Balwant Rai Saluja & Anr Etc.Etc vs Air India Ltd.& Ors on 25 August, 2014

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Author: H.L. Dattu

Bench: Arun Mishra, R.K. Agrawal, H.L. Dattu

R e p o r t a b l e

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10264-10266 OF 2013

BALWANT RAI SALUJA & ANR.	.. APPELLANT(S)	

VERSUS

AIR INDIA LTD. & ORS.	.. RESPONDENT(S)	

J U D G M E N T

H.L. Dattu, J.

1. In view of the difference of opinion by two learned Judges, and by referral order dated 13.11.2013 of this Court, these Civil Appeals are placed before us for our consideration and decision. The question before this bench is whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment.

2. At the outset, it requires to be noticed that the learned Judges differed in their opinion regarding the liability of the principal employer running statutory canteens and further regarding the status of the workmen engaged thereof. The learned Judges differed on the aspect of supervision and control which was exercised by the Air India Ltd. (for short, "the Air India")- respondent No. 1, and the Hotel Corporations of India Ltd. (for short, "the HCI")-respondent No. 2, over the said workmen employed in these canteens. The learned Judges also had varying interpretations regarding the status of the HCI as a sham and camouflage subsidiary by the Air India created mainly to deprive the legitimate statutory and fundamental rights of the concerned workmen and the necessity to pierce the veil to ascertain their relation with the principal employer.

3. The Two Judge bench has expressed contrasting opinions on the prevalence of an employer–employee relationship between the principal employer and the workers in the said canteen facility, based on, inter alia, issues surrounding the economic dependence of the subsidiary role in management and maintenance of the canteen premises, representation of workers, modes of appointment and termination as well as resolving disciplinary issues among workmen. The Bench also differed on the issue pertaining to whether such workmen should be treated as employees of the principal employer only for the purposes of the Factories Act, 1948 (for short, "the Act, 1948") or for other purposes as well.

FACTS :

4. The present set of appeals came before a two-Judge Bench of this Court against a judgment and order dated 02.05.2011 of a Division Bench of the High Court of Delhi in LPA Nos. 388, 390 and 391 of 2010. The present dispute finds origin in an industrial dispute which arose between the Appellants-workmen herein of the statutory canteen and Respondent No. 1- herein. The said industrial dispute was referred by the Central Government, by its order dated 23.10.1996 to the Central Government Industrial Tribunal cum Labour Court (for short "the CGIT"). The question referred was whether the workmen as employed by Respondent No. 3-herein, to provide canteen services at the establishment of Respondent No. 1-herein, could be treated as deemed employees of the said Respondent No. 1. Vide order dated 05.05.2004, the CGIT held that the workmen were employees of the Respondent No.1-Air India and therefore their claim was justified. Furthermore, the termination of services of the workmen during the pendency of the dispute was held to be illegal.

5. By judgment and order dated 08.04.2010, the learned Single Judge of the High Court of Delhi set aside and quashed the CGIT's award and held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. The Division Bench of the High Court of Delhi vide impugned order dated 02.04.2011 found no error in the order passed by the learned Single Judge of the High Court. The appeal was dismissed by the Division Bench confirming the order of the learned Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI and that the Air India and the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India and to be regularized was rejected by the learned Single Judge.

6. In the present set of appeals, the appellants are workers who claim to be the deemed employees of the management of Air India on the grounds, inter alia, that they work in a canteen established on the premises of the respondent No. 1-Air India and that too, for the benefit of the employees of the said respondent. It is urged that since the canteen is maintained as a consequence of a statutory obligation under Section 46 of the Act, 1948, and that since by virtue of notification dated 21.01.1991, Rules 65-70 of the Delhi Factory Rules, 1950 (for short, "the Rules, 1950") have become applicable to the respondent No. 1, the said workers should be held to be the employees of the management of the corporation, on which such statutory obligation is placed, that is, Air India.

7. Respondent No. 1 is a company incorporated under the Companies Act, 1956 and is owned by the Government of India. The primary object of the said respondent is to provide international air transport/travel services. It has Ground Services Department at Indira Gandhi International Airport, Delhi. The Labour Department vide its notification dated 20.01.1991 under sub-rule (1) of Rule 65 of the Rules, 1950, has enlisted the said M/s. Air India Ground Services Department, thereby making Rules 65 to 70, of the Rules, 1950 applicable to the same.

8. Respondent No. 2-HCI is also a company incorporated under the Companies Act, 1956 and is a separate legal entity from the Air India. As per the Memorandum of Association of Respondent No. 2, the same is a wholly- owned subsidiary of the Air India. The main objects of the said respondent, inter alia, are to establish refreshment rooms, canteens, etc. for the sale of food, beverages, etc.

9. Respondent No. 2 has various units and Respondent No. 3, being Chefair Flight Catering (for short, "the Chefair"), provides flight catering services to various airlines, including Air India. It is this Chefair unit of HCI that operates and runs the canteen. It requires to be noticed that the appellants-workmen are engaged on a casual or temporary basis by the respondent Nos. 2 and 3 to render canteen services on the premises of respondent No.1 - Air India.

ISSUE :

10. The main issue for consideration before this Court in the present reference is "whether workers, engaged on a casual or temporary basis by a contractor (HCI) to operate and run a statutory canteen, under the provisions of the Act, 1948, on the premises of a factory – Air India, can be said to be the workmen of the said factory or corporation".

