Karnataka High Court Steel Authority Of India Ltd. vs Steel Authority Of India Ltd. ... on 27 September, 1991 Equivalent citations: ILR 1991 KAR 3679, 1992 (1) KarLJ 477 Author: S Bhat Bench: Mohan, Venkatachala, S Bhat ORDER Shivashankar Bhat, J. 1. The Question referred by the Division Bench for our consideration is:- "Whether the failure of the contractor through whom contract labour is engaged to obtain a licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, (the Act' for short), will bring about the relationship of employer and employee between the said contract labour and the principal employer?" 2. The appellant is engaged in the business of manufacturing Iron and Steel as well as the distribution and marketing of the said goods; for the purpose of its marketing activities it has stockyards at various places. It is stated that in all these stockyards the main activity concerned is of storage and distribution of Iron and Steel received from different steel plants. In the very nature of this activity, it is inevitable to have loading and unloading of these goods, which according to the appellant is an intermittent type of work. The volume of loading and unloading operations varies, depending upon the quantity of goods received and deliveries to be made. Therefore, according to the appellant it was impracticable to have a permanent labour force to carry out the said operations. In these circumstances, the appellant has been entrusting the work of carrying out the loading and unloading operations to the contractors by inviting tenders and selecting them on competitive basis. The Contractor has to employ his own labour and has to supervise their working. The payments are made on the basis of tonnage handled by the Contractor; the instruments necessary for carrying out the operations are to be of the Contractor and the appellant was not responsible to provide them. The appellant is a Government of India undertaking constituted by a Legislation enacted by the Parliament (Act 16 of 1978). The appellant had a stockyard in Bangalore at a place called Byappanahally which has been shifted to a new stockyard in Channasandra. Earlier the appellant was known by the name Hindustan Steel Limited; however with effect from 1-5-1978 the earlier Company stood merged with the appellant. 3. The workmen through their union have been contending that initially there were about 40 workmen employed by the appellant through the contractors. Till 31st December 1978 one Jayaramareddi was shown as the Contractor, earlier to him his father Srinivasareddi was the Contractor. Before Srinivasareddi was inducted as the Contractor there was another person by name Madhura Muthu as the Contractor, By 31st December 1978 the number of workers came to be 80, However none of these workers were provided with any employment with effect from 1-1-1979 on the ground that the contract given to Jayaramareddi stood terminated and these workmen were not the employees of the appellant. The workmen seriously questioned this stand of the appellant and asserted that they were the direct employees of the appellant and therefore entitled to be provided with the employment by the appellant. 4. In the meanwhile 43 workmen who were earlier employed as contract labour through one M/s. Shekar Associates had raised a dispute which was referred by the State Government for consideration by the Labour Court under Section 10 of the Industrial Disputes Act. The said Reference dated 2-12-1985 was as follows: "Are

the management of the SAIL, M.G. Road, Bangalore, justified in not absorbing the services and refusing work to the following 43 workmen employed through i) Shekhar Associates, No. 29, Grant Road, Bangalore-560 001. ii) Contractor, Channasandra Stockyard, Doddabanasavadi Post, Bangalore-560 043; Sriyuth Saravanna Ananthan & 42 others. if not to what relief/s the said workmen are entitled?" The appellant contended that it was a "controlled industry" and therefore the State Government was not competent to make the Reference, Accordingly the appellant filed a Writ Petition (W.P.5766/1987) challenging the said Reference. 5. By that time there was another Reference pending before the Additional Labour Court, Bangalore, which was numbered as Reference No. 59/1982 involving 80 workmen. The said Reference involved the following points of dispute; "I. Are the Management of Steel Authority of India, Kudremukh Building, M.G. Road, Bangalore-1, justified in refusing work to 80 workmen listed in Annexure with effect from 11-1-1979 employed through their contractor, Sri Jayarama Reddy, No. 884, 11th Main 'A' 3rd Cross, Indiranagar, Bangalore-38. II. If not, to what relief the workmen are entitled?" One of the issues raised by the Labour Court pertained to the competence of the State Government to make the Reference. This was issue No. 3. The appellant contended that it was a "controlled industry". The Additional Labour Court gave a finding against the appellant and upheld the Reference as competent by its order made in August 1986. In Writ Petition No. 9115/1987 the appellant challenged this finding. 6. Subsequently the Labour Court made its Award on this Reference No. 59/1982, The Award is dated 26-2-1988, while making this Award the contention of the workmen was accepted by the Labour Court. It was held, inter alia that, the action of the appellant in refusing work and terminating the services of workmen with effect from 1-1-1979 was illegal and unjustified. The appellant was directed to reinstate the workmen with continuity of service and to pay full backwages including other consequential benefits. The Labour Court held, that the appellant had not registered itself under Section 7 of the Act and therefore it could not have employed contract labour. Similarly the Contractor had not obtained any fence under Section 12 of the Act. In these circumstances the Labour Court opined that the workmen could not be the employees of the Contractor and that they were the workmen of the appellant since they were employed for the business of the appellant in its stockyard at Bangalore. This Award was challenged in Writ Petition No. 8312/1988. 7. All these Writ Petitions were heard together by the learned Single Judge, who ultimately dismissed all of them. It was held that the appellant was notified as a "controlled industry" subsequent to the Orders of Reference and therefore the State Government had competence to make the References. On merits the learned Single Judge held that though the appellant had registered itself under Section 7 of the Act, the Contractor had not obtained any licence under the Act. Consequently the employment of the contract labour was impermissible. The learned Single Judge proceeded on the assumption that the appellant failed to provide proper amenities to the workmen and contravened the provisions of the Act. In these circumstances the award made by the Labour Court was upheld. 8. In the appeals before us the only question to be considered as per the

