National Aluminium Co.Ltd.& Ors vs Ananta Kishore Rout & Ors on 8 May, 2014

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Author: A.K. Sikri

Bench: A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5989 of 2008

National Aluminium Co. Ltd. & Ors. ….Appellant(s)

Vs.

Ananta Kishore Rout & Ors. ….Respondent(s)

With

Civil Appeal No.5992 of 2008
Civil Appeal No.5993 of 2008

J U D G M E N T

A.K. SIKRI, J.

1. The Appellant herein, National Aluminium Company Limited (NALCO) has established two schools for the benefit of the wards of its- employees. These schools are known as Saraswati Vidaya Mandir (SVM) and located at NALCO Nagar in Angul district and at Damandjodi in Koraput district, Orissa. Management of these schools is presently in the hand of Saraswati Vidya Mandir (SVS) which is affiliated to Vidya Bharati Akhila Bharatiya Sikhya Sansthan.

2. Two Writ Petitions were filed by the employees of each of school in the Orissa High Court, Cuttack for a declaration that they are the employees of NALCO and be treated as such, with consequential prayer that these employees be also accorded suitable pay scales as admissible to the employees of NALCO. Having regard to the commonality of fact, situation under which these writ petitions were filed, as well as singularity of the issue involved, both these writ petitions were heard together by the High Court, the outcome of which is the judgment dated 21st December, 2006. The High Court has accepted the case of these employees of SVM holding them to be the employees of the NALCO. As a sequittor, direction is issued to the NALCO to make available the benefits, which are enjoyed by other employees of the NALCO. Present appeals, filed by NALCO, question the validity of the aforesaid judgment of the High Court.

3. We may first take note of those facts which are not in dispute. These are as follows:

> NALCO is a Public Sector Enterprise under the Government of India. It is Company incorporated under the Indian Companies Act, 1956 with its registered office at Bhubaneswar, Orissa. NALCO is engaged in manufacture and production of Alumina and Aluminium. It has its manufacturing units: one at NALCO Nagar, Angul and at Damanjodi in Koraput district.

4. In the year 1984, NALCO established two schools in the townships set up by it for its employees working in its manufacturing units at NALCO Nagar, Angul and at Damanjodi, with a view to provide educational facility mainly to the children of its employees from primary to +2 level though the children from neighbouring area are also given admissions. It also provided necessary infrastructure, such as land, building, furniture, library, laboratory equipments and other assets. The said schools admittedly are unaided private schools. On 15th May, 1985, NALCO entered into two separate but identical agreements for the aforesaid schools with the Central Chinmoy Mission Trust, Bombay (in short, CCMT) whereunder the NALCO entrusted the management of the schools on contract basis to CCMT and the schools were called Chinmay Vidyalayas. According to the these agreements, NALCO agreed to pay an amount of Rs.10,000/- per annum to CCMT as donation towards the supervision charges for each school.

5. These Agreements acknowledged the fact that the two schools have been established by the NALCO and to start and run those schools, it had approached CCMT. The Agreements further stipulated terms and conditions on which CCMT was to run and manage these schools. It is a common case of the parties that the schools have been recognized by the State Government (Education Department) and also affiliated to the Orissa Board of Secondary Education. As per the requirements of the Statute governing school education, every school is required to constitute a Managing Committee. Accordingly, these Agreements also provided that the powers to establish, maintain and manage the schools shall vest in the Managing Committee consisting of seven members. Out of these seven members, four were the nominees of CCMT and three persons were nominated by the NALCO. Chairman, Vice-Chairman and Secretary-cum-correspondent were to be the nominees of CCMT. Though the admission in the schools is open to all children irrespective of caste, creed and community, preference is to be given to the children of the employees of the NALCO. Apart from constructing the building and providing requisite furniture and fittings, NALCO

was also to provide quarters at its own cost for teachers and staff members of the schools. NALCO also agreed to provide residential accommodation to every employee in due course. Significantly, the employees of the schools were to be treated at par with NALCO employees so far as the medical, consumer co-operative, club and similar facilities are concerned. NALCO also agreed to meet the revenue deficit as per Clause 15 of the said Agreement which reads as under:

> "15. That NALCO shall meet the revenue defit of Chinmaya Vidyalaya, Damanjodi on the actual basis. Since NALCO shall be meeting the capital expenditure and the revenue deficit, NALCO shall have the right to fix the tuition fees and other charges from time to time for children of NALCO employees and others."