SUBMISSIONS :

11. Shri Jayant Bhushan, learned Senior Counsel for the appellants- workmen has two alternative submissions; firstly, that in the event of a statutory requirement to provide for a canteen or any other facility, the employees of the said facility would automatically become employees of the principal employer, irrespective of the existence of any intermediary that may have been employed to run that facility. Secondly, the test of sufficient control by the principal employer over the operation of the canteen and consequently over the appellants-workmen, should prevail. Therefore, the Court should pierce the veil and take note of the fact that the contractor was a mere camouflage, and the principal employer was in real control of the canteen and its workmen. Reference is made to

the following cases in support of his submissions- Saraspur Mills Co. Ltd. v. Ramanlal Chimanlal, (1974) 3 SCC 66; Hussainbhai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257; M.M.R. Khan v. Union of India, 1990 Supp SCC 191; and Parimal Chandra Raha v. LIC, 1995 Supp (2) SCC 611.

12. Shri Jayant Bhushan also submits that the issue raised in these appeals is squarely covered by the observations made by the Constitution Bench in the case of Steel Authority of India Ltd. v. National Union Waterfront Workers, (2001) 7 SCC 1.

13. While supporting the judgment in the Steel Authority of India's case (supra), Shri C.U. Singh, learned Senior Counsel for Respondent No. 1- Air India would contend that the issue that came up for consideration before the Constitution Bench is entirely different and, therefore, the said decision has no bearing on the facts and the question of law raised in the present set of appeals.

14. Shri C.U. Singh would then refer to the various case laws cited by the learned counsel for the appellants to show that they are not only distinguishable on facts, but are inapplicable to the facts of the present case. He would also refer to the three-Judge Bench decision of this Court in the case of Indian Petrochemicals Corpn. Ltd. v. Shramik Sena, (1999) 6 SCC 439, and then would submit that the proposition of law enunciated in the Indian Petrochemicals case (supra) is followed by this Court in Hari Shankar Sharma v. Artificial Limbs Mfg. Corpn., (2002) 1 SCC 337; Workmen v. Coates of India Ltd., (2004) 3 SCC 547; Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd., (2005) 5 SCC 51; and Karnataka v. KGSD Canteen Employees' Welfare Assn., (2006) 1 SCC 567.

15. In so far as the second submission of the learned counsel for the appellants is concerned, Shri C.U. Singh would submit that it is not the test of sufficient control, but the test of effective and absolute control which would be relevant, and that if the said test, in the given facts is applied, the appellants would fail to establish the employer and employee relationship. In aid of his submissions, he refers to Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635; International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374; and National Aluminium Co. Ltd. v. Ananta Kishore Rout & Ors., (2014) 6 SCC 756.

RELEVANT PROVISIONS :

> 16. To appreciate the point of view of the parties to the present lis, it is necessary to notice the relevant provisions.
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> 17. Section 46 of the Act, 1948 statutorily places an obligation on the occupier of a factory to provide and maintain a canteen in the factory where more than two hundred and fifty workers are employed. There is nothing in the said provision which provides for the mode in which the factory must set up a canteen. It appears to be left to the discretion of the concerned factory to either discharge the said obligation of setting up a canteen either by way of direct involvement or through a contractor or any other third party. The provision reads as under:

"46. Canteens.-(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice in the generality of the foregoing power, such rules may provide for -

(a) the date by which such canteen shall be provided;

(b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen; (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c)."

18. By virtue of Notification No. 27(12)89-CIF/Lab/464 dated 21.01.1991, rules 65 to 70 of the Rules, 1950 were made applicable to M/s.

Air India Ground Services Department. The rules impose obligations upon the occupier of the factory as regards providing for and maintaining the said canteen.

19. Rules 65 to 70 of the Rules, 1950 are in furtherance of the duty prescribed on the State Government to run statutory canteens as per Section 46 of the Act, 1948. Rule 65, inter alia, provides for an official notification and approval of the occupier canteen facility as well as additional guidelines regarding the construction, accommodation, hygiene, ventilation, sanitation and other maintenance works. Rule 66 prescribes for setting up a dining hall, with adequate space and furniture along with reservation of dining space for women employees. Rule 67 enumerates the requisite equipment such as utensils, furniture, uniforms for the canteen staff and other equipment to be purchased and maintained in a hygienic manner. Rule 68 prescribes that the prices to be charged on foodstuffs and other items will be on a non-profit basis, as approved by the Canteen Managing Committee. Rule 69 illustrates the procedure for handling the auditing of accounts, under the supervision of the Canteen Managing Committee as well as Inspector of Factories. Lastly, Rule 70 enumerates the consultative role of the Managing Committee regarding, inter alia, the quality and quantity of foodstuffs served, arrangement of menus, duration for meals, etc. It also prescribes that such a Committee must have equal representation of persons nominated by the occupier and elected members by the workers of the factory. The Manager is entrusted with determining and

supervising the procedure for conducting such elections and dissolving the Committee at the expiry of its two year statutory term.

DISCUSSION :

20. Before we deal with the issue that arises for consideration, it would be necessary to consider the applicability of the Constitution Bench decision in the Steel Authority of India case (supra). Learned counsel refers to paragraphs 106 and 107 of the said judgment to contend that the observations made therein is the expression of the Court on the question of law and since it is the decision of the Constitution Bench, the same would be binding on this Court. To appreciate the submission of the learned counsel, we notice the aforesaid paragraphs:

> "106. We have gone through the decisions of this Court in VST Industries case (2001) 1 SCC 298, G.B. Pant University case (2000) 7 SCC 109 and M. Aslam case (2001) 1 SCC 720. All of them relate to statutory liability to maintain the canteen by the principal employer in the [pic]factory/establishment. That is why in those cases, as in Saraspur Mills case (1974) 3 SCC 66 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 have to be absorbed as regular employees of the establishment.
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> 107. 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 labourer 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 a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were 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 position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

21. By placing his fingers on Clause (iii) of paragraph 107, the learned counsel would contend that the said observation is the ratio of the Court's decision and, therefore, it is binding on all other Courts. We do not agree. The Constitution Bench in Steel Authority of India's case (supra) was primarily concerned with the meaning of the expression "appropriate Government" in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(a) of the

Industrial Disputes Act, 1947 and the other issue was 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 Contract Labour (Regulation and Abolition) Act. The Court while over-ruling the judgment in Air India Statutory Corporation vs. United Labour Union (1997) 9 SCC 377, prospectively, held that neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issue of notification under the said section, prohibiting contract labour and consequently the principal employer is not required to absorb the contract labour working in the concerned establishment.