Reference made by the Division Bench is whether failure of the contractor to obtain a licence under Section 12 of the Act will bring about the relationship of employer and employee between the appellant and the alleged contract labour. The learned Counsel for the workmen however questioned the correctness of the finding given by the learned Single Judge that the appellant had registered itself under Section 7 of the Act. 9. The learned Counsel for the appellant contended that, failure on the part of the Contractor to obtain a licence under the Act cannot result in creating a relationship of employer and employee between the principal employer who engages the contract labour and the said contract labour. Such a relationship could arise only out of a contract between the parties concerned or by a specific provision in a statute bringing about such a relationship. In other words, if there is no contractual relationship of master and servant it is possible to have such deemed relationship deemed to exist by virtue of relevant statutory provision. In the instant case the Act nowhere provides for such deemed relationship of employer and employee as having been brought about under any circumstances. There is no other law also governing the fact situation. On the other hand the learned Counsel for the workmen contended that the so called contract labour were employed in the work of the appellant's establishment or, at any rate, their employment was in connection with such a work and therefore they fall within the definition of workmen under the Act. The learned Counsel further urged that the existence of the Contractor who is not licensed under the Act cannot be recognised for any purpose and if so his intervening presence in between the appellant and the contract labour vanishes altogether resulting in a direct relationship between the appellant and the workmen. The learned. Counsel also urged that any construction of the Act which does not yield to such a result will "render the provisions of the Act meaningless. 10. On this question different High Courts have expressed differing views. However, before referring to any of these Decisions we consider it most appropriate to examine the statute in question uninfluenced by any one of them. 11. The Act was enacted in the year 1970 with a view to regulate the contract labour and to provide for its abolition in certain circumstances. Generally, it is considered that the practice of engaging contract labour is pernicious, beset with exploiting tendencies and result in unwholesome labour practices coming in the way of proper working conditions. However, it is not possible to eliminate engaging of contract labour altogether, in that there are several fields of employment where it is not possible to have a continuous employment. The process, operation or other work incidental to or necessary for the industry, trade or occupation may be of such a nature that a permanent work force would not be practicable and necessary. In such a situation it is inevitable for the employer to engage contract labour for a short period or during the intermittent periods of work. The Act provides for the continuation of contract labour wherever it becomes necessary and where it is not possible to have permanent labour force. If engaging contract labour is inevitable, as a necessary consequence thereof, their working conditions will have to be properly regulated. These are provided for in the Act. Thus the Act has two main aspects: 1) To prohibit the employment of contract labour, and 2) To regulate the working conditions of the contract

labour wherever such employment is not prohibited. Such working conditions would include the payment of proper wages and provision for reasonable amenities. As observed by the Supreme Court in GAMMON INDIA LTD. v. UNION OF INDIA, :"The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of Section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment." Therefore whenever contract labour in an establishment is not prohibited, prima facie it is not unreasonable to assume that such contract labour is necessary for that establishment. 12. Section 10 of the Act is the only provision governing the prohibition of employment of contract labour in any establishment. The power to prohibit is vested with the appropriate Government and the power has to be exercised in the manner stated in the said Section. The factors to be considered before issuing a notification prohibiting employment of contract labour are stated in Sub-section (2) of Section 10. 13. In cases where contract labour is not prohibited, the establishment will have to be registered under Section 7 before engaging contract labour. The 'principal employer' defined under Section 2(1)(g) in relation to an establishment shall make an application to the Registering Officer in the prescribed manner for registration of the establishment (vide Section 7). Rule 17(1) read with Form I of the Contract Labour (Regulation & Abolition) Central Rules, 1971, ('the Rules' for short) prescribe the matters to be furnished while seeking registration. Apart from the particulars of the establishment and the nature of the work carried on in the establishment, the Application Form requires the principal employer to furnish the names and addresses of contractors, nature of work in which contract labour is employed or is to be employed, maximum number of contract labour to be employed on any day through each contractor, estimated date of commencement of each contract work and the estimated date of its termination. Certificate of Registration is issued in Form II as per Rule 18(1). This provides for stating the names and addresses of the contractors. Section 9 of the Act which is quite relevant, reads thus: "9. Effect of non-registration:- No principal employer of an establishment to which this Act applies, shall - (a) in the case of an establishment required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that Section, (b) in the case of an establishment the registration in respect of which has been revoked under Section 8, employ contract labour in the establishment after the expiry of the period referred to in Clause (a) or after revocation of registration referred to in Clause (b), as the case may be." From the above, it is clear that there is a bar against a principal employer from employing contract labour without being registered under Section 7. Corresponding to this the licensing of contractors is provided