6. These agreements were terminable at the instance of the parties by giving six months prior notice in writing to the other party. In the event of termination the agreements, the services of the staff employed by the school were liable to be terminated in accordance with the terms of their appointment in these schools.

7. These agreements came to an end by efflux of time in the year 1990. It appears that CCMT was not interested in continuing with the aforesaid arrangement. This led NALCO to find another organization for running and managing the schools. It is how SVS came into the picture which agreed to manage both the schools. Accordingly Agreement dated 18th May, 1990 was entered into by NALCO with SVS. As per the Agreement, name of the school was changed from Chinmaya Vidyalaya Damanjodi to Saraswati Vidya Mandiar (SVM). As per this agreement NALCO agreed to pay Rs.2,000/- per month to the SVS towards its supervision charges which was enhanced from time to time and this figure was Rs.50,000/- per annum at the time of the filing of the writ petitions in the High Court. Even as per this Agreement, the Executive Authority of these two schools vests in the Managing Committee to be constituted separately for each of the schools. This Managing Committee is constituted with the following members:

> "a) The respective unit heads of Damanjodi/Angul or its nominee shall be the ex-officio president;
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> b) A nominee of the Finance department of the respective units of NALCO;
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> c) A nominee of the Personnel Admn. Department of the respective units of NALCO;
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> d) A representative of the parents/guardians who hsall be an employee of NALCO to be co-opted by the Managing Committee respectively for each school at the units;
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> e) 4 members to be nominated by the Samiti;
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> f) The headmaster of the school;

g) A representative of the teachers;

h) A part-time representative of the Samiti who shall act as the ex-officio member-secretary of the Managing Committees." The aforesaid clause in the Agreement is with a proviso that the relevant provisions of the Orissa Education Act and Rules shall be kept in view while making aforesaid nominations.

8. Accordingly, two Managing Committees were constituted; one for each school and both have been registered under the Societies Registration Act, 1860. As per the provision contained in clause 4 of the aforesaid Agreement, other clauses relating to placing at the exclusive disposal of the SVS, the two school premises along with requisite furniture/fittings, library, laboratory games equipments, audio-visual, etc. remain as it is. Likewise provision for providing deficit funds, after accounting for the fee and other amounts received from the students, by NALCO is also maintained. Other functions which are specifically assigned to the Managing Committee, as per this Agreement, are as follow:

"(a) Audit of the schools accounts by the Auditors appointed by the Managing Committee.

(b) Managing Committee to raise funds by way of donation and voluntary contribution including power to borrow funds or raise loans for the purpose of the schools after getting prior approval of the Samiti, without any liability to NALCO."

9. It is also significant to note that apart from providing usual termination clause, as per this Agreement, the Samiti agreed to retain the services of the existing teachers and staff in both the schools as provided in clause 25 thereof, which is to the following effect:

"25. It has been agreed by the Samiti to retain the services of the existing teachers and staffs in both the schools on their existing terms and conditions of service and the Managing Committee in due course may review the position."

10. Since the teaching and non-teaching staff working in the aforesaid schools had no service conditions, there was discontentment among the employees. Therefore, it was thought proper to frame rules regulating conditions of service for such employees. A joint meeting was convened for this purpose wherein certain modalities were worked out to frame rules regarding recruitment and conditions of services of the employees of the schools and a committee for this purpose was constituted comprising of the authorities of both the schools at Angul and Damanjodi, the Manager (Personnel) of NALCO and the Secretary of SVS. A set of draft rules was framed under the name and style 'Saraswati Vidyamandir Employees' Recruitment and Conditions of Service Rules, 1995' (Rules' hereinafter). The Rules so framed were approved by the Corporate office of NALCO.

11. These Rules provide for the scales of pay of different categories of employees, the modalities for recruitment of Principal, teachers and other non-teaching staff and determination of seniority of the employees besides fixing the age of superannuation etc.