In the aforesaid decision, firstly, the issue whether contract labourers working in statutory canteen(s) would fall within the meaning of expression "workmen" under the Act, 1948 and therefore they are employees of the principal employer and secondly, whether the principal employer to fulfil its obligation under Section 46 of the Act, 1948 engages a contractor, the employees of the contractor can claim regularisation and extension of the service conditions extended to the employees of the principal employer did not remotely arise for consideration of the Court.

Secondly, in our considered view, the observations made by the Constitution Bench in paragraph 107 of the Judgment by no stretch of imagination can be considered 'the law declared' by the Court. We say so for the reason, the Court after noticing several decisions which were brought to its notice, has summarised the view expressed in those decision in three categories. The categorisation so made cannot be said the declaration of law made by the Court which would be binding on all the Courts within the territory of India as envisaged under Article 141 of the Constitution of India. This Court in the case of The Commissioner of Income Tax v. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363, has observed:

> "39. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. The Judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it was rendered and while applying the decision to the later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings"

22. Further, this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Ors., (1990) 3 SCC 682, observed as follows:

> "44. An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes), Lord Simon concerned with the decisions in Griffiths v.

> J.P. Harrison (Watford) Ltd. and Finsbury Securities Ltd. v. Inland Revenue Commissioner with their interrelationship and with the question whether Lupton's case fell with-in the precedent established by the one or the other case, said: (AC p. 658) '...what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material.' "

23. It is stated therein that a judicial decision is the abstraction of the principle from the facts and arguments of the case. It was further observed in the Punjab Land Development case (supra), that:

> "53. Lord Halsbury's dicta in Quinn v. Leatham, 1901 AC 495: (AC p. 506) "...every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides." This Court held in State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154, that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not other observation found therein nor what logically follows from the various observations made in it. ..."

24. A Constitution Bench of this Court in the case of State of Punjab v. Baladev Singh, (1999) 6 SCC 172, held that a judgment has to be considered in the context in which it was rendered and that a decision is an authority for what it decides and it is not everything said therein constitutes a precedent.

25. In our view, the binding nature of a decision would extend to only observations on points raised and decided by the Court and neither on aspects which it has not decided nor had occasion to express its opinion upon. The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. We are further of the view that a ratio of the judgment or the principle upon which the question before the Court is decided must be considered as binding to be applied as an appropriate precedent.

26. The Constitution Bench in Steel Authority of India's case (supra), decided on the limited issue surrounding the absorption of contract workers into the principal establishment pursuant to a notification issued by the appropriate Government under Section 10 of the Contract Labour (Abolition and Regulation) Act, 1970. The conclusion in paragraph 125 of Steel Authority of India's case (supra), inter alia, states that on issuance of a notification under Section 10(1) of Contract Labour (Abolition and Regulation) Act, 1970 passed by the appropriate Government would not entail the automatic absorption of contract workers operating in the establishment and the principal employer will not be burdened with any liability thereof. The issue surrounding workmen employed in statutory canteens and the liability of principal employer was neither argued nor subject of

dispute in the Steel Authority of India's case (supra). Therefore, in our considered view the decision on which reliance was placed by learned counsel does not assist him in the facts of the present case.

27. The Act, 1948 is a social legislation and it provides for the health, safety, welfare, working hours, leave and other benefits for workers employed in factories and it also provides for the improvement of working conditions within the factory premises. Section 2 of the Act, 1948 is the interpretation clause. Apart from others, it provides the definition of worker under Section 2(l) of the Act, 1948, to mean a person employed, directly or through any other agency, whether for wages or not, in any manufacturing or cleaning process. Section 46 of the Act, 1948 requires the establishment of canteens in factories employing more than two hundred and fifty workers. The State Government have been given power under the Section to make Rules requiring that such canteens to be provided in the factory under Sub Section (2), the items for which rules are to be framed have been specified. The Sub Section also contemplates the delegation by the State Government the power to the Chief Inspector to make rules in respect of the food to be served in such canteens and their charges. In exercise of rules making power, the Delhi State has framed and notified the Rules, 1950, in which rules 65 to 70 are incorporated to give effect to the purpose of Section 46 of the Act, 1948.

28. The question before us is "when the company is admittedly required to run the canteen in compliance of the statutory obligation under Section 46 of the Act, 1948, whether the canteen employees employed by the contractor are to be treated as the employees of the company only for the purpose of Act 1948 or for all the other purposes."

29. Before we advert to the aforesaid issue raised and canvassed, we intend to notice some of the decisions of this Court where a similar issue was raised and answered. In Indian Petrochemicals case (supra), a three Judge Bench of this Court has stated the law on the point by holding that the employees of the statutory canteens are covered within the definition of 'workmen' under the Act, 1948 and not for all other purposes. The Court went on to observe that the Act, 1948 does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits etc. They are governed by other statutes, rules, contracts or policies.