under Chapter IV of the Act. Section 12 which is relevant, reads thus: "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 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 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 the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed." This has to be read with Rule 21 and Form IV under the Rules prescribing the format governing the application for licence. Apart from the particulars of the establishment certain particulars of the contract labour are also to be furnished. But the names, etc., of the workmen to be employed need not be furnished. However, the contractor along with his application shall have to furnish a certificate of the principal employer, in Form V, certifying that the said employer has engaged the applicant and that the employer undertakes to be bound by the provisions of the Act. The substance of the certificate is nothing but agreeing to abide by the provisions of the law, which is nothing but stating the obvious. As per column 3(c) of Form IV, the applicant for the licence has to furnish the number and date of certificate of registration of the establishment There is no similar requirement for the employer to give the licensing details in Form I when the employer seeks registration. Nowhere an obligation is cast on the employer to state whether the contractor is a licensed contractor. Chapter V provides for the welfare and health of the contract labour. In all these provisions the primary responsibility to provide the amenities, facilities and payment of wages is of the contractor. It is only when the contractor fails to provide the amenities and facilities or pay the wages, the principal employer is made responsible for the same. However, wherever the principal employer has to discharge the obligation cast on the contractor in this regard, the principal employer is permitted to re-imburse himself from the contractor the expenditure incurred or the payments made. Any person who contravenes any provision of the Act liable to be punished under the provisions of Sections 23 and 24. The Act also provides for the inspection of the establishment by the inspecting staff and for other allied matters. 14. Apart from the Rules already referred, there are a few other relevant Rules such as Rule 25. Rule 25 prescribes the format and terms and conditions of the licence. It is provided therein, inter alia, that the workmen employed by the contractor, if perform the same or similar kind of work as the workmen directly employed by the principal employer, there should be parity of wage rates, working hours, etc. Amenities and facilities to be provided for by the contractor are reiterated in this Rule, The licence issued to a contractor is for a particular period and there is a provision for its renewal or amendment Similarly the certificate of registration issued to the principal, employer may be amended under certain circumstances as per Rule 20. Chapter V of the Rules elaborates the welfare

measures to be provided to the contract labour. Chapter VI of the Rules govern the wages. All these provisions indicate that the primary responsibility for the wages of the contract labour, the amenities to be provided to them and other matters, is of the contractor and only on his failure the principal employer has to step-in in his place for those purposes. No provision in the Act or the Rules state that the contract labour shall be continued in service after the expiry of the contractual period. Similarly no provision in the Act indicate that the principal employer has any direct dealing with the contract labour and it is most likely that the principal employer may not be aware of the names and addresses of the contract labour employed by the contractor. Chapter VII of the Rules shows that it is for the contractor to maintain the register of persons employed and he has to issue employment card. It is he who has to issue service certificate on termination of the employment Muster foil, wage register, etc, are to be maintained by the contractor. Section 2(1)(i) defines workmen as a person employed in or in connection with the work of any establishment (omitting other clauses of definitions as unnecessary for the present purpose). Section 2(1)(b) defines 'contract fabour' as follows: "2(1)(b): a workman shall be deemed to be employed as"contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;" The term 'contractor' is defined in Sub-clause (c) as follows: "2(1)(c):"contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;" The term 'principal employer' is defined under Sub-clause (g). 15. There is no doubt that every workman employed as part of the contract labour force is employed in or in connection with the work of the establishment. Therefore, for the purpose of the Act he is a workman. But the definition of the 'workman' does not declare him to be the workman under the principal employer. The definition identifies the person to be a workman, so that that word can be understood in the particular manner wherever it is used in the Act. One such user of the term 'workman' is found in the definition of 'contract labour'. Whenever a workman is hired in or in connection with the work of an establishment by or through a contractor then he is deemed to be a contract labour. The contractor is the person, essentially, who undertakes to produce a given result for the establishment through contract labour. Therefore the contractor is responsible to give the result for which purpose he requires his own labour force. The definition of the 'contractor' nowhere refers to the licensing of the contractor. In other words the definition by itself is not confined to a "licensed contractor". 16. In the instant case, we have to examine the question under consideration having regard to the following circumstances: a) There is no prohibition against employment of contract labour in the appellant's establishment. b) The appellant is registered under Section 7 of the Act. c) The contractor has not obtained any licence under the Act. The contention of the learned Counsel for the workmen has been that the appellant has contravened the provisions of the Act by

employing contract labour under a contractor who is not licensed and thus he comes within the mischief of Section 9 of the Act. According to Mr. Subba Rao, learned Counsel for the workmen, employment of contract labour permitted under Section 9 is only a contract labour provided by the licensed contractor; a contract labour under an unlicensed contractor cannot be recognised as a valid contract labour at all. Further it was contended that the principal employer has to verify whether the contractor has a valid licence under the Act; even otherwise it is not difficult or impractical for the principal employer to find out whether the contractor is licensed or not. If the contractor fails to obtain the licence the principal employer is equally responsible for the said failure. The object of the licence is to see that the welfare measures contemplated by the various provisions of the Act are properly implemented. It is a matter of public policy that the contractor should be licensed since the employer is equally responsible for such a licensing of the contractor; if he indulges in engaging the services of unlicensed contractor the said engagement will have to be ignored for all purposes; therefore the workmen who rendered their services in the establishment of principal employer renders the said services as the employees of the principal employer, thereby giving rise to a direct relationship between the two. The above contention proceeds on the assumption that the word "licensed" has to be read into the definition of contractor under Section 2(1)(c) of the Act. In other words, according to him the following words will have to be inserted at the end of the said definition 'contractor': "and who has obtained a licence under the provisions of this Act". 16(a). If so, Section 9 will have to be read by altering its structure and by adding some more words into it which are not found, so as to include the idea that the employment of the contract labour shall be made only through the licensed contractor. 17. It is a well known canon of construction of a statute that it has to be read without adding words to it. However, the learned Counsel for the workmen sought to invoke the principle which was enunciated by Lord Denning thus (1949) 2 All E.R. 155 @ 164 - Seaford Court Estates Ltd. v. Asher: "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the legislature, A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases." The job of ironing out the creases is quite different and distinct from the tailoring work. The Court cannot add the material not used by the Legislature while conveying its intention in enacting a particular provision. Interpretative skill has to be applied when there is a genuine ambiguity in the statute in question. The Court cannot assume that a particular intention was sought to be effectuated by the Legislature while enacting the law even though the words 'needed to effectuate that intention were not used in fact. 18. Section 10 of the Act makes it clear that the intention of the Parliament was not to eliminate the employment of contract labour altogether. Similarly, there is no special personal qualification

