Secretary, H.S.E.B vs Suresh & Ors Etc. Etc on 30 March, 1999

Bench: M.Jagannadha Rao, Umesh C. Banerjee

PETITIONER:
SECRETARY, H.S.E.B.

Vs.

RESPONDENT:
SURESH & ORS ETC. ETC.

DATE OF JUDGMENT: 04/04/1999

BENCH:
M.Jagannadha Rao, Umesh C. Banerjee

JUDGMENT:

BANERJEE, J The doctrine of equality as enshrined in the Constitution promised an egalitarian society and the Contract Labour (Regulation & Abolition) Act, 1970 is the resultant effect of such a constitutional mandate having its due focus in that perspective. This Court in Minerva Mills' case (AIR 1980 SC 1789) in no uncertain terms laid down that the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic justice. In short, this Court has equated the security clause in the Constitution so as to mean that the people of the country ought to be secured of socio-economic justice by way of a fusion of Fundamental Right and Directive Principles of State Policy. As a matter of fact this Court has been candid enough on more occasions than one and rather, frequently to note that socialism ought not to be treated as a mere concept or an ideal, but the same ought to be practised in every sphere of life and be treated by the law courts as a constitutional mandate since the law courts exists for the society and required to act as a guardian-angel of the society. As a matter of fact the socialistic concept of society is very well laid in Part III and Part IV of the Constitution and the Constitution being supreme, it is a bounden duty of the law courts to give shape and offer reality to such a concept. In this context reference to the Constitution Bench decision of this Court in Nakara's case (D.S. Nakara & Ors Vs. Union of India) (AIR 1983 SC 130) seems to be rather apposite. This Court stated that democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. The primary impact of socialism as a matter of fact is to offer and provide security of life so that the citizens of the country may have two square meals a day, and maintenance of a minimum standard of life, it is expected, would lead to the abridgment of the gap between the have-s and have not-s. The feudal exploitation and draconian concept of law ought not to outweigh the basic structure of the Constitution, or its socialistic status. Ours is a socialist State as the Preamble depicts and the aim of socialism,

therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to sub-serve the need and the requirement of the common man. Article 39 is a pointer in that direction. Each clause under the Article specifically fixes certain social and economic goal so as to expand the horizon of benefits to be accrued to the general public at large. In particular reference to Article 39 (a) it is seen that the State ought to direct its policies in such a manner so that the citizens - men and women equally, have the right of an adequate means of livelihood and it is in this perspective again that the enactment in the statute book as noticed above (The Contract Labour (Regulation & Abolition) Act 1970) ought to be read and interpreted so that social and economic justice may be achieved and the constitutional directive be given a full play. Having noticed the broad features, as above, be it noted these appeals by Special Leave arise from the order of the Division Bench of the High court of Punjab & Haryana at Chandigarh. The contextual facts depict that the Haryana State Electricity Board (hereinafter referred to as `Appellant Board') is a statutory Board with one of its primary functions being the supply of power to urban and rural areas in the State of HaryanOa through its various plants and stations. In order to keep the said plants and stations clean and hygienic, the Appellant Board, upon tenders being floated, awards contracts to contractors who undertake the work of keeping the same clean and hygienic. One such contract was awarded to one Kashmir Singh, for "proper, complete and hygienic cleaning, sweeping and removal of garbage from the Main Plant Building" at Panipat, at the rate of Rs.33,000 per month with a stipulation to engage minimum 42 safai karamcharis with effect from 15th May, 1987 for a period of one year and in terms therewith the Contractor took over the work and performed the said work through the above-stated Safai Karamcharis. Subsequently by reason however of a dispute raised by the Safai Karamcharis, as regards their entitlement to be absorbed permanently on completion of 240 days in the year with the Board, the matters were referred to the Conciliation Officer, Panipat culminating however in an order of reference by the State Government on 27.12.1988 to the Labour Court, Ambala which was suObsequently transferred to Panipat. On the further factual score, it appears that the Labour Court upon consideration of the facts and the evidence taken on record passed the impugned award inter alia recording therein that the workmen are otherwise entitled to reinstatement with continuity of service alongwith 10% back wages. We shall revert to the order of the Labour Court for further consideration shortly hereafter, but to complete the basic factual backdrop in the matter it ought to be noted that as against the order of the Labour Court, the appellant moved 37 Writ Petitions in the High Court of Punjab and Haryana, which were however, disposed of by a common judgment and order dated 24th January, 1995, inter alia, recording that there existed a relationship of employer and workmen between the Appellant Board and the respondents and by reason wherefor, the High Court directed reinstatement of the respondents with continuity of service though however, without back wages. While dealing with these matters the High Court did place strong reliance on the observation of this Court in the case of Hussainbhai Vs. Alath Factory Tezhilali Union (1978 LIC 1264) wherein this Court observed: "Who is employee, in Labour Law? That is the short, die-hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Union's worken and so no direct employer-employee vinculum juris existed between the petitioner and the workmen.