30. The aforesaid viewpoint is reiterated by this Court in the case of Haldia Refinery Canteen Employees Union and others v. Indian Oil Corporation Ltd. and ors., (2005) 5 SCC 51 and in Hari Shankar Sharma v. Artificial Limbs Manufacturing Corporation, (2002) 1 SCC 337. As observed by the Constitution Bench of this Court in the case of Union of India v. Raghubir Singh, 178 ITR 548 (SC), the pronouncement of law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or a smaller number of Judges and in order that such decision is binding, it is not necessary that it should be a decision rendered by a Full Court or a Constitution Bench of the Supreme Court. The Indian Petrochemical's case (supra) is decided by a three-Judge Bench of this Court and the facts and the legal issues raised in the present appeals are the same or similar as in Indian Petrochemicals case (supra), and since we are not persuaded to take a different view in the matter, the observations made therein is binding on us.

31. This Court in the Indian Petrochemical case (supra), while explaining the decision in Parimal Chandra Raha's case (supra), has stated that in Raha's case, the Supreme Court did not specifically

hold that the deemed employment of the workers is for all purposes nor did it specifically hold that it is only for the purposes of the Act, 1948. However, a reading of the judgment in its entirety makes it clear that the deemed employment is only for the purpose of the Act, 1948. Therefore, it has to be held that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Act, 1948 only and not for all other purposes. To arrive at this conclusion, the Court has followed the view expressed by this Court in M.M.R Khan's case (supra) and Reserve Bank of India v. Workmen, (1996) 3 SCC 267.

32. The proposition of law in the Indian Petrochemicals case (supra) has been reiterated in the Hari Shankar Sharma's case (supra). This Court stated that:

> "6. The observations in Parimal Chandra Raha case relied on by the appellants which might have supported the submission of the appellants have been explained by a larger Bench in Indian Petrochemicals Corpn. Ltd. v. Shramik Sena where it was held, after considering the provisions of the Factories Act and the previous decisions on the issue, that the workmen of a statutory canteen would be the workmen of the establishment only for the purpose of the Factories Act and not for all other purposes unless it was otherwise proved that the establishment exercised complete administrative control over the employees serving in the canteen."

33. The aforesaid principle has also been applied in Haldia's case (supra); KGSD Canteen case (supra); Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union & Anr., (2000) 4 SCC 245; and Barat Fritz Werner Ltd. v. State of Karnataka, 2001 (4) SCC 498.

34. The Coates of India Ltd.'s case (supra) was regarding a dispute over the status of the appellant-workmen therein who were hired by a contractor to work in a canteen run on the premises of the respondent company. This Court observed that merely some requirement under the Act, 1948 of providing a canteen in the industrial establishment is by itself not conclusive of the question or sufficient to determine the status of the persons employed in the canteen. The Industrial Court and the learned Single Judge of the High Court held in favour of the workmen. However, the Division Bench of the High Court held in favour of the respondent-company therein. This Court took note of the relevant finding of fact by the learned Single Judge therein and upheld the conclusion of the Division Bench of the High Court, that the workmen were employed only by the contractor to run the canteen, and they were not employees of the respondent Company. The Court went on to observe that since the canteen employees were not directly appointed by the Company nor had they ever moved the Company for leave or other benefits enjoyed by the regular employees of the Company, and further that the canteen employees got their wages from the respective contractors and, therefore, they are not employees of the Company.

35. The Haldia case (supra) was similar to the facts of the present case. In that case, the appellant-workmen were working in the statutory canteen run by the respondent through a contractor in its factory. It was contended therein that the factory of the respondent where the workmen were employed was governed by the provisions of the Act, 1948 and the canteen where the said workmen were employed would be a statutory canteen and the same was maintained for the

benefit of the workmen employed in the factory. It was alleged therein that the respondent had direct control over the said workmen and the contractor had no control over the management, administration and functioning of the said canteen. Therefore, writ applications were filed seeking issuance of mandamus to the respondent to absorb the appellants in the service of the respondent therein and to regularize them as such. This Court then made a detailed reference to the Parimal Chandra Raha case (supra), the MMR Khan case (supra) and the Indian Petrochemicals case (supra). The Court then extensively referred to the terms and conditions of the contract between the canteen contractor and the respondent to ascertain whether there was any control of the respondent company therein over the workers in the canteen, and if so what was the nature of the said control. It was observed as follows:

> "14. No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This, however, does not mean that the employees working in the canteen have become the employees of the management.
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> 15. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corpn. Ltd. shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corpn. Ltd. case is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance with any statutory provisions/obligations is concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages, etc. and also for depositing the provident fund contributions with the authorities concerned. The contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned [pic]under the contract brought by the employees of the contractor, third party or by the Central or State Government authorities."

36. As regards the nature of control exercised by the management over the workmen employed by the contractor to work in the said canteen, it was observed by this Court in the Haldia case (supra) that the control was of a supervisory nature and that there was no control over disciplinary action or

dismissal. Such control was held not to be determinative of the alleged fact that the workmen were under the control of the management. This Court observed as follows:

> "16. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability, etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management."

37. The last case that we intend to refer on this point is that of KGSD Canteen case (supra), wherein this Court was required to answer the question as to whether the employees of the canteen are employees of the State or whether their services should be directed to be regularized or not. However, in the said case, the State had no statutory compulsion to run and maintain any canteen for its employees. This Court made reference to numerous cases on this issue, inter alia, the Saraspur Mills case (supra), the Parimal Chandra Raha case (supra), the MMR Khan case (supra), the Indian Petrochemicals case (supra), the Constitution Bench decision in the Steel Authority of India case (supra), the Hari Shankar Sharma case (supra), and the Haldia case (supra).

