Supreme Court of India Steel Authority Of India Ltd. & ... vs National Union Water Front ... on 30 August, 2001 Bench: B.N. Kirpal, Syed Shah Quadri, M.B. Shah, Ruma Pal, K. G. Balakrishnan CASE NO.: Appeal (civil) 6009-6010 of 2001

PETITIONER: STEEL AUTHORITY OF INDIA LTD. & ORS. ETC.ETC.

Vs.

RESPONDENT: NATIONAL UNION WATER FRONT WORKERS & ORS.

DATE OF JUDGMENT: 30/08/2001

BENCH: B.N. Kirpal, Syed Shah Mohammed Quadri, M.B. Shah, Ruma Pal, K. G. Balakrishnan,

[Arising out of S.L.P. (C) NOS.12657-58/98] With (C.A.No.6011/2001@S.L.P.(C) No.20926/1998, C.A. No.6012/2001 @ S.L.P.(C) No.9568/2000, T.C. No.1/2000, T.C. Nos.5 to 7/2000, T.C.(C)No.14/2000, T.C.Nos.17&18/2000, C.A.Nos.719-720/2001,C.A.Nos.5798-99/98, C.A.Nos.6013-22/2001 @ SLP(C) Nos.16122-31/98, C.A. No.6023/2001 @ SLP(C) No.19391/99, C.A.Nos.4188-94/98, C.A.No.4195/98, C.A. Nos.6024-25/2001 @SLP (C) Nos.8282-83/2000, TP(C) No.169/2000, TP(C) Nos.284- 302/2000, C.A.No.6029/2001@ SLP (C) No.16346/2000, C.A.Nos.6030-34/2001@SLP(C)Nos.13146-150/2000,T.P.(C) No.308 -337/2000, C.A.No.141/2001)

JUDGMENT: SYED SHAH MOHAMMED QUADRI, J. Leave is granted in the Special Leave petitions. In Food Corporation of India, Bombay & Ors. vs. Transport & Dock Workers Union & Ors. , a two-Judge Bench of this Court, having noticed the conflict of opinion between different Benches including two three-Judge Benches of this Court on the interpretation of the expression appropriate Government in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, the CLRA Act) and in Section 2(a) of the Industrial Disputes Act, 1947 (for short, the I.D.Act) and having regard to the importance of the question of automatic absorption of the contract labour in the establishment of the principal employer as a consequence of an abolition notification issued under Section 10(1) of the CLRA Act, referred these cases to a larger Bench. The other cases were tagged with the said case as the same questions arise in them also. That is how these cases have come up before us. To comprehend the controversy in these cases, it will suffice to refer to the facts in Civil Appeal Nos.6009-10 of 2001@ S.L.P.Nos.12657-12658 of 1998 which are preferred from the judgment and order of the Calcutta High Court in W.P.No.1773 of 1994 and FMAT No.1460 of 1994 dated July 3, 1998. The appellants, a Central Government Company and its branch manager, are engaged in the manufacture and sale of various types of iron and steel materials in its plants located in various States of India. The business of the appellants includes import and export of several products and bye-products through Central Marketing Organisation, a marketing unit of the appellant, having network of branches in different parts of India. The work of handling the goods in the

stockyards of the appellants, was being entrusted to contractors after calling for tenders in that behalf. The Government of West Bengal issued notification dated July 15, 1989 under Section 10(1) of the CLRA Act (referred to in this judgment as the prohibition notification) prohibiting the employment of contract labour in four specified stockyards of the appellants at Calcutta. On the representation of the appellants, the Government of West Bengal kept in abeyance the said notification initially for a period of six months by notification dated August 28, 1989 and thereafter extended that period from time to time. It appears that the State Government did not, however, extend the period beyond August 31, 1994. The first respondent-Union representing the cause of 353 contract labourers filed Writ Petition No.10108/89 in the Calcutta High Court seeking a direction to the appellants to absorb the contract labour in their regular establishment in view of the prohibition notification of the State Government dated July 15, 1989 and further praying that the notification dated August 28, 1989, keeping the prohibition notification in abeyance, be quashed. A learned Single Judge of the High Court allowed the writ petition, set aside the notification dated August 28, 1989 and all subsequent notifications extending the period and directed that the contract labour be absorbed and regularised from the date of prohibition notification - July 15, 1989 - within six months from the date of the judgment i.e., April 25, 1994. The appellants adopted a two-pronged attack strategy. Assailing the said judgment of the learned Single Judge, they filed writ appeal (FMAT No.1460 of 1994) and challenging the prohibition notification of July 15, 1989 they filed Writ Petition No.1733 of 1994 in the Calcutta High Court. While these cases were pending before the High Court, this Court delivered judgment in Air India Statutory Corporation & Ors. vs. United Labour Union & Ors. holding, inter alia, that in case of Central Government Companies the appropriate Government is the Central Government and thus upheld the validity of the notification dated December 9, 1976 issued by the Central Government under Section 10(1) of the CLRA Act prohibiting employment of contract labour in all establishments of the Central Government Companies. On July 3, 1998, a Division Bench of the High Court nonetheless dismissed the writ appeal as well as the writ petition filed by the appellants taking the view that on the relevant date the appropriate Government was the State Government. The legality of that judgment and order is under challenge in these appeals. Three points arise for determination in these appeals : (i) what is the true and correct import of the expression appropriate government as defined in clause (a) of sub-section (1) of Section 2 of the CLRA Act; (ii) whether the notification dated December 9, 1976 issued by the Central Government under Section 10(1) of the CLRA Act is valid and applies to all Central Government companies; and (iii) whether automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on issuance of a valid notification under Section 10(1) of the CLRA Act, prohibiting the contract labour in the concerned establishment. Inasmuch as in some appeals the principal employers are the appellants and in some others the contract labour or the union of employees is in appeal, we shall refer to the parties in this judgment as the principal employer and the contract labour. Before taking up these points, it

needs to be noticed that the history of exploitation of labour is as old as the history of civilisation itself. There has been an ongoing struggle by labourers and their organisations against such exploitation but it continues in one form or the other. The Industrial Disputes Act, 1947 is an important legislation in the direction of attaining fair treatment to labour and industrial peace which are sine qua non for sustained economic growth of any country. The best description of that Act is given by Krishna Iyer, J, speaking for a three-Judge Bench of this Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Ors. , thus : The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute- resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. After the advent of the Constitution of India, the State is under an obligation to improve the lot of the work force. Article 23 prohibits, inter alia, begar and other similar forms of forced labour. The Directive Principle of State Policy incorporated in Article 38 mandates the State to secure a social order for promotion of welfare of the people and to establish an egalitarian society. Article 39 enumerates the principles of policy of the State which include welfare measures for the workers. The State policy embodied in Article 43 mandates the State to endeavour to secure, by a suitable legislation or economic organisation or in any other way for all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 43A enjoins on the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment, or other organisations engaged in any industry. The fundamental rights enshrined in Articles 14 and 16 guarantee equality before law and equality of opportunity in public employment. Of course, the preamble to the Constitution is the lodestar and guides those who find themselves in a grey area while dealing with its provisions. It is now well settled that in interpreting a beneficial legislation enacted to give effect to directive principles of the state policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment. The CLRA Act was enacted by the Parliament to deal with the abuses of contract labour system.' It appears that the Parliament adopted twin measures to curb the abuses of employment of contract labour – the first is to regulate employment of contract labour suitably and the second is to abolish it in certain circumstances. This approach is clearly discernible from the provisions of the CLRA Act which came into force on February 10, 1971. A perusal of the Statement of Objects and Reasons shows that in respect of such categories as may be notified by the appropriate Government, in the light of the prescribed criteria, the contract labour will be abolished and in respect of the other categories the service conditions of the contract labour will be regulated.

Before concentrating on the relevant provisions of the CLRA Act, it may be useful to have a birds eye view of that Act. It contains seven chapters. Chapter I has two sections; the first relates to the commencement and application of the Act and the second defines the terms used therein. Chapter II which has three sections provides for the constitution of a Central Advisory Board by the Central Government and a State Advisory Board by the State Government and empowers the Boards to constitute various committees. Chapter III contains regulatory provisions for registration of establishments which employ contract labour. Section 10 which prohibits the employment of contract labour falls in this chapter; we shall revert to it presently. Chapter IV contains provisions for purposes of licensing of Contractors to make sure that those who undertake or execute any work through contract labour, adhere to the terms and conditions of licences issued in that behalf. Power is reserved for revocation, suspension and amendment of licenses by the Licensing Officer and a provision is also made for appeal against the order of the Licensing Officer. Chapter V takes care of the welfare and health of contract labour obliging the appropriate Government to make rules to ensure that the requirements of canteen, rest-rooms and other facilities like sufficient supply of wholesome drinking water at convenient places, sufficient number of latrines and urinals accessible to the contract labour in the establishment, washing facilities and the first aid facilities, are complied with by the contractor. Where the contractor fails to provide these facilities the principal employer is enjoined to provide canteen, rest-rooms etc., mentioned above, for the benefit of the contract labour. Though the contractor is made responsible for payment of wages to each worker employed by him as contract labour before the prescribed period yet for effective implementation of this requirement, care is taken to ensure presence of a nominee of the principal employer at the time of the disbursement of wages. Here again, it is prescribed that if the contractor fails to pay the wages to the contract labour, the principal employer shall pay the full wages or unpaid wages, as the case may be, to the contract labour and a right is conferred on him to recover the same from the amount payable to the contractor; if however, no amount is payable to him then such amount is treated as a debt due by the contractor to the principal employer. Chapter VI deals with the contravention of the provisions of the Act, prescribes offences and lays down the procedure for prosecution of the offenders. Chapter VII is titled miscellaneous and it contains eight sections which need not be elaborated here. Now we shall advert to point No.1. The learned Solicitor General for the appellant - principal employer - has conceded that the State Government is the appropriate Government in respect of the establishments of the Central Government companies in question. Mr. Shanti Bhushan, the learned senior counsel appearing for the respondents - contract labour in these appeals, submitted that in view of the concession made by the learned Solicitor General, he would not address the Court on that aspect and prayed that the judgment and order of the High Court, under appeal, be confirmed. Mr. G.L. Sanghi, the learned senior counsel appearing for the appellants in the appeals filed by the Food Corporation of India (FCI)- principal employer-and Mr. K.K. Venugopal, the learned senior counsel for the appellant - the principal employer - in the appeals filed

by the Oil and Natural Gas Commission (ONGC) among others sail with the learned Solicitor General, submitted that the appropriate Government on the relevant date was the State Government and for that reason the notification issued by the Central Government on December 9, 1976 was never sought to be applied to the establishments of FCI and ONGC but in view of the amendment of the definition of the expression, appropriate Government with effect from January 28, 1986, the Central Government would thereafter be the appropriate Government. The learned Additional Solicitor General who appeared for Indian Farmers and Fertiliser Co- operative Ltd. (IFFCO) and Mr. B. Sen, the learned senior counsel appearing for the appellant, adopted the arguments of the learned Solicitor General on this point. Ms. Indira Jaisingh, the learned senior counsel appearing for the contract labour (respondents in the appeals filed by FCI), argued that in the case of FCI the appropriate Government before and after the notification issued by the Central Government on January 28, 1986, was the Central Government. Mr. K.K. Singhvi, the learned senior counsel for the contract labour (respondents in the appeal of ONGC), has argued that all Central Government Undertakings which fall within the meaning of other authorities in Article 12 are agents or instrumentalities of the State functioning under the authority of the Central Government, as such the Central Government will be the appropriate Government; the Heavy Engineerings case was wrongly decided by the two Judge Bench of this Court which was followed by a three-Judge Bench in the cases of Hindustan Aeronautics Ltd. and Rashtriya Mill Mazdoor Sangh; in those cases the judgments of this Court in Sukhdev Singhs case, Ajay Hasias case, Central Inland Water Transport Corporations case, C. V. Ramans case and R.D. Shetty International Airports case were not considered; the approach of the Court in the Heavy Engineerings case was based on private law interpretation and that the approach of the Court ought to be based on public law interpretation. It is submitted that in a catena of decisions of this Court, it has been held that where there is deep and pervasive control, a company registered under the Companies Act or a society registered under the Societies Act would be State and, therefore, it would satisfy the requirement of the definition of appropriate Government. He contended that in Air Indias case (supra) a three-Judge Bench of this Court had correctly decided that for all the establishments of the Air India the Central Government was the appropriate Government, which deserved to be confirmed by us. Notwithstanding the concession made by the learned Solicitor General which has the support of Mr. Shanti Bhushan, we cannot give a quietus to this issue as the other learned counsel strenuously canvassed to the contra. We, therefore, propose to decide this point in the light of the contentions put forth by the other learned counsel. To begin with the relevant provisions of Section 1 of the CLRA Act which deals, inter alia, with its extent and application, may be noticed here: Section 1 - (1) to (3) *** *** ***

