HINDALCO INDUSTRIES LTD. A

v.

ASSOCIATION OF ENGINEERING WORKERS

(Civil Appeal No. 6410 of 2000)

MARCH 14, 2008

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(TARUN CHATTERJEE AND P. SATHASIVAM, JJ.)

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971:

Schedule IV – Item 9 – Unfair labour practice by Company C *–Complaint that Company treating its canteen workmen as contract workmen – Workmen of statutory canteen run by Company through contractor – Continuing for long time inspite of change of several contractors – No fresh appointment letters issued by successive contractors – Activities of canteen* D *workmen, their suitability to work, physical fitness etc. controlled by Company – Company providing rent free premises with free water, electricity, furniture, crockery, cooking utensils for canteen – Payment of wages, PF contribution etc. of canteen workmen reimbursed/paid by Company – Quality, quantity,* E *rates and manner of supply of food articles laid down by Company – HELD: Industrial Court rightly concluded that contract was nothing but paper agreement – Even though canteen was shown to be run by contractor, ultimate control and supervision was of Company – Company committed* F *unfair labour practice – Industrial Court rightly directed the Company to absorb and make canteen employees as employees of Company and grant them wages and benefits as admissible to the last category of unskilled workmen of the Company – Direction of Industrial Court to be complied with* G *expeditiously.*

The respondent-Workers Union filed a complaint before the Industrial Court alleging unfair Labour practice by the appellant-Company in terms of Item 9 of Schedule

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A IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It was stated in the complaint that the workmen working in the canteen maintained by the Company in terms of s.46 of the Factories Act were deprived by the Company of
B permanency and other benefits as applicable to other permanent workmen of the Company; that the company was illegally treating the 27 workmen working in the canteen for a long period as contract workmen; that the contracts were sham, arranged from time to time merely
C for the purpose of avoiding to give the canteen workmen the benefits of permanency and other benefits; that the contractors kept on changing, but most of the workmen of the canteen were continuing for more than 10 years without fresh appointment orders on change of
D contractors. It was thus stated that the company had been engaging in unfair labour practice by treating its workers as workmen on contract. The stand of the company was that the complaint was time barred; that the workmen concerned being workmen of the contractor, could not claim permanent status as workers of the company; that
E dispute being related to contract labour and since the complainant-Union had approached the appropriate authority under the Contract Labour (Regulation and Abolition) Act, 1991, the complaint under the 1971 Act before the Industrial Court was liable to be dismissed on
F the principle of res judicata. It was further contended on behalf of the Company that the dispute could be resolved under the Industrial Disputes Act, 1947 and the complaint under the 1971 Act, was not maintainable.

G The Industrial Court held that the Company committed unfair labour practice under Item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions Prevention of Unfair Labour Practices Act, 1971. It directed the company to absorb and make the canteen employees as permanent employees of the company and grant them
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wages and benefits as admissible to the last category of unskilled workmen. The Company approached the High Court which declined to interfere. On the petition for special leave filed by the Company, the Supreme Court directed the High Court to decide the matter on merits. The High Court accordingly heard the matter afresh and confirmed the order passed by the Industrial Court.

In the instant appeal filed by the Company, the questions for consideration before the Court were: (i) whether the Industrial Court was justified in issuing direction to absorb all the employees of the canteen in the company's employment and pay them wages and other benefits to the extent of last category of unskilled workers in the company; and (ii) whether the High Court was right in affirming the said order?

Dismissing the appeal, the Court

HELD: 1.1 Taking note of all the relevant materials, special circumstances, the fact that most of the canteen employees were working for more than 10-15 years and finding that there is no valid reason for the company to deny them permanency, the Industrial Court rightly concluded that the Company has committed unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971 and issued appropriate directions. The Industrial Court is perfectly right in arriving at the conclusion that the evidence coupled with the terms of agreement show that the contract is nothing but paper agreement. With the material placed before this Court also, it is clear that even though the record shows that canteen is being run by the contractor, ultimate control and supervision over the canteen is of the Company. [para 25] [135-D, E, F]

Indian Petrochemicals Corporation Ltd. and Another vs. Shramik Sena and Others, (1999) 6 SCC 439; *Parimal Chandra Raha vs. LIC,* 1995 Supp (2) SCC 611 – relied on.