38. We conclude that the question as regards the status of workmen hired by a contractor to work in a statutory canteen established under the provisions of the Act, 1948 has been well settled by a catena of decisions of this Court. This Court is in agreement with the principle laid down in the Indian Petrochemicals case (supra) wherein it was held that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Act, 1948 only and not for all other purposes. We add that the statutory obligation created under Section 46 of the Act, 1948, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the Act, 1948 and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject matter of various other legislations, policies, etc. Therefore, we cannot accept the submission of Shri Jayant Bhushan, learned counsel that the employees of the statutory Canteen ipso-facto become the employees of the principal employer.

39. We may now refer to the various decisions, cited by learned counsel, Shri Jayant Bhushan.

40. The Saraspur Mills case (supra) came before this Court as a result of a dispute under the Bombay Industrial Relations Act, 1946. In that case, the appellant-Company was responsible for maintaining the canteen under the provisions of Section 46 of the Act, 1948 and the rules made thereunder. The appellant-therein had handed over the task of running the said canteen to a

cooperative society. The society employed the respondent-workmen in the canteen. One of the issues that came up for consideration before this Court was that, whether the employees of the said cooperative society could be said to be the employees of the appellant- company. The case of the workmen was that the appellant-company was running the canteen to fulfill its statutory obligations and thus the running of the said canteen would be part of the undertaking of the appellant although the appellant did not run itself the canteen but handed over the premises to the co-operative society to run it for the use and welfare of the Company's employees and to discharge its legal obligation. The appellant- company had resisted the claim by contending that the workmen had never been employed by it but by the co-operative society which was its licensee. This Court after referring to the amended definition of employee and employer in Section 3(13) and 3(14) of Bombay Industrial Relation Act, 1946 and the definition of `Worker' under the Act, 1948, and also referring to earlier decision in Basti Sugar Mills Ltd. v. Ram Ujagar and Ors., (1964) 2 SCR 838, held that since under Act, 1948, it was the duty of the appellant- company to run and maintain the canteen for use of its employees, the ratio of the decision in Ahmedabad Mfg. and Calico Printing Co. Ltd., v. Their Workmen (1953) II LLJ 647 would be fully applicable in which the very same provision of the Act, 1948 were considered and confirmed the finding of the Industrial Court.

41. It would be relevant to note that the primary reasoning of the Court in the Saraspur Mills case (supra) to hold that the workers of the canteen run by a cooperative society to be the employees of the appellant- company therein, was in view of the amended definition of "employer" and "employee" as found under the Bombay Industrial Relations Act, 1946 and definition of `Workmen' under the Act, 1948. Since no such expansive definition finds mention neither in the Act, 1948 nor in the facts of the present case, it would not be proper to place reliance on the given case as a precedent herein.

42. In the Hussainbhai case (supra), the dispute arose between workmen hired by a contractor to make ropes within the factory premises on one hand, and the petitioner who was the factory owner manufacturing ropes who had engaged such contractor, on the other hand. The issue therein pertained to whether such workmen would be that of the contactor or the petitioner. In the said case, the Court went into the concept of employer- employee relationship from the point of view of economic realities. It was observed, by a three-Judge Bench, that:

> "5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in 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 contractu is of no consequence 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 contractor. ..."

43. The Hussainbhai case (supra) did not deal with the Act, 1948, much less any statutory obligation thereunder. The case proceeded on the test of employer-employee relationship to ascertain the actual employer. The Court gave due weight and consideration to the concept of 'economic control' in this regard. It may only be appropriate for the Court in the present case to refer to this judgment as regards determining the employer- employee relationship.

44. The case of M.M.R. Khan (supra), also came up for consideration before a three-Judge Bench of this Court. It related to the workers employed in canteens run in the different railway establishments. The relief claimed was that the workers concerned should be treated as railway employees and should be extended all service benefits which are available to the said railway employees. The Court was concerned, in the said case, with three types of canteens:- (i) Statutory Canteens; (ii) Non- Statutory, Recognized Canteens; and (iii) Non-Statutory, Non-Recognized Canteens. As regards statutory canteens, the Court noticed that under Section 46 of the Act, 1948, the occupier of a factory was not only obliged to provide for and maintain a canteen where more than 250 workers are employed, but was also obliged to abide by the rules which the concerned Government may make, including the rules for constitution of a managing committee for running the canteen and for representation of the workers in the management of the canteen. In other words, the whole working and functioning of the canteen has to conform to the statutory rules made in that behalf.

45. It would be relevant to notice the facts noted by this Court in the MMR Khan's case (supra). This Court had made an explicit reference to the relevant provisions of the Railway Establishment Manual and the Administrative Instructions on Departmental Canteens in Offices and Industrial Establishments of the Government as issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions of the Government of India, which dealt with the canteens and had express provisions thereunder that were integral to the final decision of this Court. The issue that arose before the Court was whether the employees of the statutory canteen could be said to be the employees of the railway administration as well. This Court observed that:

> "25. Since in terms of the Rules made by the State Governments under Section 46 of the Act, it is obligatory on the railway administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognizes the obligation on the railway Administration created by the Act and as pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the railway administration may employ anyone such as a staff committee or a co- operative society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the railway administration. If the management of the canteen is handed over to a consumer cooperative society the bye-laws of such society have to be amended suitably to provide for an overall control

by the railway administration.

> 26. In fact as has been pointed out earlier the Administrative Instructions on departmental canteens in terms state that even those canteens which are not governed by the said Act have to be under a complete administrative control of the concerned department and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be taken according to the rules made in that behalf by the said department.

In the circumstances, even where the employees are appointed by the staff committee/cooperative society it will have to be held that their appointment is made by the department through the agency of the committee/society as the case may be. ..."