(4) • It applies –

(a) to every establishment in which twenty or more workmen are employed

or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen : Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification. (5)(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(c) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide the question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final. Explanation : For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature –

(d) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year. A perusal of this section brings out that CLRA Act applies to every establishment and every contractor of the specified description. However, the establishments in which work only of an intermittent or casual nature is performed are excluded from the purview of the Act. We shall also refer to definitions of relevant terms in sub- section (1) of Section 2 which contains interpretation clauses. Clause (a) defines the expression appropriate Government thus : 2(1) In this Act, unless the context otherwise requires –

(a) appropriate Government means –

(b) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated. Addressing to the definition of appropriate Government, it may be pointed out that clause (a) of Section 2(1) was substituted by the Contract Labour (Regulation and Abolition) Amendment Act, 1986 with effect from January 28, 1986. Before the said amendment, the definition read as under : 2(1). (a) appropriate Government means –

(iii) in relation to any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government; or

(iv) any establishment of any railway, Cantonment Board, major port, mine or oil-field, or

(v) any establishment of a banking or insurance company, the Central Government, (2) in relation to any other establishment the Government of the State in which that other establishment is situated. A plain reading of the unamended definition shows that the Central Government will be the appropriate Government if the establishment in question answers the description given in sub- clauses (i) to (iii). And in relation to any other establishment, the Government of the State, in which the establishment in question is situated, will be the appropriate Government. So far as subclauses (ii) and (iii) are concerned, they present no difficulty. The discussion has centred round sub-clause (i). It may be seen that sub-clause (i) has two limbs. The first limb takes in an establishment pertaining to any industry carried on by or under the authority of the Central Government and the second limb embraces such controlled industries as may be specified in that behalf by the Central Government. Before embarking upon the discussion on the first limb, it will be apt to advert to the amended definition of appropriate Government which bears the same meaning as given in clause

(a) of Section 2 of the Industrial Disputes Act, quoted hereunder:

2. (a) appropriate Government means –

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees State Insurance Corporation established under section 3 of the Employees State Insurance Act, 1948 (34 of 1948), or the Board of trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of

1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited], or [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or [the Banking Service Commission established under section 3 of the Banking Service Commission Act, 1975,] or [an air transport service, or a banking or an insurance company], a mine, an oil field], (a Cantonment Board] or a major port, the Central Government; and

(ii) in relation to any other industrial dispute, the State Government; An analysis of this provision shows that the Central Government will be the appropriate Government in relation to an industrial dispute concerning :

(1) any industry carried on by or under the authority of the Central Government, or by a railway company; or (2) any such controlled industry as may be specified in this behalf by the Central Government; or (3) the enumerated industries (which form part of the definition quoted above and need not be reproduced here). What is evident is that the phrase any industry carried on by or under the authority of the Central Government is a common factor in both the unamended as well as the amended definition. It is a well-settled proposition of law that the function of the Court is to interpret the Statute to ascertain the intent of the legislature-Parliament. Where the language of the Statute is clear and explicit the Court must give effect to it because in that case words of the Statute unequivocally speak the intention of the legislature. This rule of literal interpretation has to be adhered to and a provision in the Statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore the words used therein must be construed in their natural ordinary meaning as commonly understood. We are afraid we cannot accept the contention that in construing that expression or for that matter any of the provisions of the CLRA Act, the principle of literal interpretation has to be discarded as it represents common law approach applicable only to private law field and has no relevance when tested on the anvil of Article 14, and instead the principle of public law interpretation should be adopted. To accept that contention, in our view, would amount to abandoning a straight route and oft treaded road in an attempt to create a pathway in a wilderness which

can only lead astray. We have not come across any principles of public law interpretation as opposed to private law interpretation for interpreting a statute either in any authoritative treatise on interpretation of statutes or in pronouncement of any Court nor is any authority of this Court or any other Court brought to our notice. We may, however, mention that there does exist a distinction between public law and private law. This has been succinctly brought out by the Rt. Hon. Sir Harry Woolf (as he then was, now Lord Woolf) in The Second Harry Street Lecture delivered in the University of Manchester on February 19, 1986. The learned Law Lord stated : I regard public law as being the system which enforces the proper performance by public bodies of the duties which they owe to the public. I regard private law as being the system which protects the private rights of private individuals or the private rights of public bodies. The critical distinction arises out of the fact that it is the public as a whole, or in the case of local government the public in the locality, who are the beneficiaries of what is protected by public law and it is the individuals or bodies entitled to the rights who are the beneficiaries of the protection provided by private law. The divide between the public law and the private law is material in regard to the remedies which could be availed when enforcing the rights, public or private, but not in regard to interpretation of the Statutes. We are not beset with the procedural mandate as in the R.S.C. Order 53 of 1977 of England which was the subject matter of consideration by the House of Lords in OReilly Vs. Mackman . In that case the appellant sought declaration by ordinary action that the order passed by the Prisons Board of visitors awarding penalty against him was void and of no effect. The House of Lords, dismissing the appeal filed against the judgment of the Court of Appeal, held that where a public law issue arises, the proceedings should be brought by judicial review under R.S.C. Order 53 and not by private law action which would be abuse of the process of court. Now, going back to the definition of the said expression, it combines three alternatives, viz., (a) any industry carried on by the Central Government; (b) any industry carried on under the authority of the Central Government; and (c) any industry carried on by a railway company. Alternatives (a) and (c) indicate cases of any industry carried on directly by the Central Government or a railway company. They are too clear to admit of any polemic. In regard to alternative (b), surely, an industry being carried on under the authority of the Central Government cannot be equated with any industry carried on by the Central Government itself. This leaves us to construe the words under the authority of the Central Government. The key word in them is authority. The relevant meaning of the word authority in the Concise Oxford Dictionary is delegated power. In Blacks Law Dictionary the meanings of the word authority are: permission; right to exercise powers – often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with prin-

cipals manifestations of consent to agent. In Corpus Juris Secundum (at p.1290) the following are the meanings of the term authority: in its broad general sense, the word has been defined as meaning control over; power; jurisdiction; power to act, whether original or delegated. The word is frequently used to express derivative power; and in this sense, the word may be used as meaning instructions, permission, power delegated by one person to another, the result of the manifestations by the former to the latter of the formers consent that the latter shall act for him, authority in this sense — in the laws of at least one state, it has been similarly used as designating or meaning an agency for the purpose of carrying out a state duty or function; some one to whom by law a power has been given. In Words and Phrases we find various shades of meaning of the word authority at pp.603, 606, 612 and 613: Authority, as the word is used throughout the Restatement, is the power of one person to affect the legal relations of another by acts done in accordance with the others manifestations of consent to him; an agency of one or more participating governmental units created by statute for specific purpose of having delegated to it certain functions governmental in character; the lawful delegation of power by one person to another; power of agent to affect legal relations of principal by acts done in accordance with principals manifestations of consent to him. From the above discussion, it follows that the phrase any industry carried on under the authority of the Central Government implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government Company or other Govt. company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question. In interpreting the said phrase, support is sought to be drawn by the learned counsel for the contract labour from the cases laying down the principles as to under what circumstances a Government company or undertaking will fall within the meaning of State or other authorities in Article 12 of the Constitution. We shall preface our discussion of those cases by indicating that for purposes of enforcement of fundamental rights guaranteed in Part III of the Constitution the question whether a Government Company or undertaking is State within the meaning of Article 12 is germane. It is important to notice that in these cases the pertinent question is appropriateness of the Government - which is the appropriate Government within the meaning of CLRA Act; whether, the Central or the State Government, is the appropriate Government in regard to the industry carried on by the Central/State Government Company or any undertaking and not whether such Central/State Government company or undertaking come within the meaning of Article 12. The word State is defined in Article 12 which is quoted in the footnote. In Sukhdev Singh & Ors. vs. Bhagatram Sardar Singh Raghuvanshi & Anr. , this Court, in the context whether service Regulations framed by statutory corporations

have the force of law, by majority, held that the statutory corporations, like ONGC, IFFCO, LIC established under different statutes fell under other authorities and were, therefore, State within the meaning of that term in Article 12 of the Constitution. The Court took into consideration the following factors, (a) they were owned, managed and could also be dissolved by the Central Government;

(b) they were completely under the control of the Central Government and (c) they were performing public or statutory duties for the benefit of the public and not for private profit; and concluded that they were in effect acting as the agencies of the Central Government and the service Regulations made by them had the force of law, which would be enforced by the Court by declaring that the dismissal of an employee of the corporation in violation of the Regulations, was void. In Ramanna Dayaram Shetty vs. The International Airport of India & Ors. , a three-Judge Bench of this Court laid down that Corporations created by the Government for setting up and management of public enterprises and carrying out public functions, act as instrumentalities of the Government; they would be subject to the same limitations in the field of constitutional and administrative laws as Government itself, though in the eye of law they would be distinct and independent legal entities. There, this Court was enforcing the mandate of Article 14 of the Constitution against the respondent - a Central Govt. Corporation. Managing Director, U.P.Warehousing Corporation & Anr. Vs. Vinay Narayan Vajpayee dealt with a case of dismissal of the respondent-employee of the appellant-Corporation in violation of the principles of natural justice. There also the Court held the Corporation to be an instrumentality of the State and extended protection of Articles 14 and 16 of the Constitution to the employee taking the view that when the Government is bound to observe the equality clause in the matter of employment the corporations set up and owned by the Government are equally bound by the same discipline. In Ajay Hasia etc. Vs. Khalid Mujib Sehravardi & Ors. etc. , the question decided by a Constitution Bench of this Court was: whether Jammu & Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu & Kashmir Registration of Societies Act, 1898, was State within the meaning of Article 12 of the Constitution so as to be amenable to writ jurisdiction of the High Court. Having examined the Memorandum of Association and the Rules of the Society, the Court decided that the control of the State and the Central Government was deep and pervasive and the society was a mere projection of the State and the Central Government and it was, therefore, an instrumentality or agency of the State and Central Government and as such an authority-state within the meaning of Article 12. The principle laid down in the aforementioned cases that if the government acting through its officers was subject to certain constitutional limitations, a fortiorari the government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations, was

approved by the Constitution Bench and it was pointed out that otherwise it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the government would be enabled to override the Fundamental Rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it. That principle has been consistently followed and reiterated in all subsequent cases -