A *General Labour Union (Red Flag), Bombay vs. Ahmedabad Mfg. & Calico Printing Co. Ltd. and Others,* **1995 Supp (1) SCC 175**; *Vividh Kamgar Sabha vs. Kalyani Steels Ltd. and Another,* **(2001) 2 SCC 381**; *Cipla Ltd. vs. Maharashtra General Kamgar Union and Others,* **(2001) 3 SCC 101**; *Sarva* B *Shramik Sangh vs. Indian Smelting & Refining Co. Ltd. and Others,* **(2003) 10 SCC 455**; *Oswal Petrochemicals vs. Govt. of Maharashtra and Others,* **(2005) 12 SCC 433 – referred to**

M.M.R. Khan vs. Union of India, **1990 Supp SCC 191** and *Reserve Bank of India vs. Workmen,* **(1996) 3 SCC 267,**

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1.2 The Industrial Court has found that the workmen joined the service in different years between 1978 and 1992. Most of them have worked for more than 10 years and their dates of joining have not been disputed by the D **Company. It is also not disputed that in spite of change of several contractors, neither the workmen were replaced nor fresh appointments were made. On the other hand, same workmen were continuing even on the date of filing of the complaint. From the evidence and the materials, it is also clear that the activities of the workmen in the** E **canteen, their suitability to work and physical fitness are ultimately controlled by the company. [para 23, 25] [132-F-H; 133-A, 135-C,D]**

1.3 Apart from the evidence let in on both the sides, F **as rightly pointed by the Industrial Court, the relevant terms of the agreements as reproduced in the order of the Industrial Court clearly show that it is the duty of the company to provide canteen premises free of rent along with free water, electricity, fuel, furniture, fixtures, crockery** G **and all cooking utensils. It further shows that the company has laid down the quality, quantity of food articles and fixed the rates and the manner of supplying meals, eatables, snacks, tea and beverages etc. After adverting to clause (d) (1)(2) of the agreement, the Industrial Court has concluded that though responsibility is cast upon the** H

contractor to make payment of wages, P.F. contribution etc. on submission of the bills, the amounts are to be paid/ reimbursed by the company. This clearly shows that though certain amounts are being paid by the contractor, in the real sense, ultimately, it is the company which pays all the amounts. [para 25] [134-F, G, 135-A,B]

2 The High Court was conscious about the observation of this Court made in the earlier petition for special leave wherein the High Court was directed to decide the matter on merits afresh. The order of the High Court further shows that it has adverted to the relevant details furnished before the Industrial Court and analysed the same and finally, after recording that the finding of fact arrived by the Industrial Court cannot be termed as perverse and they are based on proper appreciation of evidence and sound reasoning, dismissed the Letters Patent Appeal. There is no error or infirmity in arriving at such conclusion. On the other hand, the conclusion arrived by the Industrial Court and affirmed by the High Court are correct. [para 26] [136-A, B, C]

3. In the light of what has been stated in the judgment and in view of abundant factual details as mentioned in para 24 of the judgment as well as the reasonings as laid down in Indian Petrochemicals Corpn. Ltd.* the stand taken by the appellant-Company is rejected. Inasmuch as the Industrial Court has issued directions as early as on 15.10.1998 which were not implemented due to court proceedings, the appellant-Company is directed to implement the same within a period of three months. [para 27] [136-D-E]

* *Indian Petrochemicals Corporation Ltd. and Another vs. Shramik Sena and Others,* **(1999) 6 SCC 439 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6410 of 2000.

From the final Judgment and Order dated 20.01.2000 of

A the High Court of Judicature at Bombay in Letters Patent Appeal No. 58 of 1999 in Writ Petition No. 6181 of 1998.

L.N. Rao, R.K. Sanghi, Narendra M. Sharma, Vanita Mehta and Rajesh Prasad Singh for the Appellant.

B S.F. Deshmuk and P.K. Manohar for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1) Hindalco Industries Ltd., aggrieved by the judgment and order dated 20.01.2000 of the High Court C of Bombay in L.P.A. No. 58 of 1999 confirming the order of the Industrial Court accepting the case of the Association of Engineering Workers' Union, has filed the above appeal.

2) The respondent herein namely, Association of Engineering Workers' Union (hereinafter referred to as "the D Union") filed a complaint of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU and PULP Act, 1971") against Hindalco Industries Ltd. – appellant herein (hereinafter referred to as "the E Company") before the Industrial Court at Thane. According to the Union, the complainant is a trade union recognized as a representative union of the appellant-company. The Company has engaged employees in unfair labour practices on and from 1971 on a continuous basis from month to month, therefore, the F period of limitation is not applicable. However, as a measure of abundant precaution, the Union has filed a separate application for condonation of delay. The Company has engaged about 500 workmen in the manufacture of aluminium and aluminium products. The complainant-Union (respondent herein) is a G recognized Union for the establishment of the appellant-Company. In terms of Section 46 of the Factories Act, 1948, the Company is duty bound to maintain a canteen for the benefits of workmen working in an establishment. Accordingly, the Company is maintaining a Canteen at its Kalwa establishment. In order to avoid giving the workmen working in the canteen, H

permanency and benefits which are applicable to permanent workmen of the Company, the Company is illegally treating the workmen working the canteen as contract workmen. It is the specific case of the complainant-Union that the contract is sham and is a mere arrangement made for the purpose of avoiding permanency and giving wages and benefits as are applicable to permanent workmen of the company.