46. We are in agreement with the view expressed in MMR Khan case (supra). We further observe that the reasoning of the Court, as noticed hereinabove, was based on the Railway Establishment Rules and the relevant Administrative instructions issued by the Government of India. By virtue of the aforesaid Rules and Administrative instructions, it was made mandatory that the complete administrative control of the canteen be given to the Railway Administration. Such mandatory obligations are not present in the instant case. In light of the same, the given case cannot be said to be a precedent on the general proposition as regards the status of employees of a statutory canteen established under the Act, 1948.

47. We have already referred to the decision of this Court in Parimal Chandra Raha case (supra), and, therefore, we are not referring to the said decision once over again. However, we add that in the Parimal Chandra Raha case (supra), this Court made a general observation that under the provisions of the Act, 1948, it is statutorily obligatory on the employer to provide and maintain a canteen for the use of his employees. As a consequence, the Court stated that, the canteen would become a part of the principal establishment and, therefore, the workers employed in such canteen would be the employees of the said establishment. This Court went on to observe that the canteen was a part of the establishment of the Corporation, that the contractors engaged were only a veil between the Corporation and the canteen workers and therefore, the canteen workers were the employees of the Corporation. This Court, while arriving at the said conclusion laid emphasis on the contract between the corporation and the contractor, whereby it was shown that the terms of the said contract were in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Furthermore, it was found that majority of the workers had been working in the said canteen continuously for a long time, whereas the intermediaries were changed on numerous occasions.

48. In light of the above discussion, in our view, the case laws on which the reliance is placed by learned counsel would not assist him to drive home the point canvassed.

49. To ascertain whether the workers of the Contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, this Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there

exists an employer-employee relationship between the factory and the workmen working in the canteen. In this regard, the following cases would be relevant to be noticed.

50. This Court would first refer to the relevant pronouncements by various English Courts in order to analyze their approach regarding employer-employee relationship. In the case of Ready Mix Concrete (South East) Ltd v. Minister of Pensions and National Insurance, [1968] 2 QB 497, McKenna J. laid down three conditions for the existence of a contract of service. As provided at p.515 in the Ready Mix Concrete case (supra), the conditions are as follows:

> "(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master; (ii) he agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master; (iii) the other provisions of the contract are consistent with its being a contract of service."

51. In the Ready Mix Concrete case (supra), McKenna J. further elaborated upon the above-quoted conditions. As regards the first, he stated that there must be wages or remuneration; else there is no consideration and therefore no contract of any kind. As regards the second condition, he stated that control would include the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. Furthermore, to establish a master-servant relationship, such control must be existent in a sufficient degree.

52. McKenna J. further referred to Lord Thankerton's "four indicia" of a contract of service said in Short v. J. and W. Henderson Ltd. (1946) 62 TLR 427. The J. and W. Henderson case (supra) at p.429, observes as follows:

> "(a) The master's power of selection of his servant; (b) the payment of wages or other remuneration; (c) the master's right to control the method of doing the work; and (d) the master's right of suspension or dismissal."

> 53. A recent decision by the Queen's Bench, in JGE v. The Trustees of Portsmouth Roman Catholic Diocesan Trust, [2012] EWCA Civ 938, Lord Justice Ward, while discussing the hallmarks of the employer-employee relationship, observed that an employee works under the supervision and direction of his employer, whereas an independent contractor is his own master bound by his contract but not by his employer's orders. Lord Justice Ward followed the observations made by McKenna J. in the Ready Mix Concrete case (supra) as mentioned above. The JGE case (supra), further noted that 'control' was an important factor in determining an employer-employee relationship. It was held, after referring to numerous judicial decisions, that there was no single test to determine such a relationship. Therefore what would be needed to be done is to marshal various tests, which should cumulatively point either towards an employer-employee relationship or away from one.

54. The case of Short v. J. and W. Henderson Ltd., as cited in the Ready Mix Concrete case (supra) and in the JGE case (supra), was also referred to in the four-Judge Bench decision of this Court in Dhrangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 274. In the Dhrangadhra Chemical Works case (supra), it was observed that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work.

55. In Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126, as regards the concept of control in an employer-employee relationship, observed as follows:

"15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)"

56. In the case of Bengal Nagpur Cotton Mills case (supra), this Court observed that:

"9. In this case, the industrial adjudicator has granted relief to the first respondent in view of its finding that he should be deemed to be a direct employee of the appellant. The question for consideration is whether the said finding was justified.

10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant."

57. Further, the above case made reference to the case of the International Airport Authority of India case (supra) wherein the expression "control and supervision" in the context of contract labour was explained by this Court. The relevant part of the International Airport Authority of India case (supra), as quoted in Bengal Nagpur Cotton Mills case (supra) is as follows:

"38. ... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a [pic]contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/ allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

58. A recent decision concerned with the employer-employee relationship was that of the NALCO case (supra). In this case, the appellant had established two schools for the benefit of the wards of its employees. The Writ Petitions were filed by the employees of each school for a declaration that they be treated as the employees of the appellant-

company on grounds of, inter alia, real control and supervision by the latter. This Court, while answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the appellant-therein. In this regard, reference was made to the case of Dhrangadhra Chemical Works case (supra) wherein this Court had observed that:

"14. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p.23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., (1952) SCR 696 "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question"."

59. The NALCO case (supra) further made reference to the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514, wherein this Court had observed as follows:

"37. The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts;

(e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment;

(h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent."

60. It was concluded by this Court in the NALCO case (supra) that there may have been some element of control with NALCO because its officials were nominated to the Managing Committee of the said schools. However, it was observed that the above-said fact was only to ensure that the schools run smoothly and properly. In this regard, the Court observed as follows:

"30. ... However, this kind of "remote control" would not make NALCO the employer of these workers. This only shows that since NALCO is shouldering and meeting financial deficits, it wants to ensure that the money is spent for the rightful purposes."

61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and

(vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra).

