerable effect on the present dispute was noted as follows:

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"16. In a recent Constitution Bench judgment of this Court in *Steel Authority of India Ltd.* v. *National Union Waterfront Workers*, *Air India case*[1] 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: (SCC pp. 61-63)

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

(*1*)(*a*)-(*2*)(*b*) * * *

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(*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.

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(*4*) We overrule the judgment of this Court in *Air India case* prospectively and declare that any direction issued

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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

A contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

Para 126 of the same judgment reads: (SCC p.63)

> "126. We have used the expression 'industrial adjudication' by design as determination of the questions aforementioned requires enquiry into disputes questions of facts which cannot conveniently be made by 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."

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**19.** 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*. The High Court held that the work entrusted to 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 the 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 alleged that the labour contract was a 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 a 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 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

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Corporation and the contractors did not comply with the provisions of the CLRA Act. Conclusion that the contract was a sham or it was only a camouflage cannot be arrived at as a matter of law for non-compliance with 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 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 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."

**20.** 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 the CLRA Act, but that material could not be a foundation or basis to say that the labour contract was a sham, a camouflage or a devise* to deny the statutory benefits to the workers. From the judgment under challenge, it is clear that *Air India case* 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 the CLRA

A Act and that power could be exercised after obtaining advice of the Contract Labour Advisory Board which in turn had to keep in mind several factors enumerated in clauses (*a*) to (*d*) of Section 10(2) of the CLRA Act stating that in the present case in almost 15 years, there was no registration of the 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 the Government of Maharashtra went on to record in clear terms that the Government had taken a decision to abolish the 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* 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 device and a sham. In our view, the conclusion of the High Court that the contract labour system in the present case was a sham, cannot be sustained in the light of what is stated above and particularly when the disputed questions of fact arose for consideration in the light of rival contention raised by the parties. We have detailed them above to say so.

**28.** 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."

16. Article 254 of the Constitution is also relevant. It reads as follows:

"254. *Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-(1)* If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of Such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

17. In Sub-Article (1) of Article 254 it has been clearly indi-

A cated that the competing legislations must be in respect of one of the matters enumerated in the concurrent list. It lays down the general rule and clause (2) is an exception thereto. The proviso qualifies the exception. In *Deep Chand v. State of Uttar Pradesh and Ors.* (AIR 1959 SC 648) the following principles were laid B down to ascertain whether there is repugnancy or not. The test was (1) whether there is direct conflict between two provisions; (ii) whether the legislature intended to lay down an existing code in respect of the subject matter replacing the earlier law; and (iii) whether two laws occupy the same field. In *Zaverbhai* C *Amaidas v. State of Bombay* (AIR 1954 SC 752) it was pointed out that the important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". If the latter legislation deals not only with the matters which formed the subject of the earlier legislation but with other D distinct matters though of a cognate and allied character, then Article 254(2) will have no application.

18. A Constitution Bench in *M. Karunanidhi v. Union of India* (AIR 1979 SC 898 at para 8) observed as follows:

E "It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of law made by State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of Clause (2) the State law would be void F to the extent of repugnancy. This naturally means that where both the State and the Parliament occupy the field contemplated by Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central G Act. In fact, the Scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to be Seventh Schedule, Parliament alone is empowered to H legislate and the State Legislatures have no authority to

make any law in respect of the Entries contained in List I. Secondly, so far as Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the entries appearing therein, but this is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislature alone is competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where, however, the law passed by the State comes into collision with a law passed by the Parliament on an entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with Clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by the large the law falls within the four corners of the State List, and entrenchment if any is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on the subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be

A protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central B Act in its applicability to the State only. Such a state of affairs exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

C 19. Clause (1) of Article 254 speaks about over-riding effect of a law made by Parliament which the Parliament is competent to enact. Same is the position in respect of a provision of existing law with respect of one of the matters enumerated in concurrent list which is subject to operation of Clause (2). So D far as Clause (2) is concerned when a law is made by the legislature of the State with respect to one of the matters enumerated in the concurrent list and it contains any provision repugnant to earlier law made by Parliament or in the existing law with respect of that matter then the law so made by legislature E of the State shall if it has been reserved for the consideration of the President and has received the assent prevail in that State. In that case, the assent of the President becomes the determinative factor. The proviso to Clause (2) curtails the ambit of Clause (2) by providing that Parliament can enact a law with F respect to the same matter in which the State Legislature has made the law and by such law the Parliament can add to, amend, vary or repeal the law made by the legislature of the State. In other words, in terms of the proviso in Article 254 the legislative power of the Parliament has been enlarged in the sense that it G can add to, amend, vary or repeal the law made by the legislature of the State.

20. Sections 7, 10 and 12 of the Act have also relevance. The read as follows:

H *"7.Registration of certain establishments.-(1)* Every

principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

10. *Prohibition of employment of contract labour*-(1) Notwithstanding anything contained in this Act, the appropriate Government may, after Consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

*(a)* whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;

*(b)* whether it is of perennial nature, that is to say, it is of

A sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment ;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

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(d) whether it is sufficient to employ considerable number of whole-time workmen.

*Explanation.-If a* question arises whether any process or operation or other work is of perennial nature, the decision C of the appropriate Government thereon shall be final.

*12. Licensing of contractors.—(1)* With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint no contractor to whom this D Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in E particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on F the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

21. In view of what has been stated above, the Division Bench was not justified in its conclusions and on the contrary, learned Single Judge had correctly analysed the position in law. G That being so, Civil Appeals are allowed. There will be no order as to costs.

22. In view of the order passed in Civil Appeals no order is necessary to be passed in Writ Petition 529 of 2005.

H N.J. Appeals allowed.