3) On the date of filing of the complaint, out of 27 workmen who have worked for various periods, 23 workmen have worked for more than ten years continuously the maximum being for 25 years. The remaining four workmen have also worked for more than 3 ½ years and as such are permanent workmen of the Company. The Company has been making arrangement showing on papers that the contract is being given to someone or the other whereas in fact, the canteen is engaged and run by the Company itself. It is, therefore, the case of the Union that 27 workmen whose names are mentioned in the complaint are, in fact, the workmen of the Company. As per the various decisions of this Court, the workmen who are working in the statutory canteen are treated as workmen of the principal employer. On the same analogy, all the 27 workmen are workers of the Company.

4) The Company has engaged and is engaging in unfair labour practices by treating its own workmen as workmen on contract. The workmen are entitled for a declaration that they are the workmen of the Company. In order to comply with the technicalities that are required to be done, the Union is simultaneously making an application to the State Contract Labour Advisory Board to abolish the contract system as far as the canteen is concerned in the appellant-Company. The Union is also raising a demand that all the 27 workmen should be absorbed in the Company from the initial date of their employment in the Company and pay them wages and other benefits that are applicable to permanent workmen of the Company.

A 5) The Company filed the reply in the Industrial Court stating that the complaint is time barred since filed beyond the prescribed time limit laid down under the provisions of the MRTU & PULP Act, 1971, hence the same is to be dismissed *in limine*. Further the dispute under reference is pertaining to employees B employed under the contract i.e., contract labour, there is a specific remedy and relief available under the Contract Labour (Regulation & Abolition) Act, 1971, which is a specific forum available to redress the grievances, if any. Inasmuch as the Complainant-Union has already approached the appropriate C authority for abolition of contract labour, the present complaint before the Industrial Court is liable to be dismissed on the principle of *res judicata*. With regard to the merits, it is stated that the practice of giving contract to run the canteen is in vogue right from inception. The complainant is very well aware of the D contract and the canteen contractor who is managing the canteen. There are several decisions of this Court holding that employing contract labour cannot be agitated within the forum under MRTU & PULP Act 1971, when there is specific remedy available in Contract Labour (Regulation & Abolition) Act, 1971. Moreover, since it is a disputable point such dispute is required E to be resolved through the machinery provided under the Industrial Disputes Act, 1947, hence, any complaint to that effect under MRTU & PULP Act, 1971 is not maintainable. It is further reiterated that working of the canteen is distinct and separate which is neither incidental nor connected with the manufacturing F process of the factory. The canteen is exclusively run and managed by the contractor which is an outside agency.

6) On the above pleadings and on the basis of the oral and documentary evidence, the Industrial Court, by order dated G 15.10.1998, allowed the complaint and declared that the Company has committed unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 and further directed the Company to cease and desist such unfair labour practice. In the same order, the Industrial Court directed the Company to absorb and make the canteen employees referred to in the H

Annexure as permanent employees of the Company from the date of its order. In addition to the same, the Industrial Court directed the Company to pay them the wages and other benefits like the last category of unskilled workmen in the Company. A

7) Aggrieved by the aforesaid order of the Industrial Court, the Company preferred Writ Petition No. 6181 of 1998 before the High Court of Bombay. The learned single Judge, by order dated 25.01.1999, confirmed the order of the Industrial Court and dismissed the writ petition. The said order of the learned single Judge was challenged before the Division Bench of the High Court in L.P.A. No. 58 of 1999. By order dated 22.03.1999, the said L.P.A. was summarily dismissed. Questioning the same, the Company filed an appeal before this Court in Civil Appeal No.6120 of 1999 (@ S.L.P.(C) No. 9244 of 1999). By order dated 25.10.1999, this Court allowed the appeal of the Company, set aside the order passed by the High Court and remitted the matter to the High Court for deciding the same on merits. Pursuant to the said direction, L.P.A. No. 58 of 1999 was restored on its file and heard afresh and the Division Bench by the impugned order dismissed the Letters Patent Appeal and confirmed the order of the Industrial Court. Aggrieved by the aforesaid order of the Division Bench of the High Court dated 20.01.2000, the Company has filed the present appeal. B C D E

8) Heard Mr. P.P. Rao, learned senior counsel for the appellant-Company and Mr. S.F. Deshmuk, learned counsel for the respondent-Union. F

9) The points for consideration in this appeal are (i) whether the Industrial Court is justified in issuing direction to absorb all the employees of the canteen in the company's employment and pay them wages and other benefits to the extent of last category of unskilled workers in the company; (ii) whether the High Court is right in affirming the said order? G

10) Since, the Union has filed a complaint under item 9 of Schedule IV of the MRTU and PULP Act, 1971, before going into the merits, let us refer the Preamble and relevant provisions H

A of the Act. The preamble of the MRTU and PULP Act, 1971 reads as under:-

> "An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers
B on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to
C trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid.
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> WHEREAS, by Government Resolution, Industries and
D Labour Department, No. IDA.1367-LAB-II, dated the 14th February, 1968, the Government of Maharashtra appointed a Committee called "the Committee on Unfair Labour Practices" for defining certain activities of employers and workers and their organizations which should be treated as unfair labour practices and for suggesting action which
E should be taken against employers or workers, or their organizations, for engaging in such unfair labour practices;
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> AND WHEREAS, after taking into consideration the report of the Committee the Government is of opinion that it is
F expedient to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-out; to
G define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes or according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the
H purposes aforesaid; It is hereby enacted in the Twenty-

second Year of the Republic of India as follows:-" A

Among the various definitions, we are concerned about Section 3(16) which refers to "unfair labour practices" means unfair labour practices as defined in section 26. Chapter-VI, Section 26 speaks about Unfair labour practices. It reads:

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"26. Unfair labour practices

In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV."