62. In the present set of appeals, it is an admitted fact that the HCI is a wholly owned subsidiary of the Air India. It has been urged by the learned counsel for the appellants that this Court should pierce the veil and declare that the HCI is a sham and a camouflage. Therefore, the liability regarding the appellants herein would fall upon the Air India, not the HCI. In this regard, it would

be pertinent to elaborate upon the concept of a subsidiary company and the principle of lifting the corporate veil.

63. The Companies Act in India and all over the world have statutorily recognized subsidiary company as a separate legal entity. Section 2(47) of the Companies Act, 1956 (for short "the Act, 1956") defines 'subsidiary company' or 'subsidiary', to mean a subsidiary company within the meaning of Section 4 of the Act, 1956. For the purpose of the Act, 1956, a company shall be, subject to the provisions of sub-section (3) of Section 4, of the Act, 1956, deemed to be subsidiary of another. Clause (1) of Section 4 of the Act, 1956 further imposes certain preconditions for a company to be a subsidiary of another. The other such company must exercise control over the composition of the Board of Directors of the subsidiary company, and have a controlling interest of over 50% of the equity shares and voting rights of the given subsidiary company.

64. In a concurring judgment by K.S.P. Radhakrishnan, J., in the case of Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613, the following was observed:

> "Holding company and subsidiary company ....
>
> 257. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. ...
>
> 258. Holding company, of course, if the subsidiary is a WOS, may appoint or remove any Director if it so desires by a resolution in the general [pic]body meeting of the subsidiary. Holding companies and subsidiaries can be considered as single economic entity and consolidated balance sheet is the accounting relationship between the holding company and subsidiary company, which shows the status of the entire business enterprises. Shares of stock in the subsidiary company are held as assets on the books of the parent company and can be issued as collateral for additional debt financing. Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed decentralized management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries."

65. The Vodafone case (supra), further made reference to a decision of the US Supreme Court in United States v. Bestfoods [141 L Ed 2d 43: 524 US 51 (1998)]. In that case, the US Supreme Court explained that as a general principle of corporate law a parent corporation is not liable for the acts of its subsidiary. The US Supreme Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes, and further that the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary was held not to be sufficient to pierce the status of their

relationship and, to hold parent company liable.

66. The doctrine of 'piercing the corporate veil' stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of Salomon v. A Salomon & Co Ltd., [1897] AC 22. Lord Halsbury LC (paragraphs 31–33), negating the applicability of this doctrine to the facts of the case, stated that:

> "...a company must be treated like any other independent person with its rights and liabilities legally appropriate to itself ..., whatever may have been the ideas or schemes of those who brought it into existence."

67. Most of the cases subsequent to the Salomon case (supra), attributed the doctrine of piercing the veil to the fact that the company was a 'sham' or a 'façade'. However, there was yet to be any clarity on applicability of the said doctrine.

68. In recent times, the law has been crystallized around the six principles formulated by Munby J. in Ben Hashem v. Ali Shayif, [2008] EWHC 2380 (Fam). The six principles, as found at paragraphs 159– 164 of the case are as follows- (i) ownership and control of a company were not enough to justify piercing the corporate veil; (ii) the Court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice; (iii) the corporate veil can be pierced only if there is some impropriety; (iv) the impropriety in question must be linked to the use of the company structure to avoid or conceal liability; (v) to justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and (vi) the company may be a 'façade' even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

69. The principles laid down by the Ben Hashem case (supra) have been reiterated by UK Supreme Court by Lord Neuberger in Prest v. Petrodel Resources Limited and others, [2013] UKSC 34, at paragraph 64. Lord Sumption, in the Prest case (supra), finally observed as follows:

> "35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The Court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited

> one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil."

70. The position of law regarding this principle in India has been enumerated in various decisions. A Constitution Bench of this Court in Life Insurance Corporation of India v. Escorts Ltd. & Ors., (1986) 1 SCC 264, while discussing the doctrine of corporate veil, held that:

> "90. ... Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

71. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.

72. Having considered the relevant judicial decisions and the well established and settled principles, it would be appropriate to revert back to the controversy as found in the present factual matrix.

73. In the present reference, this Court is required to ascertain whether workmen, engaged on a casual or temporary basis by a contractor to operate and run a statutory canteen on the premises of a factory or corporation, can be said to be the workmen of the said factory or corporation.

74. It has been noticed above that workmen hired by a contractor to work in a statutory canteen established under the provisions of the Act, 1948 would be the said workmen of the given factory or corporation, but for the purpose of the Act, 1948 only and not for all other purposes. Therefore, the appellants-workmen, in the present case, in light of the settled principle of law, would be workmen of the Air India, but only for the purposes of the Act, 1948. Solely by virtue of this deemed status under the Act, 1948, the said workers would not be able to claim regularization in their employment from the Air India. As has been observed in the Indian Petrochemicals case (supra), the Act, 1948 does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts or policies.

75. To ascertain whether the appellants-herein would be entitled to other benefits and rights such as regularization, this Court would have to apply the test of employer-employee relationship as noticed hereinabove. For the said purpose, it would be necessary to refer to the Memorandum of Association and the Articles of Association of the HCI to look into the nature of the activities it undertakes. The objects of the HCI, as provided under its Memorandum of Association, inter alia, include the following:

> (i) To carry on the business of hotel, motel, restaurant, café, tavern, flight kitchen, refreshment room and boarding and lodging, house-keepers, licensed victuallers, etc.;
>
> (ii) To provide lodging and boarding and other facilities to the public;
>
> (iii) To purchase, erect, take on lease or otherwise acquire, equip and manage hotels;
>
> (iv) To establish shops, kitchens, refreshment rooms, canteens and depots for the sale of various food and beverages.