12. It cannot be disputed that as per these Rules, it is the Managing Committee's of the schools, which are registered as societies under the Societies Registration Act, undertake the recruitment of the teaching and other staff, issue appointment letters and take all other decisions in respect of the services of teaching and other staff including promotion, pay fixation, seniority, grant of leave, disciplinary action, retirement, termination etc. This has been so demonstrated by NALCO by producing copies of the orders issued by the MCs relating to each of the aforesaid aspects. Not only this, it has been so provided under the Rules as well. Rule 4 prescribes the method of recruitment; Rule 2(a) defines the appointing as MC; Rule 4(11) deals with the cadre of posts; Rule 20 touches the aspect of termination of service; and Rule 24 deals with the discipline and disciplinary action.

13. From these facts, narrated above, one can easily find out as to what are the respective cases of both the parties. The employees of both schools filed the writ petitions to lay the claim that they are the employees of the NALCO on the ground that real control and supervision of the schools, including the staff is that of NALCO which has the final say in all vital matters. It was their argument that though the appointments are made by the Managing Committees of the schools, it is on the recommendation of the Selection Committee of which the authorities of NALCO are the members. Further, since inception of the school, an officer in the rank of General Manager of NALCO has been functioning as the President of the Managing Committee, and an officer in the rank of Chief Manager/DGM (Personal Admn.), and the DGM (Finance) are the other two members. That apart, the building furniture/fittings and all necessary paraphernalia for running of the schools is provided by and is the responsibility of NALCO. Even the finances are provided by NALCO the financial budget is approved by the Board of Director of the NALCO. NALCO even fixes the tuition fee. No transaction of the schools can be made without the approval of DGM (Finance), NALCO which includes the expenditure with regard to the salary component, provident fund, medical reimbursement, leave travel concession, festival advance, increments, etc. Teaching and non-teaching staff of the schools are allotted with residential quarters by the NALCO. It was thus argued that NALCO plays a decisive role in the matter of appointment of the employees as well as in the management of the schools.

14. On the other hand, the case of the NALCO was that Managing Committees are the societies registered under Societies Registration Act having independent legal status; it is these MCs which are not only the appointing authorities but disciplinary authorities with all controlling power over these employees and therefore NALCO cannot be treated as the employer of the staff of the schools.

15. The High Court after considering the respective submissions and perusing the material on record came to the conclusion that real control and supervision over these employees and even over the schools, was that of NALCO. Some of the relevant discussion in the impugned judgment is extracted below:

> "A bare look at the basic document, i.e. agreement dated 15th May, 1985 entered into between the NALCO and CCMT, Clause 20 of it, as indicated above, would show that on termination of the agreement, only the name of the Chinmaya Vidyalaya cannot be used by NALCO and subsequently, the place of CCMT has been taken over by SVS. From the voluminous documents as referred to above, there can be no second

> opinion in regard to the fact that the schools were established by the NALCO, funded by NALCO authorities and it has deep and pervasive control over the schools. It is the NALCO, which pays the salary, Provident fund, and makes the medical reimbursement, the SVS as stated in its affidavit, only looked to the discipline, curriculum and management of the schools. In this regard, we may refer to a decision rendered by this Court in OJC No.4581985 (Duryodhan Swain & Ors. vs. Fertiliser Corporation of India and others) on 22.11.1990, wherein a similar question arose. Twenty-one petitioners serving in the Fertilizer Higher Secondary school in different capacities had filed the said writ petition. The said school was imparting teaching in + 2 course and on account of the welfare need of its employees, the school was given grant and was converted into a Higher Secondary School. Even though a managing committee was constituted for the said school, representatives of trade unions and of guardians and parents as well as the officials of the corporation were also included.

The financial control of the school rested in a larger measure with the corporation and it was fully financed by the corporation. In those prevailing facts and circumstances, this court held that the corporation had deep and pervasive control over the working of the school and ultimately, directed the corporation to accept the petitioners to be its employees.