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Sections 4 and 5 refer Industrial Court and its duties. As per Section 27, no employer or union and no employees shall engage in any unfair labour practice. Section 28 provides elaborate procedure for dealing with complaints relating to unfair labour practices. Section 30 speaks about powers of Industrial and Labour Courts. Section 32 mandates the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of the Act. Section 59 makes it clear that if any proceeding is initiated under the the MRTU and PULP Act, 1971, no proceeding shall be entertained by any authority in respect of those matters under the Bombay Industrial Relations Act, 1946 (Bombay Act) and Industrial Disputes Act, 1947 (in short "the I.D. Act"). Section 60 prohibits filing of suits in any civil court in respect of the subject-matter of a complaint or application to the Industrial Court or Labour Court under this Act.

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11) Though an objection was raised as to limitation in filing complaint before the Industrial Court in view of reasons adduced and accepted by the Industrial Court and the High Court, we are of the view that there is no need to elaborate the same. We also reject the supplementary objection, namely, the complaint is hit by the principle of *res judicata* since according to the Industrial Court, no sufficient material was placed to throw the complaint on the ground of earlier/parallel proceeding in any other forum.

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12) Coming to the main issue, according to the Union, the H

A Company is having 500 employees working in the manufacturing and other activities. It is their specific case that there is a canteen inside the campus of the manufacturing unit and it is a statutory canteen and, therefore, the employees working in the canteen numbering 27 are the employees of the
B company. It is not in dispute that the provisions of Factories Act, 1948 are applicable to the Company. Section 46(1) mandates that the State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and
C maintained by the occupier for the use of the workers. The presence of a canteen within the Company premises and statutory provision as referred above are not disputed. However, it is the case of the Company that the employees in the canteen are working through a contractor and, therefore, they are not
D entitled for status of permanent employees of the Company. Mr. P.P.Rao, learned senior counsel appearing for the appellant-Company, by drawing our attention to various decisions of this Court would submit that unless relationship of employer and employee exists, the present issue/claim cannot be gone into by the Industrial Court under the provisions of the MRTU and
E PULP Act, 1971. In other words, according to him, in view of the objection/stand taken in the reply statement before the Industrial Court, the issue raised by the Union cannot be adjudicated and it is for the Union or workmen to get an order under the provisions of the I.D. Act and thereafter, approach the Industrial Court for
F necessary relief, if any. On the other hand, Mr. Deshmuk, learned counsel appearing for the respondent-Union vehemently contended that in view of the object of the enactment and all other details such as existence of a canteen from several years, control and supervision by the company, the contractor is only a
G name-lender and the Industrial Court has jurisdiction to go into the issue raised in the complaint. He further contended that based on the relevant acceptable materials, the Industrial Court granted relief in favour of the Union which was rightly affirmed by the High Court and the same cannot be lightly interfered under
H Article 136 of the Constitution of India.

13) In the earlier part of our judgment, we have referred to the claim of both parties as well as relevant provisions of the the MRTU and PULP Act, 1971. Now let us consider various pronouncements on the point in issue. The earliest decision relied on by the Company is ***General Labour Union (Red Flag), Bombay*** vs. ***Ahmedabad Mfg. & Calico Printing Co. Ltd. and Others***, 1995 Supp (1) SCC 175. In that decision, General Labour Union (Red Flag), Bombay had filed a complaint before the Industrial Court under the MRTU and PULP Act, 1971 complaining of the breach of Items 1(*a*), (*b*), 4(*a*), (*f*) and 6 of Schedule II and Items 7, 9 and 10 of Schedule IV of the said Act. The case of the complainant-union was that the 21 workmen who were working in one of the canteens of the respondent-company, were not given the service conditions as were available to the other workmen of the company and there was also a threat of termination of their services. It is an admitted fact that these workmen were employed by a contractor who was given a contract to run the canteen in question. The complaint was filed on the footing that the workmen were the employees of the company and, therefore, the breach committed and the threats of retrenchments were cognizable by the Industrial Court, under the said Act. The complaint proceeded on the basis as if the workmen were a part of the work-force of the company. The facts on record reveal that the workmen were never recognised by the respondent-company as its workmen and it was the contention of the company that they were not its employees. The Industrial Court dismissed the complaint holding that since the workmen were not the workmen of the respondent-company, the complaint was not maintainable under the said Act. The High Court in writ petition confirmed the said finding and dismissed the petition on the same ground. Hence, the Labour Union approached this Court by filing appeal. This Court has concluded as under:-

> **"2.** As pointed out both by the Industrial Court and the High Court, it was not established that the workmen in question were the workmen of the respondent-company.