This argument is impeccable in laissez faire economics `red in tooth and claw' and under the Contract Act rooted in English Common Law. But the human gap of a century yawans between this

strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble of the Constitution. This Court in Ganesh Beedi's case (1974) 1 Lab LJ 367 (AIR 1974 SC 1832) has raised on British and American ruligs hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw Societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioners.

The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to prodce goods or services and these goods or services are for the business of another, that other is, inOB fact, the employer.

He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractors of no consequences when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contract. Myried 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 Arts.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."

Incidentally, the claim of the workmen arises by reason of discontinuation of the service at the units belonging to the appellant herein. The Labour Court while adjudicating the issue, as to the justification of the termination of services of the workmen in terms of the order of reference under Section 10 of the Industrial Disputes Act, came to a definite conclusion on the basis of evidence tendered that the work force did in fact work for more than 240 days in the year and as a matter of fact, there was no dispute raised on that score by the Board and it is on this factual score that the Labour Court did record that the presence of an intermediary would not, however, alter the situation as regards the existence of relationship of employer and the workmen and thus between the Board and the claimants and as such answered the reference in the affirmative, resulting in a finding that the workmen are entitled to be reinstated with continuity of service along with 10% back-wages. It is this finding of the Labour Court which stands accepted by the High Court in writ petitions under Article 226 of the Constitution, challenging the validity of the award of the Labour Court and the High Court, as noted above rejected the writ petitions stating therein:

> "on the admitted facts of the case it is to be ascertained as to whether after complying the principle of lifting of the veil, the existence of the relationship of workman and

> employer is surfaced or not. After critically examining the evidence lead in the case, the court below has come to the conclusion that there existed a relationship of employer and workman between the contestiOOng parties and that the intermediatary contract was just an eye wash.".

The High Court did in fact note with care and caution the doctrine of `lifting of veil' in industrial jurisprudence and recorded that in the contextual facts and upon lifting of the veil, question of having any contra opinion as regards the exact relationship between the contesting parties would not arise and as such directed reinstatement though, however, without any back wages. While it is true that the doctrine enunciated in Soloman vs. Soloman (1897 Appeal Cases page 22) came to be recognised in the corporate jurisprudence but its applicability in the present context cannot be doubted, since the law court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit. Rescopound stated that the greatest virtue of the law court is flexibility and as and when the situation so demands, the law court L.....I.....T.....T.....T.....T..