Now in the instant case, at the cost of repetition, we may say that the agreement dated 18.05.1990 entered into between the NALCO and the SVS (Annexure 1) and the agreement dated 15.05.1985 entered into between the NALCO and CCMT (Annexure 19) as indicated above, would amply prove the control of NALCO over the schools in finance, payment, discipline and administration. This fact is further corroborated and strengthened by the submission of the learned counsel for the SVS that it only carries on the activities of providing better educational aid and that it is not an educational agency.

It is a peculiar case, where there is no denial that all the employees are getting much higher scale of pay than that of the employees of the aided and unaided schools under the state and their pay structure is totally different and even much better than the employees of all the Government educational institutions functioning of the state. It has become possible only due to the reason that the entire finance is being paid by NALCO and if NALCO withdraws itself from the schools, neither SVS and SVM would be able to meet the expenses of the schools.

The agreement dated 15.05.1985 as well as the conduct of the parties and the transactions that are carried on from 1985 till today, would indicate that NALCO has deep and pervasive control over the management of the schools and it is NALCO, which is the educational agency in establishing the schools. The argument advanced by Mr. R.K. Rath, learned counsel for NALCO, and Mr. B.N. Rath, learned counsel appearing for SVS in both the Writ Petitions do not detract from the position that the schools are being managed and financed by the NALCO and from the documents. It is crystal clear that the ownership and overall management of the schools are retained by the NALCO while CCMT and SVM or SVS as the case may be, have taken up the responsibility of running the schools at different point of time because they have expertise and experience in the field of teaching."

16. Before us arguments of both the parties remain the same. Mr. P.P. Rao, learned Senior Counsel appearing for the Appellant in one appeal and Mr. Ashok Gupta, Senior Advocate appearing in the other appeal of NALCO challenged the aforesaid line of thinking of the High Court. It was argued by Mr. Rao that the High Court took into consideration those facts which were irrelevant and not germane to decide the controversy viz. over the whether NALCO had any deep and comprehensive control and supervision over the teaching and other staff of the school. His submission was that establishment of the school with necessary infrastructure was not at all relevant factor. The schools were set up by NALCO acknowledging its responsibility as a model employer which can be termed as a step towards "Corporate Social Responsibility". As a welfare measure, NALCO wanted to provide this facility in the two NALCO campuses. However, by providing land, building and infrastructure and setting up of the school, all of it has been handed over to the outside agency to run these schools. For running these schools, it is that outside agency which had to employ the staff and settle their service conditions. In so far as provision of providing financial assistance is concerned, it was only to the extent of meeting shortfall, again, keeping in mind good corporate governance. He argued that the real test in such a case was to examine as to which authority was the appointing authority of the employees, and was fixing terms and conditions of the employment, including fixing their service conditions like pay fixation, seniority, grant of leave, promotion etc. When all these powers were with the Managing Committee or the SVS which was so specifically provided in the service rules as well, duly approved by the Director of Education, by no stretch of imagination these employees could be called as the employees of NALCO.

17. Another submission of Mr. Rao was that even the High Court has accepted, in the impugned judgment, that the employees of these schools are enjoying much higher scales of pay than that of the employees of aided and unaided schools under the State of Orissa and their pay structure is much better than the employees of even the Government educational institutions functioning in the State. He, thus, argued that when it is established as an admitted fact that the salaries and services conditions of the employees of these schools are far superior than their counter parts in working in aided, unaided and government schools, there was no reason for these employees to file these petitions. Elaborating this proposition, the submission of Mr. Rao was that even if it is assumed that they are the employees of NALCO, no direction could have been given to give them the pay scales which are enjoyed by the employees of NALCO, in the absence of any parity inasmuch as principle of equal pay for equal work has no application in a case like this as the duties, functions, job requirements and even the eligibility conditions for appointment of such staff were materially different from the employees of the NALCO. Therefore, the High Court could not give any direction to NALCO to make available the benefits which are being enjoyed by other employees of NALCO to the employees of these schools. To buttress this argument he referred to the following judgments:

> (i) A.K. Bindal & Anr. v. Union of India & Ors.; (2003) 5 SCC 163; (ii) State of West Bengal & Anr. v. West Bengal Registration Copywriters Association and Anr.;