- See Delhi Transport Corpn. Vs. D.T.C. Mazdoor Congress & Ors. , Som Prakash Rekhi Vs. Union of India & Anr. , Manmohan Singh Jaitla etc. Vs. Commr., Union Territory of Chandigarh & Ors. etc. , P.K. Ramachandra Iyer & Ors. etc. Vs. Union of India & Ors. etc. , A.L. Kalra Vs. Project and Equipment Corpn. Of India Ltd. , Central Inland Water Transport Corpn. Ltd. & Anr. etc. Vs. Brojo Nath Ganguly & Anr. etc. , C.V. Raman Vs. Management of Bank of India & Anr. etc. , Lucknow Development Authority Vs. M.K. Gupta , M/s Star Enterprises and Ors. Vs. City and Industrial Development Corpn. of Maharashtra Ltd. & Ors. , LIC of India & Anr. Vs. Consumer Education & Research Centre & Ors. and G.B. Mahajan & Ors. Vs. Jalgaon Municipal Council & Ors. . We do not propose to burden this judgment by adding to the list and referring to each case separately. We wish to clear the air that the principle, while discharging public functions and duties the Govt. Companies/Corporations/Societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law – constitutional or administrative law – as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law. From the above discussion, it follows that the fact of being instrumentality of a Central/State Govt. or being State within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a Company/Corporation or an instrumentality of the Govt. is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of appropriate Government in the CLRA Act. Take the case of a State Government corporation/company/undertaking set up and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry can it be said that the appropriate Government is the Central Government? We think the answer must be in the negative. In the above example if, as a fact, any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial dispute concerning that industry, the appropriate Government will be the Central Government. This is so not because it is agency or

instrumentality of the Central Government but because the industry is carried on by the State Govt. Company/Corporation/Undertaking under the authority of the Central Government. In our view, the same reasoning applies to a Central Government undertaking as well. Further, the definition of establishment in CLRA Act takes in its fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case how is appropriate Government determined for the purposes of CLRA Act or Industrial Disputes Act? In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the Central Govt? Obviously, there cannot be one test for one part of definition of establishment and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of Government is carrying on an industry under the authority of the Central Government and not whether the undertaking is instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of Central Government or State Government. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to Central Government though they may be State within the meaning of Article 12 of the Constitution. We have held above that being the instrumentality or agency of the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. Therefore, it will be incorrect to say that in relation to any establishment of a Central Government Company/undertaking, the appropriate Government will be the Central Government. To hold that the Central Government is the appropriate Government in relation to an establishment, the court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the appropriate Government under the CLRA Act and the I.D.Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a Statute or by virtue of relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the Government company/any undertaking by the Statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the Government company/ any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case. We shall refer to the cases of this Court on this point. In Heavy Engineering Mazdoor Union vs. State of Bihar & Ors. the said expression (appropriate Government) came up for consideration. The Heavy Engineering Corporation is a Central Government company. The President of India appoints Directors of

the company and the Central Government gives directions as regards the functioning of the company. When disputes arose between the workmen and the management of the company, the Government of Bihar referred the disputes to the Industrial Tribunal for adjudication. The union of the workmen raised an objection that the appropriate Government in that case was the Central Government, therefore, reference of the disputes to the Industrial Tribunal for adjudication by the State Government was incompetent. A two-Judge Bench of this Court elaborately dealt with the question of appropriate Government and concluded that the mere fact that the entire share capital was contributed by the Central Government and the fact that all its shares were held by the President of India and certain officers of the Central Government, would not make any difference. It was held that in the absence of a statutory provision, a commercial corporation acting on its own behalf even though it was controlled, wholly or partially, by a Government Department would be ordinarily presumed not to be a servant or agent of the State. It was, however, clarified that an inference that the corporation was the agent of the Government might be drawn where it was performing in substance Governmental and not commercial functions. It must be mentioned here that in the light of the judgments of this Court, referred to above, it is difficult to agree with the distinction between a governmental activity and commercial function of government companies set up and owned by government, insofar as their function in the realm of public law are concerned. However, the contention that the decision in that case is based on concession of the counsel for the appellant is misconceived. This Court summed up the submission in para 4 thus : The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways. It was, therefore, rightly conceded both in the High Court as also before us that it is not an industry carried on by the Central Government. That being the position, the question then is, is the undertaking carried on under the authority of the Central Government? It is evident that the concession was with regard to the fact that it was not an industry carried on by the Central Government and not in regard to was the undertaking carried on under the authority of the Central Government? Indeed that was the question decided by the Court on contest and it was held that the undertaking was not carried on by the Central Government company under the authority of the Central Government and that the appropriate Government in that case was the State Government and not the Central Government. From the above discussion, it is evident that the Court correctly posed the question- whether the State Govt. or the Central Govt. was the appropriate Government and rightly answered it. In M/s. Hindustan Aeronautics Ltd. Vs. The Workmen & Ors. , this Court was called upon to decide the question as to whether the expression appropriate Government, as defined in Section 2(a)(i) of the Industrial Disputes Act, was the State Government or the Central Government. In that case dispute arose between the management

of the Barrackpore branch (West Bengal) of the appellant and its employees. The Governor of West Bengal referred the dispute to Industrial Tribunal under Section 10 of the I.D. Act. The competence of the State Government to make the reference was called in question. A three-Judge Bench of this Court, relying on the decision in Heavy Engineerings case (supra), held that the reference was valid. The Court took note of the factors, viz; if there is any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working, the appropriate Government concerned in the maintenance of the industrial peace was the West Bengal Government; that Barrackpore industry was a separate unit; the cause of action in relation to the industrial dispute arose at Barrackpore. Having regard to the definitions of the terms appropriate Government and establishment, in Section 2 of CLRA Act, it cannot be said that the factors which weighed with the Court were irrelevant. It was also pointed out therein that from time to time certain statutory corporations were included in the definition but no public company of which the shares were exclusively owned by the Government, was roped in the definition. What we have expressed above about Heavy Engineerings case (supra) will, equally apply here. The aforementioned phrase an industry carried on by or under the authority of the Central Government again fell for consideration of a three-Judge Bench of this Court in Rashtriya Mill Mazdoor Sangh, Nagpur vs. Model Mills, Nagpur & Anr. . The case arose in the context of Section 32(iv) of the Payment of Bonus Act, 1965, which provides that nothing in that Act shall apply to employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority. Under Section 18-A of the Industries (Development and Regulation) Act, 1951, the Central Government appointed an authorised Controller to replace the management of the respondent - Model Mills. That was done to give effect to the directives issued by the Central Government under Section 16 of the said Act. On behalf of the respondent it was contended that substitution of the management by the Controller appointed under Section 18-A of the Industries (Development & Regulation) Act would tantamount to the industry being run under the authority of the department of the Central Government. Negativing the contention it was held : While exercising power of giving directions under Section 16 the existing management is subjected to regulatory control, failing which the management has to be replaced to carry out the directions. In either case the industrial undertaking retains its identity, personality and status unchanged. On a pure grammatical construction of sub-section (4) of Section 32, it cannot be said that on the appointment of an authorised controller the industrial undertaking acquires the status of being engaged in any industry carried on under the authority of the department of the Central Government. Food Corporation of India, Bombays case (supra) is the only case which arose directly under the CLRA Act. The Food Corporation of India (FCI) engaged, inter alia, the contract labour for handling

of foodgrains. Complaining that their case for departmentalisation was not being considered either by the Central Government or by the State Government, nor were they extended the benefits conferred by the CLRA Act, a representative action was initiated in this Court by filing a writ petition under Article 32 of the Constitution seeking a writ of mandamus against the Central/State Government to abolish contract labour and to extend them the benefits under that Act. The FCI resisted the claim for abolition of contract labour on the ground that the operations of loading/unloading foodgrains were seasonal, sporadic and varied from region to region. However, it pleaded that the State Government and not the Central Government was the appropriate Government under the CLRA Act. In view of the unamended definition of the expression appropriate Government under CLRA Act, which was in force on the relevant date, it was pointed out that the FCI was not included in the definition by name as it was done under the Industrial Disputes Act. Following the judgment of this Court in Heavy Engineerings case (supra) and referring to the decision of this Court in Rashtriya Mill Mazdoor Sanghs case (supra), the Court took the view that the same principle would govern the interpretation of the expression appropriate Government in the CLRA Act and held that the State Government was the appropriate Government pertaining to the regional offices and warehouses which were situate in various States. We find no illegality either in the approach or in the conclusion arrived at by the Court in these cases. It was in that background of the case law that the Air Indias case (supra) came to be decided by a three-Judge Bench of this Court. The Air India Corporation engaged contract labour for sweeping, cleaning, dusting and watching of the buildings owned and occupied by it. The Central Government having consulted the Central Advisory Board constituted under Section 3(1) of the CLRA Act issued notification under Section 10(1) of the Act prohibiting employment of contract labour on and from 9.12.1976 for sweeping, cleaning, dusting and watching of the buildings owned or occupied by the establishment in respect of which the appropriate Government under the said Act is the Central Government. However, the Regional Labour Commissioner, Bombay opined that the State Government was the appropriate Government under the CLRA Act. The respondent-Union filed writ petition in the High Court at Bombay seeking a writ of mandamus to the appellant to enforce the said notification prohibiting employment of contract labour and for a direction to absorb all the contract labour doing sweeping, cleaning, dusting and watching of the buildings owned or occupied by the Air India with effect from the respective dates of their joining as contract labour with all consequential rights/benefits. A learned Single Judge of the High Court allowed the writ petition on November 16, 1989 and directed that all the contract labour should be regularised as employees of the appellant from the date of filing of the writ petition. On appeal, the Division Bench, by order dated April 3, 1992, confirmed the judgment of the learned Single Judge and dismissed the appeal. On further appeal to this Court, it was

held that the word control was required to be interpreted in the changing commercial scenario broadly in keeping with the constitutional goals and perspectives; the interpretation must be based on some rational and relevant principles and that the public law interpretation is the basic tool of interpretation in that behalf relegating common law principles to purely private law field. In that view of the matter, it concluded that the two-Judge Bench decision in Heavy Engineerings case narrowly interpreted the expression appropriate Government on the common law principles which would no longer bear any relevance when it was tested on the anvil of Article 14. It noted that in Hindustan Aeronautics Ltd., Rashtriya Mill Mazdoor Sangh and Food Corporation of India, the ratio of Heavy Engineering formed the foundation but in Hindustan Aeronautics Ltd. there was no independent consideration except repetition and approval of the ratio of Heavy Engineering case which was based on concession; in Food Corporation of India, the Court proceeded on the premise that warehouses of the corporation were situate within the jurisdiction of the different State Governments and that led to conclude that the appropriate Government would be the State Government. Thus, distinguishing the aforementioned decisions, it was held therein (Air Indias case) that from the inception of the CLRA Act the appropriate Government was the Central Government. We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression appropriate Government in Air Indias case (supra). Point No.1 is answered accordingly. Point No.2 relates to the validity of the notification issued by the Central Government under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970, dated December 9, 1976. The main contention against the validity of the notification is that an omnibus notification like the impugned notification would be contrary to the requirements of Section 10 of the CLRA Act and is illustrative of non-application of mind. It would be profitable to refer to Section 10 of the Act :

10. Prohibition of employment of contract labour -

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may

be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

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

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
(d) whether it is sufficient to employ considerable number of whole-time workmen. Explanation : If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. A careful reading of Section 10 makes it evident that sub- section (1) commences with a non obstante clause and overrides the other provisions of the CLRA Act in empowering the appropriate Government to prohibit by notification in the Official Gazette, after consultation with Central Advisory Board/State Advisory Board, as the case may be, employment of contract labour in any process, operation or other work in any establishment. Before issuing notification under subsection (1) in respect of an establishment the appropriate Government is enjoined to have regard to: (i) the conditions of work; (ii) the benefits provided for the contract labour; and (iii) other relevant factors like those specified in clauses (a) to (d) of sub-section (2). Under clause (a) the appropriate Government has to ascertain whether the process, operation or other work proposed to be prohibited is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; clause (b) requires the appropriate Government to determine whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; clause (c) contemplates a verification by the appropriate Government as to whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and clause (d) requires verification as to whether the work in that establishment is sufficient to employ considerable number of whole-time workmen. The list is not exhaustive. The appropriate Government may also take into consideration other relevant factors of the nature enumerated in sub-section (2) of Section 10 before issuing notification under Section 10(1) of the CLRA Act. The definition of establishment given in Section 2(e) of the CLRA Act is

as follows: In clause (e) - establishment is defined to mean -

(e) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on. The definition is in two parts : the first part takes in its fold any office or department of the Government or local authority

- the Government establishment; and the second part encompasses any place where any industry, trade, business, manufacture or occupation is carried on - the non-Govt. establishment. It is thus evident that there can be plurality of establishments in regard to the Government or local authority and also in regard to any place where any industry, trade, business, manufacture or occupation is carried on. Now, reading the definition of establishment in Section 10, the position that emerges is that before issuing notification under sub-section (1) an appropriate Government is required to:

(i) consult the Central Board/State Board; (ii) consider the conditions of work and benefits provided for the contract labour and (iii) take note of the factors such as mentioned in clauses (a) to (d) of sub-section (2) of Section 10, referred to above, with reference to any office or department of the Government or local authority or any place where any industry, trade, business, manufacture or occupation is carried on. These being the requirement of Section 10 of the Act, we shall examine whether the impugned notification fulfils these essentials. The impugned notification issued by the Central Government on December 9, 1976, reads as under : S.O.No.779(E) 8/9.12.76 in exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) the Central Government after consultation with the Central Advisory Contract Labour Board hereby prohibits employment of contract labour on an from the 1st March, 1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government. Provided that this notification shall not only apply to the outside cleaning and other maintenance operations of multistoreyed buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience. A glance through the said notification, makes it manifest that with effect from March 1, 1977, it prohibits employment of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment in respect of which the appropriate Government under the said Act is the Central Government. This clearly indicates that the Central Government had not adverted to any of the essentials, referred to above, except the requirement of consultation with the Central Advisory Board. Consideration of the factors mentioned above has to be in respect of each establishment,

whether individually or collectively, in respect of which notification under sub-section 1 of Section 10 is proposed to be issued. The impugned notification apart from being an omnibus notification does not reveal compliance of sub- section (2) of Section 10. This is ex facie contrary to the postulates of Section 10 of the Act. Besides it also exhibits non- application of mind by the Central Government. We are, therefore, unable to sustain the said impugned notification dated December 9, 1976 issued by the Central Government. Point No.3 remains to be considered. This is the moot point which generated marathon debate and is indeed an important one. The learned Solicitor General contended that contract labour had been in vogue for quite some time past; having regard to the abuses of the contract labour system, the CLRA Act was enacted by the Parliament to regulate the employment of contract labour and to cause its abolition in an establishment when the given circumstances exist; prior to the Act no mandamus could have been issued by courts creating relationship of employer and the employee between the principal employer and the contract labour and the Act did not alter that position. When the principal employer entrusts the work to a contractor there will be principal to principal relationship between them as such the work force of the contractor cannot be said to be the employees of the establishment. It was argued that under the Specific Relief Act a contract of employment could not be enforced specifically much less can a new contract of employment between the principal employer and the contract labour be created by the court. He has also pointed out that in every government company/establishment which is an instrumentality of the State there are service rules governing the appointment of staff providing among other things for equality of opportunity to all aspirants for posts in such establishments, calling for candidates from the employment exchange and the reservation in favour of Scheduled Castes/Scheduled Tribes/other Backward Classes, so a direction by the court to absorb the contract labour en bloc could be complied with only in breach of the statutory service rules. He has further contended that conceding that the CLRA Act is a beneficial legislation, the benefits which the Parliament thought it fit to confer on the contract labour are specified in the Act and the court by way of interpretation cannot add to those benefits. The contentions of Mr. G.L. Sanghi for the principal employer are : that there was never the relationship of master and servant between the F.C.I. and the contract labour; the various provisions of the Act which require the contractor to maintain canteen, rest-rooms and other facilities like a sufficient supply of wholesome drinking water at convenient places, sufficient number of latrines and urinals accessible to the contract labour in the establishment, washing facilities and the first aid facilities negative the existence of any direct relationship as sought to be made out. The responsibilities of the principal employer under the CLRA Act arise only in the event of failure of the contractor to fulfil his statutory obligations and in such an event he is bound to reimburse the principal employer. Whenever a contractor

undertakes to produce a given result or to provide services to an establishment/undertaking by engaging contract labour, the relationship of the master and servant exists between the contractor and the contract labour and not between the principal employer and the contract labour. When the Central Government/State Government/local authority entrusts any work to a contractor who recruits contract labour, in connection with that work, obviously the recruitment will not be in conformity with the statutory service rules and the same position would obtain with regard to non-governmental organisations, factories, mines etc. Further, having regard to the distinction between the principal employer and the establishment, in the absence of conferment of any authority on the manager by his principal employer to enter into a contract of employment on his behalf, the manager by entrusting work to a contractor cannot make a contract of service between the principal employer and the contract labour; if this analogy is applied to the case of the Central Government/the State Government/local authority, the contractor who undertakes to produce a given result would be creating a status of government servant by selecting and appointing persons for a particular establishment/undertaking. Such a consequence will obliterate the constitutional scheme in relation to government employment resulting in uncontemplated and unimaginative liabilities in financial terms. He pointed out that under the Mines Act the manager has no authority to employ persons so as to create master and servant relationship; the same position will equally apply in the case of occupier of a factory under the Factories Act. The provisions of the CLRA Act do not make the contractor an agent for creating relationship of master and servant between the principal employer and the contract labour in the situations pointed out above. In all such cases absorbing the contract labour would amount to opening a new channel of recruitment and it could not have been the intention of the Parliament in enacting CLRA Act to provide for appointment to the posts in various government/non-government establishments by circumventing the service rules. He canvassed that no direction could be issued to the principal employer by the Court to absorb the contract labour in the establishment. Mr. T.R. Andhyarujina, the learned senior counsel appearing for the principal employer (respondents in Transfer Case No.7 of 2000 (Delhi Multi Storey Bldg. Emp. Union Vs. Union of India & Anr.), urged that prior to coming into force of the CLRA Act, the Industrial Courts were ordering abolition of contract labour system and giving appropriate directions to the employer to employ contract labour on such terms and conditions as the employer might deem fit but no direction was given to make automatic absorption on abolition of contract labour. In 1946 in the Rege Committee Report or in 1969 in the Report of Mr. Justice P.B. Gajendragadkar who was himself a party to the judgment in The Standard-Vacuum Refining Co. of India Ltd. Vs. ITS Workmen and Ors. , no recommendation was made for automatic absorption of the contract labour by the principal employer; the Statement of Objects and Reasons of the CLRA Act also

does not speak of automatic absorption of contract labour which would show that the Parliament deliberately did not make any provision for automatic absorption; when the contract is terminated either by the principal employer or by the contractor or when the contractor himself terminates services of his workers or when he abandons the contract, the workmen go along with the contractor or may have a cause against the contractor but they can have no claim against the principal employer as such on prohibition of employment of contract labour also the same consequence should follow; by prohibiting the contract labour the Parliament intended that labour in general should be benefitted by making it impossible for the principal employer to engage contract labour through a contractor and the benefit of automatic absorption is not conferred by the CLRA Act on the contract labour working in an establishment at the time of issuing the notification prohibiting engagement of contract labour. Mr. K.K. Venugopal, the learned senior counsel appearing for the principal employer (appellant in O.N.G.C.) contended that Section 10 of the CLRA Act did not speak of automatic absorption so giving a direction to make absorption of the contract labour as a consequence of issuance of notification thereunder, prohibiting the engagement of contract labour in various processes, would be contrary to the Act. Had it been the intention of the Parliament to establish relationship of master and servant between the principal employer and the contract labour, submitted the learned counsel, Section 10 of the CLRA Act would have been differently worded and new sub section to that effect would have been enacted. If the court were to accept the contention of the contract labour that automatic absorption should follow a notification prohibiting employment of contract labour, the court would be adding a sub-section to Section 10 prescribing for automatic absorption on issuance of notification under sub-section (1) of Section 10 which would be impermissible. Mr. Shanti Bhushan argued that a contractor employing contract labour for any work of an establishment would, in law, create relationship of master and servant between the establishment and the labour; he sought to derive support from judgments of this court in the following cases: The Maharashtra Sugar Mills Ltd. Vs. The State of Bombay & Ors. , Shivnandan Sharma Vs. The Punjab National Bank Ltd. , Basti Sugar Mills Ltd. Vs. Ram Ujagar & Ors. , The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal & Ors. and Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Ors. . His further contention is that a joint reading of definitions of contract labour in clause (b) and of establishment in clause (e) of Section 2 of the CLRA Act would show that a legal relationship between a person employed to work in an industry and the owner of the industry comes into existence and it would not make any difference whether that relationship was brought about by the act of the principal/master or by the act of his authorised agent; the very fact of being employed in connection with an industry, creates rights in favour of the person employed and against the owner of the industry by bringing into existence, in law, a relationship of employer and

the employee (master and servant) between them. He pointed out that the definition of the expression workman in clause (i) excludes an out-worker, a person to whom any articles and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer when the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of the principal employer and argued that it would show that those who work at the place either of or under the Control and management of the principal employer, must be treated as the workmen of the principal employer. It is further argued that where the work is of a perennial nature, sub-section (2) of Section 10 of the CLRA Act requires that the contract labour should be abolished so it would be an abuse on the part of the employer to resort to employing contract labour in such a case. Reliance is also placed on Rules 21(2), 25(2)(V)(a), 72, 73, 74-Form XII, Rules 75, 76, 77, 81(3), 82(2) and Forms I, II, III and IV relating to certificate of registration, Form VI relating to licence, Form XIV relating to issue of employment card and Form XXV relating to annual returns of the principal employer, to contend that the principal employer has to keep track with the number of workmen employed, terms and conditions on which they are employed and, therefore, the employer cannot be permitted to plead that no relationship of master and servant exists between the principal employer and the contract labour. It is elaborated that under the CLRA Act, the action of the contractor who is the agent of the principal employer to engage contract labour, binds him and creates relationship of master and servant between them, therefore, the only consequence of notification under Section 10(1) could be to remove the contractor (middle-man) and mature the relationship which had already existed between the workman and the principal employer into a completely direct relationship and that the effect of the notification could never be to extinguish the rights of the persons for whose benefit the notification was required to be issued; reliance is placed on the three Judge Bench of this Court in Air Indias case (supra) and it is pointed out that Justice S.B. Majmudar who was a party to Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat Vs. Hind Mazdoor Sabha & Ors. case has given very weighty reasons for automatic absorption in his concurring judgment. Insofar as the reservation quota in favour of Scheduled Castes, Scheduled Tribes and Backward Classes is concerned, he submitted that there would be many situations in which the rule of reservation could not be complied with, e.g. when a private company had made appointments without following the rule of reservation and if such a company were to be taken over by the State the claim of the workers for absorption could not be denied on the ground that it would upset the rule of reservation. It is further contended that if on issuing notification under Section 10(1) prohibiting employment of contract labour, there is no automatic absorption, the employer cannot

employ work force which will result in closing down the industry producing a crippling affect on the establishment; but if automatic absorption is held to be the rule, no disturbance will be caused in the functioning of the industry and the contract labourers would become employees of the principal employer and that the employer will, however, have a right to retrench any excess staff by following the principles of retrenchment and paying retrenchment compensation as provided in the Industrial Disputes Act. Mr. Bhaskar P. Gupta, the learned senior counsel appearing for the contract labour (respondents in Civil Appeal Nos.719-720 of 2001), submitted that identification forms for working in different departments of the company were issued by the appellant company to the contract labour and, therefore, there was a direct relationship of master and servant between the management and the labourers; and if it were to be held that there was no automatic absorption on prohibition of engagement of contract labour the workers would be placed in a position worse than that held by them before abolition. He urged for construction of the provisions of the Act on the principles laid down in Heydons case to support the plea that the Act provided for absorption of the contract labour on issuing abolition notification by necessary implication and provided penal consequences to prevent exploitation and abuse of the contract labour. In that case, it is submitted, the company itself understood that the provisions of the Act required automatic absorption and absorbed 1550 workers leaving only 400 workers to be absorbed. Ms. Indira Jaisingh has contended that the primary object of the labour laws is to effectuate the Directive Principles of State policy and, therefore, the provisions of CLRA Act have to be interpreted accordingly; the principles of contract law are inapplicable in sricto sensu to labour-management relations; she relied on the following judgments of this Court : Western India Automobile Association Vs. The Industrial Tribunal, Bombay and Ors. , The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi & Anr. , Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab and Uptron India Ltd. Vs. Shammi Bhan & Anr. . Prior to the enactment of CLRA Act, it is pointed out, the courts have ordered abolition of contract labour and their departmentalisation in The Standard-Vacuums case (supra) and Hussainbhais (supra). She has argued that the Statement of Objects and Reasons does not say that the CLRA Act is intended to alter the then existing law; it codifies the existing law and confers quasi legislative power upon the government to prohibit contract labour; it does not affect the powers of the court to direct absorption of contract labour [see Barat Fritz Werner Ltd.etc.etc. Vs. State of Karnataka ; the abolition notification is issued after consideration of all the facts and circumstances so the consequence can only be that the contractor is displaced and a direct relationship is established between the principal employer and the contract labour; in Air Indias case (supra), it was held that the consequence of the abolition of contract labour, by necessary implication, would result in the principal employer absorbing the contract labour; the linkage between the contrac-