111.....T.....T.....T.....T.J ought to administer justice in accordance therewith and as per the need of the situation. Turning attention, however, on to the legislative intent in the matter of enactment of the Act of 1970, at the first blush itself, it appears that in expression of its intent, the legislature very aptly coined the enactment, as such, for regulation and abolition of contract labour. Conceptually, engagement of contract labour by itself lends to various abuses and in accordance with devout objective as enshrined in the Constitution and as noticed herein before, this enactment has been introduced in the statute book in the year 1970, to regulate contract labour and to provide for its abolition in certain circumstances since prior to such, the factum of engagement of contract labour stood beset with exploiting tendencies and resulted in unwholesome labour practice. Incidentally, however, be it noted that the legislature did not feel it expedient to do away with the contract labour altogether, since there are several fields of employment where it is not otherwise possible to have continuous employment and as such, regard being had to the necessities of the situation, the Act of 1970 provides for continuation of contract labour. As a matter of fact the legislature in the enactment, has itself provided various provisions pertaining to the working conditions of contract labour, provided however engagement of contract labour becoming invariable or necessary in the interest of the concerned industry. The legislation therefore subserves twin purpose, to wit: (i) to abolish the contract labour; and (ii) to regulate the working conditions of contract labour wherever such employment is required in the interest of the industry. There is however, a total unanimity of judicial pronouncements to the effect that in the event, the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being of perennial in nature, that is to say, in the event of the engagement of labour force through intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since, involvement of contractor may have its social evil of labour exploitation and thus the contractor ought to go out of scene bringing together the principal employer and the contract labourers rendering the employment as direct, and resultantly a direct employee. This aspect of the matter has been dealt with great lucidity, by one of us (Majmudar,J.) in Air India Statutory Corporation etc. vs. United Labour Union & Ors. etc. [JT 1996 (11) SC 170]. While recording concurrence with Ramaswamy, J. and but observed: presenting his own reasons therefor Majmudar,

J. "It has to be kept in view that contract labour system in an establishment is a tripartite system. In between contract workers and the principal employer is the intermediary contractor and because of this intermediary the employer is treated as principal employer with various statutory obligations flowing from the Act in connection with regulation of the working conditions of the contract labourers who are brought by the intermediary contractor on the principal's establishment for the benefit and for the purpose of the principal employer and who do his work on his establishment through the agency of the contractor. When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labour system in the establishment gets abolished on fulfilment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanishes and along with him vanishes the term `principal employer'. Unless there is a contractor agent there is no principal. Once the contractor intermediary goes the term `principal' also goes with it. Then remains out of this tripartite contractual scenario only two parties - 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 these erstwhile contract labourers. It was urged that Section 10 nowhere provides for such a contingency in express term. It is obvious that no such express provision was required to be made as the very concept of abolition of a contract labour system wherein the work of the contract labour is of perennial nature for the establishment and which otherwise would have been done by regular workmen, would posit improvement of the lot of such workmen and not its worsening. Implicit in the provision of Section 10 is the legislature 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 on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the legislature has expressly not mentioned the consequences of such abolition, but the very scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the intermediary contractor. It was contended that contractor might have employed a number of workmen who may be in excess of the requirement and, therefore, the principal employer on abolition of the contract labour may be burdened with excess workmen. It is difficult to appreciate this contention. The very condition engrafted in section 10(2)(d) shows that while abolishing contract labour from the given establishment, one of the relevant considerations for the appreciate Government is to ascertain whether it is sufficient to appoint considerable number of whole time workmen. Even otherwise there is an inbuilt safety valve in Section 21 of the Act which enjoins the principal employer to make payment of wages to the given number of contract workmen who he has permitted to be brought for the work of the establishment if the contractor fails to make payment to them. It is, therefore, obvious that the principal employer as a wordly businessman in his practical commercial wisdom would not allow contractor to bring larger number of contract labour which may be in excess of the requirement of the principal employer. On the contrary, the principal employer would see to it that the contractor brings only those number of workmen who are required to discharge their duties to carry out the work of the principal employer on his establishment through, of course the agency of the contractor. In fact the scheme of the Act and regulations framed thereunder clearly indicate that even the number of the workmen required for the given contract work is to be specified in the licence given to the contractor."