(2009) 14 SCC 132,

(iii) Nihal Singh & Ors. v. State of Punjab & Ors; (2013) 10 Scale 162

18. Mr. Ashok Gupta, in addition, argued that the impugned direction to treat the employees of the school as that of NALCO, amended to giving them the status of public employment which was impermissible inasmuch as the procedure for recruitment by NALCO for its own staff was entirely different. Further, whether the agreement entered into with SVS is a camouflage an aspect which could not have been gone into in writ proceedings under Article 226 of the Constitution. He also argued that impugned direction of the High Court would discourage the corporate sector, private or public, to take up welfare measures for its employees and would be counter productive to the principle of corporate good governance, which is now mandatorily provided under new Companies Act, enacted by the Parliament in the year 2013.

19. Mr. Venugopal, the learned Senior Counsel appearing for the employees of the schools defended the judgment of the High Court and the directions contained therein. He referred to all those documents and provisions as per which NALCO had been exercising effective control in functioning of these schools. These features have already been mentioned above. Thrust of his submission was that even when there was cloak of Managing Committee, apparently running the show, it was only a subterfuge, when examined in the light of the aforesaid documents reflecting that the real control was that of NALCO which was pulling the strings. Apart from highlighting that the schools were established by NALCO which remain the property of NALCO, it is even providing entire infrastructure as well as full financial support on continuous basis. Further the schools were established for the benefit of the children of NALCO's employees. He also referred to various documents, which are taken note of by the High Court as well, to buttress his submission that the actual decision making authority from the stage of recruitment process to that of termination of these employees, is NALCO. From these documents, he drew the attention of the Court to the following aspects:

> "(i) Though the appointments are made by the Managing Committees of the School, selection process of appointment is controlled by NALCO which has financial say in the matter.
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> (ii) Appointments are made on the recommendation of the Selection Committee of which authorities of NALCO are the members.
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> (iii) President of the Managing Committee is the General Manager of NALCO. Likewise Chief Manager/DGM (Personnel Administration) is member of the Managing Committee who takes care of personnel managing of the Managing Committee.

Financial affairs of the Schools are controlled by DGM (Finance) of NALCO as a member of the Managing Committees. In this way administrative and financial control is exercised by NALCO.

(iv) Entire expenses incurred for running of the school are borne by NALCO and no transaction can be made without the approval of DGM (Finance), NALCO including the expenses with regard to the salary, Provident Fund, medical reimbursement, Leave Travel Concession, festival advance, increments etc.

(v) Teaching and non-teaching staff of the schools also enjoyed the facilities of Consumer Cooperative Society by NALCO as well as NALCO Hospital, like any other employees of NALCO.

(vi) Budgetary provisions for the school are made by the NALCO authorities every year. NALCO appoints auditors to audit the accounts of the schools. NALCO has provided residential quarters to the teaching and non-teaching staff of the school in the NALCO Township at par of the employees of the NALCO.

(vii) Documents show that day to day grievances of the staff of different schools and other issues are addressed by NALCO Authorities."

20. Mr. Venugopal submitted that in a matter like this, where one has to examine as to who may be the employer of the employees of the school, there were three possibilities namely NALCO, Siksha Samiti or Managing Committee. He argued that so far as the Managing Committee is concerned, it is not having any legal entity of its own. Moreover as soon as the agreement between NALCO and SVS comes to an end, these Managing Committees would disappear. Therefore, such a body cannot be the employer. Likewise, in so far as the SVS is concerned, it was only an agency for running the school and would go away after the expiry or termination of the agreement. Therefore, it would follow that NALCO is the real employer which fact stands established from the manner in which NALCO is exercising deep and pervasive control.

21. We have considered the aforesaid submissions with reference to the record of this case. No doubt, the school is established by NALCO. NALCO is also providing necessary infrastructure. It has also given adequate financial support inasmuch as deficit, after meeting the expenses from the tuition fee and other incomes received by the schools, is met by NALCO. NALCO has also placed staff quarters at the disposal of the schools which are allotted to the employees of the schools. Employees of the school are also accorded some other benefits like recreation club facilities etc. However, the poser is as to whether these features are sufficient to make the staff of the schools as employees of NALCO.