required for a person to be eligible to obtain the licence under Section 12 of the Act. The licensing system is necessary to regulate the very system sought to be licensed. Licensing is only a regulatory measure. Licensing does not create any privilege. The observation of the Supreme Court in INDIAN MICA AND MICANITE INDUSTRIES LTD. v. THE STATE OF BIHAR AND ORS., may be recalled in this regard; at page 1186, Supreme Court observed: "Generally speaking by granting a licence the State does not confer any privilege or benefit on any one. All that it does is to regulate a trade, business or profession in public interest. There may be cases where a Government which is the owner of a particular property may grant permit or licence to someone to exploit that property for his benefit. Such a right may be given for consideration. It is only in those cases that licence or a permit is a conferment of a benefit or a privilege and not in the case of grant of a licence for carrying on any ordinary trade, business or profession." 19. Much emphasis was laid on the definition of the 'workman' in the Act, but the definition by itself does not create any rights and liabilities. The definition takes the place of a dictionary to convey the meaning of a particular word in the context of the particular legislation. A person who works is generally referred as a workman. That does not mean that he is employed under the person for whose benefit the work is performed. 20. If a registered establishment could employ contract labour only through a licensed contractor under the Act and any other kind of engagement of contract labour is not to be recognised for the purposes of the Act, all the welfare provisions enacted in the Act will become useless. The benefits conferred on the contract labour under Chapter V of the Act read with the relevant Rules will be available only to the contract labour employed through the licensed contractors. That was not the intention of the Parliament at all. The consequences of accepting the contention of Mr. Subba Rao will be quite disastrous to the welfare of the workmen in general. 21. We are not here concerned with a case where the contractor is a mere name lender and in reality no contractor was engaged by the establishment (or the principal employer) to produce a given result. In the case before us, genuinely there was a contractor who engaged his own workers to carry out the operations of loading and unloading. The limited question is, whether this genuine engagement of a contractor becomes in the eye of law a fictitious transaction, only because the contractor failed to obtain the prescribed licence. We don't find any deeming provision in the Act, deeming such a contract labour, as part of the regular labour force of the principal employer. Since device of deeming is basically a legislative creation, we do not think, we can adopt the device of deeming the non-licensed contractor as legally non-existent. 22. The bar imposed on the principal employer is found only in Section 9, according to which he shall not employ contract labour without registering under Section 7. The registration under Section 7 satisfies the requirement and removes the restriction against employing contract labour. Nowhere Section 9 says, the employment of contract labour has to be the employment of workman through a licensed contractor. Therefore, it will be unreasonable to attribute contravention of the relevant provisions of the Act by the principal employer only because, the contractor failed to obtain a licence under Section 12. When

the law nowhere prohibits engagement of a non-licensed contractor for the purpose of employing contract labour, the eye of the law cannot ignore the existence of such a contractor, if engaged by a registered principal employer. The agreement between the principal employer and a non-licensed contractor being not prohibited, it cannot be ignored as avoid transaction. 23. The continuance of the contract labour system, as a matter of necessity, has been recognised by the Parliament while enacting the Act in question. The power to prohibit the contract labour system in an establishment under Section 10 of the Act is not an absolute power, but is conditioned by the circumstances stated therein. This itself indicates that there is nothing inherently opposed to the public policy in resorting to the engagement of contract labour. The purpose of the Act is to prevent the misuse of the system by exploiting the unemployed class without providing the contract labour with proper amenities and wages etc. 24. The consequences of contravening the provisions of the Act are, again, specifically stated in the Act. The person who contravenes the Act is liable to be prosecuted and punished. If it is to be held that the "contractor" referred to in the Act has to be read as a "licensed contractor" it is impossible to invoke even those penal provisions against the person who indulges in engaging contract labour without a licence. 25. The consequences of contravening a Statute are to be found only from the Statute in question. The consequences which result in imposing higher burden or excessive liabilities on a person who contravenes the Statute cannot be read into the Statute. The creation of the relationship of master and servant cannot be read into as a penal consequence of the contravention of the Act. A contractor may have several workmen under him. He may have taken contract from several establishments also. He may shift his workman from one establishment to another depending upon the availability of the work. The number of workmen employed in each of the establishment by him also may vary from time to time. In all these cases if the contractor is not licensed under the Act, can it be said that these workmen are to be treated as the regular direct employees of all the establishments wherein they were working? Such a result will be quite unworkable. The contractor undertakes to give a particular result to the principal employer. It is not the concern of the principal employer as to the number of workmen who may be employed by the contractor. The number may vary depending upon the availability of the work and the time within which the work has to be completed. Again, here, it is not possible to identify the persons to be treated as the direct employees of the employer just because the contractor failed to obtain the requisite licence. 26. The licence obtained by a contractor is personal to the licensee though it is related to a particular establishment. Suppose during the period of contract, a licensee dies or the Firm (if the licensee is a partnership Firm) gets dissolved and the principal employer had to engage the services of another contractor and the licensing of the new contractor takes time, can it be said that the employment of the contract labour during the above period of interregnum results in the creation of a direct relationship of employer-employee between the principal employer and the contract labour? If it is to be answered in the affirmative, then there is no purpose in the new contractor getting any licence at all. This is a strong circumstance indicating that