A In the circumstances, no complaint could lie under the Act as is held by the two courts below. We, therefore, find nothing wrong in the decision impugned before us. The workmen have first to establish that they are the workmen of the respondent-company before they can file any B complaint under the Act. Admittedly, this has not been done. It is open for the workmen to raise an appropriate industrial dispute in that behalf if they are entitled to do so before they resort to the provisions of the present Act."

14) In ***Vividh Kamgar Sabha*** vs. ***Kalyani Steels Ltd. and*** C ***Another***, (2001) 2 SCC 381, similar claim under the MRTU and PULP Act, 1971 was considered. The two-Judge Bench following the ***General Labour Union (Red Flag), Bombay case*** (supra) dismissed the appeal filed by the workers-Union on the ground that the complaint was not maintainable. Similar D direction as issued in ***General Labour Union (Red Flag), Bombay case*** (supra) has been issued in this case also.

15) The next decision which is also under the MRTU and PULP Act, 1971 is ***Cipla Ltd.*** vs. ***Maharashtra General Kamgar Union and Others,*** (2001) 3 SCC 101. When similar E claim was made by the trade-Union against the Management – Cipla Ltd., the same was negatived by the Labour Court. However, the Division Bench of the High Court took a different view of the matter and allowed the complaint. While considering the appeal filed by Cipla, the two-Judge Bench accepted the F case of the Management and rejected the stand taken by the trade-Union. The argument of learned senior counsel appearing for the Union that in view of Section 32 of the Act incidental question can be considered by the Industrial Court was not acceptable and this Court concluded:

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> **"11.** Next decision relied upon by Shri Singhvi is *Central Bank of India Ltd.* v. *P.S. Rajagopalan* AIR 1964 SC 743 to contend that even in cases arising under Section 33-C(2) of the Industrial Disputes Act the scope, though very limited, certain incidental questions can be gone into like

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a claim for special allowance for operating adding machine which may not be based on the Sastry Award made under the provisions of Chapter V-A. The learned counsel pointed out that in the event we were to hold that it is only in clear cases or undisputed cases the Labour Court or the Industrial Tribunal under the Act can examine the complaints made thereunder, the whole provision would be rendered otiose and in each of those cases provisions of the Bombay Industrial Relations Act, 1946 or the Industrial Disputes Act will have to be invoked. We are afraid that this argument cannot be sustained for the fact that even in respect of claims arising under Section 33-C(2) appropriate dispute can be raised in terms of Section 10 of the Industrial Disputes Act and that has not been the position in the present case. Nor can we say that even in cases where employer-employee relationship is undisputed or indisputably referring to the history of relationship between the parties, dispute can be settled and not in a case of the present nature where it is clear that the workmen are working under a contract. But it is only a veil and that will have to be lifted to establish the relationship between the parties. That exercise, we are afraid, can also be done by the Industrial Tribunal under the Bombay Industrial Relations Act, 1946 or under the Industrial Disputes Act. Therefore, we are afraid that the contention advanced very ably by Shri Singhvi on behalf of the respondents cannot be accepted. Therefore, we hold that the High Court went far beyond the scope of the provisions of the Act and did not correctly understand the decisions of this Court in *Gujarat Electricity Board, Thermal Power Station* v. *Hind Mazdoor Sabha* (1995) 5 SCC 27 and *General Labour Union (Red Flag)* v. *Ahmedabad Mfg. & Calico Printing Co. Ltd.* 1995 Supp (1) SCC 175. The correct interpretation of these decisions will lead to the result, which we have stated in the course of this order."

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A By saying so, allowed the appeal filed by Cipla Ltd.

15) The next decision heavily relied on the side of the appellant-Company is ***Sarva Shramik Sangh*** vs. ***Indian Smelting & Refining Co. Ltd. and Others,*** (2003) 10 SCC 455. Here again, this Court considered the very same provisions B of the MRTU and PULP Act, 1971. Similar contentions were raised by the Union and the Management. Basing reliance on General Labour Union (Red Flag) Bombay (supra) and Cipla Ltd. (supra), this Court concluded:

C "24. ... . In order to entertain a complaint under the Maharashtra Act it has to be established that the claimant was an employee of the employer against whom complaint is made under the ID Act. When there is no dispute about such relationship, as noted in para 9 of *Cipla case* the D Maharashtra Act would have full application. When that basic claim is disputed obviously the issue has to be adjudicated by the forum which is competent to adjudicate. The sine qua non for application of the concept of unfair labour practice is the existence of a direct relationship of employer and employee. Until that basic question is E decided, the forum recedes to the background in the sense that first that question has to be got separately adjudicated. Even if it is accepted for the sake of arguments that two forums are available, the court certainly can say which is the more appropriate forum to effectively get it adjudicated F and that is what has been precisely said in the three decisions. Once the existence of a contractor is accepted, it leads to an inevitable conclusion that a relationship exists between the contractor and the complainant. According to them, the contract was a facade and sham one which has G no real effectiveness. As rightly observed in *Cipla case* it is the relationship existing by contractual arrangement which is sought to be abandoned and negated and in its place the complainant's claim is to the effect that there was in reality a relationship between the employer and the H complainant directly. It is the establishment of the existence

of such an arrangement which decides the jurisdiction. That being the position, *Cipla case* rightly held that an industrial dispute has to be raised before the Tribunal under the ID Act to have the issue relating to actual nature of employment sorted out. That being the position, we find that there is no scope for reconsidering *Cipla case* the view which really echoed the one taken about almost a decade back." A B