22. In order to determine the existence of employer - employee relationship, the correct approach would be to consider as to whether there is complete control and supervision of the NALCO. It was so held by this Court in Chemical Works Limited (supra) way back in the year 1957. The court emphasised that the relationship of master and servant is a question of fact and that depends upon the existence of power in the employer, not only to direct what work the servant is to do but also the manner in which the work is to be done. This was so explained by formulating the following principle:-

> "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 Page 23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., and Another, "The

> proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

23. It has been established from the documents on record that both the schools have their own independent Managing Committees. These Managing Committees are registered under the Societies Registration Act. It is these Managing Committees who not only recruit teaching and other staff and appoint them, but all other decisions in respect of their service conditions are also taken by the Managing Committees. These range from pay fixation, seniority, grant of leave, promotion, disciplinary action, retirement, termination etc. In fact, even Service Rules, 1995 have been framed which contain the provisions; delineating all necessary service conditions. Various documents are produced to show that appointment letters are issued by the Managing Committees, disciplinary action is taken by the Managing Committees, pay fixation and promotion orders are passed by the Managing Committees and even orders of superannuation and termination of the staff are issued by the Managing Committees. It, thus, becomes clear that day to day control over the staff is that of the Managing Committees. These Managing Committees are having statutory status as they are registered under the Societies Registration Act. Therefore, Mr. Venugopal is not right in his submission that Managing Committees do not have their own independent legal entities.

24. Merely because the schools are set up by NALCO or they have agreed to take care of the financial deficits for the running of the schools, according to us, are not the conclusive factors. Such aspects have been considered by this Court in various cases. In the case of RBI (Supra), question was as to whether workers of the canteens which were established and even financed by the RBI, were the workers of RBI. Various canteens were set up by the RBI which were being run through a Cooperative Society. They were established in the Bank's premises for the benefit of its employees. The Bank was reimbursing the charges incurred in getting various statutory licenses. Even prior permission of the RBI was required to increase the strength of the employees. Holding that these canteen workers were not the employees of RBI, the court observed:

> "10. The Bank does not supervise or control the working of the canteens or the supply of eatables to employees. The employees are not under an obligation to purchase eatables from the canteen. There is no relationship of master and servant between the Bank and the various persons employed in the canteens aforesaid. The Bank does not carry any trade or business in the canteens. The staff canteens are established only as a welfare measure. Similar demands made by the staff canteen employees and the request made to the Central Government to refer the dispute for adjudication was rejected by the Central Government and the challenge against the same before the Calcutta High Court was unsuccessful. According to the Bank, it has no statutory or other obligation to run the canteens and it has no direct control or supervision over the employees engaged in the canteens. It has not right to take any disciplinary action or to direct any canteen employee to do a particular work. The disciplinary control over the persons employed in the canteens does not vest in the Bank nor has the Bank any say or control regarding the allocation or work or the way in which the work is carried out by the said employees. Sanctioning of leave, distribution of work, maintenance of the Attendance Register are all done either by the Implementation

> Committee (Canteen Committtee) or by the Cooperative Society or by the contractor."

25. The court noticed that the Implementation Committee (Canteen Committee) which was running the canteen consisted of certain members, three out of which were nominated by the Bank. This was held to be a non-determinative factor. Following discussion on this aspect is also material and, therefore we extract the same hereunder:

> "Moreover, there is no right in the Bank to supervise and control the work done by the persons employed in the Committee nor has the Bank any right to direct the manner in which the work shall be done by various persons. The Bank has absolutely no right to take any disciplinary action or to direct any canteen employee to do a particular work. Even according to the Tribunal, the Bank exercises only a 'remote control'."

26. In the present case, as pointed out above, the day to day supervision and control vests with the Managing Committee, from the appointment till cessation/termination. The exercise which is undertaken by the High Court is in the nature of piercing the veil and commenting that real control vests with NALCO. Though we would come to this aspect a little later, it is necessary to point out at this stage that whether the arrangement/ contract is sham or camouflage is a disputed question of fact. In the present case writ petitions were filed and it is not a case where industrial disputes were raised by these employees.