76. The objects incidental or ancillary to the main objects include, inter alia:

> "...
>
> (5) To carry on any business by means of operating hotels etc. or other activity which would tend to promote or assist Air-India's business as an international air carrier.

..."

77. It can be noticed from the above, that the primary objects of the HCI have no direct relation with the Air India. It is only one of the many incidental or ancillary objects of the HCI that make a direct reference to assisting Air India. The argument that the HCI runs the canteen solely for Air India's purpose and benefit could not succeed in this light. The HCI has several primary objects, which include the running of hotels, motels, etc., in addition to establishing shops, kitchens, canteens and refreshment rooms. The Air India only finds mention under HCI's ancillary objects. It cannot be said that the Memorandum of Association of the HCI provides that HCI functions only for Air India. Nor can it be said that the fundamental activity of the HCI is to run and operate the said statutory canteen for the Air India.

78. As regards HCI's Articles of Association, it is stated therein that the HCI shall be a wholly-owned subsidiary of the Air India and that its share capital shall be held by the Air India and/or its nominees. Furthermore, the said Articles included provisions whereby Air India controls the composition of the Board of Directors of the HCI, including the power to remove any such director or even the Chairman of the Board. Further, Air India has the right to issue directions to the HCI, which the latter is bound to comply with. In this regard, it may be contended that the Air India has effective and absolute control over the HCI and that therefore latter is merely a veil between the

appellants-workmen and Air India. We do not agree with this contention.

79. In support of the above we find that nothing has been brought before this Court to show that such provisions in the Articles of Association are either bad in law or would impose some liability upon the Air India, in terms of calling the appellants to be its own workers. In our view, the said Articles are not impermissible in law. It is our considered opinion that the doctrine of piercing the veil cannot be applied in the given factual scenario. Despite being a wholly owned subsidiary of the Air India, Respondent No. 1 and Respondent No. 2 are distinct legal entities. The management of business of the HCI is under its own Board of Directors. The issue relating to the appointment of the Board of Directors of the HCI by the Air India would be a consequence of statutory obligations of a wholly owned subsidiary under the Act, 1956.

80. The present facts would not be a fit case to pierce the veil, which as enumerated above, must be exercised sparingly by the Courts. Further, for piercing the veil of incorporation, mere ownership and control is not a sufficient ground. It should be established that the control and impropriety by the Air India resulted in depriving the Appellants-workmen herein of their legal rights. As regards the question of impropriety, the Division Bench of the High Court of Delhi in the impugned order dated 02.05.2011, noted that there has been no advertence on merit, in respect of the workmen's rights qua HCI, and the claim to the said right may still be open to the workmen as per law against the HCI. Thus, it cannot be concluded that the controller 'Air India' has avoided any obligation which the workmen may be legally entitled to. Further, on perusal of the Memorandum of Association and Articles of Association of the HCI, it cannot be said that the Air India intended to create HCI as a mere façade for the purpose of avoiding liability towards the Appellants-workmen herein.

81. Therefore, the only consideration before this Court is the nature of control that the Air India may have over the HCI, and whether such control may be called effective and absolute control. Such control over the HCI would be required to be established to show that the appellants-workmen were in fact the employees of the Air India.

82. It may be noticed again that the NALCO case (supra) dealt with a similar issue. In that case, the Court had observed that the day-to-day functioning of the school as setup by the appellant therein was not under NALCO, but under a managing committee therein. Further, the said Managing Committee was a separate and distinct legal entity from NALCO, and was solely responsible for recruitment, disciplinary action, termination, etc. of its staff. The Court therefore had held that the respondents therein could not be said to be employed by NALCO. In the present case, HCI is a separate legal entity incorporated under the Act, 1956 and is carrying out the activity of operating and running of the given canteen. The said Articles of Association of the HCI, in no way give control of running the said canteen to the Air India. The functions of appointment, dismissal, disciplinary action, etc. of the canteen staff, are retained with the HCI. Thus, the exercise of control by the HCI clearly indicated that the said respondent No. 2 is not a sham or camouflage created by respondent No. 1 to avoid certain statutory liabilities.

83. Reference was also made by the learned counsel for the Appellants to certain documents such as minutes of meetings, etc. to show that the Air India was exercising control over the HCI in matters relating to transfer of workmen in the canteen, rates of subsidies, items on the menu, uniforms of the canteen staff, etc. On a perusal of the said documents, it is found that the said matters were, again, in the nature of supervision. In fact, most of these were as a consequence of the obligations imposed under the Rules, 1950. Air India, being the entity bearing the financial burden, would give suggestions on the running of the canteen. Furthermore, in light of complaints, issues or even suggestions raised by its own employees who would avail the said canteen services, Air India would put forth recommendations or requests to ensure the redressal of said complaints or grievances. As regards discussions over uniforms, prices, subsidies, etc., it may be noted that the same are obligations under the Rules, 1950 as applicable to Air India.

84. In our considered view, and in light of the principles applied in the Haldia case (supra), such control would have nothing to do with either the appointment, dismissal or removal from service, or the taking of disciplinary action against the workmen working in the canteen. The mere fact that the Air India has a certain degree of control over the HCI, does not mean that the employees working in the canteen are the Air India's employees. The Air India exercises control that is in the nature of supervision. Being the primary shareholder in the HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, the Air India would be entitled to have an opinion or a say in ensuring effective utilization of resources, monetary or otherwise. The said supervision or control would appear to be merely to ensure due maintenance of standards and quality in the said canteen.

85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

> The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises

absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs.

Ordered accordingly.

.....J. [H.L. DATTU] .....J. [R.K. AGRAWAL] .....J. [ARUN MISHRA]
NEW DELHI, AUGUST 25, 2014.