Incidentally, the Haryana State Electricity Board in the usual course of business has had to maintain the plant and stations as a licencee within the meaning of Indian Electricity Act, 1910 and Electricity Supply Act, 1948. This maintenance work cannot by any stretch be ascribed to be of seasonal nature but a continued effort to achieve the purpose of its existence in terms of the statute. The number of employees required for such purpose had been specified in the contract itself and as a matter of fact supervision of the Board as regards the attendance has also not been disputed before the Labour Court: Maintenance of records pertaining to other statutory duties and liabilities has also not been disputed. Documents, as disclosed before the Labour Court, (to wit Exb. M.5) depict the overall control of the workings of the contract labour including administrative control being with the Board. We deliberately refrain ourselves from going into the same, since that would be beyond the purview of writ jurisdiction and may amount to an appraisal of evidence but the factum of overall supervision and administration being with the Board and as dealt with by the Labour Court cannot in any way be doubted. It is on this perspective that the High Court also thought it fit to rely on the judgment and record its affirmation to what had been passed by the Labour Court, since no reasonable person could come to a conclusion different upon lifting the veil. In the contextual facts, we also record our concurrence to the observations of the High Court that finding of fact arrived at by the Labour Court cannot otherwise be interfered with while exercising powers under Article 226 of the Constitution, unless the same is otherwise perverse or there is existing an error apparent on the face of the record. It would in this context, however, be convenient to note the observations of the High Court as below:- "The learned counsel for the petitioner has tried to argue that the findings of fact arrived at by the Labour Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labour Court has referred to the whole of the evidence lead in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme Court in R.K. Panda's case (supra) the findings of fact arrived at by the Labour Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents-workmen, the continuity of the work for which the labour was employed and the fact that the wages were paid by the petitioner-employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmira Singh, Contractor, there is no other conclusion which can be arrived at except the one that there existing a relationship of employer and workmen between the contesting parties and the Labour Court had rightly passed the award which is impugned in this petition."

Needless to note at this juncture that the Contract Labour Regulation Act being a beneficial piece of legislation as engrafted in the statute book, ought to receive the widest possible interpretation in regard to the words used and unless words are taken to their maximum amplitude, it would be a violent injustice to the framers of the law. As a matter of fact law is well settled by this court and we need not dilate much by reason, therefor to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour

would be left on the mercy of the intermediary. As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic polity ought to survive with full vigour:

> socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises - is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution - the answer cannot possibly be in the affirmative - the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people. The expression `regulation' cannot possibly be read as contra public interest but in the interest of public. Reliance on the decision in the case of Denanath & Ors. v. National Fertilisers Ltd. & Ors. (JT (1991) 4 SC 413) in support of the Boards contention, however, stands diluted by reason of the decisions of this Court in Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors. (JT 1995 (4) SC 264 and Air India Statutory Corporation etc. v. U.L.U. & Ors. etc. (JT 1996 (11) SC
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> 109). The ratio as has been decided in Air India's case appears to have softened the edges of Dinanath's ratio.

While dealing with this issue in Air India's case (supra), this court has, as a matter of fact taken note of more or less the entire catena of cases pertaining to contract labour and we do thus feel it wholly unnecessary to deal with the same in extenso excepting however recording some observations of this Court in Air India's case (supra) as below:-

> "In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir

Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised. Before we conclude, the other aspect of the matter as has been contended by the learned Advocate, appearing in support of the appeals ought to be noticed, to the effect that as a matter of fact the principal employer, namely, the Board has in fact applied for registration of establishment and there are documentary evidence available in support thereof. Though, however, no such case has been made out nor the issue raised either before the Labour Court or before the High Court, this Court, however, to subserve the ends of justice permitted the appellant to file documentary evidence in support of the same and as such three weeks' time was granted at the conclusion of the hearing on 13th January, 1999 so that the same may be produced before the Court. We however wish to place on record that in the normal circumstances, no such opportunities are granted, especially at this stage of the proceeding, but by reason of special facts, which are singularly singular, this Court granted such an opportunity so as to meet the ends of justice.. The appellant, however, has failed to obtain such an opportunity and as a matter of fact no such documentary evidence has seen the light of the day even after such an opportunity to the appellant. In that view of the matter we do not see any merit in these appeals and the appeals therefore fail and are thus dismissed. No order however as to costs. In view of the order as above, we do not deem it fit to pass any order in the pending Interlocutory Applications including the Application for Contempt and the same thus stand disposed of, without any order as to costs.

.....J (S.B. Majmudar) .....J (Umesh C. Banerjee) New Delhi, March 30, IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO190 OF 1991 Mishri Lal (dead) by Lrs. ..Appellant Versus Dhirendra Nath (dead) by Lrs. & Ors. ...Respondents Dear Brother Rao, Draft Judgment in the above mentioned matter is being sent herewith for your kind consideration.