27. In the case of Workmen of Nilgiri Cooperative Marketing Societies Ltd. (Supra) the entire law was re-visited. The Court emphasised that no hard and fast rule can be laid down nor it is possible to do so. Likewise no single test – be it control test, be it organisational or any other test – has been held to be the determinative factor for determining the jural relationship of employer and employee. The Court enumerated the relevant factors, which are to be examined in such cases, in Paras 37 and 38 which reads as under:-

> "37. The control test and the organisation 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;
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> (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." In the facts of that case, where the court found that the portress and gridders who were claiming themselves to be the employees of Nilgiri Cooperative Marketing Society, were not its employees as the said society was neither maintaining any attendance register or wage register or fixing working hours or had issued appointment letters to them."

28. More significant case, having close proximity with the present one is the judgment in SC Chandra & Ors. v. State of Jharkhand and Ors. 2007 (8) SCC 279. In that case Hindustan Copper Limited (HCL), the Government of India enterprise, had established a school. Employees of that school claimed that their real employer was HCL. Admitted facts were that school was established by the HCL with the object of benefiting children of the workers of the HCL. Even the financial assistance was provided to the schools. The Court however, came to the conclusion that only by giving financial assistance the HCL did not become the employer of teachers and staff working in the school. They were held to be the employees of the Managing Committee of the school. That apart of the discussion which has direct bearing on the present case runs as follows:-

> "8. We have heard learned counsel for the parties and perused the records. The basic question before us is whether a writ of mandamus could be issued against the management of HCL. The learned Single Judge relying on the Division Bench in an identical matter pertaining to Bharat Cooking Coal Limited dismissed the writ petition of the appellants. This issue was examined in an analogous writ petition and in the aforesaid case, this issue was extensively considered as to whether the management of the school is the direct responsibility of HCL or not. After considering the matter in detail, the learned Single Judge relying on the aforesaid judgment found that there is no relationship of master and servant with that of the teachers and other staff of the school with HCL as the management of the school was done by the Managing Committee though liberal financial grant was being made by the Corporation. By that there was no direct connection of the management of HCL with that of the management of the school. Though through various communication an impression was sought to be given that the school is being run by HCL but in substance HCL only used to provide financial assistance to the school but the management of the school was entirely different than the management of HCL. Giving financial assistance does not necessarily mean that all the teachers and staff who are working in the school have become the employees of HCL. Therefore, we are of the view that the view taken by the learned Single Judge appears to be correct that there was no relationship of the management of HCL with that of the management of the school though most of the employees of HCL were in the Managing Committee of the school. But by that no inference can be drawn that the school had bee n established by HCL. The children of workers of HCL were being benefited by the education imparted by this school. Therefore the management of HCL was giving financial aid but by that it cannot be construed that the school was run by the management of HCL. Therefore, under these circumstances, we are of opinion that the view taken by the learned Single Judge appears to be correct."

29. From the reading of Para 20 in that judgment it can be discerned that the Managing Committee which was managing the school was treated as an independent body. This case is relevant on the second aspect as well viz. the claim of school employees predicate upon the financial burden that is assured by NALCO. To that aspect we shall advert to little later in some detail.

30. No doubt, there may be some element of control of NALCO because of the reason that its officials are nominated to the Managing Committees of the schools. Such provisions are made to ensure that schools runs smoothly and properly by the society. It also becomes necessary to ensure that the money is appropriately spent. However, this kind of 'remote control' would not make NALCO as the employer of these workers. This only shows that since NALCO is shouldering and meeting the financial deficits, it wants to ensure that money is spent for rightful purposes.

31. It was argued that the Managing Committee cannot be the employer as it would lose its identity on the termination of agreement between NALCO and SVS. However, even that by itself cannot be the determinative factor. When the agreement was earlier entered into between NALCO and CCMT, and staff was appointed in the school by CCMT, NALCO ensured that such staff is taken over by SVS. For this purpose a specific clause is provided in agreement between NALCO and SVS which reads as under:

> "That if any of the parties hereto at any time wishes to terminate this arrangement, it may do so on giving of least six months prior notice in writing to the other party, of such an intention, provided that such termination shall be effective only at the close of the academic session. Provided further that in the event of such termination, the services of the staff employed by the school shall, subject to any agreement to the contrary between the two parties hereto, be terminated in accordance with the terms of their appointment in the Chinmaya Vidyalaya, Damanjodi."