licensing of the contractor is not a condition precedent for validly engaging the contract labour through a contractor. 27. The fact that the principal employer has to provide amenities and pay wages etc. if the contractor fails to discharge his obligation, cannot create the relationship of employer-employee between the principal employer and the contract labour. These provisions only provide for safeguarding of the interests of the workmen so that their benefits may not be lost by the negligence of the contractor or by the contractor failing to provide them as contemplated by the Act, for any reason. The relationship between the principal employer and the contract labour is only statutory and would not result in contractual relationship as argued by the learned Counsel for the workmen. 28. One factual aspect will have to be clarified here. The Labour Court found that the appellant has not proved that it had obtained Registration Certificate under Section 7 of the Act. The Labour Court was obviously confused by the amendments made to the Registration Certificate from time to time. The Registration Certificate obtained by the appellant was in the year 1976. As and when there was change of the contractor, the registration certificate had to be amended. The corrections found in the registration certificate made the Labour Court to believe that the document was a fabricated one. The registration certificate filed before the Labour Court was marked as Exhibit M1. This finding of the Labour Court was reversed by the learned single Judge. The appellant had produced the copies of the application made by it for registration of the establishment (Annexure-J), the letter of the Labour Commissioner enclosing the Certificate of Registration (Annexure-K), and the Certificate of Registration (Annexure-K1). When the name of the Hindustan Steel Limited had to be deleted and the name of the appellant had to be substituted an appropriate letter was addressed as per Annexure-M dated 8-6-1978 seeking the correction of the name with effect from 1-5-1978. This was done only on 25-7-1979 vide Annexure-N. Apart from this, the appellant had produced a letter dated 5-2-1977 addressed to the Assistant Labour Commissioner (Annexure-L) pointing out that the then contractor Sreenivasa Reddy had expired on 31-12-1976 and the contract has been awarded to his son Jayarama Reddy. By this letter, this change was sought to be noted by the Authority and to make necessary endorsement in the certificate of registration. As rightly contended for the appellant, the appellant cannot be held responsible if there was any delay in amending the registration certificate by the concerned Authority. This apart, in the course of the arguments, the learned Counsel for the appellant pointed out that the appellant had furnished an appropriate certificate in Form No. V (prescribed under the Rules) certifying that Jayarama Reddy was the contractor and he may be issued with the licence. The office-copy of the said letter was shown to us from the file. Therefore, it is clear that the appellant had done all that it can do to obtain the registration certificate and facilitate the contractor to obtain an appropriate licence, We have no doubt in our mind that the appellant was duly registered under Section 7 of the Act and was, therefore, entitled to engage contract labour, and the bar imposed by Section 9 of the Act was not attracted to its case. We may also note here that the appellant is an Undertaking of the Government of India which owns it in its entirety. The Management of the

appellant is subject to strict scrutiny and those who are in management are equipped with proper assistance and there is no reason to disbelieve its statement that it has obtained the registration certificate under Section 7 of the Act. 29. Therefore, we are of the view that the failure of the contractor to obtain a licence by itself cannot result in creating any direct relationship of employer-employee between the appellant and the contract labour. Such a consequence cannot be read into the Act in the absence of any specific provision in the Act warranting such a result. The hardship that may result to the several employees and the difficulty of obtaining alternative employment cannot by themselves be a ground to interpret the statutory provisions in a manner not warranted by the statute. To what extent these unfortunate workmen could be accommodated is a matter for the appellant to consider in a spirit of understanding. 30. The earliest of the Decisions which support the proposition advanced by Mr. Subba Rao is that of Madras High Court rendered in WORKMEN OF BEST & CROMPTON v. THE MANAGEMENT, 1985-1 LLJ 492. In the said case the Labour Court had given a finding that the contractor was a mere name-lender and did not hold any licence under the Act, and consequently it was declared by the Labour Court that the contract labour were in fact the direct employees of the management. The decision of the Labour Court was set aside by a learned single Judge. However, the Award of the Labour Court was restored by the Division Bench in the aforesaid Decision. After referring to the Decision of the Supreme Court in STANDARD VACUUM REFINING CO. v. THEIR WORKMEN, 1960-II LLJ 233 the Bench observed that in order to enable the Management to have the benefit of the contract labour, the Act has now legalised the employment of such contract labour, provided the intermediary contractor holds a valid licence and further the Management also holds a valid registration. 31. In Standard Vacuum Refining Co.'s case the Supreme Court has not declared the practice of engaging contract labour as illegal. The Supreme Court, only had upheld the competence of the Industrial Tribunal to direct the abolition of the contract labour system on a reference made to it under Section 10 of the Industrial Disputes Act. In other words, the abolition of the contract labour system may be a subject of reference, if it is properly raised as an industrial dispute. But on the enforcement of the Act in question this declaration of the law made by the Supreme Court has stood altered. The subject of abolition of contract labour is entirely left to the appropriate Government to be dealt with by it under Section 10 of the Act. The effect of the Act has to be read in the light of this change made by the Parliament. This is quite clear from the observations of the Supreme Court in B.H.E.L. WORKERS' ASSOCIATION v. UNION OF INDIA, : "It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Section 10 of the Act." It is what the Supreme Court, as