16) In ***Oswal Petrochemicals*** vs. ***Govt. of Maharashtra and Others***, (2005) 12 SCC 433 which is also a two-Judge Bench, while considering the very same Act, namely, the MRTU and PULP Act, 1971 following the judgment of this Court in ***Cipla Ltd. (supra)*** disposed of the appeal on the same terms. C

17) Though Mr. Deshmuk, learned counsel for the Union relied on several decisions and also highlighted that all the above referred decisions are distinguishable, it is useful to refer to a three-Judge Bench decision of this Court in ***Indian Petrochemicals Corporation Ltd. and Another*** vs. ***Shramik Sena and Others***, (1999) 6 SCC 439. This is an appeal preferred by M/s Indian Petrochemicals Corporation Limited and another (Management) against an order dated 29-8-1997 made by the High Court of Judicature at Bombay in W.P. No. 2206 of 1997 filed by the Shramik Sena and another (workmen). Against the very same judgment, the workmen also filed appeal being C.A. No. 1855 of 1998. Both the appeals clubbed together, heard and disposed of by the said common judgment. The workmen therein filed a writ petition before the High Court of Bombay for a declaration that the workmen whose names are shown in Ex. 'A' annexed to the said petition, are the regular workmen of the Management and are entitled to have the same pay scales and service conditions as are applicable to regular workmen of the Management. It was further prayed that a direction be given to the Management to absorb the workmen listed in the said Ex. 'A' with effect from the actual date of their entering into the service of the canteen of the Management and to pay them all consequential benefits including arrears of D E F G H

A wages etc.

18) According to the workmen, the workers listed in Ex. 'A' to the petition are working in the canteen of the Management in its factory at Nagothane, District Raigad in the State of Maharashtra, and the Management was treating them as B persons employed on contract basis through a contractor named M/s Rashmi Caterers, who was impleaded in the writ petition as Respondent 5. It was contended on behalf of the above workmen that the factory of the Management where the workmen are employed, is governed by the provisions of the C Indian Factories Act, 1948 and the canteen where the said workmen are employed is a statutory canteen established by the Management as required under the said provisions of the Act. It was further contended that the said canteen is maintained for the benefit of the workmen employed in the factory and the D Management had direct control over the said workmen and that Respondent 5, though shown as a contractor, has no control over the Management, administration and functioning of the said canteen. The canteen is a part of the establishment of the Management and the workers working in the canteen are the E workmen of the said Management. The further contention of the workmen was that the work carried on by them in the said canteen is perennial in nature and the canteen is incidental to and is connected with the establishment of the Management. It is their further case that the Management is denying the said F workmen the status of its regular employees and was treating them as contract employees contrary to the statutory provisions and judicial pronouncements of this Court.

19) On behalf of the Management, it was contended before the High Court that it was a public sector undertaking and it G cannot appoint any person in contravention of the recruitment policy which requires the Management to follow a roster system. Therefore, apart from the fact that the workmen were not in the regular employment of the said Management, the absorption or regularisation of the services of the said workmen would H contravene Article 16(4) of the Constitution, and would also

contravene the reservation policy which is applicable for recruitment in the establishment managed by it.

20) The High Court, following the decision in ***Parimal Chandra Raha*** vs. ***LIC***, 1995 Supp (2) SCC 611 allowed the writ petition holding that since the workmen whose names were found in Annexure 'A' to the petition are working in the statutory canteen of the Management, they are entitled to be absorbed in the employment of the said Management and also issued directions in regard to absorption of the employees.

21) Being aggrieved by the said judgment and order of the High Court, the Management has preferred C.A No. 1854 of 1998 and being aggrieved by the conditions imposed while directing the absorption of the employees, on behalf of the workmen C.A. No. 1855 of 1998 has been preferred before this Court.