tor and the employee would be snapped and a direct relationship between the principal employer and the contract labour would emerge to make them its employees; she invited our attention to Vegoils Private Limited Vs. The Workmen , Dena Nath & Ors. Vs. National Fertilisers Ltd. & Ors. and Gujarat Electricitys case (supra) and submitted that the award proceedings stipulated in Gujarat Electricitys Case (supra) was cumbersome procedure making the remedy a teasing illusion, therefore, automatic absorption alone was the proper solution. Our attention was also invited to various Forms prescribed under the Rules to bring home the point that the principal employer had complete control over the number of contract labourers being employed and there could be no over- employment without the knowledge of the employer and it was urged that the fact that the labourers had been working for quite a number of years would show that their continuance was necessary. Mr. R. Venkatramani, the learned senior counsel appearing for the respondents in the appeal filed by the O.N.G.C. submitted that though the CLRA Act itself did not abolish the contract labour, it empowered the appropriate government to abolish the system in any establishment in the given circumstances. His contention is that Section 10 is intended to remove the contractor from the picture and that it can not be read as leading to removal of workers. He has also relied on the reasoning of Justice Majmudar in Air Indias case (supra) and added that if the contract labour is not absorbed the remedy of the abolition of the contract labour would be worse than the mischief sought to be remedied. He submitted that this Court directed absorption in V.S.T. Industries Ltd. Vs. V.S.T. Industries Workers Union & Anr. , G. B. Pant University of Agriculture & Technology, Pant Nagar, Nainital Vs. State of U.P. & Ors. , Union of India & Ors. Vs. Mohammed Aslam & Ors. , Indian Petrochemicals Corporation Ltd. & Anr. Vs. Shramik Sena & Ors. . Mr. K.K. Singhvi, the learned senior counsel for the contract labour, referred to the reports of the Royal Commission appointed by the then British Government, the Rege Committee, the Second Planning Commission and the Second National Commission of Labour headed by Justice Gajendragadkar to emphasise that the practice of contract labour is an unfair practice of exploiting the labour and that each of these reports recommended abolition of the contract labour and where it was not possible so to do, to regulate the same. He pleaded for absorption of the contract labourer by the principal employer on the abolition of the contract labour system in the process, operation or other work in the establishment in which it was employed in three situations : (1) where there has been notification for abolition of contact labour; (2) where in violation of the notification, contract labour is employed; and (3) where principal employer resorts to employing of contract labour without getting itself registered or through a contractor who is not licensed. He laid emphasis upon the Directive Principles contained in Articles 39, 41, 42 & 43 and urged for interpreting the beneficial legislation like CLRA Act to promote the intention of the legislature; he argued that the purpose of abolition of the contract labour

was to discontinue the exploitation of the contract labour and to bring it on par with the regular workmen, therefore, it was implicit that on abolition of the contact labour system, the concerned workmen should be absorbed as regular employees of the principal employer; relying upon the reasoning of Justice Majmudar in his concurring judgment in Air Indias case (supra), it was submitted that in labour laws the development had been on the basis of the judgments of the Courts and, therefore, we should interpret Section 10 to hold that as a result of issuance of prohibition notification, the contract labour working in an establishment at that time should stand absorbed automatically. Ms. Asha Jain Madan, the learned counsel appearing for the contract labour (respondents in C.A. Nos. of 2001 @ S.L.P. (C) Nos.12657-12658 of 1998), adopted the argument of the other learned senior counsel; she also relied on the concurring judgment of Justice Majmudar in Air Indias case (supra) in support of her contention that automatic absorption should follow prohibition of contract labour by the appropriate Government in any given establishment. The contentions of the learned counsel for the parties, exhaustively set out above, can conveniently be dealt with under the following two issues : A. Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the CLRA Act; and B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour, emerges. For a proper examination of these issues, a reference to Section 10 which provides for prohibition of employment of contract labour and Clauses (b), (c), (e), (g) and (i) of Section 2 of CLRA Act which define the terms contract labour, contractor, establishment, principal employer and workman respectively will be apposite. To interpret these and other relevant provisions of the CLRA Act, to which reference will be made presently, we may, with advantage, refer to CRAIES on Statute Law quoting the following observation of Lindley M.R. in Re Mayfair Property Co. in regard to Rule in Heydons case, in order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydons Case, to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief. What the learned Master of the Rolls observed in 1898 holds good even in 2001, so we proceed in the light of Rule in Heydons case. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub-section (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour, is neither spelt out in Section 10 nor indi-

cated anywhere in the Act. In our view, the following consequences follow on issuing a notification under Section 10 (1) of the CLRA Act:

(1) contract labour working in the concerned establishment at the time of issue of notification will cease to function; (2) the contract of principal employer with the contractor in regard to the contract labour comes to an end; (3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter; (4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour; (5) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Section 10 (1) has been issued; where all the benefits under the CLRA Act which were being enjoyed by it, will be available; (6) if a contractor intends to retrench his contract labour he can do so only in conformity with the provisions of the I.D. Act. //The point, now under consideration, is : whether automatic absorption of contract labour working in an establishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert to this aspect shortly. Now we shall notice the definitions of the terms referred to above. The term contract labour as defined in clause (b) of Section 2 reads: (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. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will

be a contract labour. Clause (c) of Section 2 defines contractor as under: (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. It may be noticed that the term contractor is defined in relation to an establishment to mean a person who undertakes to produce a given result for the establishment through contract labour or supplies contract labour for any work of the establishment and includes sub-contractor but excludes a supplier of goods or articles of manufacture to such establishment. The definition of principal employer in clause (g) of Section 2 runs thus: (2)(1)(g)(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment. Explanation: For the purpose of sub-clause

(v) of this clause, the expressions mine, owner and agent shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952). It contains four parts. Under the first part, the head of any office or department or such other officer as the Government or the local authority, as the case may be, may specify in that behalf, is called the principal employer. The second part takes in the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named is treated as the principal employer. The third part includes, within the meaning of the principal employer, the owner or agent of a mine or where a person has been named as the manager of the mine, the person so named . And the fourth part embraces every person responsible for the supervision and control of any establishment within the fold of principal employer. The term workman as defined in clause (i) of Section 2 of the CLRA Act is as follows: workman means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied but does not include any such person-

(A) who is employed mainly in a managerial or administrative capacity;

(B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties

attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or (C) who is an out-worker, that is to say, a person to whom any articles and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer. The definition is quite lucid. It has two limbs. The first limb indicates the meaning of the term as any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled, supervisory, technical or clerical work for hire or reward. It is immaterial that the terms of employment are express or implied. The second limb contains three exclusionary classes - (A) managerial or administrative staff; (B) supervisory staff drawing salary exceeding Rs.500/-(p.m.) and (C) an out worker which implies a person to whom articles and materials are given out by or on behalf of the principal employer to be made up cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other place not being the premises under the control and management of the principal employer. Now we shall consider issue A: Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of abolition notification, is implied in Section 10 of the CLRA Act. It would be useful to notice the historical perspective of the contract labour system leading to the enactment of the CLRA Act for a proper appreciation of the issue under examination. The problems and the abuses resulting from engagement of contract labour had attracted the attention of the Government from time to time. In the pre-independence era, in 1929 a Royal Commission was appointed by the then British Government to study and report all the aspects of labour. Suffice it to mention that in 1931 the Royal Commission (also known as Whitley Commission) submitted its report mentioning about existence of intermediary named jobber and recommended certain measures to reduce the influence of the jobber. Nothing substantial turned on that. In 1946 Rege Committee noted that in India contractors would either supply labour or take on such portions of work as they could handle. The Committee pointed out, whatever may be the grounds advanced by employers, it is to be feared that the disadvantages of the system are far more numerous and weightier than the advantages; though the Rege Committee recognised need for contract labour yet urged for its abolition where it was possible and recommended for regulating conditions of service where its continuance was unavoidable. In 1956 the Second Planning Commission (of which the then Prime Minister Pandit Jawahar Lal Nehru was the Chairman) observed that in the case of contract labour the major problems relate to the regu-

lations of working conditions and ensuring them continuous employment and for that purposes suggested that it was necessary to:

(a) undertake studies to ascertain the extent and the nature of the problems involved in different industries:
(b) examine where contract labour could be progressively eliminated. This should be undertaken straightway;
(c) determine cases where responsibility for payment of wages, ensuring proper conditions of work, etc. could be placed on the principal employer in addition to the contractor;
(d) secure gradual abolition of the contract system where the studies show this to be feasible, care being taken to ensure that the displaced labour is provided with alternative employment;
(e) secure for contract labour the conditions and protection enjoyed by other workers engaged by the principal employer; and
(f) set up a scheme of decasualisation, wherever feasible. It is no doubt true that one of the suggestions referred to above, does speak of care being taken to ensure that the displaced labour is provided with alternative employment, but a careful reading of the recommendation shows that the Committee was not unmindful of the fact that abolition of the contract labour system would result in displacement of labour, nonetheless what it thought fit to recommend was alternative employment and not absorption in the establishment where the contract labour was working. In 1969, the National Commission of Labour submitted its report recording the finding that the contract labour system was functioning with advantage to the employer and disadvantage to the contract labour and recommended that it should be abolished. The Commission also observed that under the various enactments the definition of worker was enlarged to include contract labour and thus benefits of working conditions and hours of work admissible to labour directly employed were made available to the contract labour as well. Indeed, the National Commission which was chaired by Justice P.B. Gajendragadkar who was a party to the judgment of this Court in The Standard Vacuums case (supra) possibly inspired by that judgment enumerated factors, indicated therein which would justify dispensing with the contract labour system, in para 29.11 of its report, which is reproduced hereunder. 29.11 - Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of wholetime workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of middlemen. While recommending abolition of contract labour altogether, it was emphasised that such facilities which other regular workers enjoyed, should be made available to contract labour if for some unavoidable reasons the contract labour had to stay. In para 29.15 of its report the National Commission of Labour noticed the fact of introduction of The Contract Labour