above, directed the Government to consider as to whether the system should be abolished in the establishment in question before it. The observations of the Supreme Court in Gammon India Ltd. v. Union of India which we have already quoted earlier, are also to the same effect. The Madras High Court in the aforesaid case after examining the facts gave a finding that there was no valid licence obtained by the contractor and therefore the workmen who worked in the establishment and received their wages through the contractor came within the purview of the definition of 'workmen' under Section 2(s) of the Industrial Disputes Act. The definition of the 'workman' under the Act was also applied for this purpose. Referring to the definition of contract labour under the Act, the Bench observed thus:- "This definition in our view implies that if the workman is not hired through a contractor holding a valid licence under the Act, he would be a workman employed by the Management itself. Further, the Management must be aware that the contractor had no valid licence and that therefore the workman could not be contract labour within the meaning of Section 2(2)(b) of the Act. The Management yet engaged the services of these 75 workmen and paid their wages through the contractor Kesavan. The intermediary because of want of licence in his favour will have no existence in the eye of law. It would thus lead to the position that there is but direct relationship between the Management and these 75 workmen would it not immediately lead to the result that this is an implied contract between the Management and these 75 workmen to the effect that as long as they did the work allotted to them, they would be paid their respective wages'. We thus come to the conclusion that in the above admitted circumstances, these 75 workmen were employed by the establishment." 32. There is no warrant to imply that it is only where the contractor obtains a licence under the Act, workmen employed through him will be contract labour. In the definition of the term 'contract labour', the word 'contractor' cannot be read as "licensed contractor" by implication, and thus the said definition cannot form the basis to hold that the workmen (employed through the contractor) are the regular employees of the principal employer. We have also noted already that the term 'contract labour' do not require any licence as such being obtained by the contractor. So long as the person falls within the definition of 'contract labour' he has to be recognised as a contract labour for the purposes of the Act and it is not possible to imagine that in the eye of law an unlicensed contractor has no existence. It is hot the function of the Court to create a fiction. It is entirely within the realm of law-maker to deem certain set of things which in fact is not so. The approach of the learned Judges was to treat the licence as a privilege to engage contract labour, for which we do not find any basis, especially in the context of Section 10 of the Act. 33. In WORKMEN, FOOD CORPORATION OF INDIA v. FOOD CORPORATION OF INDIA, the facts were quite peculiar. The principal employer was engaging contract labour through a contractor. After some time the system was given up and the entire contract labour were taken on the rolls of the principal employer. Again after some time these workmen were transferred to a contractor by treating them as contract labour. It is this transfer of the labour from one status to another that was criticised by the Supreme Court and the workmen were declared as regular employees. The

ratio of the Decision could be gathered from the following observations found at page 676:- "The next question to which we must address ourselves is whether once on the introduction of the direct payment system, the workmen acquired the status of the workmen of the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reinduct contractor so as to again introduce a smoke-screen which may on paper effectively deny the status of being the workmen of the Corporation, acquired by these workmen. And on discontinuance of the system of direct payment, without ordering retrenchment of their services by the Corporation, they obtained a fresh employment under the Contractor, is it legally, permissible? The question provides its own correct and effective answer. No employer since the introduction of the I.D. Act, 1947, and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D. Act, 1947 would be void, it is not necessary to call in aid precedents to substantiate this too obvious and well established proposition. When workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well established legal position, the effect of the employment by the second employer is wholly irrelevant." 34. F.C.I. LOADING & UNLOADING WORKERS' UNION v. FOOD CORPORATION OF INDIA, which is a decision of a learned single Judge of this Court, is a case wherein both the principal employer and the contractor did not obtain the registration and the licence respectively. To what extent the non-obtaining of the registration certificate under Section 7 of the Act by the principal employer would create a direct relationship between the employer and the contract labour, need not be considered by us in the instant case. We express no opinion on this question. 35. FOOD CORPORATION OF INDIA v. CENTRAL GOVT. INDUSTRIAL TRIBUNAL, 1988-I LLN 472 is a Decision of a Division Bench of the Punjab and Haryana High Court. The Bench held in paragraphs 15 and 16 (at pages 475 and 476) thus: "15. Every worker, in our view, who works for a principal employer to whom the provisions of Contract Labour Act are attracted, is to be treated as the worker of the principal employer unless two conditions are satisfied: (i) that the establishment has secured a certificate of registration for the relevant period; and (ii) it had employed contract labour through a licence contractor, 16. If either of the conditions is missing then the contract labour employed through the contractor shall be treated to be the 'worker' of the employer." With respect to the teamed Judges, we cannot agree with the above broad proposition in view of our understanding of the licensing provision and the purpose behind it being only regulatory. 36. In TAMIL MANILA TOZHILALAR SANGAM v. MADRAS REFINERIES LTD

AND ORS., W.A. No. 175 of 1989 DD 12-4-1989 (Madras), a Division Bench of the Madras High Court had doubted the correctness of the earlier Decision rendered in Workmen of Best & Crompton's case. The Division Bench referred the question to a larger Bench after giving its reasons for disagreeing with the earlier view. Since the Decision is riot reported, we may as well quote elaborately from the copy of the Decision furnished to us, At para 11 A, the Bench observed thus: "There is no provision in the Contract Labour Act which deals with regularisation of the workmen as defined in Section 2(2(b) of the Contract Labour Act, The object of the Act is 'to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith'. There are 35 sections divided into 7 chapters relating to construction of Advisory Boards, Registration of establishments. Licensing of contractors, Welfare and Health of contract labour, penalties and procedures and certain miscellaneous provisions. Therefore there is no provision in this Act which deals with conferment of permanent status on workmen employed under a contractor who may supply labour to an establishment as defined in this Act. Though the contractor may have a licence, but if the establishment is not registered and if it made to treat them as its regular employees, when an establishment utilises their services through the licensed contractor. As stated earlier, if neither the contractor nor the establishment had obtained licence or registration respectively, but still indulge in engaging contract labour, even then there is no provision resulting in their confirmation as employees of the establishment. To put it shortly, for any contravention committed by the establishment or the contractor, the only consequence would be that they would be subject to the penalties as found in Chapter VI and in so far as the work force are concerned, there being no contractual relationship between them and the establishment, this Act had not anywhere directed for their services being regularised, as claimed by the petitioner Sangam. It is because of the absence of any provisions in this regard, they are relying only upon the decisions above referred to. Hence, it has to be considered whether this is a case wherein the rationale of the said decisions could be applied or not." Thereafter, after referring to the Workmen of Best & Crompton's case and the definition of the 'contract labour', the Bench observed at Para-13 thus: "The definition pertains to a deeming provision as to when a workman could be treated as a contract labour and it does not state that in the absence of the contractor holding a valid licence, he becomes a workman of the establishment. A careful reading of this definition would show that it pertains to circumstances in which a workman would be deemed to be a contract labour. It does not in any manner confer upon him any right to claim regularisation in the event of any of the contravention of the provisions of the Contract Labour Act, either by contractor or by the establishment or by both of them." In the next para, the Bench considered as to whether the contractor who had no licence ceased to have any existence in the eye of law, and held that it is not possible to deem such cessation of existence in the eye of law. The various Decisions cited before it were distinguished by pointing out that in those cases there was a contractual relationship between the employer and the concerned employee relating to his