22) Para 10 of the said decision shows that while considering at the SLP stage for granting leave, a two-Judge Bench of this Court observed that the questions involved in these appeals are of considerable importance and it will be desirable if the same is decided by a Bench of three Judges. Consequently, both the appeals were heard by a three-Judge Bench. Similar contentions as raised in the case on hand were raised on behalf of the Management and Workmen. No doubt, taking note of the definition 2(l) of the Factories Act which defines "worker", did not accept the workmen's contention that employees of a statutory canteen *ipso facto* become the employees of the establishment for all purposes. After considering ***Parimal Chandra Raha's case (supra)*** and ***M.M.R. Khan*** vs. ***Union of India***, 1990 Supp SCC 191 and ***Reserve Bank of India*** vs. ***Workmen***, (1996) 3 SCC 267, this Court concluded that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes. Had the three-Judge Bench stopped therein, we have no other option except to apply the principle as stated in ***General Labour***

A ***Union (Red Flag) case (supra)***, ***Vividh Kamgar Sabha case (supra)***, ***Cipla Ltd. case (supra)***, ***Sarva Shramik Sangh case (supra)*** and ***Oswal Petrochemicals.*** However, from para 23 onwards, the three-Judge Bench discussed the main issue with which we are concerned, namely, "whether from the material on B record it could be held that the workmen are, in fact, the employees of the Management for all purposes". Since the factual details that arose in the ***Indian Petrochemicals case (supra)*** are identical to the case on hand, we reproduce the following discussion and the ultimate conclusion:

C **"25.** Though the canteen in the appellant's establishment is being managed by engaging a contractor, it is also an admitted fact that the canteen has been in existence from the inception of the establishment. It is also an admitted fact that all the employees who were initially employed D and those inducted from time to time in the canteen have continued to work in the said canteen uninterruptedly. The employer contends that this continuity of employment of the employees, in spite of there being a change of contractors, was due to an order made by the Industrial E Court, Thane, on 10-11-1994 wherein the Industrial Court held that these workmen are entitled to continuity of service in the same canteen irrespective of the change in the contractor. Consequently, a direction was issued to the Management herein to incorporate appropriate clauses F in the contract that may be entered into with any outside contractor to ensure the continuity of employment of these workmen. The Management, therefore, contends that the continuous employment of these workmen is not voluntary. A perusal of the said order of the Industrial Court shows G that these workmen had contended before the said Court that the Management was indulging in an unfair labour practice and in fact they were employed by the Company. They specifically contended therein that they are entitled to continue in the employment of the Company irrespective of the change in the contractor. The Industrial Court H

accepted their contention as against the plea put forth by the Management herein. The employer did not think it appropriate to challenge this decision of the Industrial Court which has become final. This clearly suggests that the Management accepted as a matter of fact that the respondent workmen are permanent employees of the Management's canteen. This is a very significant fact to show the true nature of the respondents' employment. That apart, a perusal of the affidavits filed in this Court and the contract entered into between the Management and the contractor clearly establishes:

(*a*) The canteen has been there since the inception of the appellant's factory.

(*b*) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.

(*c*) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.

(*d*) The wages of the canteen workers have to be reimbursed by the appellant.

(*e*) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(*f*) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(*g*) The workmen have the protection of continuous employment in the establishment.

26. Considering these factors cumulatively, in addition to the fact that the canteen in the establishment of the Management is a statutory canteen, we are of the opinion that in the instant case, the respondent workmen are in

A fact the workmen of the appellant Management.

27. At this stage, it is necessary to note another argument of Mr Andhyarujina that in view of the fact that there is no abolition of contract labour in the canteen of the appellant's establishment, it is open to the Management to manage its canteen through a contractor. Hence, he contends that by virtue of the contract entered into by the Management with the contractor, the respondent workmen cannot be treated as the employees of the Management. This argument would have had some substance if in reality the Management had engaged a contractor who was wholly independent of the Management, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the Management. In the background of this finding, the last argument of Mr Andhyarujina should also fail."

23) In the light of above background, let us consider the factual details available and as asserted in the complaint of the Union filed in our case. In order to establish the specific plea raised in the complaint, the complainant has examined one Dagdu Deshmukh and Shankar Nam Patil. Both of them are working in the canteen. According to Deshmukh, he joined the Company on 22.02.1982 and according to Shankar he is in the service of the Company from 01.11.1989. The Complainant has enclosed a list of the employees working in the canteen in the Annexure to the complaint. The Industrial Court, on perusal of the said list, found that they joined the service in different years since 1978 till 1992. Most of them have worked for more than 10 years. The Industrial Court has also concluded that their dates of joining mentioned in Annexure to the complaint have not been disputed by the Company. It is also demonstrated before the Court that there were number of contractors since 1971 till the contract was taken by M/s Gambhir Caterers, since 1965 to 1968 one Mehra was the canteen contractor. Thereafter, in 1968, one S.S.Shetty worked as a Canteen Contractor. He was running

the said canteen for 14 years. Thereafter, the Universal Caterer was the Canteen Contractor from 1981 to 1995. After 1995, Gambhir Caterer is the Canteen Contractor. It is relevant to mention and in fact not disputed that in spite of the changes in the Canteen Contractor the service of the canteen employees continued and they were not issued fresh appointment orders by any of the canteen contractors including the last one, namely, Gambhir Caterer.

24) The Industrial Court analysed the evidence of Complainant's witness and also the evidence of the Company. From the evidence and other materials, the Court noted the following information:

(a) Canteen has been in existence since 1965.

(b) Canteen employees were working in four shifts.