32. Only because SVS agreed to take over the employees, would not mean that NALCO becomes the employer. On the contrary, this clause suggests that but for the intervention of NALCO, the school staff that was engaged by CCMT would have been dealt with by CCMT. It is a matter of record that CCMT runs other schools as well. In that eventuality it would have taken these employees with themselves or retrench these employees in accordance with law. Same is the position of SVS who have other schools also. However, this kind of situation is not going to arise in the present case. We place on record the assurance given by the learned Senior Counsels appearing for NALCO that the teaching and other staff of the two schools would not lose their jobs even if present agreement of NALCO with SVS comes to an end and the management is taken over by some other agency for running the schools. We direct that NALCO shall stand committed by this assurance and would adhere to the same for all times to come. The position which emerges, in view of the aforesaid assurance, is that the service tenure of these employees is protected.

33. In so far as their service conditions are concerned, as already conceded by even the respondents themselves, their salaries and other perks which they are getting are better than their counter parts in Government schools or aided/ un-aided recognised schools in the State of Orissa. In a situation like this even if, for the sake of argument, it is presumed that NALCO is the employer of these

employees, they would not be entitled to the pay scales which are given to other employees of NALCO as there cannot be any comparison between the two. The principle of 'equal pay for equal work' is not attracted at all. Those employees directly employed by NALCO are discharging altogether different kinds of duties. Main activity of NALCO is the manufacture and production of alumina and aluminium for which it has its manufacturing units. The process and method of recruitment of those employees, their eligibility conditions for appointment, nature of job done by those employees etc. is entirely different from the employees of these schools. This aspect is squarely dealt with in the case of SC Chandra & Ors. (supra) where the plea for parity in employment was rejected thereby refusing to give parity in salary claim by school teachers with class working under Government of Jharkhand and BCCL. The discussion which ensued, while rejecting such a claim, is recapitulated hereunder in the majority opinion authored by A.K. Mathur, J.:

> "20. After going through the order of the Division Bench we are of opinion that the view taken by the Division Bench of the High Court is correct. Firstly, the school is not being managed by BCCL as from the facts it is more than clear that BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.
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> 21. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work.

There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be educated with the clerks of the State Government or of BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana v. Charanjit Singh wherein Their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL." Markandey Katju, J in his concurring and supplementing judgment dwelt on this very aspect in the following manner:-

> "24. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s e.g. Dhirendra Chamoli v. State of U.P., Surinder Singh

v. Engineer-in-Chief, CPWD, Randhir Singh v. Union of India, etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in Dhirendra Chamoli case this Court granted to the casual, daily rated employees the same pay scale as regular employees.

25. It appears that subsequently it was realised that the application of the principle of equal pay for equal work was creating havoc. All over India different groups were claiming parity in pay with other groups e.g. Government employees of one State were claiming parity with Government employees of another State.

26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this court in recent years.

27. Thus, in State of Haryanan v. Tilak Raj it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

28. In State of Haryana v. Charanjit Singh discussing a large number of earlier decisions it was held by a three Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is complete and wholesale identity between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions."

34. We say at the cost of repetition that there is no parity in the nature of work, mode of appointment, experience, educational qualifications between the NALCO employees and the employees of the two schools. In fact, such a comparison can be made with their counter parts in the Government schools and/or aided or unaided schools. On that parameter, there cannot be any grievance of the staff which is getting better emoluments and enjoying far superior service conditions.

35. We thus, are of the opinion that the impugned judgment of the High Court is un-sustainable. Allowing these appeals, the judgment of the High Court is hereby set aside. There shall, however, be no order as to costs.

.....J. [Surinder Singh Nijjar] .....J. [A.K. Sikri] New Delhi May 8, 2014