(Regulation and Abolition) Bill, 1967 (for short the Bill) in the Parliament, which incorporated to a great extent the said recommendations. The Bill later became the CLRA Act. It is worth noticing that in spite of absence of a provision for absorption of contract labour in the Bill (on issuance of notification under Section 10(1) of the CLRA Act prohibiting engagement of contract labour), the National Commission endorsed that measure. We have given punctilious reading to the report of the Joint Committee of the Parliament on the said Bill. Neither in the main report nor in the dissent note, do we find a reference to the automatic absorption of the contract labour. This may perhaps be for the reason that on abolition of contract labour system in an establishment, the contract labour nonetheless remains as the workforce of the contractors who get contracts in various establishments where the contract labour could be engaged and where they would be extended the same statutory benefits as they were enjoying before. We noticed that it was clear to the Joint Committee that by abolition of contract labour, the principal employer would be compelled to employ permanent workers for all types of work which would result incurring high cost by him, which implied creation of employment opportunities on regular basis for the contract labour. This could as well be yet another reason for not providing automatic absorption. This is so far as the recommendations of various commissions and committees leading to enactment of CLRA Act. We have already referred to the Statement of Objects and Reasons of the Act elsewhere in this judgment which also does not allude to the concept of automatic absorption of the contract labour on issuance of notification for prohibition of employment of the contract labour. Now turning to the provisions of the Act, the scheme of the Act is to regulate conditions of workers in contract labour system and to provide for its abolition by the appropriate Government as provided in Section 10 of the CLRA Act. In regard to the regulatory measures, Section 7 requires the principal employer of an establishment to get itself registered under the Act. Section 12 of the Act obliges every contractor to obtain licence under the provisions of the Act. Section 9 of the Act places an embargo on the principal employer of an establishment, which is either not registered or registration of which has been revoked under Section 8, from employing contract labour in the establishment. Similarly, Section 12(1) bars a contractor from undertaking or executing any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 of the Act make contravention of the provisions of the Act and other offences punishable thereunder. With regard to the welfare measures intended for the contract labour, Section 16 imposes an obligation on the appropriate Government to make rules to require the contractor to provide canteen for the use of the contract labour. The contractor is also under an obligation to provide rest room as postulated under Section 17 of the Act. Section 18 imposes a duty on every contractor employing contract labour in connection with the work of an establishemnt to make arrangement for a sufficient supply of wholesome drinking water for the

contract labour at convenient places, a sufficient number of latrines and urinals of the prescribed type at convenient and accessible places for the contract labour in the establishment, washing facilities etc. Section 19 requires the contractor to provide and maintain a first aid box equipped with prescribed contents at every place where contract labour is employed by him. Section 21 specifically says that a contractor shall be responsible for payment of wages to workers employed by him as contract labour and such wages have to be paid before the expiry of such period as may be prescribed. The principal employer is enjoined to have his representative present at the time of payment of wages. In the event of the contractor failing to provide amenities mentioned above, Section 20 imposes an obligation on the principal employer to provide such amenities and to recover the cost and expenses incurred therefor from the contractor either by deducting from any amount payable to the contractor or as a debt by the contractor. So also, Sub-Section (4) of Section 21 says that in the case of the contractor failing to make payment of wages as prescribed under Section 21, the principal employer shall be liable to make payment of wages to the contract labour employed by the contractor and will be entitled to recover the amount so paid from the contractor by deducting from any amount payable to the contractor or as a debt by the contractor. These provisions clearly bespeak treatment of contract labour as employees of the contractor and not of the principal employer. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labour system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that the Parliament intended to create a bar on engaging contract labour in the establishment covered by the prohibition notification, by a principal employer so as to leave no option with him except to employ the workers as regular employees directly. Section 10 is intended to work as a permanent solution to the problem rather than to provide a one time measure by departmentalizing the existing contract labour who may, by a fortuitous circumstance be in a given establishment for a very short time as on the date of the prohibition notification. It could as well be that a contractor and his contract labour who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labour engaged on the relevant date over the contract labour employed for longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labour in the CLRA Act. In the light of the above discussion we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the concerned establishment on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment. Here we may also take note of the judicial approach in regard to absorption of contract labour on issuing

direction for its abolition, from the cases decided before the enactment of CLRA Act. In The Standard Vacuums case (supra), the appellant-company engaged contractor for cleaning and maintenance work at the refinery and plant belonging to it. The contract labour made a demand for abolition of contract labour system and for absorption of the contract labour in the regular service of the company. The dispute was referred to the Tribunal under the Industrial Disputes Act. The appellant raised an objection to the competence of the reference, inter alia, on the ground that there can be no dispute between it and the respondents as they were the workmen of a different employer namely, the contractor. The Tribunal found against the appellant on the question of competence of the reference and passed award directing that the contract labour system should be abolished. On appeal, this Court held that as the ingredients of Section 2(k) of the Industrial Disputes Act were present, the dispute between the parties was an industrial dispute and, therefore, reference was competent. It was further held that the work entrusted to the contractor was incidental to and necessary for the work of the refinery and was of perennial nature; it was sufficient to employ a considerable number of whole-time workmen and that type of work was being done in most concerns through regular workmen. Therefore, the Tribunals suggestion directing abolition of contract labour was right and no interference with the award of the Tribunal was called for. However, it was observed that the date from which the direction for abolition of contract labour was to be effective, should not be put into force with retrospective effect and having noted that a few months remained for the existing contract to come to an end, permitted the existing contract system to be continued for the rest of the period of the contract. A chary reading of the above judgment shows that though direction for abolition of contract labour was approved, no automatic absorption of the contract labour working as on the date of abolition in the establishment was ordered by this Court. It is interesting to notice that the conditions pointed out by this Court, namely, (i) the work was incidental and necessary for the work of establishment; (ii) was of perennial nature; (iii) was sufficient to employ a considerable number of whole time workmen and (iv) that type of work was being done in most concerns through regular workmen, have been incorporated in sub-section 2 of Section 10 of CLRA Act. Much emphasis is laid on the judgment of this Court in The Standard Vacuums case (supra) in support of the contention that the Courts directed absorption of contract labour as a consequence of prohibition of employment of contract labour. We have pointed out above that a thoughtful reading of the said judgment would disclose that no such principle has been laid down therein. On the contrary, the Court having affirmed the direction prohibiting employment of contract labour extended the date from which the prohibition was to take effect so as to permit the existing contractor to continue for the rest of the period of the contract. Thus it is clear that before the enactment of the CLRA Act the industrial adjudicators/courts did direct abolition of contract labour

system but did not order absorption of contract labour by the principal employer on such abolition of the contract labour system. Now, it would be apt to notice the judicial approach after the enactment of the CLRA Act. In Vegoilss case (supra), the question before this Court was: had the Industrial Tribunal jurisdiction to issue direction to the establishment to abolish contract labour with effect from the date after coming into force of the CLRA Act? The appellant- company had engaged contract labour in seeds godown and solvent extraction plants in its factory. The appellant took the plea that the type of work was intermittent and sporadic for which the contract labour was both efficient and economic. On the other hand, the union of the workmen submitted that the work was continuous and perennial in nature and that in similar companies the practice was to have permanent workmen; it claimed that the contract labour system be abolished and the contract labour be absorbed as regular employees in the concerned establishment of the appellant. The Tribunal having found that the work for which the contract labour was engaged was closely connected with the main industry carried on by the appellant and that the work was also of perennial character, directed abolition of contract labour system from a date after coming into force of the CLRA Act but rejected the claim for absorption of contract labour in the establishment of the appellant. On appeal to this Court, after pointing out the scheme of Section 10 of the Act, it was held that under the CLRA Act, the jurisdiction to decide about the abolition of contract labour had to be in accordance with Section 10, therefore, it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the Act, if it became necessary. From this judgment, no support can be drawn for the proposition that absorption of the contract labour is a concomitant of the abolition notification under Section 10(1) of the Act. A Constitution Bench of this Court in M/s Gammon India Ltd. & Ors. Vs. Union of India & Ors. considered the constitutional validity of the CLRA Act and the Rules made thereunder in a petition under Article 32 of the Constitution of India. In that case, the work of construction of a building for the banking company was entrusted to the petitioners - building contractors - who engaged contract labour for construction work. While upholding the constitutional validity of the CLRA Act and the Rules made thereunder, this Court summed up the object of the Act and the purpose for enacting Section 10 of the Act as follows : The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. 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. There is nothing in that judgment to conclude that on abolition of contract labour system under Section 10(1), automatic absorption of contract labour in the establishment of the principal employer in which they were working at that time, would follow. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of non- compliance of Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer. In the case of R.K. Panda and Ors. Vs. Steel Authority of India and Ors. contract labour was employed at Rourkela Plant of the Steel Authority of India through contractors and continued in employment for long periods - between 10 and 20 years - as contract labourers. It was found that though the respondents were changing the contractors, yet under the terms of the agreement the incoming contractors were obliged to retain the contract labour engaged by the outgoing contractors. That apart, for about eight years the contract labour was continued to be employed by virtue of the interim order of this Court. It was noticed that in B.H.E.L. Workers Association, Hardwar & Ors. etc. Vs. Union of India & Ors. etc. , Mathura Refinery Mazdoor Sangh through its Secretary Vs. Indian Oil Corpn. Ltd., Mathura Refinery Project, Mathura and Anr. and the Dena Naths case (supra), on the question - whether the contract labourers had become the employees of the principal employer in course of time or whether the engagement and employment of labourers through a contractor was a mere camouflage and a smokescreen - this Court took the view that it was a question of fact and had to be established by the contract labourers on the basis of the requisite material in the industrial court or industrial tribunal. However, having regard to the various interim orders

passed by this Court and the time taken in deciding the case, this Court considered the matter on merits and on the basis of the offer made by the respondents, which was recorded, issued certain directions which need not be quoted here. However, no order was made directing absorption of contract labour on abolition of contract labour system. In National Federation of Railway Porters, Vendors & Bearers vs. Union of India & Ors. , a two-Judge Bench of this Court on the basis of findings contained in the report of the Labour Commissioner that there was no evidence that the labourers were the employees of the Society (contractor) and that they were contract labourers provided by the Society under the agreement, treated them as labourers of the Northern Railway as they had completed 240 days of continuous service in a year, some from 1972, some from 1980 and some from 1985. Following the order of this Court dated April 15, 1991 [Raghavendra Gumashta vs. Union of India (Writ Petition No.277 of 1988)], the Court directed their absorption in the Railway Service. It is obvious that direction to absorb the labourers was given on the premise that they were not the employees of the contractor (the society) but were of the Northern Railways. In Mathura Refinery Mazdoor Sanghs case (supra), the disputes between the contract labourers represented by the appellant and the respondents, referred to the industrial tribunal for adjudication, included the question, whether the contract labourers were the employees of the respondent corporation. The tribunal answered the question against the appellant but issued, among others, a direction that the respondent should give preference to the contract labour in the employment by waiving the requirement of age and other qualification wherever possible. It was, however, clarified by the industrial tribunal that the ameliorative steps should not be taken to mean that the contract labour had become the direct employees of the refinery. Against those directions, this Court dismissed the appeal holding that the suggestions and directions given by the tribunal in the impugned award, could not be improved upon. In Association of Chemical Workers, Bombay vs. A.L. Alaspurkar and Ors. a three-Judge Bench of this Court declined to go into the correctness of the pronouncement in Dena Naths case (supra) that automatic absorption does not follow on prohibition of contract labour but directed the principal employer to consider the contract labour, by giving them preference, in appointment. In Gujarat Electricity Boards case (supra), a two-Judge Bench of this Court has held that if there is a genuine labour contract between the principal employer and the contractor, the authority to abolish the contract labour vests in the appropriate Government and not in any court including industrial adjudicator. If the appropriate Government abolishes the contract labour system in respect of an establishment the industrial adjudicator would, after giving opportunity to the parties to place material before it, decide whether the workmen be absorbed by the principal employer, if so, how many of them and on what terms, but if the appropriate Government declines to abolish the contract labour the industrial adjudicator has to reject the reference. If, however,

the so-called contract is not genuine but is sham and camouflage to hide the reality, Section 10 would not apply and the workmen can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer. The court or the industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief. While this was the state of law in regard to the contract labour, the issue of automatic absorption of the contract labour came up before a Bench of three learned Judges of this Court in Air Indias case (supra). The Court held : (1) though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer; (2) the Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employment; and (3) in a proper case the Court as sentinel on the qui vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has a constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer. Justice Majmudar, in his concurring judgment, put it on the ground that when on the fulfillment of the requisite conditions, the contract labour is abolished under Section 10 (1), the intermediary contractor vanishes and along with him vanishes the term principal employer and once the intermediary contractor goes the term principal also goes with it; out of the tripartite contractual scenario only two parties remain, the beneficiaries of the abolition of the erstwhile contract labour system, i.e. the workmen on the one hand and the employer on the other, who is no longer their principal employer but necessarily becomes a direct employer for erstwhile contract labourers. The learned Judge also held that in the provision of Section 10 there is implicit legislative intent that on abolition of contract labour system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities under Chapter V in that very establishment. In regard to the judgment in Gujarat Electricity Boards case (supra), to which he was a party, the learned Judge observed that he wholly agreed with Justice Ramaswamys view that the scheme envisaged by Gujarat Electricity Board case was not workable and to that extent the said judgment could not be given effect to. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning or conclusions. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary

implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provide no ground for absorption of contract labour on issuing notification under sub-section (1) of Section 10. Admittedly when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that the Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of CLRA Act. We have gone through the decisions of this Court in V.S.T. Industries case (supra), G. B. Pant Universitys case (supra) and Mohammed Aslams case (supra). All of them relate to statutory liability to maintain the canteen by the principal employer in the factory/establishment. That is why in those cases, as in The Saraspur Mills case (supra), the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract labour working in the establishment of the principal employer has to be absorbed as regular employees of the establishment. An analysis of the cases, discussed above, shows that they fall in three classes; (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct po-

sition as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract labour would indeed be the employees of the principal employer. The next issue that remains to be dealt with is: B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges. Mr. Shanti Bhushan alone has taken this extreme stand that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. We are afraid, we are unable to accept this contention of the learned counsel. A careful survey of the cases relied upon by him shows that they do not support his proposition. In The Maharashtra Sugar Millss case (supra), the question that fell for consideration of this court was whether the contract labour was covered by the definition of employee under the Bombay Industrial Relations Act, 1946 and, therefore, should be treated as employees of the appellant-sugar mills. There contractors were engaged by the appellant for carrying on certain operations in its establishment. The contractors were to employ contract labour (workers) for carrying out the work undertaken but they should have the approval of the appellant, although it was the obligation of the contractors to pay wages to the workers. However, the contract labour engaged by the contractors got the same amenities from the appellant as were available to its muster roll workers. An industrial dispute arose in respect of the payment of wages to the contract labour engaged by the contractors which, along with other disputes, was referred to the Industrial Court by the Government. The reference was contested, as being not maintainable, by the appellant on the plea that the contractors workers were not employees within the meaning of the said Act. The term employee is defined in the said Act to mean any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes a person employed by a contractor to do any work for him in execution of a contract with an employer within the meaning of sub-clause (3) of clause 14. It was on the basis of the definitions of the terms the employer and the employee, the contract labour engaged by the contractors was held to be employees of the appellant. The decision in that case cannot be read as holding that when a contractor engages contract labour in connection with the work of the principal employer, the relationship of master and servant is created between the principal employer and the contract labour. In Shivnandan Sharmas case (supra), the respondent-Bank entrusted its cash department under a contract to the treasurers who appointed cashiers, including the appellant - the head cashier. The question before the three-Judge Bench of this Court was: was the appellant an employee of the Bank? On the construction of the

agreement entered into between the Bank and the treasurers, it was held that the treasurers were under the employment of the Bank on a monthly basis for an indefinite term as they were under the complete control and direction of the Bank through its manager or other functionaries and, therefore, the appointees including the appellant (nominees) of the treasurers, were also the employees of the Bank. This Court laid down, if a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master. We do not think that the principle, quoted above, supports the proposition canvassed by the learned counsel. The decision of the Constitution Bench of this Court in Basti Sugar Mills case (supra) was given in the context of reference of an industrial dispute under the Uttar Pradesh Industrial Disputes Act, 1947. The appellant-Sugar Mills entrusted the work of removal of press mud to a contractor who engaged the respondents therein (contract labour) in connection with that work. The services of the respondents were terminated by the contractor and they claimed that they should be re-instated in the service of the appellant. The Constitution Bench held, The words of the definition of workmen in Section 2(z) to mean any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word employer included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between employer and workmen. It was with a view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause

(iv) of Section 2(i). The position thus is : (a) that the respondents are workmen within the meaning of Section 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press- mud which is ordinarily a part of the industry. It follows therefore from Section 2(z) read with sub-clause (iv) of Section 2(i) of the Act that they are workmen of the appellant company and the appellant company is their employer. It is evident that the decision in that case also turned on the wide language of statutory definitions of the terms workmen and employer. So it does not advance the case pleaded by the learned counsel. In The Saraspur Mills case (supra), the question was whether the respondents engaged for working in the canteen run

by the co-operative society for the appellant-company were the employees of the appellant-Mills. The respondents initiated proceedings under Section 79 of the Bombay Industrial Relations Act, 1946 for payment of D.A. in terms of the award of the Industrial Court. The appellant contested the claim on the ground that the respondents were employees of the co-operative society and not of the appellant. A two-Judge Bench of this Court approached the question from the point of view of statutory liability of the appellant to run the canteen in the factory and having construed the language employed in the definitions of employee and employer in sub-sections (13) and (14), respectively, of Section 3 of the Act, and the definition of worker contained in Section 2(i) of the Factories Act and having referred to the Basti Sugar Mills case (supra), held that even though in pursuance of a statutory liability the appellant was to run the canteen in the factory, it was run by the co-operative society as such the workers in the canteen (the respondents) would be the employees of the appellant. This case falls in class (iii) mentioned above. In a three-Judge Bench decision of this Court in Hussainbhais case (supra), the petitioner who was manufacturing ropes entrusted the work to the contractors who engaged their own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment. On reference of that dispute by the State Government, they succeeded in obtaining an award against the petitioner who unsuccessfully challenged the same in the High Court and then in the Supreme Court. On examining various factors and applying the effective control test, this court held that though there was no direct relationship between the petitioner and the respondent yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the management not the immediate contractor. Speaking for the Court, Justice Krishna Iyer observed thus :- Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43, and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances..... Of course, if there is total dissociation in fact between the disowning Management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The Managements adventitious connections cannot ripen into real employment. This case falls in class (ii) mentioned above. The above discussion amply justifies rejection of the contentions of Mr. Shanti Bhushan by us. We find no substance in the next submission of Mr. Shanti Bhushan that a combined reading of the definition of the terms contract labour, establishment and workman would show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship.

We have quoted the definitions of these terms above and elucidated their import. The word workman is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms establishment and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. The circumstances under which contract labour could be treated as direct workman of the principal employer have already been pointed out above. We are not persuaded to accede to the contention that a workman, who is not an out-worker, must be treated as a regular employee of the principal employer. It has been noticed above that an out-worker falls within the exclusionary clause of the definition of workman. The word out worker connotes a person who carries out the type of work, mentioned in sub-clause (C) of clause (i) of Section 2, of the principal employer with the materials supplied to him by such employer either (i) at his home or (ii) in some other premises not under the control and management of the principal employer. A person who is not an out worker but satisfies the requirement of the first limb of the definition of workman would, by the very definition, fall within the meaning of the term workman. Even so, if such a workman is within the ambit of the contract labour, unless he falls within the afore-mentioned classes, he cannot be treated as a regular employee of the principal employer. We have also perused all the Rule and Forms prescribed thereunder. It is clear that at various stages there is involvement of the principal employer. On exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiorari much less can such a relationship be found to exist from the Rules and the Forms made thereunder. The leftover contention of Ms. Indira Jaisingh may be dealt with here. The contention of Ms. Indira Jaisingh that the principles of contract law sticto sensu do not apply to the labour and management is too broad to merit acceptance. In Rai Bahadurs case (supra), the industrial dispute referred to the Industrial Tribunal was: whether all the employees of the appellant should be allowed 30 days earned leave with full wages for every 11 months service without discrimination. The appellant framed the rules on July 1, 1956 providing that every workman employed on or before that date would be entitled to 30 days earned leave with full wages for every 11 months service. The contention of the employer was that those who were employed after that date were not entitled to the same period of leave. It was contended that the appellant was entitled to fix the terms of employment on which it would employ the workmen and it was open for the workman to accept or not to accept those terms so the Tribunal was not justified in interfering with such matter. A three-Judge Bench of this Court, by majority, held that the Tribunal was justified in

directing the appellant to provide the same uniform rules as to earned leave for all its employees that the doctrine of absolute freedom of contract had to yield to the higher claims for social justice and had to be so regulated. After referring to Western Indias case (supra) and The Bharat Banks case (supra), Justice P.B. Gajendragadkar speaking for the majority observed: in order that industrial adjudication should be free from the tyranny of dogmas or the sub- conscious pressure of pre-conceived notions, it is important that the temptation to lay down broad principles should be avoided. Accordingly, it is not necessary to decide the broad contention whether industrial adjudication can interfere with the contract between the employers and the employees. It is apparent that the case was decided on the ground that there could be no discrimination of the employees in regard to their entitlement for earned leave on the basis of a fixed date and that no general principle was laid down that the contract laws are inapplicable to labour-management relation. In the case of Uptron India (supra), the controversy related to the termination of the services of the workmen for unauthorised absence. The Industrial Employment (Standing Orders) Act, 1946 provided that a workman is liable to automatic termination on the ground of unauthorised absence. It is in that context that this Court has observed that the general principles of the Contract Act, 1872 applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment but relationship so created is partly contractual and partly non-contractual as the States have already, by legislation, prescribed positive obligations for the employer towards his workmen, as for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 etc. In our view, the law has been correctly laid down therein. The judgment in that case cannot be read as laying down a principle of law that the provisions of the Contract Act are not applicable to relation between the labour and the management. The upshot of the above discussion is outlined thus: (1) (a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government,

(b) After the said date in view of the new definition of that expression, the

answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government : (1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;

(3) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and
(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the afore-said requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;
(4) We over-rule the judgment of this court in Air Indias case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air Indias case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications. We have used the expression industrial adjudicator by design as determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review. In the result : C.A.Nos.6009-6010 /2001 @S.L.P. (C) Nos. 12657-58/98 The order of the High Court at Calcutta, under challenge, insofar as it relates to holding that the West Bengal Government is the appropriate Government within the meaning of the CLRA Act, is confirmed but the direction that the contract labour shall be absorbed and treated on par with the regular employees of the appellants, is set aside. The appeals are accordingly allowed in part. C.A.No.6011/2001@ SLP(C)No.20926/98 In the impugned order of the High Court of Judicature, Madhya Pradesh, Bench at Jabalpur in C.P. 143 of 1998 dated October 14,1998, it was held that no contempt of the High Court was committed. In view of this finding, no interference of this Court is warranted. The appeal is accordingly dismissed. T.C.No.1/2000 W.A.No. 80/1998 on the file of the High Court of Judicature at Andhra Pradesh was transferred to this Court and numbered as TC.1/2000. The writ appeal is directed against the order of the learned Single Judge

dismissing W.P.No.29865/1998 on 13.11.1997. The petitioner questioned the competence of the State Government to make reference of the industrial dispute to the Labour Court at Visakhapatnam. It will be open to the Labour Court to decide the question whether the reference was made by the appropriate Government on the basis of the main judgment. Transferred Case No.1/2000 (W.A.80/1998) is dismissed accordingly. T.C. Nos.5-7/2000 Civil Writ Petition Nos.1329/97, 655/97 and 1453/97 on the file of the High Court of Delhi were transferred to this Court and numbered as TC. 5/2000, TC. 6/2000 and TC. 7/2000 respectively. The petitioners therein prayed for a writ of mandamus directing the respondents to absorb them as regular employees in the establishment in which they were working at the relevant time. Their claim is based on the impugned notification dated December 9, 1976 issued by the Central Government. In view of the finding recorded by us that the notification is illegal and it is not issued by the appropriate Government under the CLRA Act in relation to the establishment in question, the petitioners in writ petitions cannot get any relief. However, we leave it open to the appropriate Government to issue the notification under Section 10(1) of the CLRA Act in respect of the concerned establishment of the petitioners. Subject to the above observation the transferred cases are dismissed. T.C.Nos. 17/2000 and 18/2000 L.P.A. Nos. 326/97 and 18/98 on the file of the High Court of Judicature, Madhya Pradesh, Bench at Jabalpur were transferred and numbered as TC.Nos. 17/2000 and 18/2000. The Letter patent appeals were directed against the order of a learned Single Judge allowing the writ petitions and directing absorption of the members of the respondent-union. The claim of the petitioners was based on a notification issued by the Central Government on 17.3.1993 prohibiting with effect from the date of publication of the notification the employment of contract labour in the limestone and dolomite mines in the country, in the works specified in the Schedule to the notification. The points that arise in these cases are: (i) the validity of the notification and (ii) the consequential orders that may be passed on issue of the abolition notification. Having regard to the facts of these cases, we consider it appropriate to direct that the cases be transferred back to the High Court to be decided by the High Court in the light of the main judgment. Transferred cases are disposed of accordingly. C.A.No.6012/2001@SLP(C)No.9568/2000 This appeal arises from the order of the High Court of Judicature at Jabalpur in LPA No.418/1999 dated 1.5.2000. The High Court declined to pass any order and dismissed the LPA as this Court had stayed proceedings in the connected LPA Nos. 326/97 and 18/98 on August 17, 1998. Inasmuch we have now transferred back those LPAs, we consider it appropriate to transfer this case also back to the High Court to be heard and decided along with the said cases. The appeal is accordingly disposed of. C.A.Nos. 719-720/2001 These appeals arise from the judgment and order of a Division Bench of the High Court of Judicature at Calcutta in MAT Nos. 1704 and 1705 of