service conditions and consequently regularisation of services was ordered. That principle cannot be applied to a case where service conditions are governed by the Statute. At para-17 the Bench further observed: "That apart, during the course of the submissions made by the respective parties, it was further felt that in the absence of any provisions in the Act for such a regularisation to be declared, a Court cannot and should not legislate on acquisition of rights not covered by that Act. Recruitment of a workman in an establishment basis could be done only by adopting a prescribed procedure taking into account several meritorious factors depending upon the kind of jobs for which they are appointed. A contractor for supplying labour in certain contingencies overlooks such standards as are required for regular appointment in a particular establishment. The tenure of contract being short, he collects all sort of persons and quite often to exploit them, as claimed by petitioner Sangam in its affidavit. By deliberately not renewing the licence or by supplying more number of workmen than he is licensed to supply, he could aid and abet in getting under serving persons appointed to regular service in a reputed establishment. This sort of relief, if extended would only lead to more malpractices and abuses and will have far-reaching consequences in effective functioning of establishment." The possibility of creating heart-burning and deprivation of promotional prospects to the existing directly employed persons, if contract labour is to be regularised as a regular workmen, was referred in paragraph-18 of the Judgment. As to the effect of treating the contract labour as direct employees on the penal provisions of the Act, the Bench observed in paragraph-19 as follows:- "If by a declaration by Court under Article 226 it is held that on a contravention committed, by not taking out a licence or by not obtaining a registration or by employing labour in excess of the permitted limit, the concerned workmen in the eye of law would be treated as regularly employed from the date of their inception to service, then there could be no question of contravention of any provisions of the Act for it would only mean that whatever had been done or attempted to be done, had not resulted in any contravention because on the disappearance of the intermediary contractor in the eye of law, they are direct workmen of the establishment. It would result in the entire chapter being made redundant, if the Courts are to grant such a relief which is not conceived of under the Act." 37. To the same effect is the decision of the Kerala High Court in P. KARUNAKARAN v. CHIEF COMMERCIAL SUPDT. SOUTHERN RAILWAY, 1989-I LLJ 8. Malimath, C.J., while considering a similar problem on behalf of the Bench, observed at page-10 as follows:- "Even if the conditions under Section 10 are satisfied and a notification is issued abolishing the contract labour in the establishment of the type with which we are concerned in this case, the legal" consequence that flows from issuance of such notification is the abolition of such contract labour. If the services under contract labour stand terminated as a consequence of the issuance of the notification under Section 10, persons who lose their jobs have not been given any statutory right for absorption in service of one or the other establishment. It therefore, follows that even after a notification is issued under Section 10 in respect of this establishment, the legal consequence flowing from such issuance is the abolition of the contract labour. On such abolition, per-

sons who get displaced do not get any statutory right for absorption in regular service under their employer." This is one of the important aspects which indicate that the Statute in question does not contemplate the creation of a direct relationship between the management and the contract labour just because the contractor contravened the provisions of the Act. The creation of the relationship was not one of the subjects covered by the provisions of the Act. 38. In A.P. DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION, HYDERABAD v. K. RAMULU AND ORS., 1989-II LLJ 312 a Division Bench of the Andhra Pradesh High Court also has taken a similar view. The Bench also pointed out that the Act nowhere provides that whenever a contractor is changed the new contractor should engage the services of the earlier workmen who were working under the previous contractor. This again indicates that the subject of the Act is quite different and it has nothing to do with the regularisation of the services of the workmen. At page 318 the Bench observed in the above case thus: "If the Parliament desired that the contract labour who filed the petition under Section 10 should be continued by every contractor that may be engaged by the principal employer during pendency of application under Section 10 before the appropriate Government one would expect clear positive provisions in that regard in the Act itself. Such a matter does not arise by way of necessary intendment from the provisions of the Act and Rules as they stand in the statute book today. When such provisions are lacking in the Act and the Rules, it is hot permissible to accept the contention that such a situation was in contemplation of Parliament and that such was the intention behind the provisions of the Act as they stand. In our view, to accept the contention of the learned Counsel for the Writ Petitioner would clearly amount to legislation by Court which is not permissible and we would be going much farther than what Parliament intended." 39. CHAIRMAN & M.D., SINGARENI COLLIERIES CO. LTD. v. KOTA POSHAM, 1990 Lab.I.C. 405 is a Decision of another Bench of the Andhra Pradesh High Court. In that case, the contract labour sought absorption by the principal employer. The learned single Judge granted the relief. This was reversed by the Division Bench. The ratio of the Decision is as follows:- "A contract labour working in an establishment in public sector under a contractor is not entitled to claim absorption on regular basis without being sponsored by an employment exchange even if he has worked continuously for 5 years. It is open to the establishments in public sector to choose the media of Employment Exchange for filling up vacancies and the establishment cannot be compelled to appoint persons other than those sponsored by the Employment Exchanges. The word 'employer' as such is not defined. On the other hand, the definition of 'principal employer' denotes the existence of a middle man, viz., the contractor. Therefore, there is no direct 'master and servant' relationship between the company and the contract labour. It may be that the contract labour come under the definition of employees within the restricted meaning as mentioned in the Act of 1970; but that does not mean that they are the regular employees." The above Decision once again highlights the problem that will result by accepting the proposition advanced before us by the learned Counsel for the workmen. Just because the workmen have been rendering services in connection with the