(c) Canteen is situated in the company premises.

(d) The company has provided utensils, gas and other articles like chair, table, etc.

(e) The company has also provided room to the canteen employees for their residential complex.

(f) Seven to Eight employees who are bachelors are residing in the said room.

(g) The company has provided electricity and water. Respective charges are not being deducted from the wages of the employees.

(h) The company has also supplied umbrellas for the rainy season.

(i) The company is paying maintenance charge and electricity charge and other expenses of the canteen.

(j) All the facilities including premises to the canteen are provided by the company.

(k) The wages of employees of the canteen are

A reimbursed by the company.

(l) The company is purchasing the food items.

(m) When ever there is rise in the wages of the employees, it is the company who is to pay the same.

B (n) The company is providing three sets of uniforms to the employees and also providing service washermen.

(o) The employer's contribution P.F. is reimbursed by
C the company.

(p) In the past the company has regularized some of the employees working in the canteen.

From the above, it is clear that all the facilities to the canteen
D are provided by the company.

25) It is true that Sridhar Bhandari, the Manager of Gambhir Caterer, in his evidence has stated that the workers are keeping the attendance card, muster roll (Ex.C-12 and C-13) and payment details of Gambhir Caterer. In view of the above
E statement, the Industrial Court ventured to find legitimate control over the activities of the canteen employees. While considering the said issue, the Court verified various terms of agreement dated 28.11.1995. The relevant terms have been reproduced in para 49 of the order of the Industrial Court which clearly show
F that it is the duty of the company to provide canteen premises free of rent along with free water, electricity, fuel, furniture, fixtures, crockery and all cooking utensils. It further shows that the company has fixed the rate of meals, eatables, snacks, tea and beverages etc. As rightly pointed out by the Industrial Court, apart
G from the evidence let in on the side of the union and the company from the terms of contract, it is clear that it is the duty of the company to provide sufficient premises, furniture, fuel, gas, electricity, water and also laid down several procedure as to how food items to be supplied. As rightly concluded by the
H Industrial Court, the company has clearly laid down the quality,

quantity, the rates and manner of supplying food articles. After adverting to clause (d) (1)(2) of the agreement, the Industrial Court has concluded that though responsibility is cast upon the contractor to make payment of wages, P.F. contribution etc. on submission of the bills, the amounts are to be paid/reimbursed by the company. The above details clearly show that though certain amounts are being paid by the contractor, in the real sense, ultimately, it is the company which pays all the amounts. From the evidence and the materials, it is also clear that the activities of the workmen in the canteen, their suitability to work, physical fitness are ultimately controlled by the company. In those circumstances, the Industrial Court is perfectly right in arriving the conclusion that the evidence coupled with the terms of agreement show that the contract is nothing but paper agreement. As stated earlier, in spite of change of several contractors, neither the workmen were replaced nor fresh appointments were made. On the other hand, same workmen were continuing even on the date of filing of the complaint. Taking note of all the above-mentioned relevant materials, special circumstances and most of the employees are working for more than 10-15 years and finding that there is no valid reason for the company to deny their permanency, the Industrial Court rightly concluded that the company has committed unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971 and issued appropriate directions. With the materials placed, we are also of the opinion that even though the record shows that canteen is being run by the contractor, ultimate control and supervision over the canteen is of the Company. Inasmuch as the facts on hand are identical to the decision in ***Indian Petrochemicals Corpn. Ltd. case (supra)*** which is a three-Judge Bench decision which was not cited before any of the decisions relied on by the company, in view of the circumstances narrated in the earlier paras, we accept the conclusion arrived by the Industrial Tribunal.

A B C D E F G

26) Coming to the impugned order of the High Court, it is argued that in spite of the earlier direction of this Court in SLP

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A (C) No. 9244 of 1999, the High Court has not adverted to the relevant aspects and committed the same error in confirming the order of the Industrial Court. In the light of the said contention, we have gone through the impugned decision of the High Court, which clearly shows that the High Court was conscious about
B the observation of this Court. The High Court order further shows that it has adverted to the relevant details furnished before the Industrial Court and analysed the same and finally after recording that the finding of fact arrived by the Industrial Court cannot be termed as perverse and they are based on proper appreciation
C of evidence and sound reasoning dismissed the Letters Patent Appeal. We do not see any error or infirmity in arriving such conclusion. On the other hand, as discussed above, we are in entire agreement with the conclusion arrived by the Industrial Court and affirmed by the High Court.

D 27) In the light of what has been stated above and in view of abundant factual details as mentioned in para 24 of this judgment as well as the reasonings as laid down in ***Indian Petrochemicals Corpn. Ltd. case (supra),*** we reject the stand taken by the appellant-Company. Accordingly, the appeal fails
E and the same is dismissed. Inasmuch as the Industrial Court has issued directions as early as on 15.10.1998 and not implemented due to court proceedings, we direct the appellant-Company to implement the same within a period of three months from the date of receipt of copy of this judgment. No costs.

F R.P. Appeal dismissed.