1999 dated August 12, 1999. A learned Single Judge of the High Court directed, inter alia, absorption of contract labour on the ground that the type of work in which the contract labour was engaged was prohibited in view of the notification issued by the Central Government on February 9, 1980 under Section 10(1) of the CLRA Act. The appellants filed the application against the notification on the ground that the respondents are not covered by the notification. Be that as it may, the Central Government issued a further notification on 14.10.1999 which appears to cover the respondents herein. The Division Bench maintained the directions under appeals with modification in regard to interim order. In view of the fact that we have over-ruled the judgment of this Court in Air Indias case (supra) which covered the field when the order of the High Court was passed, we set aside the order of the High Court under challenge. Appeals are accordingly allowed. T.C.No. 14/2000 M.A.T. No.1592/1997 pending before the Division Bench of the High Court of Calcutta which was filed against the order of a learned Single Judge dated 9.5.1997 in C.O. No.6545(w) of 1996, holding that having regard to the impugned notification of the Central Government dated December 9, 1976 issued under Section 10(1) of the CLRA Act prohibiting employment of contract labour, the appellants are bound to absorb the contract labour as regular employees of the appellants. In view of the main judgment, the order of the learned Single Judge cannot be sustained. It is accordingly set aside and the transferred case is allowed. C.A.Nos. 5798-99/1998 In these appeals, the Food Corporation of India is the appellant. Having regard to the un-amended definition of the appropriate Government which was in force till 28.1.1986, the appropriate Government within the meaning of CLRA Act was the government of the State in which the concerned establishment of FCI was situated. With effect from 28.1.1986, the amended definition of that expression under the CLRA Act came into force. Consequently, the definition of that expression as given in the Industrial Disputes Act would apply for purposes of the CLRA Act also. FCI is included within the definition of appropriate Government in sub-clause (1) of clause (a) of Section 2 of the Industrial Disputes Act. It follows that for any establishment of FCI for the purposes of the CLRA Act, the appropriate Government will be the Central Government. In these appeals, prohibition notification was issued on March 26, 1991 under Section 10(1) of the CLRA Act prohibiting employment of contract labour in the concerned establishment in the process, operation or work of handling of foodgrains including loading and unloading from any means of transport, storing and stocking. The respondents claimed absorption of contract labour in the concerned establishment of the appellant. A Division Bench of the High Court of Bombay following the judgment of this Court in Air Indias case (supra) directed the appellant to absorb the contract labour engaged in the depots of the appellant in Jalgaon, Srirampur and Ahmednagar (Khedgaon). Inasmuch we have over-ruled the judgment in Air Indias case (supra), the appeals deserve

to be allowed. We, accordingly, set aside the judgment of the High Court under challenge and allow these appeals leaving it open to the contract labour to seek appropriate relief in terms of the main judgment. C.A.Nos.6013-22/2001@SLP(C) Nos. 16122-16131/98 These appeals by FCI from the judgment of a Division Bench of the Karnataka High Court in W.A. Nos. 345-354/97 dated April 17, 1998 confirming the judgment of a learned Single Judge passed in W.P. NO.22485/94 and batch dated 22.11.1996. The learned Single Judge directed absorption of the contract labour with effect from 29.1.1996. Inasmuch as the impugned judgment, under challenge, was passed following the judgment in Air Indias case (supra) which has since been over-ruled, we set aside the judgment of the High Court and allow these appeals accordingly, leaving it open to the contract labour to seek appropriate relief in terms of the main judgment. C.A.Nos. 4188-94/98 and 4195/98 These appeals arise from a common judgment of the High Court of Karnataka in W.A.Nos. 228-229, 231, 233-236/97 and 1742/97 dated 17.4.98 are filed by union of workmen and workmen of FCI. The Division Bench confirmed the judgment of the learned Single Judge directing absorption of contract labour in the concerned establishment of the appellants w.e.f. 29.1.96. The grievance of the appellants is that they should have been absorbed with effect from the date of the prohibition notification dated November 1, 1990. Inasmuch as in the connected civil appeals we have set aside the judgment of Division Bench passed following the judgment of this Court in Air Indias case (supra) which has since been over-ruled, the appellants are not entitled to any relief in these appeals. Accordingly, these appeals are dismissed. T.P(C) Nos. 284-302/2000 and 308-337/2000 In these transfer petitions, the petitioners prayed for transfer of various writ petitions/writ appeals pending in the High Court of Andhra Pradesh mentioned in para (a) of prayer on the ground that the question involved in those cases is pending consideration of this Constitution Bench in SLP (C) Nos. 12657- 58/98. Notice has been ordered in these cases but the cases are not transferred. Inasmuch as we have already pronounced the judgment in the above-mentioned cases, we are not inclined to allow these transfer petitions. The High Court will now proceed to decide those cases in accordance with the main judgment. Transfer petitions are dismissed accordingly. C.A.No.6029/2001@SLP(C)No. 16346/2000 The order under challenge in this appeal is the judgment of a Division Bench of the High Court of Bombay in W.P.No. 4050/99 dated 2.8.2000. On the ground that the members of respondent union (employees of ONGC) are covered by the notification issued by the Central Government on December 9, 1976, the High Court ordered absorption of the workers employed as contract labour. Inasmuch as the Central Government became the appropriate Government, for an establishment of ONGC after the amended definition of the appropriate Government came into force under the CLRA Act w.e.f. 28.1.1986 whereunder the definition of the said expression under the Industrial Disputes Act is adopted in the CLRA Act, therefore, the

Central Government will be the appropriate Government for ONGC w.e.f. 28.1.1986. It follows that the notification issued on December 9, 1976 would not cover the establishments of the appellant. However, as the High Court directed absorption of the contract labour in the establishments of the appellant following the judgment of this Court in Air Indias case (supra) and that judgment has since been over-ruled, both on the question of appropriate Government as well as on the point of automatic absorption, we set aside the order under challenge and accordingly allow this appeal. C.A.Nos.6030-34/2001@SLP(C)Nos.13146-150/2000 These appeals are directed against the order of the High Court of Andhra Pradesh in W.A. Nos. 1652-1655/99 and 1959/99 dated 22.11.99. The Division Bench of the High Court took note of the fact that the order of the learned Single Judge had been given effect to and on the facts declined to condone the delay of 353 days in filing the writ appeals. In our view, having regard to the facts and circumstances of the case, no interference with the impugned order, is warranted. The appeals are, therefore, dismissed. C.A.Nos.6024-25/2001@SLP(C)Nos.8282-83/2000 These appeals are from the order of the Division Bench of the High Court of Gujarat in L.P.A.No.118/2000 dated 19.4.2000 which was directed against the interim order passed by a learned Single Judge. Inasmuch as the writ petitions are pending before the High Court, we are not inclined to interfere with the orders impugned in the appeals. We leave it open to the High Court to dispose of the writ petitions in terms of the main judgment. The appeals are accordingly dismissed. T.P.(C)No. 169/2000 In this transfer petition, the petitioner seeks transfer of S.C.A.No.5192/99 pending in the High Court of Gujarat. Notice has been issued but the case is not transferred. In view of the fact that we have pronounced the judgment in the connected cases, we are not inclined to order transfer of the case from the High Court. We leave it open to the High Court to dispose of the said appeal in accordance with the main judgment of this Court. Transfer petition is dismissed accordingly. C.A.No.6023/2001@SLP(C)No.19391/99 This appeal arises from the judgment and order dated 19.8.1999 of the High Court of Patna, Ranchi Bench, Ranchi, in L.P.A.No. 214/99 (R). The Division Bench declined to interfere with the order of the learned Single Judge dismissing the writ petition filed by the appellant. The case arose out of the award dated October 3, 1996 passed by the Central Government Industrial Tribunal No.1 directing the appellant to absorb the contract labour. The Tribunal, on appreciation of the evidence, found that the contract labourers were not regularised to deprive them from the due wages and other benefits on par with the regular employees under sham paper work by virtue of the sham transaction. It was also pointed out that the workmen in other coal washery were regularised. The claim of the appellant that the washery was given to the purchaser was not accepted as being a sham transaction to camouflage the real facts. The learned Single Judge on consideration of the entire material confirmed the award and the Division

Bench declined to interfere in the LPA. We find no reason to interfere with the order under challenge. The appeal is, therefore, dismissed with costs. C.A.No. 141/2001 This appeal arises from the judgment of the High Court of Judicature at Bombay passed in W.P.No. 2616/99 dated 23.12.99. The employment of contract labour in the concerned establishment of the appellant was prohibited by the notification issued by the Central Government under Section 10(1) of the CLRA Act on 16.11.99. Following the judgment of this Court in Air Indias case (supra), the High Court directed the appellant to absorb the contract labour. Inasmuch as we have over-ruled the judgment of this Court in Air Indias case (supra), the direction given by the High Court cannot be sustained. We, however, leave it open to the respondent-union to seek appropriate relief in terms of the main judgment. The order, under challenge, is set aside. The appeal is accordingly allowed. In all these cases except in C.A.6023/2001@SLP(C)No. 19391/99, the parties are directed to bear their own costs. .....J. (B.N. Kirpal) .....J. (Syed Shah Mohammed Quadri) .....J. (M.B. Shah) .....J. (Ruma Pal) .....J. (K. G. Balakrishnan) New Delhi, August 30, 2001 1999 (7) SCC 59 1997 (9) SCC 377 1981 (1) SCC 315 1983 (2) Appeal Cases 237 In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. 1975 (3) SCR 619 1979 (3) SCR 1014 1980 (2) SCR 773 1981 (2) SCR 79 1991 Suppl. (1) SCC 600 1981 (1) SCC 449 1984 Suppl. SCC 540 1984 (2) SCC 141 1984 (3) SCC 316 1986 (3) SCC 156 1988 (3) SCC 105 1994 (1) SCC 243 1990 (3) SCC 280 1995 (5) SCC 482 20 1991 (3) SCC 91 1969 (1) SCC 765 1969 (1) SCC 765 1975 (4) SCC 679 1984 Suppl. SCC 443 1960 (3) SCR 466 AIR 1951 SC 313 1955 (1) SCR 1427 1964 (2) SCR 838 1974 (3) SCC 66 1978 (4) SCC 257 1995 (5) SCC 27 AIR (36) 1949 Federal Court 111 1950 SCR 459 1963 (3) SCR 930 1998 (6) SCC 538

36. J.T. 2001 (2) SC 376 1971 (2) SCC 724
37. 1992 (1) SCC 695 2001 (1) SCC 298 2000 (7) SCC 109 2001 (1) SCC 720 1999 (6) SCC 439 (6th Edition by S.G.G.Edgar Page 96) (1898 (2) Ch.28, 35,) (1584 (3) Co. Rep. 7a) The explanation appended to this clause clarifies that the expressions mine, owner and agent shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952. 1974 (1) SCC 596 1994 (5) SCC 304
38. 1985 (1) SCC 630
39. 1991 (2) SCC 176
40. 1995 Supp. (3) SCC 152 1993 Supp. (3) SCC 248