work of the principal employer, if they are to be treated as the workmen of the establishment under the principal employer, there is no scope for the principal employer thereafter to engage the contract labour at all. As and when contract labour is employed and the services of the workmen were extracted they will become regular employees by the application of the principle propounded by Mr. Subba Rao. If so, either those employees will be permanently on the rolls of the employer or they are entitled to pemanancy by compelling the succeeding contractor to employ the earlier workmen. The object of the Act, thus, was not regularisation of the services of the contract labour under any circumstances. 40. A learned single Judge of the Bombay High Court in GENERAL LABOUR UNION (RED FLAG) v. K.M. DESAI, 1990-I LLN 181 also followed the above stated principle and held that the failure of the contractor to obtain the licence would not create a direct relationship between the principal employer and the workmen. However, a Bench of the Gujarat High Court in F.C.I. WORKERS' UNION v. F.C.I., 1990-I LLN 972 held that the failure of the contractor to obtain licence created a direct relationship between the principal employer and the workmen. The reasoning need not be adverted to by us again because we have already dealt with those aspects. 41. It is unnecessary for us to refer to any Decision wherein certain benefits were conferred on the casual labourers and directions were issued for the regularisation of their services. All those cases stand on a different footing because the initial relationship itself was a direct relationship of master-and-servant. 42. CATERING CLEANERS OF SOUTHERN RAILWAY v. UNION OF INDIA AND ANR., was cited by the learned Counsel for the workmen. The Supreme Court found the engagement of cleaners, in catering establishments and pantry cars as contract labour, by the Railways was found to be unjustified. But the Supreme Court did not issue the writ sought, to abolish the system as the power of abolition vested exclusively with the Central Government under Section 10 of the Act. At page 785, Supreme Court held: "... We refrain from doing so because under Section 10, Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or their work in any establishment. The appropriate Government is required to consult the Central Board or the State Board as the case may be before arriving at its decision. The decision, of course, will be subject to judicial review. But we do not think that we will be justified in issuing the mandamus prayed for unless and until the Government fails or refuses to exercise the power vested in it under Section 10." The instant case is not one where the Court is called upon to examine the validity of the exercise of the power by the appropriate Government under Section 10 of the Act. Therefore, above Decision will not be of any avail to the contesting respondents. In fact Standard Vacuum Refining Company's case was referred by the Supreme Court, which we have already referred white considering Best & Crompton's case, decided by the Madras High Court. 43. The view taken by Bench of the Delhi High Court in NEW DELHI GENERAL MAZDOOR UNION v. STANDING CONFERENCE OF PUBLIC ENTERPRISES, 1991-I LLN 1218 is also similar to the view we have taken on the question. The principal employer was not registered under Section 7 of the Act and the contractors

were also not licensed under Section 12 of the Act. The workmen claimed that a direct relationship between them and the principal employer resulted because of the services rendered by them. This contention was negatived by pointing out that the Act only regulates the employment of contract labour, unless the system is abolished under Section 10 of the Act. The purpose of registration and the licensing was to see that the regulatory provisions are properly implemented. In paragraph-32, the Bench has given its reasons which we have referred to in the earlier part of this Judgment. To the same effect is the Judgment of the Division Bench of Punjab & Haryana High Court in GIAN SINGH v. FOOD CORPORATION OF INDIA, 1991-78 FJR 325. 44. Before concluding, we may summarise our conclusions as follows:- (i) The system of contract labour has not been abolished altogether, in the absence of a notification under Section 10 of the Act abolishing the system in question in a particular establishment, recourse to that system has to be inferred as necessary by that establishment (ii) Whenever there is no prohibition notified under Section 10 of the Act, the employment of contract labour cannot be treated as opposed to public policy. (iii) Neither the registration under Section 7 nor the licensing under Section 12 of the Act creates any privilege to employ contract labour. The purpose of licensing is regulatory in character, of a fight which is already recognised. (iv) it is impermissible to read into the definition of 'Contractor' under the Act as the holder of a valid licence under the Act. (v) The employer is not responsible for the failure of the contractor to obtain a licence under Section 12 of the Act, and there is no compulsion imposed on him under the Act that he should continue to engage only a licensed contractor. (vi) The statutory consequences are to be specifically found in the very statute. (vii) The effect of the contravention of any of the provisions of the Act is to be located from the various provisions of the Act, and it is not possible to infer a consequence which may result in imposing higher burdens or larger liabilities on a person who is not directly connected with the contravention of the law as in the case of a registered establishment engaging a contractor who in turn fails to obtain licence. (viii) There is absolutely no warrant to deem a direct relationship of employer-employee between the principal employer and the contract labour only because the contractor fails to obtain a licence. Such deeming will result in enlarging the scope of the penal provisions without any express words to that effect. (ix) Regularisation of the contract labour, whether employed through a licensed contractor or through an unlicensed contractor, is not one of the objects stated anywhere in the Act. (x) The appellant in the instant case has complied with the provisions of Section 7 of the Act, and the finding to the contra by the Labour Court was rightly reversed by the learned single Judge. 45. Our answer to the Question Referred for consideration, is that the failure of the contractor to obtain a licence under Section 12 of the Act would not result in bringing about the direct relationship of employer and employee between the contract labour and the principal employer. These Writ Appeals be now sent back to the Division Bench for disposal.